

**Resolution No. 1539-10**

A Resolution Establishing the Policy and Procedures for Tax Exemptions and Incentives for Economic Development for the City of Ottawa, Kansas; and Repealing Resolution No. 1367-06.

**Be It Resolved By the Governing Body of the City of Ottawa, Kansas:**

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**Section 1. Definitions.** For the purpose of this Resolution, in application to the City of Ottawa, the words or phrases as used in this Resolution shall have the following meaning:

- 1) "Applicant" shall mean and include the business, property owner or owners, and their officers, employees and agents.
- 2) "Associated therewith" as used with respect to tangible personal property shall mean being located within, upon, or adjacent to buildings or added improvements to buildings.
- 3) "Commenced operations" shall mean the start of the business activity housed in the building for which a tax exemption is requested.
- 4) "Economic development purposes" shall mean the expansion or the establishment of a new business enterprise which:
  - a) Is or proposes to be located or principally based in Kansas; and
  - b) Can provide demonstrable evidence that:
    - i) it is or will be primarily engaged in any one or more of the Kansas basic industries; or
    - ii) it is or will be primarily engaged in the development or production of goods or the provision of services for out-of-state sale; or
    - iii) it is or will be primarily engaged in the production of raw materials, ingredients or components for other enterprises which export the majority of their products; or
    - iv) it is a national or regional enterprise which is primarily engaged in interstate commerce; or

- v) it is or will be primarily engaged in the production of goods or the provision of services which will supplant goods or services which would be imported into the City; or
  - vi) it is the corporate or regional headquarters of a multistate enterprise which is primarily engaged in out-of-state industrial activities that take place outside of Ottawa.
- 5) "Kansas basic industry" shall mean:
- a) agriculture;
  - b) mining;
  - c) manufacturing;
  - d) interstate transportation;
  - e) wholesale trade which is primarily engaged in multistate activity or which has a major import supplanting effect within the state;
  - f) financial services which are primarily engaged in providing such services for interstate or international transactions;
  - g) business services which are primarily engaged in providing such services to out-of-town markets;
  - h) research and development of new products, processes or technologies; or
  - i) tourism activities which are primarily engaged in for the purpose of attracting out-of-state tourists.

Note: As used in these subsections, "primarily engaged" means engagement in an activity by an enterprise to the extent that not less than 51% of the gross income of the enterprise is derived from such engagement.

- 6) "Expansion" shall mean the enlargement of a building or buildings, construction of a new building, the addition of tangible personal property, or any combination thereof, which is new to the tax rolls and increases the employment capacity of a business eligible for a tax exemption.
- 7) "Tangible personal property" shall mean machinery and equipment, which is new to the tax rolls, and used during the term of the tax exemption which may be granted.
- 8) "Target area" shall mean the NE Ottawa Industrial Park.

**Section 2. Purpose.** The purpose of this Resolution is to establish the official policy and procedures of the City of Ottawa for the granting of property tax exemptions for real and personal property being added to the tax rolls in accordance with the provisions of Section 13 of Article 11 of the Constitution of the State of Kansas and the provisions of K.S.A 12-1740 et seq. and K.S.A 79-201a.

**Section 3. General Objective.** The securing of private economic investment to broaden the tax base is an important current and long-term objective of the City. When fiscal benefits exceed fiscal costs, a broadened tax base provides local government with the financial resources to maintain and enhance the services available to all residents. The creation of job opportunities for Franklin County residents is an important current and long-term objective of the City. The quality of life for all area residents is enhanced when good job opportunities are available.

The granting of property tax exemptions on real and personal property is one of the incentives available under Kansas law to help achieve these public objectives. This resolution is intended to establish the policy and procedures to govern the fair, effective and judicious use of the power to grant such exemptions.

Because of Ottawa's assets and the desire of area residents to plan for the future and retain a community that is different from other growing suburban areas, a property tax exemption may not be offered to every firm that is eligible under state statutes.

**Section 4. Economic Development Objectives.** The City of Ottawa works in cooperation with Franklin County, U.S.D. 290 and the Ottawa O.F.C.E.D. to achieve the general objectives outlined in Section 2. This partnership enables the maximization of resources and development of a consensus regarding the kind of economic development that best advances the interests of the community. All of the partners in this effort share a commitment to:

- 1) Encourage existing industry to expand
- 2) Assist new business start-ups
- 3) Recruit new companies from out-of-state and internationally
- 4) Promote high technology and research based businesses
- 5) Encourage training and development of Ottawa area employees
- 6) Support the location and retention of businesses which are good "corporate citizens" that will add to the quality of life in Ottawa through their leadership and support of local civic and philanthropic organizations.

While it is new companies from out-of-state that typically generate the most publicity, it is the policy of the City to place a priority on the retention and expansion of existing businesses. The City's role in an economic development partnership may involve providing the zoning and infrastructure improvements required to create new jobs and innovative investment; this creates the personal assistance and in some cases the incentives including a property tax exemption, that are required to compete for new businesses, expansions of existing businesses and out-of-state relocations.

The partners believe Ottawa and Franklin County should be selective as to the kinds of businesses that are recruited and assisted. In general, the target objectives looked for in new and expanding businesses are:

- 1) Average wages per employment category that meet or exceed the average in the community as determined annually by the Kansas Department of Human Resources Wage Survey. <http://laborstats.dol.ks.gov>
- 2) A combined positive cost/benefit ratio of 1:1.30 or greater over a 10 year period as determined by the City's adopted economic model.
- 3) Environmentally sound. The City will, at its sole discretion, require higher design standards for the design of the buildings and materials used for projects receiving property tax abatement. Projects shall utilize construction materials that meet or exceed the requirements set forth in the design guidelines as provided by the City's Planning and Codes Department. The project must be environmentally acceptable to the location intended as well as the surrounding area.
- 4) It is the City's goal to attract a wide variety of jobs, which utilize the full range of skills and educational levels possessed by Ottawa/Franklin County residents. To accomplish this goal, the governing body may determine it in the public's interest to grant a property tax exemption to a business whose wages or cost/benefit ratio do not meet the requirements of the target objectives above if the business offers excellent benefits as defined as an employer that provides at least 70% of health insurance premium cost and/or if average hourly wages are \$1.50 above KS Dept HR Wage Survey amount. An applicant business must agree to pay a wage at or above 130% of the federal poverty threshold for a family of three (3) to their employees and/or complement the existing industry and build on the human resources and the capabilities of local high schools, Ottawa University and Neosho County Community College graduates.

**Section 5. Legal Authority.** The governing bodies of Kansas counties and cities may exempt certain property for economic development purposes from taxes for a maximum of 10 years, in accordance with the provisions of Section 13 of Article 11 of the Kansas Constitution and the provisions of K.S.A 12-1740 et seq. and K.S.A 79-201a, subject to such limitations or prohibitions as may be enacted by the legislature. This authority is discretionary because the City may provide for tax exemptions in an amount and for purposes more restrictive than that authorized by the Constitution or any such

legislation. Pursuant to its home rule and statutory powers, the City may (1) require the owners of any property for which an exemption is requested to provide certain information, (2) condition the granting of an exemption to an agreement providing for the payment of in lieu charges or taxes and (3) require the payment of initial application and annual renewal fees reasonably necessary to cover the costs of administration.

**Section 6. General Procedure.** The following basic procedure shall govern the issuance of tax exemptions within this City.

- 1) The applicant business shall apply for a tax exemption by filing a written application as provided in Section 16.
- 2) The Public Incentives Review Committee (see section 19), shall determine whether the requested application should be recommended to the City Commission.
- 3) The amount of the tax exemption will be determined in accordance with Section 14.
- 4) Notice of the City's intent to issue a tax exemption will be submitted to the State Court of Tax Appeals for final approval. If approval is denied the exemption cannot legally be awarded.
- 5) If the business fails to pay the in lieu tax payments, as may be required as a condition of the granting of an exemption, or fails to provide the Annual Renewal Application reports or other information requested by the City, the City Commission may revoke, or modify the exemption.

**Section 7. Public Incentives Review Committee.** There is hereby created a Public Incentives Review Committee, which shall be composed of:

- 1) The Mayor, or the Mayor's designee who shall serve as chair,
- 2) The City Manager
- 3) The City Planning and Codes Administration Director
- 4) The City Director of Finance
- 5) A representative of O.F.C.E.D.
- 6) A representative of the Franklin County Commission
- 7) A representative of U.S.D. 290

The purpose of this Committee shall be to:

- 1) Receive and review requests applications for tax exemptions
- 2) To gather and review such additional information as may be deemed necessary to determine if the company meets the general and economic development objectives of Sections 2 and 3 of this document.
- 3) To conduct preliminary negotiations with the applicant business.
- 4) To review the annual tax abatement report for compliance with performance agreements
- 5) To make recommendations to the City Commission.

Note: Public Incentives Review Committee records, including applications for tax exemptions, may be withheld from public disclosure under the Kansas Open Records Act as provided for under subsections (20) and (31) and other subsections of K.S.A. 45-221, but shall be available for public inspection when otherwise required by law. The Committee is authorized to issue administrative report of findings which shall not be binding on the City Commission, and may be superseded by any action by the City Commission.

**Section 8. Jurisdiction.** The City shall grant tax exemptions only as to property located within the City. The City will provide notice to Franklin County and the USD 290 Board of Education on all applications.

**Section 9. Nominal Tax Determination.** All tangible property of a business receiving a tax exemption under this Resolution shall be annually assessed by the County Appraiser in the same manner as if it were not exempt, but the amount exempted shall not be placed on the assessment rolls. The amount of the property taxes which would be payable shall also be determined annually by the Director of Finance in the same manner as if the property were not exempt. Separate assessment and tax calculations shall be made for:

- 1) Land
- 2) The improvements thereon
- 3) Any tangible, personal property associated with the business

The City shall request the County Clerk and County Treasurer to provide the City with this information as early as possible, but no later than November 15 of each year.

**Section 10. Minimum Payment In Lieu of Taxes.** All applicants receiving a tax exemption pursuant to this Resolution of Policy and Procedures shall be required to make a minimum payment in lieu of taxes. The minimum payment shall equal the amount of property tax paid or payable for the most recent year prior to the acquisition of the property by the new business or the construction of new buildings or added improvements to buildings. The purpose of requiring a minimum payment in lieu of taxes is to provide the City, County, School District and any other taxing jurisdictions affected by the exemption with as much tax revenue from the exempted property as was received prior to exemption.

**Section 11. Special Assessments.** Any tax exemption granted for real property under this Resolution of Policy and Procedures shall not affect the liability of such property for any special assessments levied or to be levied against such property.

**Section 12. Pirating.** It is the intent of the City, the County and the O.F.C.E.D. to avoid participation in "bidding wars" between Kansas cities or areas competing for the relocation of an existing Kansas business through attempts to offer the largest tax incentive or other public inducement, which is detrimental to the State's economy and the public interest. It is the policy of the City to discourage applications for tax exemptions, or to grant tax exemptions that deliberately encourage and cause the pirating of business from another Kansas community to this community. This policy does not preclude providing information to companies that inquire about Ottawa or are seeking an expansion rather than relocation. It also does not preclude the granting of a tax exemption in those situations where:

- 1) The company has already made a decision to relocate or expand or,
- 2) The company is seriously considering moving out of state.

**Section 13. "Public Good" Requirement.** The basic principle from which the City operates is that private business should not be subsidized with public funds, the indirect consequences of tax exemptions, unless the public good expressed in Section 2 of this Resolution of Policy and Procedures is served.

**Section 14. Standards for Costs and Benefits.** The City, in determining whether a tax exemption should be granted; may conduct a cost benefit analysis to consider various factors including, but not limited to, the following:

- 1) The increase in appraised valuation of the property.
- 2) The sales and income tax revenue which may result.
- 3) The number of new jobs, the earnings and the benefits that will be provided.
- 4) The expenditures local government will need to make to provide street and city utility improvements/extensions, emergency services and other services to the company.
- 5) The expenditures for police and fire protection, recreation, street maintenance, social programs, etc. for the new residents associated with the company.
- 6) The expenditures for capital investments (library, streets, airport, sewer plants, etc.) for the new residents associated with the company.

- 7) The expenditures by the local school district to provide the facilities and to educate the students of the new residents associated with the company.
- 8) Other public or private expenditures associated with attracting the new company.
- 9) The degree to which the business improves the diversification of the economy.
- 10) The kinds of jobs created in relation to skills available from the local labor market.
- 11) The degree to which the ultimate market for the business products and services is outside the community, recognizing that outside markets bring "new money" to the local economy.
- 12) The potential of the business for future expansion and additional job creation.
- 13) The beneficial impacts the business may have by creating other new jobs and businesses, including the utilization of local products or other materials and substances in manufacturing.
- 14) The beneficial economic impact the business will have on a particular area of the City, including designated enterprise zones and areas of needed revitalization or redevelopment.
- 15) The compatibility of the location of the business with land use and development plans and availability of existing infrastructure and essential public services.
- 16) Whether the project shall be of a nature that has been identified by the City as desirable to stimulate the local economy while also improving the quality of life for the citizens by:
  - a) Exporting a substantial part of the project's total products and/or services from the Ottawa area;
  - b) Adding jobs and/or replacing purchases now being made by Ottawa citizens in areas outside of the City;
  - c) Supporting or spurring the development of a new industrial enterprise by developing significant speculative building space;
  - d) Facilitating retail development.

**Section 15. No Unfair Advantage.** If in the judgment of the City Commission, an unfair advantage for one business over another Ottawa business that competes for the same consumer market within the City, the City Commission may deny the application.

**Section 16. Amount of Tax Exemption.** To accomplish the economic objectives of the City as outlined earlier in this document, it shall be the policy of the City to consider providing a 50% tax abatement for projects that qualify for tax abatement under Kansas law and meet the tax abatement provisions in this policy. The abatement percentage of 50% may be adjusted to an anticipated maximum of 80%. However, when deemed appropriate by a majority of the governing body, this policy may allow for an overall adjustment, which would provide a total abatement that exceeds 80%.

Additional abatement amounts may be based on the following criteria.

- 1) A company that has been paying property tax in Franklin County and whose payments are current to date for at least three years may be eligible for an additional five percent tax abatement for a new project.
- 2) Additional abatement adjustments may be considered for projects that meet the following criteria:
  - a) When the investment under consideration exceeds \$20 million dollars in adjusted 2010 dollars the City Commission may consider a property tax abatement that exceeds fifty percent.
  - b) Companies that employ more than 100 employees or more.
  - c) Companies whose new construction achieves U.S. Green Building Council LEED Certification".

- 3) The governing body's authority is discretionary and applications may be considered on a case-by-case basis. The governing body is under no obligation to approve any requested tax abatement and reserves the right to deviate from the policies contained herein and the schedule above (though not the procedures) if, in the opinion of the governing body, circumstances warrant such deviation. The governing body may vary the amount and duration of the abatement provided the net abatement to a business shall not reduce the net tax revenues as would be received pursuant to the above schedules to the local taxing units over 10 years. It shall be the policy of the City to approve a tax abatement request for the real and personal property portion of a project if the project meets the economic development objectives outlined in Section 3 of this policy.

An example of a 50% abatement schedule is found in chart 1 below. However, other payment schedules may be considered.

**Chart 1**

	% Abated
Year 1	95%
Year 2	85%
Year 3	75%
Year 4	65%
Year 5	55%
Year 6	45%
Year 7	35%
Year 8	25%
Year 9	15%
Year 10	5%
Thereafter	0%

**Section 17. Abatement Criteria.** It is the intention of the governing body that all projects receiving tax abatement meet the criteria detailed below. Failure to meet these standards may result in a decrease in the total abatement percentage available to a project.

- 1) **Wages:** The amount and diversity of additional employment opportunities, which would be provided, shall be a primary consideration. The City expects projects that pay at or above average wages as determined by the Kansas Department of Human Resources Wage Survey. The region's economic conditions at the time an application is received will be taken into consideration.
- 2) **Design Criteria:** Projects must be in compliance with the City's Comprehensive Plan and must utilize construction materials which meet or exceed the requirements set forth in the policies and procedures as provided by the City's Planning Department and the Development Review Committee.
- 3) **Location:** The Governing Body will give strong consideration for an applicant's business that will be located in a targeted area for economic development or redevelopment, has specific site constraints making development more difficult or costly, or is considered in need of rehabilitation in some way. The compatibility of the location of the business with land use and development plans of the City and the availability of existing infrastructure facilities and essential public services will be a consideration. The project must be environmentally acceptable to the location intended as well as the surrounding area.
- 4) Preference will be given to businesses that do their own pre-treatment of wastewater, or do not require extensive environmental controls. The proposed use must be clean,

nonpolluting, and consistent with all policies, ordinances and codes. Based upon future growth, the applicant must be willing to work with the City to provide a traffic study on any projected traffic impact increase on the City.

- 5) The abatement period for a project approved under this Resolution shall be determined by the amount of new capital investment in the City of Ottawa. Capital investment shall include any expenditure for land, building, or personal property subject to ad valorem taxation. The abatement term for projects considered under authority of Section 13 of Article 11 of the Kansas Constitution shall begin in the calendar year after the calendar year in which the business commences operations.

**Section 18. Application Required.** The City will not consider granting any tax exemption unless the business submits a full and complete application and provides such additional information as may be requested by the City. The City Manager is hereby authorized and empowered to prepare a standard application form which, upon completion, will provide the Governing Body with adequate and sufficient information to determine whether a tax exemption should be granted and the amount thereof. The accuracy of the information provided in the application shall be verified by the applicant. Any misrepresentation of, or error in fact, may render the application null and void and may be cause for the repeal of any ordinance adopted in reliance on said information.

**Section 19. Application and Renewal Fees.** An applicant may request a tax abatement by filing with the Director of Finance, six copies of a written application on a form provided by the Finance Department and accompanied by a non-refundable application fee of \$1,500.00, which shall cover administrative costs of the City. Furthermore, the business seeking tax abatement shall be responsible for any City costs associated with the retention of bond counsel, attorney costs, or auditing costs associated with an annual renewal fee of \$300.00

**Section 20. Initial Review Procedure.** Upon receipt of the completed application form and the required fee, the Finance Director shall determine:

- 1) Whether the application is complete and sufficient for review
- 2) Whether the applicant's business is eligible for an exemption under the Kansas Constitution, this resolution or any other applicable laws. If the application is incomplete, the Director of Finance shall notify the applicant, noting the need for such changes or additions as are necessary. If questions arise as to whether the business is legally eligible for an exemption, the matter shall be referred to the City Attorney, who shall consult with the applicant business. If the application is found complete and is for a purpose that appears to be authorized by law, the Public Incentives Review Committee shall be notified and a meeting to convene the Committee shall be scheduled by the City Manager or his designee.

**Section 21. Initial City Commission Action.** Upon receiving the recommendations of the Public Incentives Review Committee, the City Commission shall first determine whether to reject the requested exemption or to further consider the request. Upon a favorable vote for further consideration, the City Commission shall issue a letter of intent as provided by Section 21 and schedule a public hearing thereon.

**Section 22. Letters of Intent.** Upon receiving the recommendations of the Public Incentives Review Committee, the City Commission shall issue a letter of intent, setting forth in general terms its proposed plans for granting a tax exemption and conditions thereto. Such letters of intent shall be issued only as an expression of good faith intent and shall not in any way bind the Commission to the granting of an exemption. Such letters of intent shall expire six months after issuance, but may be renewed. A public hearing shall not be required prior to the issuance of letters of intent. No other individual or body shall have authority to issue a letter of intent.

**Section 23. Notice and Hearing.** No tax exemption shall be granted by the City prior to a public hearing thereon. Notice of the public hearing shall be published at least seven days prior to the hearing in the official City newspaper, giving the time and place. The hearing may be held at a regular or special meeting of the City Commission. The Finance Director shall notify the Franklin County Clerk, the Superintendent of USD 290, the Franklin County Extension District, and the manager of any other taxing jurisdiction, excluding the state, which derives or could derive property taxes from the applying business, advising them of the scheduled public hearing and inviting their review and comment. Upon request, the City shall provide any such public agency with a copy of the application, which shall remain confidential unless released by the City Commission or the Public Incentives Review Committee. The applicant business shall be invited, but not required, to attend the public hearing.

**Section 24. Performance Agreement/Resolution.** Pursuant to this Resolution, any tax exemption granted shall be accompanied by a Performance Agreement between the applicant and the City. The Performance Agreement shall be authorized by Resolution of the City Commission and shall include provisions governing the situation if an applicant fails to meet the wage, number of jobs, and/or capital investment projections set forth in the original application.

Any business which has been granted an exemption from ad valorem taxes for economic development purposes pursuant to Section 13, Article 11 of the Kansas Constitution shall annually supply to the City such proof as the City may reasonably require that the business is in compliance with terms and conditions established by the Governing Body for the granting of the exemption.

**Section 25. Annual Administrative Review for Compliance.** All tax exemptions granted shall be subject to an annual administrative review to ensure that the ownership, use of property, and the economic performance of the business, including the capital investment, employment, and wages, are pursuant to requirements and criteria of this policy, the application for tax abatement, and the conditions of the granting of the tax abatement. The review shall also include an evaluation of the entire abatement period for the business, including milestones and project phases for the business. The annual review shall provide an opportunity for the company receiving the abatement to describe their achievements, especially in the areas of environmentally sound practice, community engagement and services, and job training. If the business:

- 1) No longer qualifies for abatement pursuant to law or this policy;
- 2) Substantially fails to meet the expectations set forth in the application for a tax abatement, including failure to meet employment, wage, or capital investment plans in the application; or
- 3) Substantially fails to meet the criteria or objectives of this policy; the City Commission, after notice and a public hearing may modify the exemption by ordinance.

Each business receiving a tax exemption shall be required to complete an annual report by March 1. The information in the report will cover the time period of January 1 through December 31 of the previous year. The annual report will be reviewed by the Finance Director, City Manager, County Administrator and, U.S.D. Superintendent.

By May 1 of each year, a report shall be presented to the City Commission, listing all of the property tax exemptions that remain in effect at that time. The annual report shall include information regarding when the exemption was granted, when the exemption expires, current property taxes paid for the property, in lieu of tax payments, amount of any industrial revenue bonds issued, the assessed value of the property, number of employees, salary and payroll of employees, and any and other information as requested by the City Commission. The failure of a business to provide accurate and timely information to the City in the preparation of the annual report may be grounds for modification or repeal of the tax abatement.

**Section 26. Transfer of Ownership or Use.** No exemption or tax incentive granted by the City shall be transferred as a result of a change in the majority ownership of the business. Any new majority owner shall file a new application for a tax exemption. Further, the City shall be notified by the business of any substantive change in the use of a tax-exempt property.

**Section 27. Distribution of Revenue.** The granting of tax exemptions by the City Commission is hereby declared to be a contract under the provisions of K.S.A. 12-147. Any in lieu of taxes payment which may be required of a business granted a tax exemption under this Resolution shall be paid to the County Treasurer, with notice of the amount and date paid provided to the City. The County Treasurer is requested to apportion the payment to the general fund of all taxing subdivisions, excluding the state, which levies taxes on property where the business is situated. The apportionment shall be based on the relative amount of taxes levied, for any and all purposes, by each of the applicable taxing subdivisions.

**Section 28. Exemption Ordinance.** After final approval, the City Clerk shall provide a copy of the ordinance, as published in the official City newspaper, granting an exemption from taxation to the applicant for use in filing an initial request for tax exemption as required by K.S.A. 79-213, and by K.S.A. 79-210 for subsequent years.

**Section 29. Exemption Forms.** A copy of the exemption application required by K.S.A. 79-213 and 79-210, and the statement required by K.S.A. 79-214 for the cessation of an exempt use of property shall be filed with the City Clerk by the property owner.

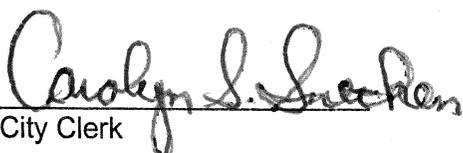
**Section 30. Waiver of Resolution Requirements.** The City Commission reserves the right to grant or deny a tax exemption under circumstances beyond the scope of this resolution, or to waive any procedural requirement. However, no such action or waiver shall be taken or made except upon a finding by the City Commission that a compelling or imperative reason or emergency exists, and that such action or waiver is found and declared to be in the public interest. In addition, no exemption can be provided without the approval of the State Board of Tax Appeals.

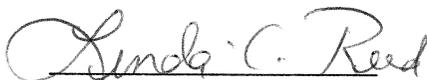
**Section 31. Repeal of Prior Resolution:** Resolution No. 1367-06 and all other Resolutions in conflict are hereby repealed.

**Section 32. Effective Date:** This Resolution shall be in full force and effect after its adoption by the Governing Body.

**Adopted** by the Governing Body of the City of Ottawa, Kansas this 17th day of November, 2010

ATTEST:

  
City Clerk

  
Mayor