

City of South Daytona

Community Development Department

1672 S. Ridgewood Avenue • South Daytona, FL 32121 • 386/322-3022 • Fax 386/322-3018



MEMORANDUM

To: James L. Gillis Jr., City Manager
From: S. Laureen Kornel, Community Development Director
Date: August 11, 2020
Re: Ordinance No. 2020-16 Allowing fences in front yards

AGENDA ITEM
E14 DATE 8/11/20

Introduction

This is an administrative request to amend Article V, Section 5.6, Supplementary regulations, under Section E, Fences and walls, of the City's Land Development Code (LDC) to allow fences in front yards.

Background

The Land Development Code currently prohibits fences in front yards. As described in the attached Planning and Appeals Board staff report, this action proposes to amend the fence regulations to add building permit guidance, add a description of fence materials, allow fences in front yards; prohibit fences in conservation areas, and to clarify that fences may be allowed in drainage and utility easement.

Analysis

The Land Development Code criteria has been analyzed and provided in the attached Planning and Appeals Board attached to this Memorandum as Exhibit A. The proposed amendment is consistent with the Comprehensive Plan and meets the criteria of the Land Development Code. The PAB met to discuss this item on July 15, 2020, and unanimously (6-0) recommended approval to the City Council.

Staff Recommendation

Staff recommends amend the City's Land Development Code to allow fences in front yards. Attached to this memorandum as Exhibit B is Ordinance 2020-16 which achieves this purpose.

Attachments: Planning and Appeals Board Staff Report
Ordinance 2020-16

EXHIBIT A

PAB STAFF REPORT

STAFF REPORT

City of South Daytona Community Development Department

DATE: July 8, 2020

SUBJECT: Land Development Code Amendment - Article V, Section 5.6, Supplementary Regulations (Fences)

APPLICANT: Administrative (City initiated)

NUMBER: LDC 2020-07

PROJECT PLANNER: S. Laureen Kornel, AICP, Community Development Department

INTRODUCTION: This is an administrative request to amend Article V, Section 5.6, Supplementary regulations, (E) fences and walls of the Land Development Code (LDC) to modify the fence requirements.

BACKGROUND: The prohibition of fences within the first 25' of front yards prompted staff to review the current fence requirements of the LDC. For examples in multi-family zoning districts such as the Palmetto Apartments, on large lots along Palmetto Avenue with front yards where the front yard setback is greater than 100' and along commercial corridors, the land Development code does not permit fences within the first 25' of the front yard. Upon a review of Section 5.6(E) Fences and Walls, staff compiled a list of amendments as itemized below to allow fences in front yards and to improve the application of fence regulations.

ANALYSIS:

The LDC amendment applies to Article V, Section 5.6(E) Fences and Walls. Below is an itemized explanation of the changes proposed:

1. **Add Building Permit guidance.** This change provides guidance on submittal requirements necessary to apply for a fence permit application.
2. **Add a description of fence materials.** This change clarifies acceptable and unacceptable fence material in front yards. Specifically, chain link fences are prohibited in front yards and side corner yards of the R-1A, R-1B, R-1C, and R-2 single family residential zoning districts.
3. **Allow fences in front yards.** The City's Land Development Code currently prohibits fences in the first 25' of front yards. Requests for fences in front yards are not uncommon in the City of South Daytona; for example, Warner Christian Academy recently requested a 6' decorative open fence for security reasons within the first 25' of the front yard. With the current code, a variance to allow the

6' fence was required and approved. The Palmetto Apartments recently asked for a 5' fence for similar reasons within the first 25' of the front yard. Their request would require a variance.

For residential properties, typical reasons for requesting fences in front yards are to keep children and pets secured and away from the dangers of the street, as well as for aesthetics and to reduce potential for conflicts between neighbors. Not allowing fences within the first 25' of front yards reduces opportunity to maximize the total square footage available for use when a fence, for reasons stated earlier, is desired.

The amendment proposes to find a balance between security and aesthetics by deleting the requirement prohibiting fences in the first 25' of front yards. Alternatively, for R1A, R1B, R1C, and R2 residential zoning districts, the proposed amendment would allow a maximum height of 4' (maximum 50% opaque), and for larger lots with a minimum front yard setback of 100', 6' fences and gates (maximum 50% opaque) would be permitted. For residential districts other than R1A, R1B, R1C, and R2, the proposed amendment would allow open (maximum 50% opaque) fences up to 6' tall, or an open or non-open face fence not to exceed 4' in height. These changes generally provide for fences in front yards (maximum 50% opaque) within the first 25' of a front yard. On commercial and industrial zoned properties, 6' open fences will no longer require a variance.

4. **Prohibit fences and walls in conservation areas.** Conservation easements are restrictive by nature such that they are generally associated with a voluntary legal agreement that limits or prohibits development. Typically, no building (such as fences) is allowed in conservation easements to preserve unique vegetation or land features and to eliminate the risk of being ordered to take a fence down by a government agency that has an easement access to a given property. This change clarifies that fences and walls are prohibited in conservation easements.
5. **Clarification of fences allowed in drainage and utility easements.** This change clarifies that fences may be permitted within drainage and utility easements. If a fence is removed by a utility agency, however, it shall be the property owner's responsibility to replace the fence if desired in accordance with the LDC.

The proposed amendments are included in Attachment A attached to this staff report.

CONCLUSION: In accordance with *Section 3.2(J)(1)* of the Land Development Code, there are certain criteria that must be evaluated before adoption of a Land Development Code amendment. The Planning & Appeals Board must consider the following criteria when making their recommendation:

1. **Identifies any provision of the Code, Comprehensive Plan or other law relating to the proposed change and describes how the proposal relates to them.**

The proposed amendments are consistent with the Comprehensive Plan and the Land Development Code.

2. States factual and policy considerations pertaining to the recommendation.

The purpose of the amendments is to update and strengthen the regulations of the Land Development Code to generally allow fences in front yards. There are no other policy considerations pertaining to the recommendations other than what has been stated in the background and analysis of this report.

3. Includes the written comments, if any, received from the Development Review Committee.

Comments from the Development Review Committee have been incorporated into the proposed amendments.

RECOMMENDATION: It is expected that the proposed amendment will be reviewed by the City Council on August 11, 2020 (1st Reading) and September 14, 2020 (2nd reading). It is recommended that the Planning & Appeals Board recommend **APPROVAL** of Case #LDC 2020-07, *Article V, Section 5.6 Supplementary regulations (E) fences and walls of the LDC* to amend the fence requirements to allow fences in front yards as specified in Exhibit "A" attached to this report.

Attachment A – Proposed Fence Amendment

ATTACHMENT 2

Proposed Fence Amendment

E. Fences and walls. Fences and walls are intended to promote privacy, screening, separation, security, erosion control, or to serve other necessary and reasonable functions. All fences and walls shall be constructed in compliance with applicable building codes and according to the following dimensions and use regulations.

1. Purpose and intent: All fences must be substantially constructed of materials approved for the purpose. In all zoning areas, the administrative official may impose additional restrictions upon the height or location of fences or walls where they are deemed to constitute an impairment to traffic safety or are detrimental to normal visibility or air circulation from adjoining properties. Minor modification of a requirement may be allowed if the CDD and the CBO agree that the facts of a specific physical situation would make it unreasonable to strictly impose the requirement. Nothing in this section supersedes or eliminates screening walls or fences required by other sections of this Code.

2. Building permit required: It shall be unlawful for any person to erect, alter or locate a fence within the City without first having made application for and having been issued a permit. An application for a fence permit includes a site plan showing:

1. All structures on the site;
2. All easements, rights-of-way, and dedications;
3. Location of the fence in relationship to the property boundary lines and all building and structures on the lot;
4. Height and material of the fence;
5. Scaled drawing of a fence section, if the fence must comply with openness requirements; and
6. Any other information requested by the City Manager or designee which is necessary to make a compliance determination.

23. R1a, R1b, R1c, and R2 Residential Districts.

a. Definitions:

1. "Decorative wall": A wall constructed of brick, concrete block, or other masonry materials which is designed, constructed, and finished with the intent and result of providing an attractive visual accent to the property upon which it is located.
2. "Decorative fence": A fence constructed of wrought iron or other durable, long-lasting material, other than a common wooden fence, which is designed, constructed, and finished with the intent and result of providing an attractive visual accent to the property upon which it is located.
3. "Frontage yard": A yard which abuts a street. Such yards generally consist of front and side corner yards.

ab. Front yards: For front yards which abut a street and generally consist of front and side corner yards, fences or walls of open construction shall be permitted up to 4' in height (maximum 50% opacity). For homes setback a minimum of 100', 6' fences and gates (maximum 50% opacity) shall be permitted. Acceptable materials shall include, but are not limited to natural or artificial stone, brick, masonry, wrought iron, stuccoed concrete block, vinyl and wood picket style. Unacceptable materials shall include, but are not limited to, the following: chain-link, and common wooden fences such as shadow-box, board, and post and rail.

No fence or wall may be installed closer than 25 feet from the right-of-way of the abutting street. Any such fence or wall shall not exceed a height of six feet, if it is located at or behind the plane of the street-facing wall of the principal building; however, if it is located streetward of such plane, it shall not exceed 4' in height.

- be. *Side corner yards:* For side corner yards which abut a street, fences or walls of open or solid face construction shall be permitted in compliance with the following criteria:

No fence or wall may be installed closer than 10'ten-feet from the right-of-way of the abutting street. Any such fence or wall shall not exceed a height of 6'six feet if it is located at or behind the plane of the street-facing-wall of the principal building; however, if it is located streetward of such plane, it shall not exceed four feet in height. Chain-link fencing is prohibited in side corner yards.

- ~~d. *Exception for decorative fences or walls:* The LDRB may authorize decorative fences or walls in the front yard closer to the street right of way than otherwise allowed in this ordinance. Such fences or walls shall not exceed four feet in height. When considering whether to authorize a decorative fence or wall, the LDRB shall use the following guidelines:~~

~~▲ The fence/wall material must be durable and attractive, something that does not rapidly deteriorate and is relatively easy to maintain.~~

~~▲ Acceptable materials shall include, but are not limited to, the following: natural or artificial stone, brick, masonry, wrought iron, and stuccoed concrete block.~~

~~▲ Unacceptable materials shall include, but are not limited to, the following: ordinary chain link fencing, and common wooden fences such as shadow box, picket, board, and post and rail.~~

~~▲ Proposed fences and walls must be compatible in style, materials, location, etc. with those found in the front yards of neighboring properties abutting the same street.~~

- ce. *Side and rear yards which do not abut a street:* In side and rear yards which do not abut a street fence or walls must comply with the following location and height requirements: fences or walls of open or solid face construction shall be permitted in the yard behind (not abutting a street) the frontage yard with a height not exceeding 6'six-feet at all lot lines or interior areas of any such yard, including the boundary line between it and any frontage yards.

- df. *Waterfront yards:* Fences and walls of open or solid face construction shall be permitted at all waterfront yard lot liens and interior waterfront yard areas not to exceed 4'four-feet in height. For the purpose of measuring a fence in a waterfront yard, the point of measurement shall be the mean high water line or the seawall, whichever is closer to the principal structure or buildable yard area.

- eg. *Vacant lots:* Fences and walls of open or solid face construction may be permitted on vacant residential lots provided that they are not installed closer than 25'-feet from the abutting street for a front yard and 10'ten-feet from the abutting street for a side yard; such fences shall not exceed 4'four-feet in height. Where the side yard does not abut a street or for rear yards, there is no setback limitation, and the fence/wall may be located anywhere in the side or rear yard at a height not to exceed 6'six-feet.

- fh. *"Grand-fathering" of existing fences and walls:* All existing fences and walls which do not conform with the location and height restrictions of this ordinance shall be allowed to continue in existence as such in accordance with the following conditions: Any such fence or wall may be: (1) repaired to code; (2) replaced if damaged or destroyed by a natural event, such as a storm; (3) replaced if damaged or destroyed due to an accident. Provided, however, that replacement under the aforementioned circumstances must be accomplished within 90 days after permit issuance; if replacement is not completed within that time, the replacement structure must be brought into conformance. Also, any fence or wall which has deteriorated beyond the point of repair shall not be grandfathered and when replaced shall conform with the location and height requirements of the current regulations. The

determination of the condition "deteriorated beyond point of repair" shall be made by the community development director or his designee, and the term shall mean that 50 percent or more of the overall fence materials need replacement due to deterioration caused by the "ravages of time" and lack of maintenance.

2-14. Residential districts other than R1a, R1b, R1c, and R2. Fences and walls of open or solid face construction shall be permitted at all lot lines or interior areas of front, side and rear yards. However, said fences and walls shall not exceed the following height limits: 6' in height open face (maximum 50% opaque) or any other non-open face fence shall not exceed 4' in the front yard, and 6'six-foot open or closed face in the side and rear yards.

35. Business districts. Except for required screening walls, fencing of open or solid face construction shall follow the requirements outlined for residential districts other than R1a, R1b, R1c and R2.

46. Industrial districts. Except for required screening walls, fences or walls not to exceed 6'six-foot in height may be permitted at all lot lines or interior areas for security or safety reasons.

57. Design and maintenance.

- a. All fences shall be maintained in their original upright condition.
- b. Fences and walls designed for painting or similar surface finishes shall be maintained in their original condition as designed.
- c. Missing boards, pickets, or posts shall be replaced in a timely manner with material of the same type and quality.
- d. Fences shall be constructed so that the finished side faces outward. Chain link fence side faces outward. Chain link fence shall be installed with a top rail or with the barbs pointed down.

68. Types of fences and walls prohibited. Barbed wire fences, razor wire fences, electric fences, or other types of fences or walls which could easily harm humans or animals by contact are prohibited on developed non-industrial sites. However, the use of a limited amount of barbed wire may be allowed along the tops of chain link fences or walls at a height of no less than 6'six-foot for certain kinds of facilities, such as electric power substations or storage yards, provided that the chief building official and the community development director both agree that such is warranted for safety and/or security reasons and that the installed materials will pose no unusual hazard to humans engaging in normal activities. Temporary security fencing meeting commercial standards may be allowed for construction sites in residential zones. Fences and walls are prohibited in a conservation easement.

79. Exemptions.

- a. Customary fencing around tennis courts and other approved recreational amenities shall be exempt from height restrictions.
- b. Fences or walls specifically required by this or other City Codes, or as a part of a special exception or special use are exempt.

10. Drainage and Utility Easements.

Fences and walls may be permitted in a drainage or utility easement provided such fencing can be removed, if necessary, by the requesting utility agency and shall conform to the provisions of the Code. Replacing the fence shall be the property owner's responsibility and shall also conform to the provisions in this Code.

F. Reserved.

Editor's note— At the city's request, section 5.6.F., pertaining to home occupations, is deleted in its entirety. Section 5.6 will continue to read as herein set out. For a complete list of derivations, see the Code Comparative Table.

EXHIBIT B

ORDIANCE NO. 2020-16

ORDINANCE NO. 2020-16

AN ORDINANCE OF THE CITY OF SOUTH DAYTONA, FLORIDA AMENDING ARTICLE V, ZONING REGULATIONS, SECTION 5.6(E) OF THE CITY'S LAND DEVELOPMENT CODE TO ALLOW FENCES IN FRONT YARDS; REPEALING ALL INCONSISTENT ORDINANCES OR PARTS THEREOF; PROVIDING FOR SEVERABILITY; AND SETTING FORTH AN EFFECTIVE DATE.

WHEREAS, this is an administrative amendment to the City of South Daytona *Land Development Code* ("the *LDC*"), of the City of South Daytona, by amending the fences and walls requirements before the City Council, and

WHEREAS, the local planning agency, being the Planning and Appeals Board of the City of South Daytona, has conducted a public hearing on July 15, 2020, on the requested amendment and has made recommendations thereon to the City Council, and

WHEREAS, all applicable notice requirements of Section 166.041(3)(a), *Florida Statutes*, have been complied with, and

WHEREAS, the City Council finds the amendment to be consistent with the provisions of the *Comprehensive Plan* of the City of South Daytona, and in the overall best interest of the public health, safety and welfare, now therefore,

BE IT ENACTED BY THE PEOPLE OF THE CITY OF SOUTH DAYTONA, FLORIDA, THAT:

SECTION ONE. Subsection (E), Fences and walls of Section 5.6, Supplementary Regulations of Article VI, Zoning Regulations, of the *LDC* is hereby amended to read as follows:

- E. *Fences and walls.* Fences and walls are intended to promote privacy, screening, separation, security, erosion control, or to serve other necessary and reasonable functions. All fences and walls shall be constructed in compliance with applicable building codes and according to the following dimensions and use regulations.
1. *Purpose and intent:* All fences must be substantially constructed of materials approved for the purpose. In all zoning areas, the administrative official may impose additional restrictions upon the height or location of fences or walls where they are deemed to constitute an impairment to traffic safety or are detrimental to normal visibility or air circulation from adjoining properties. Minor modification of a requirement may be

allowed if the CDD and the CBO agree that the facts of a specific physical situation would make it unreasonable to strictly impose the requirement. Nothing in this section supersedes or eliminates screening walls or fences required by other sections of this Code.

2. Building permit required: It shall be unlawful for any person to erect, alter or locate a fence within the City without first having made application for and having been issued a permit. An application for a fence permit includes a site plan showing:

1. All structures on the site;
2. All easements, rights-of-way, and dedications;
3. Location of the fence in relationship to the property boundary lines and all building and structures on the lot;
4. Height and material of the fence;
5. Scaled drawing of a fence section, if the fence must comply with openness requirements; and
6. Any other information requested by the City Manager or designee which is necessary to make a compliance determination.

23. *R1a, R1b, R1c, and R2 Residential Districts.*

a. *Definitions:*

1. ~~"Decorative wall": A wall constructed of brick, concrete block, or other masonry materials which is designed, constructed, and finished with the intent and result of providing an attractive visual accent to the property upon which it is located.~~
2. ~~"Decorative fence": A fence constructed of wrought iron or other durable, long-lasting material, other than a common wooden fence, which is designed, constructed, and finished with the intent and result of providing an attractive visual accent to the property upon which it is located.~~
3. ~~"Frontage yard": A yard which abuts a street. Such yards generally consist of front and side corner yards.~~

ab. Front yards: For front yards which abut a street and generally consist of front and side corner yards, fences or walls of open construction shall be permitted up to 4' in height (maximum 50% opacity). For homes setback a minimum of 100', 6' fences and gates (maximum 50% opacity) shall be permitted. Acceptable materials shall include, but are not limited to natural or artificial stone, brick, masonry, wrought iron, stuccoed concrete block, vinyl and wood picket style. Unacceptable materials shall include, but are not limited to, the following: chain-link, and common wooden fences such as shadow-box, board, and post and rail.

~~No fence or wall may be installed closer than 25 feet from the right-of-way of the abutting street. Any such fence or wall shall not exceed a height of six feet, if it is located at or behind the plane of the street-facing wall of the principal building; however, if it is located streetward of such plane, it shall not exceed 4' in height.~~

be. Side corner yards: For side corner yards which abut a street, fences or walls of open or solid face construction shall be permitted in compliance with the following criteria:

~~No fence or wall may be installed closer than 10 ten feet from the right-of-way of the abutting street. Any such fence or wall shall not exceed a height of 6 six feet if it is located at or behind the plane of the street-facing wall of the principal building; however, if it is located streetward of such plane, it shall not exceed four feet in height.~~ Chain-link fencing is prohibited in side corner yards.

d. ~~Exception for decorative fences or walls:~~ The LDRB may authorize decorative fences or walls in the front yard closer to the street right-of-way than otherwise allowed in this ordinance. Such fences or walls shall not exceed four feet in height. When considering whether to authorize a decorative fence or wall, the LDRB shall use the following guidelines:

~~• The fence/wall material must be durable and attractive, something that does not rapidly deteriorate and is relatively easy to maintain.~~

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~~• Proposed fences and walls must be compatible in style, materials, location, etc. with those found in the front yards of neighboring properties abutting the same street.~~

ce. Side and rear yards which do not abut a street: In side and rear yards which do not abut a street fence or walls must comply with the following location and height requirements: fences or walls of open or solid face construction shall be permitted in the yard behind (not abutting a street) the frontage yard with a height not exceeding 6' six feet at all lot lines or interior areas of any such yard, including the boundary line between it and any frontage yards.

df. Waterfront yards: Fences and walls of open or solid face construction shall be permitted at all waterfront yard lot lines and interior waterfront yard areas not to exceed 4' four feet in height. For the purpose of measuring a fence in a waterfront yard, the point of measurement shall be the mean high water line or the seawall, whichever is closer to the principal structure or buildable yard area.

eg. Vacant lots: Fences and walls of open or solid face construction may be permitted on vacant residential lots provided that they are not installed closer than 25' feet from the abutting street for a front yard and 10' ten feet from the abutting street for a side yard; such fences shall not exceed 4' four feet in height. Where the side yard does not abut a street or for rear yards, there is no setback limitation, and the fence/wall may be located anywhere in the side or rear yard at a height not to exceed 6' six feet.

fh. "Grand-fathering" of existing fences and walls: All existing fences and walls which do not conform with the location and height restrictions of this ordinance shall be allowed to continue in existence as such in accordance with the following conditions: Any such fence or wall may be: (1) repaired to code; (2) replaced if damaged or destroyed by a natural event, such as a storm; (3) replaced if damaged or destroyed due to an accident. Provided, however, that replacement under the aforementioned circumstances must be accomplished within 90 days after permit issuance; if replacement is not completed within that time, the replacement structure must be brought into conformance. Also, any fence or wall which has deteriorated beyond the point of repair shall not be grandfathered and when replaced shall conform with the location and height requirements of the current regulations. The determination of the condition "deteriorated beyond point of repair" shall be made by the community development director or his designee, and the term shall mean that 50 percent or more of the overall fence materials need replacement due to deterioration caused by the "ravages of time" and lack of maintenance.

~~2-14. Residential districts other than R1a, R1b, R1c, and R2.~~ Fences and walls of open or solid face construction shall be permitted at all lot lines or interior areas of front, side and rear yards. However, said fences and walls shall not exceed the following height limits: 6' in height open face (maximum 50% opaque) or any other non-open face fence shall not exceed 4' in the front yard, and 6' six feet open or closed face in the side and rear yards.

~~35. Business districts.~~ Except for required screening walls, fencing of open or solid face construction shall follow the requirements outlined for residential districts other than R1a, R1b, R1c and R2.

~~46. Industrial districts.~~ Except for required screening walls, fences or walls not to exceed 6' six feet in height may be permitted at all lot lines or interior areas for security or safety reasons.

~~57. Design and maintenance.~~

- a. All fences shall be maintained in their original upright condition.
 - b. Fences and walls designed for painting or similar surface finishes shall be maintained in their original condition as designed.
 - c. Missing boards, pickets, or posts shall be replaced in a timely manner with material of the same type and quality.
 - d. Fences shall be constructed so that the finished side faces outward. Chain link fence side faces outward. Chain link fence shall be installed with a top rail or with the barbs pointed down.
68. *Types of fences and walls prohibited.* Barbed wire fences, razor wire fences, electric fences, or other types of fences or walls which could easily harm humans or animals by contact are prohibited on developed non-industrial sites. However, the use of a limited amount of barbed wire may be allowed along the tops of chain link fences or walls at a height of no less than 6' six feet for certain kinds of facilities, such as electric power substations or storage yards, provided that the chief building official and the community development director both agree that such is warranted for safety and/or security reasons and that the installed materials will pose no unusual hazard to humans engaging in normal activities. Temporary security fencing meeting commercial standards may be allowed for construction sites in residential zones. Fences and walls are prohibited in a conservation easement.
79. *Exemptions.*
- a. Customary fencing around tennis courts and other approved recreational amenities shall be exempt from height restrictions.
 - b. Fences or walls specifically required by this or other City Codes, or as a part of a special exception or special use are exempt.

10. Drainage and Utility Easements.

Fences and walls may be permitted in a drainage or utility easement provided such fencing can be removed, if necessary, by the requesting utility agency and shall conform to the provisions of the Code. Replacing the fence shall be the property owner's responsibility and shall also conform to the provisions in this Code.

F. Reserved.

SECTION TWO. All Ordinances or parts of Ordinances in conflict herewith are hereby repealed to the extent of such conflict.

SECTION THREE. In the event any word, phrase, clause, sentence, paragraph, term, or provision of this Ordinance shall be held to be invalid by a court of competent jurisdiction, such judicial determination shall not affect any other word, clause, phrase, sentence, paragraph, term or provision, of this Ordinance, and the remainder of this Ordinance shall remain in full force and effect.

SECTION FOUR. This Ordinance shall take effect immediately upon its adoption.

PASSED UPON at the first reading of the City Council, this 11th day of August, 2020.

PASSED UPON at the second and final reading of the City Council, this ____ day of _____, 2020.

WILLIAM C. HALL
Mayor

ATTEST:

JAMES L. GILLIS, JR.
City Manager