



1 REDLINE

2 Chapter 2.73

3 EQUAL BENEFITS TO EMPLOYEES OF CITY CONTRACTORS

4  
5 2.73.010 Title and purpose.

6 This ordinance shall be known as the "Long Beach Equal Benefits Ordinance".  
7 The purpose of this Chapter is to protect the public health, safety and welfare by requiring  
8 that public funds be expended in such a manner as to prohibit discrimination in the  
9 provision of employee benefits by City contractors between employees with spouses and  
10 employees with domestic partners, and/or between domestic partners and spouses of  
11 such employees.

12  
13 2.73.020 Definitions.

14 A. "Contractor" shall mean any person or persons, firm, partnership,  
15 corporation, or combination thereof, who enters into a contract with the City.

16 B. "Domestic partner" shall mean any person who has a currently registered  
17 domestic partnership with a governmental body pursuant to state or local law authorizing  
18 such registration or with his or her employer or his or her domestic partner's employer.

19 C. "Non-profit" shall mean a non-profit organization described in Section  
20 501(c)(3) of the Internal Revenue Code of 1954 which is exempt from taxation under  
21 Section 501(c)(3) of that Code, or any nonprofit educational organization qualified under  
22 Section 23701(d) of the Revenue and Taxation Code.

23  
24 2.73.030 Contractors subject to requirements.

25 A. The following contractors are subject to this Chapter:

26 1. For-profit entities which enter into an agreement with the City for  
27 public works or improvements to be performed, or for goods or services to be purchased,  
28 for an amount of One Hundred Thousand Dollars (\$100,000) or more; and

1                    2. For-profit entities which generate Three Hundred Fifty Thousand  
2 Dollars (\$350,000) or more in annual gross receipts and which occupy City property  
3 pursuant to a written agreement for the exclusive use or occupancy of said property for a  
4 term exceeding twenty-nine (29) days in any calendar year.

5                    B. The requirements of this Chapter shall only apply to those portions of a  
6 contractor's operations that occur (i) within the City; (ii) on real property outside the City if  
7 the property is owned by the City or if the City has a right to occupy the property, and if  
8 the contractor's presence at that location is connected to a contract with the City; and (iii)  
9 elsewhere in the United States where work related to a City contract is being performed.  
10 The requirements of this Chapter shall not apply to subcontracts or subcontractors of any  
11 contract or contractor.

12                    C. The City Manager or designee will provide a report to the City Council  
13 regarding the implementation of this ordinance no later than one year following the  
14 effective date of this Ordinance, and will consider among other items, whether the dollar  
15 thresholds set forth in subsections (A) and (B) should be modified.

16  
17 2.73.040 Non-discrimination in provision of benefits.

18                    A. No contractor subject to this Chapter pursuant to Section 2.73.030 shall  
19 discriminate in the provision of bereavement leave, family medical leave, health benefits,  
20 membership or membership discounts, moving expenses, pensions and retirement  
21 benefits or travel benefits or in the provision of any benefits other than bereavement  
22 leave, family medical leave, health benefits, membership or membership discounts,  
23 moving expenses, pensions and retirement benefits or travel benefits between  
24 employees with domestic partners and employees with spouses, and/or between the  
25 domestic partners and spouses of such employees except as set forth in Subsections  
26 2.73.040.A.1 and 2 below;

27                    1. In the event that the contractor's actual cost of providing a particular  
28 benefit for the domestic partner of an employee exceeds that of providing it for the

1 spouse of an employee, or the contractor's actual cost of providing a particular benefit for  
2 the spouse of an employee exceeds that of providing it for the domestic partner of an  
3 employee, the contractor shall not be deemed to discriminate in the provision of  
4 employee benefits if the contractor conditions providing such benefit upon the employee  
5 agreeing to pay the excess costs.

6 2. The contractor shall not be deemed to discriminate in the provision of  
7 employee benefits if, despite taking reasonable measure to do so, the contractor is  
8 unable to extend a particular employee benefit to domestic partners, so long as the  
9 contractor provides the employee with a cash equivalent.

10 B. Provided that a contractor does not discriminate in the provision of benefits  
11 between employees with spouses and employees with domestic partners, a contractor  
12 may:

13 1. Elect to provide benefits to individuals in addition to employees'  
14 spouses and employees' domestic partners;

15 2. Allow each employee to designate a legally domiciled member of the  
16 employee's household as being eligible for spousal equivalent benefits; or

17 3. Provide benefits neither to employees' spouses nor to employees'  
18 domestic partners.

19 C. A contractor will not be deemed to be discriminating in the provision of  
20 benefits where the implementation of policies ending discrimination in benefits is delayed  
21 following the first award of a City contract to a contractor after the effective date of this  
22 Chapter:

23 1. Until the first effective date after the first open enrollment process  
24 following the date the contract with the City is executed, provided that the contractor  
25 submits evidence that it is making reasonable efforts to end discrimination in benefits.  
26 This delay may not exceed two (2) years from the date the contract with the City is  
27 executed and only applies to benefits for which an open enrollment process in applicable.

28 2. Until administrative steps can be taken to incorporate

1 nondiscrimination in benefits in the contractor's infrastructure. The timer allotted for  
2 these administrative steps shall apply only to those benefits for which administrative  
3 steps are necessary and may not exceed three (3) months. An extension of this time  
4 may be granted at the discretion of the City Manager upon the written request of a  
5 contractor, setting forth the reasons that additional time is required.

6 3. Until the expiration of a contractor's current collective bargaining  
7 agreement(s) where all of the following conditions have been met:

8 a. The provision of benefits is governed by one or more  
9 collective bargaining agreement(s); and

10 b. The contractor takes all reasonable measures to end  
11 discrimination in benefits by either requesting that the union(s) involved agree to reopen  
12 the agreement(s) in order for the contractor to take whatever steps are necessary to end  
13 discrimination in benefits or by ending discrimination in benefits without reopening the  
14 collective bargaining agreement(s); and

15 c. In the event that the contractor cannot end discrimination in  
16 benefits despite taking all reasonable measure to do so, the contractor provides a cash  
17 equivalent to eligible employees for whom benefits are not available. Unless otherwise  
18 authorized, in writing by the City Manager, this cash equivalent payment must begin at  
19 the time the union(s) refuse to allow the collective bargaining agreement(s) to be  
20 reopened, or in any case no longer than three (3) months from the date the contract with  
21 the City was executed. This cash equivalent payment shall not be required where it is  
22 prohibited by federal labor law.

23 D. Employers subject to this Chapter pursuant to Section 2.73.030 shall give  
24 written notification to each current and new employee of his or her potential rights under  
25 this Chapter in a form specified by the City. Such notice shall also be posted prominently  
26 in areas where it may be seen by all employees.

27  
28 2.73.050 Required contract provisions.

1           Every contract subject to this Chapter shall contain provisions requiring it to  
2 comply with the provisions of this Chapter as they exist on the date when the contractor  
3 entered the contract with the City or when such contract is amended. Such contract  
4 provisions may include but need not be limited to the contractor's duty to promptly  
5 provide to the City documents and information verifying its compliance with the  
6 requirements of this Chapter and sanctions for noncompliance.

7  
8 2.73.060      Waivers and exemptions.

9           A.      The City may waive the requirements of this Chapter where the City  
10 Manager makes one or more of the following findings:

11                   1.      Award of a contract or amendment is necessary to respond to an  
12 emergency;

13                   2.      The contractor is a sole source;

14                   3.      The contractor is a non-profit entity as defined in Section 2.73.020,  
15 above;

16                   4.      Non compliant contractors are capable of providing goods or  
17 services that respond to the City's requirements;

18                   5.      The contractor is a public entity;

19                   6.      The requirements of this Chapter are inconsistent with a grant,  
20 subvention or agreement with a public agency;

21                   7.      The City is purchasing through a cooperative or joint purchasing  
22 agreement;

23                   8.      The contract involves specialized legal services such that it would be  
24 in the best interests of the City to waive the requirements of this Chapter, as determined  
25 by the City Attorney;

26                   9.      The contract involves investment of trust moneys or agreements  
27 relating to the management of trust assets, City moneys invested in U.S. government  
28 securities or under pre-existing investment agreements, or the investment of City moneys

1 where no person, entity or financial institution doing business with the City which is in  
2 compliance with this Chapter is capable of performing the desired transactions or the City  
3 will incur financial loss if the requirements of this Chapter are enforced;

4 10. After taking all reasonable measures to find an entity that complies  
5 with this Chapter, the City may waive any or all requirements of this Chapter for any  
6 contract or bid package advertised and made available to the public, or any competitive  
7 or sealed bids received by the City as of the effective date of this Chapter under the  
8 following circumstances:

9 a. There are no qualified responsive bidders or prospective  
10 contractors who comply with this Chapter and the contract is for goods, a service or a  
11 project that is essential to the City or City residents; or

12 b. The requirements of this Chapter would result in the City's  
13 entering into a contract with an entity that was set up, or is being used for the purpose of  
14 evading the intent of this Chapter.

15 B. The requirements of this Chapter shall not be applicable to contracts  
16 executed or amended prior to the effective date of this Chapter, or to bid packages  
17 advertised and made available to the public, or any competitive or sealed bids received  
18 by the City prior to the effective date of this Chapter, unless and until such contracts are  
19 amended after the effective date of this Chapter and would otherwise be subject to this  
20 Chapter.

21 C. The City Manager or designee may issue regulations from time to time  
22 implementing the provisions of this ordinance.

23  
24 2.73.070 Retaliation and discrimination prohibited.

25 A. No employer shall retaliate or discriminate against an employee in his or  
26 her terms and conditions of employment by reason of the person's status as an employee  
27 protected by the requirements of this Chapter.

28 B. No employer shall retaliate or discriminate against a person in his or her

1 terms and conditions of employment by reason of the person reporting a violation of this  
2 Chapter or for prosecuting an action for enforcement of this Chapter.

3  
4 2.73.080 Employee complaints to City.

5 A. An employee who alleges violation of any provision of the requirements of  
6 this Chapter may report such acts to the City. The City Manager may establish a  
7 procedure for receiving and investigating such complaints and take appropriate  
8 enforcement action.

9 B. The City shall have the power to examine contractors' benefit programs  
10 covered by this Chapter.

11 C. Any complaints received shall be treated as confidential matters, to the  
12 extent permitted by law. Any complaints received and all investigation documents related  
13 thereto shall be deemed exempt from disclosure pursuant to California Government Code  
14 Sections 6254 and 6255.

15  
16 2.73.090 Remedies.

17 A. Upon a finding by the City Manager that a contractor has violated the  
18 requirements of this Chapter, the City shall have the rights and remedies described in this  
19 Section, in addition to any rights and remedies provided at law or in equity.

20 1. The City Manager shall be authorized to terminate said contract and  
21 bar the contractor from bidding on future contracts with the City for three (3) years from  
22 the effective date of the contract termination.

23 2. In the City Manager's sole discretion, a contractor found to have  
24 willfully violated the requirements of this Chapter may be required to pay liquidated  
25 damages.

26 3. The City may seek recovery of reasonable attorneys' fees and costs  
27 necessary for enforcement of this Chapter.

28 B. Notwithstanding any provision of this Chapter or any other Chapter to the



1 contrary, no criminal penalties shall attach for any violation of this Chapter.

2 C. No remedy set forth in this Chapter is intended to be exclusive or a  
3 prerequisite for asserting a cause of action to enforce any rights hereunder in a court of  
4 law. This Chapter shall not be construed to limit an employee's right to bring a common  
5 law cause of action for wrongful termination.

6 D. Nothing in this Chapter shall be interpreted to authorize a right of action  
7 against the City.

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1 Section 1. Chapter 2.73 is added to the Long Beach Municipal Code to  
2 read as follows:

3 Chapter 2.73

4 EQUAL BENEFITS TO EMPLOYEES OF CITY CONTRACTORS

5  
6 2.73.010 Title and purpose.

7 This ordinance shall be known as the "Long Beach Equal Benefits  
8 Ordinance". The purpose of this Chapter is to protect the public health,  
9 safety and welfare by requiring that public funds be expended in such a  
10 manner as to prohibit discrimination in the provision of employee benefits by  
11 City contractors between employees with spouses and employees with  
12 domestic partners, and/or between domestic partners and spouses of such  
13 employees.

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15 2.73.020 Definitions.

16 A. "Contractor" shall mean any person or persons, firm,  
17 partnership, corporation, or combination thereof, who enters into a contract  
18 with the City.

19 B. "Domestic partner" shall mean any person who has a currently  
20 registered domestic partnership with a governmental body pursuant to state  
21 or local law authorizing such registration or with his or her employer or his or  
22 her domestic partner's employer.

23 C. "Non-profit" shall mean a non-profit organization described in  
24 Section 501(c)(3) of the Internal Revenue Code of 1954 which is exempt  
25 from taxation under Section 501(c)(3) of that Code, or any nonprofit  
26 educational organization qualified under Section 23701(d) of the Revenue  
27 and Taxation Code.

28 ///

1 2.73.030 Contractors subject to requirements.  
2 A. The following contractors are subject to this Chapter:  
3 1. For-profit entities which enter into an agreement with  
4 the City for public works or improvements to be performed, or for goods or  
5 services to be purchased, for an amount of One Hundred Thousand Dollars  
6 (\$100,000) or more; and

7 2. For-profit entities which generate Three Hundred Fifty  
8 Thousand Dollars (\$350,000) or more in annual gross receipts and which  
9 occupy City property pursuant to a written agreement for the exclusive use  
10 or occupancy of said property for a term exceeding twenty-nine (29) days in  
11 any calendar year.

12 B. The requirements of this Chapter shall only apply to those  
13 portions of a contractor's operations that occur (i) within the City; (ii) on real  
14 property outside the City if the property is owned by the City or if the City  
15 has a right to occupy the property, and if the contractor's presence at that  
16 location is connected to a contract with the City; and (iii) elsewhere in the  
17 United States where work related to a City contract is being performed. The  
18 requirements of this Chapter shall not apply to subcontracts or  
19 subcontractors of any contract or contractor.

20 C. The City Manager or designee will provide a report to the City  
21 Council regarding the implementation of this ordinance no later than one  
22 year following the effective date of this Ordinance, and will consider among  
23 other items, whether the dollar thresholds set forth in subsections (A) and  
24 (B) should be modified.

25  
26 2.73.040 Non-discrimination in provision of benefits.

27 A. No contractor subject to this Chapter pursuant to Section  
28 2.73.030 shall discriminate in the provision of bereavement leave, family

1 medical leave, health benefits, membership or membership discounts,  
2 moving expenses, pensions and retirement benefits or travel benefits or in  
3 the provision of any benefits other than bereavement leave, family medical  
4 leave, health benefits, membership or membership discounts, moving  
5 expenses, pensions and retirement benefits or travel benefits between  
6 employees with domestic partners and employees with spouses, and/or  
7 between the domestic partners and spouses of such employees except as  
8 set forth in Subsections 2.73.040.A.1 and 2 below;

9 1. In the event that the contractor's actual cost of  
10 providing a particular benefit for the domestic partner of an employee  
11 exceeds that of providing it for the spouse of an employee, or the  
12 contractor's actual cost of providing a particular benefit for the spouse of an  
13 employee exceeds that of providing it for the domestic partner of an  
14 employee, the contractor shall not be deemed to discriminate in the  
15 provision of employee benefits if the contractor conditions providing such  
16 benefit upon the employee agreeing to pay the excess costs.

17 2. The contractor shall not be deemed to discriminate in  
18 the provision of employee benefits if, despite taking reasonable measure to  
19 do so, the contractor is unable to extend a particular employee benefit to  
20 domestic partners, so long as the contractor provides the employee with a  
21 cash equivalent.

22 B. Provided that a contractor does not discriminate in the  
23 provision of benefits between employees with spouses and employees with  
24 domestic partners, a contractor may:

25 1. Elect to provide benefits to individuals in addition to  
26 employees' spouses and employees' domestic partners;

27 2. Allow each employee to designate a legally domiciled  
28 member of the employee's household as being eligible for spousal

1 equivalent benefits; or

2 3. Provide benefits neither to employees' spouses nor to  
3 employees' domestic partners.

4 C. A contractor will not be deemed to be discriminating in the  
5 provision of benefits where the implementation of policies ending  
6 discrimination in benefits is delayed following the first award of a City  
7 contract to a contractor after the effective date of this Chapter:

8 1. Until the first effective date after the first open  
9 enrollment process following the date the contract with the City is executed,  
10 provided that the contractor submits evidence that it is making reasonable  
11 efforts to end discrimination in benefits. This delay may not exceed two (2)  
12 years from the date the contract with the City is executed and only applies  
13 to benefits for which an open enrollment process is applicable.

14 2. Until administrative steps can be taken to incorporate  
15 nondiscrimination in benefits in the contractor's infrastructure. The timer  
16 allotted for these administrative steps shall apply only to those benefits for  
17 which administrative steps are necessary and may not exceed three (3)  
18 months. An extension of this time may be granted at the discretion of the  
19 City Manager upon the written request of a contractor, setting forth the  
20 reasons that additional time is required.

21 3. Until the expiration of a contractor's current collective  
22 bargaining agreement(s) where all of the following conditions have been  
23 met:

24 a. The provision of benefits is governed by one or  
25 more collective bargaining agreement(s); and

26 b. The contractor takes all reasonable measures to  
27 end discrimination in benefits by either requesting that the union(s) involved  
28 agree to reopen the agreement(s) in order for the contractor to take

1 whatever steps are necessary to end discrimination in benefits or by ending  
2 discrimination in benefits without reopening the collective bargaining  
3 agreement(s); and

4 c. In the event that the contractor cannot end  
5 discrimination in benefits despite taking all reasonable measure to do so,  
6 the contractor provides a cash equivalent to eligible employees for whom  
7 benefits are not available. Unless otherwise authorized, in writing by the  
8 City Manager, this cash equivalent payment must begin at the time the  
9 union(s) refuse to allow the collective bargaining agreement(s) to be  
10 reopened, or in any case no longer than three (3) months from the date the  
11 contract with the City was executed. This cash equivalent payment shall not  
12 be required where it is prohibited by federal labor law.

13 D. Employers subject to this Chapter pursuant to Section  
14 2.73.030 shall give written notification to each current and new employee of  
15 his or her potential rights under this Chapter in a form specified by the City.  
16 Such notice shall also be posted prominently in areas where it may be seen  
17 by all employees.

18  
19 2.73.050 Required contract provisions.

20 Every contract subject to this Chapter shall contain provisions  
21 requiring it to comply with the provisions of this Chapter as they exist on the  
22 date when the contractor entered the contract with the City or when such  
23 contract is amended. Such contract provisions may include but need not be  
24 limited to the contractor's duty to promptly provide to the City documents  
25 and information verifying its compliance with the requirements of this  
26 Chapter and sanctions for noncompliance.

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1           2.73.060    Waivers and exemptions.

2                    A.    The City may waive the requirements of this Chapter where  
3 the City Manager makes one or more of the following findings:

4                            1.    Award of a contract or amendment is necessary to  
5 respond to an emergency;

6                            2.    The contractor is a sole source;

7                            3.    The contractor is a non-profit entity as defined in  
8 Section 2.73.020, above;

9                            4.    Non compliant contractors are capable of providing  
10 goods or services that respond to the City's requirements;

11                           5.    The contractor is a public entity;

12                           6.    The requirements of this Chapter are inconsistent with  
13 a grant, subvention or agreement with a public agency;

14                           7.    The City is purchasing through a cooperative or joint  
15 purchasing agreement;

16                           8.    The contract involves specialized legal services such  
17 that it would be in the best interests of the City to waive the requirements of  
18 this Chapter, as determined by the City Attorney;

19                           9.    The contract involves investment of trust moneys or  
20 agreements relating to the management of trust assets, City moneys  
21 invested in U.S. government securities or under pre-existing investment  
22 agreements, or the investment of City moneys where no person, entity or  
23 financial institution doing business with the City which is in compliance with  
24 this Chapter is capable of performing the desired transactions or the City will  
25 incur financial loss if the requirements of this Chapter are enforced;

26                           10.   After taking all reasonable measures to find an entity  
27 that complies with this Chapter, the City may waive any or all requirements  
28 of this Chapter for any contract or bid package advertised and made

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Long Beach, CA 90802-4664



1 available to the public, or any competitive or sealed bids received by the  
2 City as of the effective date of this Chapter under the following  
3 circumstances:

4 a. There are no qualified responsive bidders or  
5 prospective contractors who comply with this Chapter and the contract is for  
6 goods, a service or a project that is essential to the City or City residents; or

7 b. The requirements of this Chapter would result in  
8 the City's entering into a contract with an entity that was set up, or is being  
9 used for the purpose of evading the intent of this Chapter.

10 B. The requirements of this Chapter shall not be applicable to  
11 contracts executed or amended prior to the effective date of this Chapter, or  
12 to bid packages advertised and made available to the public, or any  
13 competitive or sealed bids received by the City prior to the effective date of  
14 this Chapter, unless and until such contracts are amended after the effective  
15 date of this Chapter and would otherwise be subject to this Chapter.

16 C. The City Manager or designee may issue regulations from  
17 time to time implementing the provisions of this ordinance.

18  
19 2.73.070 Retaliation and discrimination prohibited.

20 A. No employer shall retaliate or discriminate against an  
21 employee in his or her terms and conditions of employment by reason of the  
22 person's status as an employee protected by the requirements of this  
23 Chapter.

24 B. No employer shall retaliate or discriminate against a person in  
25 his or her terms and conditions of employment by reason of the person  
26 reporting a violation of this Chapter or for prosecuting an action for  
27 enforcement of this Chapter.

28 ///

1           2.73.080     Employee complaints to City.

2           A.     An employee who alleges violation of any provision of the  
3 requirements of this Chapter may report such acts to the City. The City  
4 Manager may establish a procedure for receiving and investigating such  
5 complaints and take appropriate enforcement action.

6           B.     The City shall have the power to examine contractors' benefit  
7 programs covered by this Chapter.

8           C.     Any complaints received shall be treated as confidential  
9 matters, to the extent permitted by law. Any complaints received and all  
10 investigation documents related thereto shall be deemed exempt from  
11 disclosure pursuant to California Government Code Sections 6254 and  
12 6255.

13  
14           2.73.090     Remedies.

15           A.     Upon a finding by the City Manager that a contractor has  
16 violated the requirements of this Chapter, the City shall have the rights and  
17 remedies described in this Section, in addition to any rights and remedies  
18 provided at law or in equity.

19           1.     The City Manager shall be authorized to terminate said  
20 contract and bar the contractor from bidding on future contracts with the City  
21 for three (3) years from the effective date of the contract termination.

22           2.     In the City Manager's sole discretion, a contractor found  
23 to have willfully violated the requirements of this Chapter may be required to  
24 pay liquidated damages.

25           3.     The City may seek recovery of reasonable attorneys'  
26 fees and costs necessary for enforcement of this Chapter.

27           B.     Notwithstanding any provision of this Chapter or any other  
28 Chapter to the contrary, no criminal penalties shall attach for any violation of

1 this Chapter.

2 C. No remedy set forth in this Chapter is intended to be exclusive  
3 or a prerequisite for asserting a cause of action to enforce any rights  
4 hereunder in a court of law. This Chapter shall not be construed to limit an  
5 employee's right to bring a common law cause of action for wrongful  
6 termination.

7 D. Nothing in this Chapter shall be interpreted to authorize a right  
8 of action against the City.

9  
10 Section 2. The City Clerk shall certify to the passage of this ordinance by  
11 the City Council and cause it to be posted in three (3) conspicuous places in the City of  
12 Long Beach, and it shall take effect on the thirty-first (31st) day after it is approved by the  
13 Mayor.

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OFFICE OF THE CITY ATTORNEY  
ROBERT E. SHANNON, City Attorney  
333 West Ocean Boulevard, 11th Floor  
Long Beach, CA 90802-4664

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I hereby certify that the foregoing ordinance was adopted by the City Council of the City of Long Beach at its meeting of \_\_\_\_\_, 20\_\_, by the following vote:

Ayes: Councilmembers: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Noes: Councilmembers: \_\_\_\_\_

\_\_\_\_\_

Absent: Councilmembers: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_  
City Clerk

Approved: \_\_\_\_\_  
(Date)

\_\_\_\_\_  
Mayor