

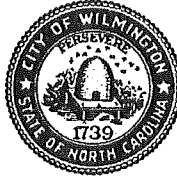
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DEC - 9 2010

PLANNING DIVISION

City Council
City of Wilmington
North Carolina

Ordinance



Introduced By: Sterling B. Cheatham, City Manager

Date: 7/6/2010

Ordinance Amending Chapter 18, Article 5, Division II. District Regulations, Article 6, Division I. Prescribed Conditions, Special Use Prerequisites, and Accessory Uses and Structures and Article 15. Definitions to Change the Use Regulations, Separation Requirements, and Definitions for Various Care Facility Uses

LEGISLATIVE INTENT/PURPOSE:

WHEREAS, NCGS Section 160A-385 authorizes local governments to amend ordinances regulating land use within their jurisdiction; and

WHEREAS, the amendment set out below is made in accordance with NCGS Section 160A-364 and Article 3, Section 18-117 of the Land Development Code; and

WHEREAS, the amendment set out below is intended to promote the public health, safety, and welfare by amending the Land Development Code to improve the use regulations, separation requirements, and definitions for various care facility uses.

THEREFORE, BE IT ORDAINED:

SECTION 1: Chapter 18, Sec. 18-177(b)(2), R-20, Residential District of the Wilmington City Code is hereby amended to delete the phrase "Family care home" and to read as follows:

"[(2) Reserved.]"

SECTION 2: Chapter 18, Sec. 18-177(c)(9), R-20, Residential District of the Wilmington City Code is hereby amended to add the phrase "Family care home" and to read as follows:

"(9) Family care home."

SECTION 3: Chapter 18, Sec. 18-178(b)(2), R-15, Residential District of the Wilmington City Code is hereby amended to delete the phrase "Family care home" and to read as follows:

"[(2) Reserved.]"

SECTION 4: Chapter 18, Sec. 18-178(c)(10), R-15, Residential District of the Wilmington City Code is hereby amended to add the phrase "Family care home" and to read as follows:

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CITY CLERK
Thelma Spivey-Sidbury

“(10) Family care home.”

SECTION 5: Chapter 18, Sec. 18-179(b)(2), R-10, Residential District of the Wilmington City Code is hereby amended to delete the phrase “Family care home” and to read as follows:

“[(2) Reserved.]”

SECTION 6: Chapter 18, Sec. 18-179(c)(9), R-10, Residential District of the Wilmington City Code is hereby amended to add the phrase “Family care home” and to read as follows:

“(9) Family care home.”

SECTION 7: Chapter 18, Sec. 18-180(b)(2), R-7, Residential District of the Wilmington City Code is hereby amended to delete the phrase “Family care home” and to read as follows:

“[(2) Reserved.]”

SECTION 8: Chapter 18, Sec. 18-180(c)(9), R-7, Residential District of the Wilmington City Code is hereby amended to add the phrase “Family care home” and to read as follows:

“(9) Family care home.”

SECTION 9: Chapter 18, Sec. 18-181(b)(3), R-5, Residential District of the Wilmington City Code is hereby amended to delete the phrase “Family care home” and to read as follows:

“[(3) Reserved.]”

SECTION 10: Chapter 18, Sec. 18-181(c)(9), R-5, Residential District of the Wilmington City Code is hereby amended to add the phrase “Family care home” and to read as follows:

“(9) Family care home.”

SECTION 11: Chapter 18, Sec. 18-182(b)(2), R-3, Residential District of the Wilmington City Code is hereby amended to delete the phrase “Family care home” and to read as follows:

“[(2) Reserved.]”

SECTION 12: Chapter 18, Sec. 18-182(c)(8), R-3, Residential District of the Wilmington City Code is hereby amended to add the phrase “Family care home” and to read as follows:

“(8) Family care home.”

SECTION 13: Chapter 18, Sec. 18-183(d)(1), MHP, Manufactured Housing Park District of the Wilmington City Code is hereby amended to delete the phrase “Family care home” and to read as follows:

“[(1) Reserved.]”

SECTION 14: Chapter 18, Sec. 18-183(e)(7), MHP, Manufactured Housing Park District of the Wilmington City Code is hereby amended to add the phrase “Family care home” and to read as follows:

“(7) Family care home.”

SECTION 15: Chapter 18, Sec. 18-184(b)(5), Multifamily Residential Districts (MF-L, MF-M, MF-MH, MF-H) of the Wilmington City Code is hereby amended to delete the phrase “Family care home” and to read as follows:

“[(5) Reserved.]”

SECTION 16: Chapter 18, Sec. 18-184(c)(11), Multifamily Residential Districts (MF-L, MF-M, MF-MH, MF-H) of the Wilmington City Code is hereby amended to add the phrase “Family care home” and to read as follows:

“(11) Family care home.”

SECTION 17: Chapter 18, Sec. 18-184(d)(10), Multifamily Residential Districts (MF-L, MF-M, MF-MH, MF-H) of the Wilmington City Code is hereby amended to add the phrase “Assisted living residence” and to read as follows:

“(10) Assisted living residence.”

SECTION 18: Chapter 18, Sec. 18-185(c)(1)d.iii., MX, Mixed Use District of the Wilmington City Code is hereby amended to delete the phrase “Nursing and personal care, by special use permit” and add the phrase “Nursing homes” and to read as follows:

“iii. Nursing homes.”

SECTION 19: Chapter 18, Sec. 18-185(c)(1)d.iv., MX, Mixed Use District of the Wilmington City Code is hereby amended to delete the phrase “Day care, adult or child, by special use permit” and add the phrase “Day care, adult or child” and to read as follows:

“iv. Day care, adult or child.”

SECTION 20: Chapter 18, Sec. 18-185(c)(1)d.viii., MX, Mixed Use District of the Wilmington City Code is hereby amended to delete the phrase “Retirement centers and life care communities, by special use permit” and add the phrase “Retirement centers and life care communities” and to read as follows:

“viii. Retirement centers and life care communities.”

SECTION 21: Chapter 18, Sec. 18-185(c)(1)d.xii., MX, Mixed Use District of the Wilmington City Code is hereby amended to add the phrase “Assisted living residence” and to read as follows:

“xii. Assisted living residence.”

SECTION 22: Chapter 18, Sec. 18-187(d)(2), HD, Historic District of the Wilmington City Code is hereby amended to delete the phrase “Family care home” and to read as follows:

“[(2) Reserved.]”

SECTION 23: Chapter 18, Sec. 18-187(e)(3), HD, Historic District of the Wilmington City Code is hereby amended to add the phrase “Family care home” and to read as follows:

“(3) Family care home.”

SECTION 24: Chapter 18, Sec. 18-188(d)(6), HD-MU, Historic District-Mixed Use of the Wilmington City Code is hereby amended to delete the phrase “Family care home” and to read as follows:

“[(6) Reserved.]”

SECTION 25: Chapter 18, Sec. 18-188(e)(5), HD, Historic District-Mixed Use of the Wilmington City Code is hereby amended to add the phrase “Family care home” and to read as follows:

“(5) Family care home.”

SECTION 26: Chapter 18, Sec. 18-189(e)(1), HD-R, Historic District-Residential of the Wilmington City Code is hereby amended to delete the phrase “Family care home” and to read as follows:

“[(1) Reserved.]”

SECTION 27: Chapter 18, Sec. 18-189(f)(3), HD-R, Historic District-Residential of the Wilmington City Code is hereby amended to add the phrase “Family care home” and to read as follows:

“(3) Family care home.”

SECTION 28: Chapter 18, Sec. 18-190(c)(15) and (16), O&I-1, Office and Institutional District 1 of the Wilmington City Code is hereby amended to add the phrases “Assisted living residence,” and “Nursing homes” and to read as follows:

“(15) Assisted living residence.”

“(16) Nursing homes.”

SECTION 29: Chapter 18, Sec. 18-190(d)(6), O&I-1, Office and Institutional District 1 of the Wilmington City Code is hereby amended to delete the phrase “Nursing and personal care” and to read as follows:

“[(6) Reserved.]”

SECTION 30: Chapter 18, Sec. 18-191(c)(17) and (18), O&I-2, Office and Institutional District 2 of the Wilmington City Code is hereby amended to add the phrases “Assisted living residence,” and “Nursing homes” and to read as follows:

“(17) Assisted living residence.”

“(18) Nursing homes.”

SECTION 31: Chapter 18, Sec. 18-191(d)(6), O&I-2, Office and Institutional District 2 of the Wilmington City Code is hereby amended to delete the phrase “Nursing and personal care” and to read as follows:

“[(6) Reserved.]”

SECTION 32: Chapter 18, Sec. 18-193(d)(3) and (4), MSMU, Main Street Mixed Use of the Wilmington City Code is hereby amended to delete the phrase “Nursing and personal care” and add the phrase “Nursing home” and add the phrase “Assisted living residence” and to read as follows:

“(3) Nursing homes.”

“(4) Assisted living residence.”

SECTION 33: Chapter 18, Sec. 18-194(c)(23), CB, Community Business District of the Wilmington City Code is hereby amended to add the phrase “Day care, adult or child” and to read as follows:

“(23) Day care, adult or child.”

SECTION 34: Chapter 18, Sec. 18-194(d)(1) and (7), CB, Community Business District of the Wilmington City Code is hereby amended to delete the phrase “Day care, adult or child” and add the phrase “Assisted living residence” and to delete the phrase “Nursing and personal care” and add the phrase “Nursing homes” and to read as follows:

“(1) Assisted living residence.”

“(7) Nursing homes.”

SECTION 35: Chapter 18, Sec. 18-195(c)(22), RB, Regional Business District of the Wilmington City Code is hereby amended to add the phrase “Day care, adult or child” and to

read as follows:

“(22) Day care, adult or child.”

SECTION 36: Chapter 18, Sec. 18-195(d)(1) and (7), RB, Regional Business District of the Wilmington City Code is hereby amended to delete the phrase “Day care, adult or child” and add the phrase “Assisted living residence” and to delete the phrase “Nursing and personal care” and add the phrase “Nursing homes” and to read as follows:

“(1) Assisted living residence.”

“(7) Nursing homes.”

SECTION 37: Chapter 18, Sec. 18-196(d)(7) and (9), CBD, Central Business District of the Wilmington City Code is hereby amended to delete the phrase “Nursing and personal care” and add the phrase “Nursing homes” and add the phrase “Assisted living residence” and to read as follows:

“(7) Nursing homes.”

“(9) Assisted living residence.”

SECTION 38: Chapter 18, Sec. 18-202(c)(1)d.iv., RFMU, Riverfront Mixed Use District of the Wilmington City Code is hereby amended to delete the phrase “Nursing and personal care, by special use permit” and add the phrase “Nursing homes” and to read as follows:

“iv. Nursing homes.”

SECTION 39: Chapter 18, Sec. 18-202(c)(1)d.vi. and vii., RFMU, Riverfront Mixed Use District of the Wilmington City Code is hereby amended to delete the phrase “Retirement center and life care community, by special use permit” and add the phrase “Retirement center and life care community” and add the phrase “Assisted living residence” and to read as follows:

“vi. Retirement center and life care community.”

“vii. Assisted living residence.”

SECTION 40: Chapter 18, Sec. 18-213.3(a)(3)e.iv.c., South 17th Street/Independence Boulevard Corridor regulations of the Wilmington City Code is hereby amended to delete the phrase “Assisted living care facility, elderly” and add the phrase “Assisted living residence” and to read as follows:

“c. Assisted living residence.”

SECTION 41: Chapter 18, Sec. 18-265(a), Day care, adult or child of the Wilmington City Code is hereby amended to read as follows:

In any residential district and in the HD and HD-MU districts, all signs shall be

minated and shall not exceed four (4) square feet in area.”

SECTION 42: Chapter 18, Sec. 18-265(e), Day care, adult or child of the Wilmington City Code is hereby amended to read as follows:

Child day care centers licensed for six (6) to twenty-nine (29) children, inclusive, shall have seventy-five (75) square feet per child of outdoor play area for the total number of children for which the center is licensed. In addition, the total number of children on the playground shall not exceed the number the space will accommodate at seventy-five (75) square feet per child.”

SECTION 43: Chapter 18, Sec. 18-265(i), Day care, adult or child of the Wilmington City Code is hereby amended to read as follows:

In any residential district and in the HD and HD-MU districts, whether contiguous or not, adult day care and child day care centers shall not be located closer than a one-half (1/2) mile radius from any existing permitted adult day care and child day care center in a residential district. This separation requirement does not apply to day care centers that are accessory to community centers, private recreation centers, religious institutions and primary and secondary schools located in any residential district and in the HD and HD-MU districts. The distance between the proposed use and the existing permitted adult day care or child day care center shall be measured by following a straight line from the nearest point of the lot line of the proposed use to the nearest point of the lot line of the lot on which the existing permitted use is located.”

SECTION 44: Chapter 18, Sec. 18-276(a), Group home supportive small, medium and large, family care home, group home residential: separation requirements of the Wilmington City Code is hereby amended to read as follows:

A proposed family care home shall be located no closer than within a one-half-mile radius from an existing permitted family care home within any single-family residential, MHP, HD-R, HD and HD-MU Districts whether contiguous or not.”

SECTION 45: Chapter 18, Sec. 18-276(b), Group home supportive small, medium and large, family care home, group home residential: separation requirements of the Wilmington City Code is hereby amended to read as follows:

A proposed group home residential shall be located no closer than within a one-half-mile radius from any existing permitted group home residential, group home supportive small, group home supportive medium, group home supportive large, or family care home within any residential, MHP, HD-R, HD and HD-MU Districts whether contiguous or not.”

SECTION 46: Chapter 18, Sec. 18-276(c), Group home supportive small, medium and large, family care home, group home residential: separation requirements of the Wilmington City Code

is hereby amended to read as follows:

A proposed group home supportive small, medium, or large shall be located no closer than within a one-half-mile radius from any existing permitted group home supportive small, medium or large, family care home or group home residential within any residential, MHP, HD-R, HD and HD-MU Districts whether contiguous or not. There shall be no separation requirement for any family care home, group home supportive small and group home supportive medium in multifamily residential districts.”

SECTION 47: Chapter 18, Sec. 18-292, Nursing and personal care of the Wilmington City Code is hereby amended to delete the section heading “Sec. 18-292. Nursing and personal care” and add the section heading “Sec. 18-292. Nursing homes” and to read as follows:

8-292. Nursing homes.”

SECTION 48: Chapter 18, Sec. 18-292, Nursing and personal care of the Wilmington City Code is hereby amended to delete the text “Nursing and personal care facilities shall comply with the following:” and add the text “Nursing homes shall comply with all requirements of the North Carolina General Statutes (NCGS and the following:” and to read as follows:

“Nursing homes shall comply with all applicable requirements of the North Carolina General Statutes (NCGS) and the following:”

SECTION 49: Chapter 18, Sec. 18-292(b), Nursing and personal care of the Wilmington City Code is hereby amended to read as follows:

“(b) There shall be a floor plan showing the number of residential units.”

SECTION 50: Chapter 18, Sec. 18-292(c), Nursing and personal care of the Wilmington City Code is hereby amended to read as follows:

“[(c) Reserved.]”

SECTION 51: Chapter 18, Sec. 18-292(d)(1), Nursing and personal care of the Wilmington City Code is hereby amended to read as follows:

“[(1) Reserved.]”

SECTION 52: Chapter 18, Sec. 18-292(e), Nursing and personal care of the Wilmington City Code is hereby amended to read as follows:

The density for nursing homes shall be that permitted for multiple family housing units in the zoning district in which the nursing home is located. This density shall be determined as follows: when the cooking and restroom facilities are located within the individual units of accommodation (apartment format), each individual unit of accommodation shall

ned to be equivalent to a single housing unit; and when the individual units of accommodation are served by common cooking or restroom facilities, the equivalent density shall be based on the number of residents, with each three (3) residents being deemed equal to one (1) housing unit for density calculation purposes.”

SECTION 53: Chapter 18, Sec. 18-292(f), Nursing and personal care of the Wilmington City Code is hereby amended to read as follows:

The site design of nursing homes shall orient all recreational areas, front of buildings, parking facilities, and other sources of activity away from any adjoining residentially-zoned areas. For new construction, the facade of the structure shall be designed to be architecturally compatible with the streetscape of the district in which it is located. Any proposed change to the facade of an existing structure shall be architecturally compatible with the surrounding neighborhood.”

SECTION 54: Chapter 18, Sec. 18-292(g), Nursing and personal care of the Wilmington City Code is hereby amended to read as follows:

The nursing home shall not be established, constructed, expanded, altered, changed, operated, or occupied, except in accordance with the Minimum Housing Code and Abandoned Structures Ordinance, and all applicable federal, state, and local regulations, including but not limited to any licensing requirements.”

SECTION 55: Chapter 18, Division I. Prescribed Conditions, Special Use Prerequisites, and Accessory Uses and Structures is hereby amended to add Section 18-321 and to read as follows:

“Sec. 18-321. Assisted living residence.

Assisted living residences shall comply with all applicable requirements of the North Carolina General Statutes (NCGS) and the following:

- (a) The minimum lot size shall be fifteen thousand (15,000) square feet.
- (b) There shall be a floor plan showing the number of residential units.
- (c) There shall be a management plan submitted with the application for a special use permit that includes at a minimum the following:
 - (1) A plan for noise and solid waste management approved as part of the management and site plan.
 - (2) Adequate provision for the recreation and laundry needs of the residents.
 - (3) Projected maximum number of residents and resident supervisory personnel.

(d) The density for assisted living residences shall be determined as follows: when the cooking and restroom facilities are located within the individual units of accommodation (apartment format), each individual unit of accommodation shall be deemed to be equivalent to a single housing unit; and when the individual units of accommodation are served by common cooking or restroom facilities, the equivalent density shall be based on the number of residents, with each three (3) residents being deemed equal to one (1) housing unit for density calculation purposes.

(e) The site design of assisted living residences shall orient all recreational areas, front of buildings, parking facilities, and other sources of activity away from any adjoining residentially-zoned areas. For new construction, the facade of the structure shall be designed to be architecturally compatible with the streetscape of the district in which it is located. Any proposed change to the facade of an existing structure shall be architecturally compatible with the surrounding neighborhood.

The assisted living residence shall not be established, constructed, expanded, altered, changed, operated, or occupied, except in accordance with the Minimum Housing Code and Abandoned Structures Ordinance, and all applicable federal, state, and local regulations, including but not limited to any licensing requirements.

Limited nonresidential uses, such as incidental food service and personal services, in the manner of internal service facilities, may be permitted, provided such facilities are designed to serve solely the residents of and occasional visitors to the assisted living facility use.

Secs. 18-322-18-339. Reserved.”

SECTION 56: Chapter 18, Sec. 18-532, Parking schedule of the Wilmington City Code is hereby amended to delete the phrase “Nursing and personal care” and add the phrase “Nursing homes” and to read as follows:

USES REQUIRED NUMBER OF OFF-STREET PARKING SPACES

Related Residential Uses Maximum Minimum

** *** ***

Nursing homes 1 per 4 beds and 1 per supervisor and staff person

SECTION 57: Chapter 18, Sec. 18-532, Parking schedule of the Wilmington City Code is hereby amended to add the phrase “Assisted living residence” and to add the phrase ”1 per 4 beds and 1 per supervisor and staff person” and to read as follows:

USES REQUIRED NUMBER OF OFF-STREET PARKING SPACES

Related Residential Uses Maximum Minimum

** *** **

Assisted living residence 1 per 4 beds and 1 per supervisor and staff person

SECTION 58: Chapter 18, Sec. 18-812, Definitions of the Wilmington City Code is hereby amended to delete the definition of "Assisted living care facility, elderly" and replace with "Assisted living residence" to read as follows:

"Assisted living residence: Establishments licensed pursuant to N.C.G.S. Chapter 131D primarily engaged in the provision of residential, social, and personal care for the elderly who have some limits on their ability for self-care, but where medical care is not a major element of the services provided at the facility. Settings in which services are delivered may include self-contained apartment units or single or shared room units with private or area baths. Assisted living residences are to be distinguished from nursing homes subject to provisions of N.C.G.S. Chapter 131E."

SECTION 59: Chapter 18, Sec. 18-812, Definitions of the Wilmington City Code is hereby amended to replace the definition for "Day care, child" to read as follows:

"Day care, child: A facility licensed pursuant to N.C.G.S. Chapter 110, Article 7 that provides child care, regardless of the time of day, wherever operated, and whether or not operated for profit for three (3) or more preschool-age children or nine (9) or more school-age children."

SECTION 60: Chapter 18, Sec. 18-812, Definitions of the Wilmington City Code is hereby amended to delete the definition of "Child day care home" and replace with "Family child care home" to read as follows:

"Family child care home: A home or facility, licensed pursuant to N.C.G.S. Chapter 110, Article 7, wherein at least two (2) but not more than eight (8) children less than (13) years of age receive care away from their own home by persons other than their own parents, legal guardians, or relatives within the fourth degree of kinship, on a regular basis more than once per week for more than four (4) hours per day. The facility must operate twelve (12) hours per day or less. All children other than the children of the operator must be counted. Cooperative arrangements among parents to provide care for their own children as a convenience rather than for employment are not included, provided there is no paid staff. Family child care homes shall be considered a home occupation. The operator of the home must reside on the premises. The home must meet applicable requirements of the North Carolina State Building Code. Family child care homes are permitted by right in all residential districts."

SECTION 61: Chapter 18, Sec. 18-812, Definitions of the Wilmington City Code is hereby amended to replace the definition for "Group day facility" to read as follows:

"Group day facility: Establishments primarily engaged in the provision of care, shelter, or supervision of persons that does not include overnight accommodations. A group day facility is

only permitted in a residential district as an accessory use to a religious institution and excludes child day care, family child care home and adult day care.”

SECTION 62: Chapter 18, Sec. 18-812, Definitions of the Wilmington City Code is hereby amended to delete the phrase “nursing and personal care facilities” from the definition of “Group home residential” and add the phrase “nursing homes” and to read as follows:

“*Group home residential*: Establishments primarily engaged in the provision of care or supervision of persons that includes over night accommodations. This definition does not include: dormitories; fraternity and sorority houses; associations or organizations, civic, social and fraternal; hospitals; motels and hotels; nursing homes; schools; guest lodging; group home supportive small; group home supportive medium; group home supportive large; and any other similar uses that provide overnight accommodations.”

SECTION 63: Chapter 18, Sec. 18-812, Definitions of the Wilmington City Code is hereby amended to replace the definition “Nursing and personal care” and add the definition “Nursing home” and to read as follows:

“*Nursing home*: Establishments licensed pursuant to N.C.G.S. Chapter 131E, Article 6 primarily engaged in providing some nursing and health related personal care, but not continuing nursing services. A nursing home provides care for persons who have remedial ailments or other ailments, for which medical and nursing care are indicated; who, however, are not sick enough to require general hospital care. These establishments have at least one (1) shift with a licensed or registered nurse to provide routine health care and observation. Included are rest homes, convalescent homes, and other institutions where health care is a major element.”

SECTION 64: Chapter 18, Sec. 18-812, Definitions of the Wilmington City Code is hereby amended to add the definition for “Retirement center and life care community” and to read as follows:

“*Retirement center and life care community* - A development that allows residents to age in place with flexible accommodations designed to meet health and housing needs as they change over time. These communities may include personal services, nursing care, and recreation amenities all collocated to enable seniors to remain within the community as they age.”

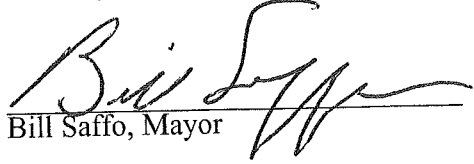
SECTION 65: That any person violating the provisions of this ordinance shall be subject to the penalties set forth in Article XIV, Section 18-52 of the Land Development Code.

SECTION 66: That all ordinances or parts of ordinances in conflict with this ordinance are hereby repealed to the extent of such conflict.

SECTION 67: That if any section, subsection, paragraph, sentence, clause, phrase or portion of this ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed severable and such holding shall not affect the validity

of the remaining portions hereof.

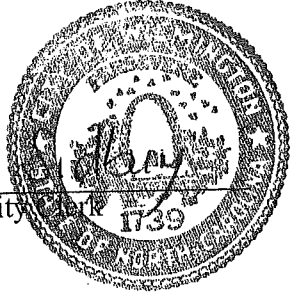
SECTION 68: That this ordinance shall be effective immediately upon its adoption.


Bill Saffo, Mayor

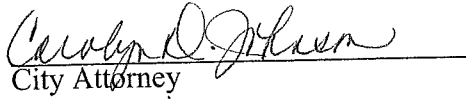
Adopted at a regular meeting
on October 5, 2010.

ATTEST:


Penelope Spicer-Sidbury, City Clerk



APPROVED AS TO FORM:


Carolyn D. Johnson
City Attorney