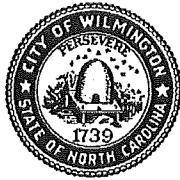


1st - Adopt.
2nd - 5/17/11
Adopt
as amended

Ordinance



City Council
City of Wilmington
North Carolina

Introduced By: Sterling B. Cheatham, City Manager

Date: 5/03/2011

Ordinance to Amend Section 18-196 of the Land Development Code to Include Provisions Related to the Preservation of Historic Structures in the Central Business District (CBD)

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.

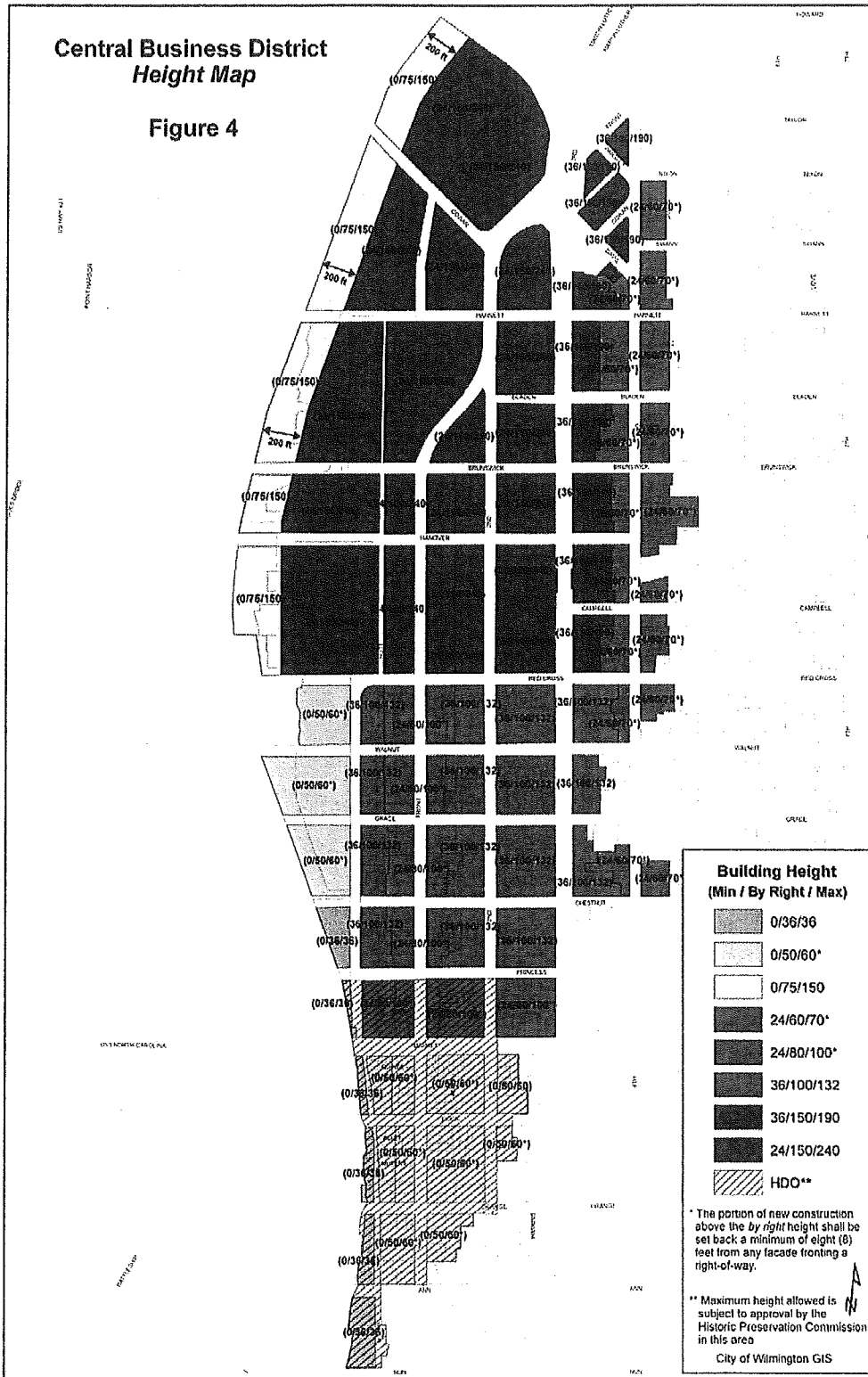
THEREFORE, BE IT ORDAINED:

SECTION 1: Chapter 18, Article 5, Sec. 18-196. CBD, Central Business District, subsection (e) (4), Building Heights of the Wilmington City Code is hereby amended to read as follows:

- (4) *Building heights.* The maximum permitted height of structures shall be as depicted on the Central Business District Height Map (*Figure 4*). Height increases above the by-right permitted height may be allowed in instances where additional public benefits or features are provided as outlined in section 18-196(g), Public Benefits Matrix.
 - a. Building height shall be measured from the average grade of the adjacent right(s)-of-way to the underside of the highest structural member.
 - b. The volume of the portion of the building above the by-right height shall be reduced by no less than ten (10) percent of the volume occurring above the by-right height, except for that of those buildings located in certain areas identified on the *Central Business Height Map (Figure 4)*. In these areas the portion of the building above the by-right height shall be set back a minimum of eight (8) feet from any façade fronting a right-of-way.

CERTIFIED TO BE A TRUE COPY.
CITY CLERK
Tara Spier-Sidbury

SECTION 2: Figure 4 Central Business District Height Map of Chapter 18, Article 5, Sec. 18-196. CBD, Central Business District, subsection (e) (4), Building Heights of the Wilmington City Code is hereby amended to read as follows:



SECTION 3: Chapter 18, Article 5, Sec. 18-196. CBD, Central Business District of the Wilmington City Code is hereby amended by adding new subsections (i) through (n) to read as follows:

(i) *Height restriction for demolition of buildings with “contributing historic structure” status.* If the owner of a contributing historic structure as identified by the National Register Historic District inventory (on file with the city clerk) elects to demolish it without approval to remove the “contributing historic structure” status purposes of this section and in accordance with the process described in Section 18-196(k) below, any new building or portion thereof within the footprint of the demolished contributing historic structure shall be subject to the following additional restrictions:

- (1) The height of any new building shall be restricted to the height of the previously existing building plus one-half (1/2) of the difference between the height of the previously existing building and the by-right height prescribed on the *Central Business District Height Map (Figure 4)*.
- (2) For the purposes of this subsection, the height of the existing structure shall be measured from the average sidewalk elevation to the highest point of the parapet, or, in the case of a building with a sloped roof, to the average roof height.
- (3) Properties located with the central business district, historic district overlay [CBD(HDO)] are subject to division V in articles 2 and 3 of this chapter.

(j) *Incentive for development of undeveloped parcels south of Red Cross Street.* Height increases above the by-right height may be allowed as conditioned below on any site in the portion of the central business district located south of Red Cross Street for which no site plan has been approved and is undeveloped as of January 1, 2011.

- (1) New construction as described in (j) above shall be entitled to twelve (12) feet of height increase above the by-right height or fifteen (15) percent increase above the by-right height, whichever is greater. This provision does not waive or supersede the design review authority granted to the historic preservation commission which may require a lower height based on the surrounding context.
- (2) Additional density of one (1) unit per one (1) foot of height increase shall be allowed.
- (3) A site that is being utilized as a parking lot as of January 1, 2011 shall be considered as “undeveloped” for purposes of this section.
- (4) Properties located with the central business district, historic district overlay [CBD(HDO)] are subject to division V in articles 2 and 3 of this chapter.

(k) *Removal of “contributing historic structure” status.* In order to retain all allowable building height, a property owner who intends to demolish a contributing historic structure

within the CBD may make application to remove the “contributing historic structure” status according to the following procedures:

- (1) For a contributing historic structure located within the historic district overlay (HDO), a property owner may apply to the historic preservation commission to remove the “contributing historic structure” status for purposes of this section. The application requirements and procedures identified in Section 18-96 of this chapter shall apply.
- (2) For a contributing historic structure located outside of the HDO, a property owner may apply to the *city council* to remove the “contributing historic structure” status for the purpose of this section, following a review and recommendation by the planning commission. The planning commission shall not review the request until the historic preservation commission has provided an advisory recommendation. The procedures identified in Section 18-118, Section 18-119, and Section 18-120 of this chapter shall apply.
- (3) The application to remove the “contributing historic structure” status for the purpose of this section shall demonstrate that it has little or no significance in the following four (4) categories and, when scored in each category, has a total combined score of less than six (6) points. Individual structures on recombined properties shall be scored individually:
 - a. *Cultural Significance* *0 to 3 points (1/2 point increments)*
 - i. The structure is associated with events or the lives of persons that have made a significant contribution to local, state or national history.
 - ii. The structure represents the work of a well known or highly regarded builder, architect or other person who was involved in the concept, planning, construction or use of the building.
 - b. *Architectural Integrity* *0 to 3 points (1/2 point increments)*
 - i. The structure has maintained the integrity of its original architectural form.
 - ii. Changes made to the structure over 50 years ago have since acquired architectural significance.
 - c. *Architectural Style* *0 to 3 points (1/2 point increments)*
 - i. The structure has a distinctive defined architectural style.
 - ii. The structure has superior craftsmanship of a degree uncommon for the period in which it was constructed.

- iii. The structure is the last or the oldest example of a certain building type or method of construction.
 - iv. The structure is one of a group of structures that represent a stylistic type or have distinctive characteristics that are significant by their commonality during a period of history.
- d. *Structural Integrity* *0 to 3 points (1/4 point increments)*
- i. The structure will be given a score of 3 points for structural integrity unless the applicant has provided a Report of Structural Inadequacy prepared and sealed by a structural engineer licensed in the State of North Carolina.
 - ii. The Report of Structural Inadequacy shall be based on the requirements of the most current version of the North Carolina Rehab Code, North Carolina Existing Buildings Code or Chapter 34 of the North Carolina Building Code rather than the North Carolina Building Code for New Construction.
 - iii. The structural components shall be assigned the following possible values if they are found to be deficient:

Walls and Supporting Elements	-1 ¾ points
Roof and Supporting Elements	-1 ¼ points

(4) Appeals from applications to the historic preservation commission shall be to the board of adjustment consistent with Section 18-96(c)(9) of this chapter. Applications that receive an unfavorable recommendation from the planning commission may be appealed within ten (10) days of the date of such adverse decision to the city council by filing with the city clerk a notice in writing stating therein the action of the planning commission and the reasons for the appeal.

(5) If the city adopts a condemnation ordinance for the structure under the Articles V, VI, and VII of Chapter 16 Buildings and Building Regulations of the city's Code of Ordinances, the "contributing historic structure" status shall be removed for the purpose of this section upon adoption of the ordinance.

(6) Properties located with the central business district, historic district overlay [CBD(HDO)] are subject to division V in articles 2 and 3 of this chapter.

(l) Redevelopment with height increase for preservation of historic building façades. In order to retain all allowable development height, any redevelopment of a site containing a contributing historic structure as identified by the National Register Historic District inventory on file with the city clerk must preserve façade(s) fronting on any public right-of-way greater than twenty-four (24) feet in width and meet the conditions outlined below. For

purposes of this section, a *façade* includes the building's exterior finish materials and veneer, fenestration, exterior embellishment, and the wall structure that serves as the substrate for the aforementioned items.

- (1) When a height increase with approved façade preservation is requested under the provisions of this subsection for redevelopment of properties within the central business district, historic district overlay [CBD(HDO)], the partial demolition, the height increase, and the new building design must be approved by the historic preservation commission and are subject to division 5 in articles 2 and 3 of this chapter.
- (2) The height of any new construction above and behind the preserved façade(s) shall be allowed up to the maximum height increase shown on the *Central Business District Height Map (Figure 4)*. Preservation of the existing historic façade(s) shall be regarded as a Public Benefit (see Table I of this section) that allows the height increase to the applicable maximum height (See Figures 6 and 7).
- (3) For purposes of this section, new construction that is higher than the preserved historic façade(s) must be set back a minimum of eight (8) feet from the face of the façade(s) which must remain unchanged in appearance. If the depth of the property is greater than eighty (80) feet, the new construction that is higher than the preserved façade must be set back a distance equal to ten percent (10%) of the depth of the property up to a maximum setback distance of twenty (20) feet (See Figures 6 and 7).
- (4) If more than one facade of a building fronts on a right-of-way, the ten percent (10%) setback [with twenty (20)-foot maximum] shall apply to new construction behind the façade fronting the greater property depth and only an eight (8)-foot setback shall apply to construction behind any other façade fronting a right-of-way (See Figures 6 and 7).
- (5) In the case of recombined lots of varying depth, an average depth measurement may be utilized in determining the setback, or alternatively, the new construction above the preserved façade may have varying setbacks relative to the property depths.
- (6) Additional density of one (1) unit per acre per each one (1) foot of height-increase granted above the by-right height is permitted.
- (7) Balconies and other architectural elements may encroach into the required new-construction setback up to a distance equal to twenty-five percent (25%) of the setback depth, but in no case may these elements encroach into the eight (8)-foot minimum setback area.
- (8) The roof over the setback area may be utilized as the substrate of an open-air, above-ground plaza and occupied/utilized for permitted uses unless historic features of the structure would be obscured by any physical elements necessitated by the use.

- (9) If the site to be redeveloped contains a contributing historic structure that is a one (1)- or two (2)-story wood-frame dwelling, the dwelling may be relocated in lieu of preserving the façade in order to take advantage of the additional height increase as indicated in Table I. Public Benefits Matrix.
- (10) The height increase permitted by this subsection cannot be combined with height increases allowable with the provision of other public benefits listed in Table 1. Public Benefits Matrix.

Figure 6. Redevelopment height comparison (typical)

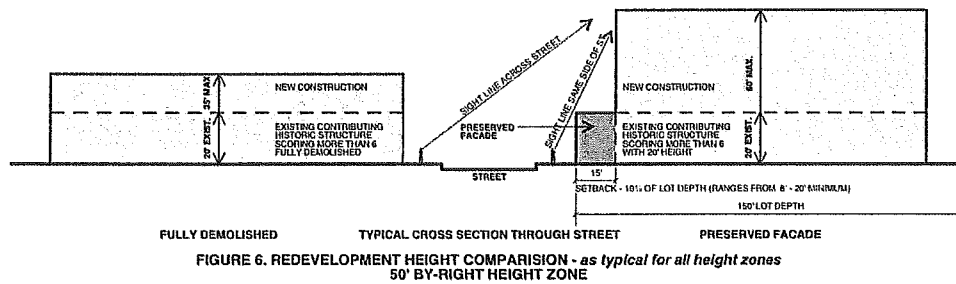


Figure 7. Illustration of redevelopment height in the Central Business District

**FIGURE 7.
ILLUSTRATION OF REDEVELOPMENT
HEIGHT IN CENTRAL BUSINESS DISTRICT**

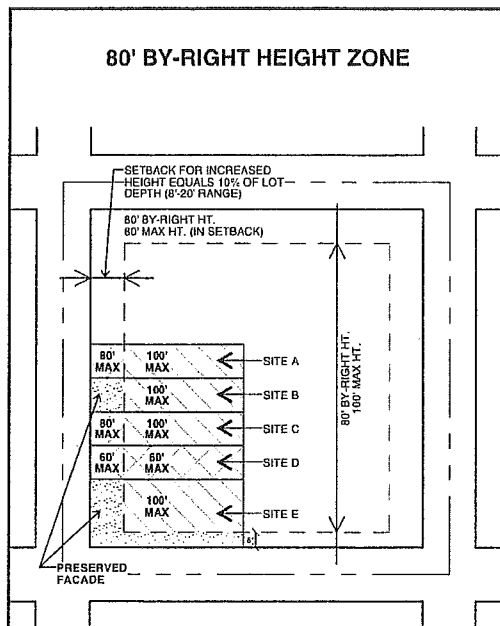
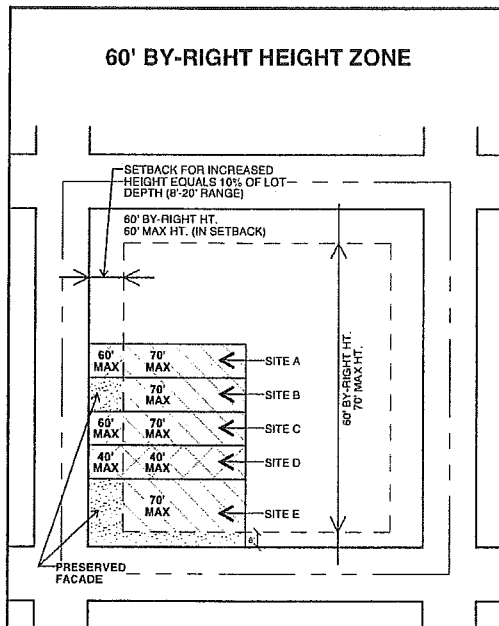
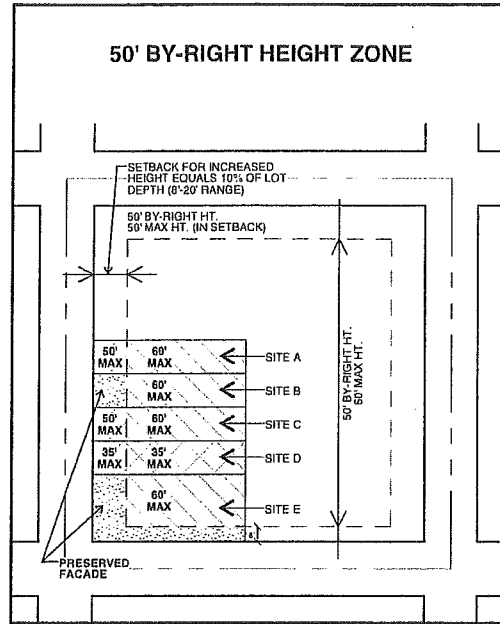
SITE A - INFILL VACANT PARCEL AS OF JANUARY 2011

SITE B - CONTRIBUTING HISTORIC STRUCTURE SCORING MORE THAN 6 WITH FACADE PRESERVED

SITE C - NONCONTRIBUTING OR CONTRIBUTING HISTORIC STRUCTURE SCORING LESS THAN 6 THAT IS FULLY DEMOLISHED AND REDEVELOPED

SITE D - CONTRIBUTING HISTORIC STRUCTURE WITH 20' HEIGHT SCORING MORE THAN 6 THAT IS FULLY DEMOLISHED AND REDEVELOPED

SITE E - CONTRIBUTING HISTORIC STRUCTURE LOCATED ON A CORNER LOT SCORING MORE THAN 6 WITH MINIMUM STREET FACADE PRESERVED



(m) *Demolition requirements and procedures.*

- (1) For demolition of all or a portion of a contributing historic structure that scores six (6) or *greater* according to the evaluation system in Section 18-196(k), the following requirements and procedures shall apply:
 - a. Prior to city sign-off of a demolition permit, the following submittals are required:
 - i. a site plan that complies with the provisions of Section 18-60 and all other applicable provisions of this chapter, and the *City of Wilmington's Standards and Specifications Manual* must be submitted by the owner and approved by the city's technical review committee prior to city-approval of the demolition permit issued by the county; and
 - ii. a financial guarantee or surety in an amount satisfactory to replace sidewalks and curbing and install erosion control features and grass and maintain the site as a green space for a period of two (2) years from submittal of the financial guarantee to the city. The financial guarantee or surety shall be in a form approved by the city attorney.
 - b. Subsequent to demolition, the following procedures are required for the site:
 - i. the owner shall remove all slabs and foundations during building demolition unless they are to be incorporated into the new construction or unless a Report of Structural Inadequacy prepared and sealed by a structural engineer licensed in the State of North Carolina demonstrates that removal would create a public safety hazard;
 - ii. the owner shall immediately install silt fencing sufficient to prevent silt from washing into the public-right-of-way until permanent seeding is established;
 - iii. the owner shall grade the site level to within one-tenth (1/10) of a foot and install other erosion control measures, including temporary seeding of grass of a type approved by the city manager, within thirty (30) days following completion of demolition;
 - iv. the owner shall begin construction on the new development within one hundred-and-eighty (180) days of completion of demolition, with one (1) thirty (30) -day extension allowed for circumstances beyond the control of the owner as determined by the city manager [for purposes of subsection (m), a parking lot as approved by the city is considered new development, but in no case shall the unimproved site be used for vehicle parking or storage];

- v. the owner shall maintain the site in a well-kept manner so as not to create a public nuisance as set forth in Chapter 10 of the city code. Maintenance of the site includes but is not limited to removal of debris and trimming and upkeep of grass; and
 - vi. if after one hundred-and-eighty (180) days and the expiration of any approved extensions no construction has begun, the owner shall replace any sidewalks that were removed or damaged, as well as remove chain link or other construction fencing and replace with a railing or fencing- type approved by the city, within thirty (30) days.
- (2) For demolition of all or a portion of a non-contributing structure or a contributing historic structure that scores *less* than six (6) according to the evaluation system in Section 18-196(k), the following requirements and procedures shall apply if no site plan has been approved by the city's technical review committee:
- a. Prior to city sign-off of a demolition permit, the following submittals are required:
 - i. an approved Semi-Permanent Green Space plan which indicates permanent seeding or sod over a majority of the site, grading to prevent significant ponding of water, and retaining existing sidewalks or replacing if damaged or removed; and
 - ii. a financial guarantee or surety in an amount satisfactory to replace sidewalks and curbing and install erosion control features and grass and maintain the site as a Semi-Permanent Green Space for a period of two (2) years from submittal of the financial guarantee to the city. The financial guarantee or surety shall be in a form approved by the city attorney.
 - b. Subsequent to demolition, the following procedures are required for the site:
 - i. the owner shall remove all slabs and foundations during building demolition unless they are to be incorporated into the new construction or unless a Report of Structural Inadequacy prepared and sealed by a structural engineer licensed in the State of North Carolina demonstrates that removal would create a public safety hazard;
 - ii. the owner shall immediately install silt fencing sufficient to prevent silt from washing into the public-right-of-way until permanent seeding is established;
 - iii. the owner shall complete implementation of the Semi-Permanent Green Space plan within sixty (60) days including planting and maintaining permanent seeding or sod over a majority of the site, grading to prevent significant ponding of water, and replacing sidewalks if removed or damaged; and

iv. the owner shall cordon steep slopes or drop-offs on the site that would present a hazard to the public utilizing a railing-type approved by the city and meeting state building code requirements. Where fencing is needed for screening or security, the fence shall be of a type approved by the city. Exposed chain link fencing shall not be utilized for these purposes.

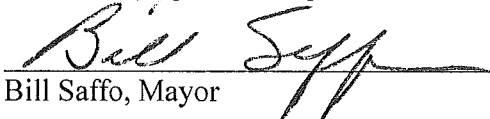
(3) Properties located with the central business district, historic district overlay [CBD(HDO)] are subject to division V in articles 2 and 3 of this chapter.

SECTION 4: 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 5: That all ordinances or parts of ordinances in conflict with this ordinance are hereby repealed to the extent of such conflict.

SECTION 6: 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.

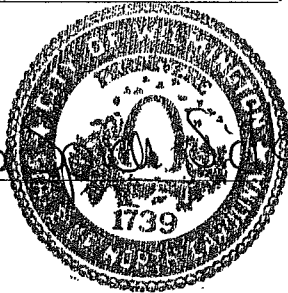
SECTION 7: That this ordinance shall be effective immediately upon its adoption.


Bill Saffo, Mayor

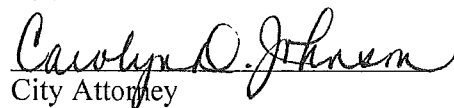
Adopted at a regular meeting
on May 17, 2011.

Attest:


City Clerk



Approved as to Form:


City Attorney