

ORDINANCE NUMBER 3577

An ordinance repealing Chapters 8.44 entitled “Barbed Wire and Electric Fences” and 12.30 entitled “Fences” and enacting a new Chapter 12.31 entitled “Fences” generally amending fence regulations and placing them in one chapter.

Chapter 12.31

Fences

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12.31.010 Authority. This ordinance is adopted pursuant to the powers granted and limitations imposed by Montana state law; Montana Code annotated (MCA) and the City of Missoula’s self-governing power. (MCA 7-14-41, MCA 7-15-41 and MCA 60-1-103)

12.31.020 Purpose. The City Council declares that the purpose of this chapter is based on its determination that it finds it necessary for public safety, health, and general welfare to regulate the installation of fences.

12.31.030 Applicability. This code shall apply to public rights-of-way, public easements, and private property within the City of Missoula and shall define and regulate the design, construction, and inspection requirements for construction of fences when a fence permit is required by Missoula Municipal Code (MMC).

12.31.040 Conflicting Provisions. If any provisions of this Fence Ordinance conflict with any provisions or regulations of Federal, State, or Local Government, then the most restrictive requirement(s) shall apply, to the extent permitted by law.

12.31.050 Definitions.

- A. "Agriculture" means the use of land for growing, raising, or marketing of plants to produce food, feed, or fiber commodities. Examples of crop agriculture include cultivation and tillage of the soil and growing and harvesting of agricultural or horticultural commodities. Crop agriculture does not include personal (household) gardens. Also, the use of land for raising animals to produce food or fiber commodities. Examples of animal agriculture include dairying and the raising of livestock, bees, fur-bearing animals, and poultry. Animal agriculture does not include the keeping of up to 6 female chickens, in accordance with Chapter 6.07 of the municipal code.
- B. "Arbor" means a fence feature forming a latticework or archway over a gate.
- C. "Fence" means any kind of wall, enclosure, or barrier around the property that does not otherwise structurally function as a retaining wall (a wall built to keep earth or water in place) or as a structural, integral part of a building as defined by the International Building Code (IBC) and International Residential Code (IRC).
- D. "Electric Fence" means any commercially available (off-the-shelf), packaged fencing system of one (1) joule or less and six thousand (6,000) volts or less that is connected to:
 - 1. Any standard 110/120-volt receptacle/outlet.
 - 2. Any hydro, solar, wind, or other natural-resource power system.
- E. "Front Yard Fence" means a fence that is intended to contain people and pets, to prevent intrusion by people or pets, or to simply mark a boundary and are not meant for privacy or to restrict vision, but for openness and continuity along the street frontage.
- F. "Rear Yard Fence" means a fence that is intended to foster privacy, but with height limitations.
- G. "Encroaching Fence" means any portion of a fence that extends beyond private property into the public right-of-way; towards the sidewalk, street, alley, or any other public space; above and/or below the ground.
- H. "Gate" means a device at a passageway or a moveable barrier, located in a section of a fence that can swing, slide, raise/lower, or otherwise provide access, ingress, and/or egress to the property or enclosed area.

12.31.060 Fences – General Conditions.

- A. Fence Permit Required. Any property owner or contractor constructing a new fence or any time twenty-five (25') feet or more of any portion of an existing fence (front or rear) is replaced, reconstructed, or repaired by a property owner or contractor, a fence permit shall be obtained from the City, prior to the construction or reconstruction of said fence. Fence permit fees are established by Resolution. One (1) fence permit is required per physical location, parcel, lot, or address. One (1) permit shall not be issued for multiple locations or addresses unless one (1) physical location, parcel, or lot has multiple addresses (such as a multi-family parcel). All work under this permit shall be completed within one hundred eighty (180) days of issuance. Any work to be done after one hundred eighty (180) days of the date of the permit shall require a new permit.

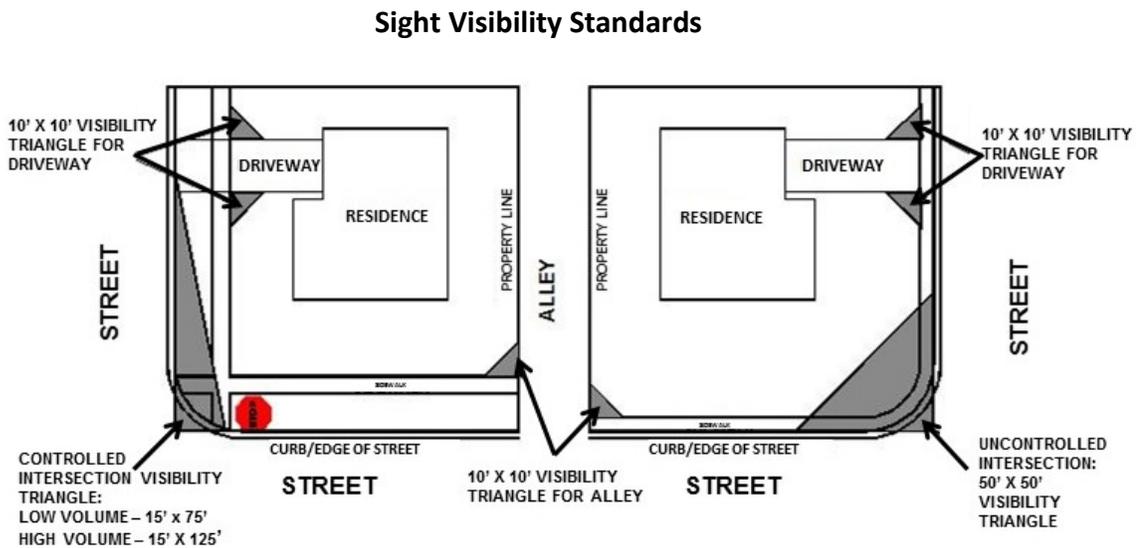
- B. Fence Maintenance. The property owner shall assume, by way of an approved fence permit application, all responsibility to maintain approved fence in good repair at all times at their sole expense. The fence that is approved to be constructed shall always be maintained in a condition that is deemed safe and satisfactory, as determined by Development Services Inspectors.
- C. Fence Liability. The property owner shall assume, by way of an approved fence permit application, all liability resulting from any incident involving the approved fence installation and maintenance and shall hold the City harmless from all damages resulting from such incident.
- D. Fence Responsibilities. The property owner shall assume, by way of an approved fence permit application, all responsibility to install the fence on the property owners' property. All fences shall be installed inside the property line so that no component; post, footing/base, or any other portion of the fence extends beyond the property line. If the location of the property line is unknown or unclear, it is recommended that, at minimum, a retracement survey be performed by a Montana licensed professional land surveyor, prior to fence installation. A dispute over property line location between neighbors is a civil matter and shall be directed to the civil court system.
- E. Fence Permit Revocation. The property owner acknowledges, by way of an approved fence permit application, that if the fence is not constructed in accordance with the approved plans or is constructed so to encroach into the public right-of-way, the issued fence permit may be revoked. If the fence permit is revoked, the property owner agrees to immediately take corrective action and/or remove the fence and restore the premises to its original condition.
- F. Covenants, Conditions, and Restrictions. Homeowners are encouraged to check Covenants, Conditions, and Restrictions that may apply to construction of fences in their subdivision before applying for fence permits.
- G. Building Permits. Any fence exceeding eighty-four (84") inches or seven (7') feet in height shall be designed and engineered for safety, structural soundness, and lateral/wind load analysis and require a City Building Permit in addition to the required City Fence Permit.
- H. Determining Yards. For irregular-shaped lots and in other instances where yards are not clearly defined in this section, the Zoning Officer is authorized to establish Front and Rear Yards for the purposes of fence location and construction.
- I. Maximum Fence Heights Exception. Requests to exceed the maximum height standards provided in this Chapter may be approved if the Development Services Director finds that there are unusual circumstances that warrant the additional height, the proposed fence is sensitive to neighborhood character, and it will not have a negative impact on residential neighbors. The property owner shall provide comment from the adjacent property owners to be included with the exception request.
- J. Fence installation relative to public sidewalks.
 - 1. Where public sidewalks do not exist, fences shall be installed no closer than twenty-four (24") inches or two (2') feet to the back of any future public sidewalk as determined by the City Engineer. This is to facilitate the installation of the future sidewalk without disturbance to the fence.
 - 2. Where public sidewalks do exist, no fence shall be installed closer than twelve (12") inches or one (1') foot to the back of the sidewalk. This is to facilitate the maintenance and/or replacement of the existing sidewalk without disturbance to the fence.

3. The fence must still be located on private property, regardless of existing or future sidewalk location, unless an encroachment permit has been approved per Section 12.31.100.
- K. Fences within an Easement or Levee. The property owner acknowledges, by way of an approved fence permit application, that certain types of fences may be permitted to encroach into certain types of easements. Property owner(s), fence permittee(s), or fence contractors shall review the plat or any separate easement document(s) for the subject property prior to submitting for an application for a Fence Permit. Fences constructed over, upon, or within an easement may be removed without notice. Property owner(s)/fence permittee(s) accept any and all liability for damage, maintenance, or repair to the easement as a result of the fence. For properties located through, upon, or within a levee, no fence of any kind shall be constructed through, upon, or within the levee. No flood control device shall be altered, damaged, impeded, or removed as a result of fence installation.

12.31.070 Fence Standards and Restrictions – Residential Uses. Residential Fence Restrictions apply to all residential development including single-family homes, duplexes, triplexes, and multi-family development.

- A. No fence shall be constructed or installed anywhere which restricts or obstructs sight visibility as described in Section 12.28.110 of this code.

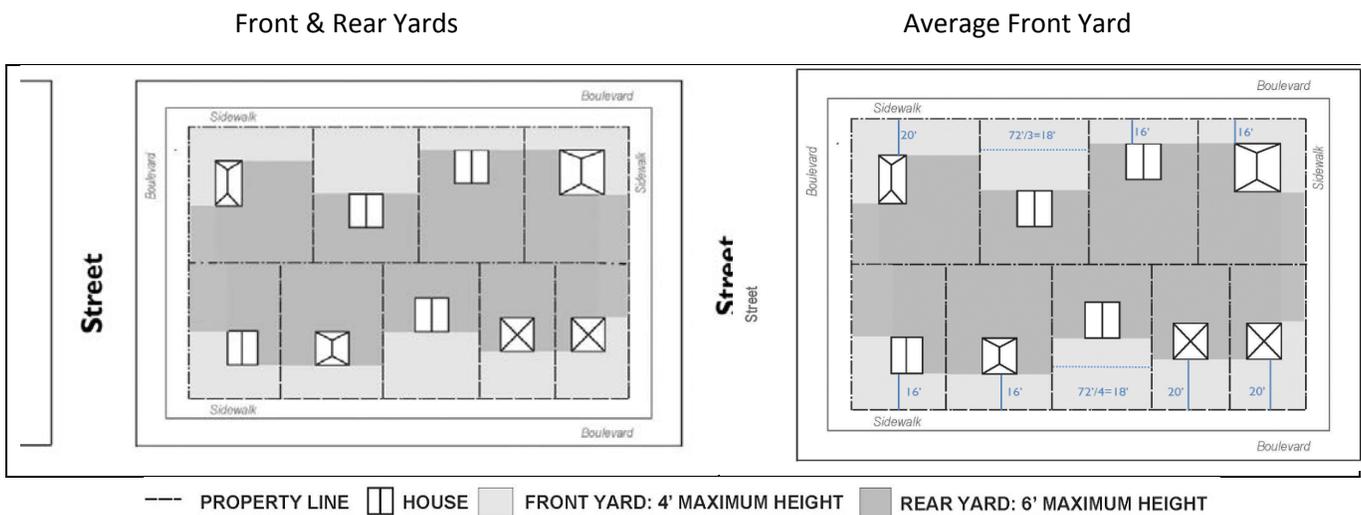
Figure 12.31.070-1.



- B. Fence Height (See Figure 12.31.070-2 for Yards and Fence Heights)
1. Front Yard fences shall have a maximum height of forty-eight (48") inches or four (4') feet. Front Yard height is to be measured at the ground level immediately adjacent to the fence or the adjacent sidewalk grade (existing sidewalk or future/proposed sidewalk) to the top of the fence post.
 2. When an existing home is further from the front property line than the other homes on the same side of the block a front yard fence on the subject parcel may be constructed at the location of the average front yard depth of the parcels within the block face.
 3. Exceptions from maximum fence height as specified in Section 12.30.070 B.1 above may be granted by the Zoning Officer to allow a six foot (6') fence height in the following cases:
 - a. Where portions of a pre-existing single family home are immediately adjacent to, or directly across the street from, a new commercial/industrial use that has generated additional impacts.
 - b. Fences in residential areas that are facing or fronting property with railroad tracks used daily.

Figure 12.31.070-2.

Yards and Fence Heights



4. Rear Yard Fences shall have a maximum height of seventy-two (72") inches, or six (6') feet. Rear Yard fence height is to be measured from the height of the ground level adjacent to the fence.
 5. Height of fences built upon or immediately behind a retaining wall shall be measured from the grade of the ground retained by the wall.
- C. Wildlife fences designed to exclude deer or elk from residential gardens, up to ninety-six (96") inches or eight (8') feet in height, will be permitted subject to the following restrictions:
1. The wildlife fence is in the rear yard and encloses the minimum area necessary to protect planted area(s). The planted area(s) must be delineated on a site plan (this provision is not intended to promote the fencing of entire yards).
 2. The wildlife fence has a maximum of ten (10%) percent opacity and the fence material is standard woven wire or custom high-tensile wire/mesh. In order to protect wildlife from injury there may be gaps of no more than eighteen (18") inches between the horizontal wire strands, no barbed wire or

other components or attachments injurious to wildlife and there must be a highly-visible top rail (flags may be used).

3. Fences in excess of eighty-four (84") inches or seven (7') feet in height require a building permit.
 4. Wildlife fences that do not meet the standards above may be permitted as an exception if the design is deemed to be an acceptable alternative by the Development Services Director that protects gardens while being safe for wildlife, sensitive to neighborhood character, and not have a negative impact on residential neighbors. The property owner shall provide comment from the affected adjacent property owners to be included with the exception request.
- D. Electric fences for deterring bears from apiaries (beehives), fruit trees, gardens, livestock pens, rabbit hutches, garbage containers, dog kennels, chicken coops, compost piles, storage sheds, and other uses may be permitted with approval of the Development Services Director in the Bear Buffer Zone as shown in Appendix A of Missoula City Resolution #7503 or on a parcel where a documented incident has occurred involving a bear on the property. The fence must enclose the minimum area necessary to protect the use. Electric fences may not be erected along or adjacent to any street, alley, sidewalk, or other public right-of-way or public property or along any dividing line between separate pieces, parcels, or lots of land. Montana Fish, Wildlife & Parks' publication [Deterring Bears with Electrified Fencing: A starter's guide](#) is a resource for design and specifications.
- E. No fence in a residential area shall be constructed of, or contain:
1. Broken glass.
 2. Barbed wire.
 3. Razor wire.
- F. No fence in a residential area adjacent to a public sidewalk shall be constructed of, or contain, materials having sharp, hazardous points, or protrusions.

12.31.080 Fence Standards and Restrictions – Commercial/Industrial/Agricultural Uses.

- A. No fence shall be constructed, or installed anywhere which restricts, or obstructs, sight visibility as described in M.M.C. Section 12.28.110 and Figure 12.31.070-1.
- B. Fence Height:
1. Commercial/Industrial/Agricultural fences shall have a maximum height of ninety-six (96") inches or eight (8') feet on all sides. Fences in excess of eighty-four (84") inches or seven (7') feet in height require a building permit.
 2. In cases where portions of an existing single family home are immediately adjacent to a commercial/industrial development the maximum height of the commercial/industrial fencing shall be seventy-two (72") inches or six (6') feet.
- C. Barbed Wire/Razor Wire Fences:
1. Barbed wire or razor wire used on Commercial/Industrial fences may be permitted with approval of the Zoning Officer. Barbed wire or razor wire used along the top of the fence shall start at a height of not less than seventy-two (72") inches or six (6') feet, and shall not be angled so as to extend beyond the property line. Barbed wire or razor wire along the top of a fence is considered to be part of the fence and shall not extend beyond a total height of ninety-six (96") inches or eight (8') feet.

2. Barbed wire fences may be used to secure livestock for agricultural purposes.
3. Barbed wire or razor wire fencing may not be installed along or adjacent to any street, alley, sidewalk, or other public right-of-way or public property or along any dividing line between separate pieces, parcels or lots of land.

D. Electric Fences:

1. Electric fences may be permitted with approval of the Zoning Officer on commercial, industrial, or agricultural properties where there is a demonstrated general security need or a need to secure agricultural livestock or protect agricultural crops. Where permitted, electric fences shall consist of any commercially available (off-the-shelf), packaged fencing system of one (1) joule or less and six thousand (6,000) volts or less that is connected to:
 - a. Any standard 110/120-volt receptacle outlet.
 - b. Any hydro, solar, wind, or other natural-resource power system.
2. The fence charger shall be installed not less than six (6') feet above ground.
3. The fence shall, at minimum, have one (1) sign at each end and/or corner of the electric fence consisting of, at minimum, eighty (80 sq. in.) square inches (i.e. eight (8") inches by ten (10") inches). Signage language shall include "WARNING" or "CAUTION" and "ELECTRIC FENCE" and display electrical symbols such as a lightning bolt.
4. All modified or altered commercial fencing systems, home-built fencing systems, or automotive/marine battery-operated fencing systems are not permitted.
5. Electric fences may not be erected along or adjacent to any street, alley, sidewalk, or other public right-of-way or public property or along any dividing line between separate pieces, parcels, or lots of land.

- E. Commercial/Industrial/Agricultural fences shall not encroach into the public right-of-way. Exceptions may only be granted by the City Engineer when it has been determined that the public safety/public interest will be served by issuing an encroachment permit. If an exception is granted all requirements in 12.31.100 apply.

12.31.090 Fence Gates and Arbors.

- A. No gate shall open in any way as to extend beyond the property line and/or into the street, alley, sidewalk, or other public right-of-way. All gates shall open into the property or be offset into the property at least a distance equal to the width of the gate. All gates shall be subject to the same height restriction(s) as the fence segment in which the gate is located.
- B. An arbor may be used over a gate where there is a walkway. The arbor must have a minimum of 6'8" height clearance, may not exceed overall height of 10', and must be outside of the right-of-way.

12.31.100 Fence Encroachments – Permits and Provisions. The City Engineer is authorized to grant a fence encroachment permit to the owner of land abutting city right-of-way for a temporary revocable privilege to construct, install, and maintain a fence upon a portion of the public right-of-way that is not currently or prospectively used or needed in the near future for any public travel or public use.

- A. Fence Permit Encroachment. A fence encroachment permit is required for any fence that encroaches into the right-of-way. The fence encroachment permit is a revocable privilege and consists of a fence

encroachment permit and a notice signed by the property owner that will be filed at the Missoula County Clerk and Recorder office containing the following sections.

1. The property owner recognizes that the City retains its right to use and to access the public right-of-way subject to the fence encroachment permit, and,
2. The property owner recognizes that the permit is revocable by the City at any time upon thirty (30) days' notice to the permittee. The permittee will be required to remove the fence and restore the land to its former condition, all at the permittee's expense, upon receipt of such notice; and,
3. The property owner will assume all liability resulting from any incident involving an encroaching fence and shall hold the City harmless from all damages resulting from such incident and the assumption of liability will be binding on successors in interest; and,
4. Any subsequent property owner will have the same conditions, responsibilities, and honor all covenants as agreed by the original property owner receiving the original fence encroachment permit; and,
5. The encroaching fence will comply with all provisions of the fence ordinance; and,
6. The property owner will pay a fence encroachment permit fee as established by City resolution, unless the fee is waived per 12.31.100 C.2.

B. Fence Encroachment General Requirements.

1. No fence shall be allowed to encroach into Montana Department of Transportation (MDT) right-of-way without MDT approval and the approval of a City of Missoula encroachment permit.
2. If no public sidewalk or curb exists, the City Engineer shall determine the most probable location of the future sidewalk/curb and approve the fence location based on this information. The City Engineer, at his discretion, may require the installation of curb and sidewalk prior to approval of the encroachment permit.
3. Encroaching fences shall have posts not exceeding two and three-eighths (2-3/8") inches outside diameter for metal pipe or four (4") inch square dimension for wooden posts. No fences shall be constructed of stone, rock, masonry, any metal with pointed or projecting tops, cable, or chain. Prior to the issuance of the fence encroachment permit, the fence design shall be approved by the City Engineer or a designee to ensure conformity to this section and to be reviewed for potential hazards.
4. No other structure or storage of personal property inclusive of motorized vehicles other than landscape materials approved by Section 12.48 Boulevards of this code shall be allowed in the public right-of-way behind a permitted encroaching fence. There shall be no shrubs, bushes, or hedges exceeding the height of the permitted fence in the public right-of-way.
5. No electric, barbed wire, or razor wire fences are allowed as Encroachment Fences.
6. Encroaching fences shall meet all applicable requirements of this chapter.

C. Fence Encroachments: Existing. Existing fences that encroach upon a portion of the public right-of-way shall be approved by the City Engineer and are subject to all requirements of this chapter.

1. When twenty-five (25') feet or more of an existing fence in the public right-of-way is replaced, repaired, or reconstructed, a new fence encroachment permit shall be obtained from the City prior to re-construction of the fence.
2. When an existing fence in the public right-of-way is replaced, repaired, or re-constructed and the reconstruction results in a reduction to the amount of encroachment, the encroachment permit fee will be waived.

3. The City Engineer may order that an encroaching fence be removed, modified, or relocated due to:
 - a. Causing a sight obstruction in accordance with Section 12.28.110 of this code;
 - b. Installation of any public improvements within the right-of-way;
 - c. Installation of a traffic control device;
 - d. An order by the City Council;
 - e. The owner replacing, reconstructing, or repairing twenty-five (25') feet or more of the existing encroaching fence; or,
 - f. If the fence is in hazardous condition.

12.31.110 Construction Site Fences.

- A. No construction site fence shall be constructed or installed which restricts or obstructs sight visibility as described in Section 12.28.110 of this code.
- B. Construction fencing on private property does not require a fence permit.
- C. Construction fencing may be up to seventy-two (72") inches or six (6') feet in height on all sides of the worksite.
- D. A construction fencing base shall not obstruct any pedestrian or vehicular traffic on sidewalks, streets, alleys, or any public right-of-way.
- E. Construction fencing shall not be permitted in the public right-of-way without prior issuance of a Right-Of-Way Occupancy Permit.
- F. Construction fencing shall be maintained in a safe condition for the duration of the construction project, as determined by Development Services Inspectors.
- G. Construction fencing is subject to all other fence restrictions identified in this chapter.

12.31.120 Investigative Fee – Work without a Permit. Investigation. Whenever any fence work, for which a fence permit is required by this ordinance, has been commenced prior to obtaining said permit, an investigation shall be made before a permit may be issued for such work. An investigation fee, in addition to the permit fee, shall be collected whether or not a permit is then or subsequently issued. The investigation fee shall be equal to the amount of the permit fee required as established by resolution and paid before any permit issued. The payment of such investigation fee shall not exempt any person from compliance with all provisions of this ordinance. In addition to the investigation fee, the Development Services Director may require additional mitigation including but not limited to removal of the fence. The Development Services Director may grant relief from the investigation fee upon written request from the contractor or property owner.

12.31.130 Penalty.

- A. It shall be unlawful for anyone to construct a fence or to allow a fence to be constructed on their real property in violation of this chapter. There shall be a fine of up to five hundred (\$500.00) dollars for not complying with the above chapter. Imprisonment shall not be a penalty for any such violation.
- B. Any fence not in compliance with this chapter may be ordered removed by the City Engineer or designee. Any fence not removed or brought into compliance within thirty (30) days' notice from the City Engineer or designee shall be removed by City labor forces or by an assigned contractor with all associated costs assigned to the property owner to become a recordable lien.

12.31.140 Appeal Process. Appeals of decisions on a fence permit by the Development Services Director may be filed by any person aggrieved by the decision to the Missoula City Council by submitting a formal letter to

Development Services Director requesting that the issue be referred to the City Council citing justification as to why the Development Services Director decision should be overruled.

12.31.150 Severability. In any section, subsection, sentence, clause, phrase, or word of this ordinance is, for any reason, held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining portions of this ordinance. The council hereby declares that it would have passed this ordinance and each section, subsection, sentence, clause, phrase, and words thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, phrases, or words have been declared invalid or unconstitutional, and if for any reason this ordinance should be declared invalid or unconstitutional, then the remaining ordinance provisions will be in full force and effect.

Effective Date:

This ordinance will be effective 30 days after passage.

First reading and preliminary adoption on the 6th day of June, 2016, by a vote of 11 ayes, Julie Armstrong, Emily Bentley, Michelle Cares, John DiBari, Jordan Hess, Gwen Jones, Marilyn Marler, Bryan von Lossberg, Harlan Wells, Heidi West, Jon Wilkins; 0 nays; 0 abstaining; and 1 absent, Annelise Hedahl.

Second and final reading and adoption on the 18th day of July, 2016, by a vote of 10 ayes Julie Armstrong, Emily Bentley, John DiBari, Annelise Hedahl, Jordan Hess, Gwen Jones, Marilyn Marler, Bryan von Lossberg, Harlan Wells, Heidi West; 0 nays; 0 abstaining; and 2 absent, Michelle Cares, Jon Wilkins.

ATTEST:

APPROVED:

 /s/ Martha L. Rehbein
Martha L. Rehbein, CMC
City Clerk

 /s/ John Engen
John Engen
Mayor

(S E A L)