

**THE MINUTES OF THE REGULAR MEETING OF THE MAYOR AND  
CITY COUNCIL OF THE CITY OF WILLCOX, COCHISE COUNTY, AZ  
HELD ON THIS 19<sup>TH</sup> DAY OF APRIL 2010**

**CALL TO ORDER**-Mayor Gerald W. Lindsey opened the regular meeting on Monday, April 19, 2010 at 7:05 p.m. welcomed back those from work session and welcomes the others. Appreciates attendance and looks forward to seeing more in the future.

**ROLL CALL**-City Clerk Cristina G. Whelan, CMC, called the roll.

**PRESENT**

Mayor Gerald W. Lindsey  
Vice Mayor Larry N. Schultz  
Councilman Elwood A. Johnson  
Councilman Jimmy L. Norris  
Councilwoman Monika Cronberg  
Councilman Stephen Klump  
Councilman Christopher Donahue

**STAFF**

City Manager Pat McCourt  
City Attorney Hector M. Figueroa  
City Clerk Cristina G. Whelan, CMC  
Public Safety Director Jake Weaver  
Library Director Tom Miner  
Finance Director Ruth Graham  
Public Services & Works Director Dave Bonner  
Building Inspector Jeff Stoddard

**PLEDGE OF ALLEGIANCE TO THE FLAG**-Mayor Lindsey.

**CALL TO THE PUBLIC**-There was no response from the public present.

**DECLARATION ON CONFLICT OF INTEREST**- There was no response from the Council members or staff.

**ADOPTION OF THE AGENDA**

**MOTION:** Councilman Johnson moved to adopt the agenda as presented with removal of item #8 regarding the discussion to select option on the Wastewater Treatment Plant.

**SECONDED:** Councilwoman Cronberg seconded the motion. **CARRIED.**

**PUBLIC HEARINGS, PETITIONS AND COMMUNICATIONS –**

**Proclamation:** Mayor Lindsey read and proclaimed: (1) the week of April 18-24, 2010 as ***National Volunteer Week*** and ***Willcox Volunteer Week***; and

(2) proclaimed the week of April 11-17-2010 as ***National Library Week***; and presented the proclamations to Library Director Tom Miner and Library Supervisor and Volunteer Coordinator Sylvia Stewart. The Mayor invited all to look at the improvements that have been made at the Library.

(3) Mayor Lindsey read and proclaimed Saturday, April 24, 2010 as ***City Clean Up Day***.

**DISCUSSION/DECISION REGARDING LETTER OF SUPPORT FOR THE COCHISE COUNTY, ARIZONA CENTENNIAL COMMITTEE HISTORICAL FIGURES PROJECT**

**MOTION:** Councilman Johnson moved to approve the letter of support for the Cochise County Arizona Centennial Committee Historical Figures Project.

**SECONDED:** Councilman Norris seconded the motion. **DISCUSSION:** City Manager McCourt stated Resolution 2010-36 was handed out this evening and typically that is the way to approve these items. City Attorney Hector Figueroa addressed the County that he complete the resolution but it had not made it through to the City and his recommendation was to adopt by resolution. Stated the Mayor and Council can vote on the motion to give authority to do it and vote by a second motion to adopt the Resolution 2010-36. Councilman Johnson suggested they wait until next meeting to adopt the Resolution and City Attorney Figueroa said that too would be appropriate and will ratify the resolution and change adoption date. **CARRIED.**

**DISCUSSION REGARDING COSTS ASSOCIATED WITH THE FT. GRANT ENHANCEMENT PROJECT**

City Manager McCourt stated this agenda item does not require any action. There was a question raised at the last meeting concerning the total cost of this project what was received from grants, City costs and total. The grant is \$398,642 of which City

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required match of \$24,096.00. There are also two (2) additional costs the City has to pay one is called the Scoping Costs \$81,508 and then ADOT Administrative cost for handling the Federal grant and that is \$5,000.00. Total amount of our City dollars is \$110,604 and grant money is \$398,642 and total project is \$509,245.00. The City's share being paid from Streets Fund and have already paid \$76,939 and the remaining portion is planned in Fiscal Year 2011 budget to be paid for.

Councilman Norris asked if still on time limit and at one time there was a time limit and if not done would lose money. City Manager McCourt we are on time. Mr. Dave Bonner, Public Services & Works Director, explained we are working with ADOT and since we have Engineer hired a year ago they are not afraid of us exceeding our time. We are waiting on ADOT to review Environmental Study done by AECOM once down then release 60% construction documents. It takes a long time and doing okay as far as getting the money. Mayor Lindsey asked if we have time line for start of construction. Mr. Bonner replied that depends on ADOT getting assessment of the Environmental Study and waiting already about 4-6 weeks. There are several in process and does not have an answer that is finite and working with Sharon Mitchell from SEAGO. Once get approval goes quickly to get bid document. Councilman Johnson does not want to proceed after spending \$76,000 and spend another \$33,000 if it is going to go by the wayside. City Manager McCourt explained this is Federal money and State holds it in the bank.

**DISCUSSION/DECISION REGARDING AUTHORIZING TRANSFER OF MONIES FROM HURF FUND (15) TO CAPITAL IMPROVEMENTS FUND (21)**

The Mayor asked Mr. McCourt for explanation and City Attorney Figueroa explained it is proper procedure for the Mayor and Council to make motion before discussion.

**MOTION:** Councilwoman Cronberg moved to authorize the transfer of monies from HURF Fund (15) to Capital Improvements Fund (21).

**SECONDED:** Councilman Klump seconded the motion. **DISCUSSION:** City Manager McCourt explained this relates to the three (3) Bond issues that were approved by the voters and they were approved to be used only for specific purposes. To segregate the monies there were put into Fund 21 so that we know where money is used. In Fund 21 one of Bonds is for Street Improvements and one Bond is for Building Improvements of this structure (Development Services/City Council Chambers) and the Library. It appears everything was done properly and our staff determined the cost paid against Streets was more than there was cash in that fund. Therefore a short term loan was made to the Streets Project. At some point we have to pay that money back. This transfer is paying back the other bond issue for building. Proposed payback is coming from HURF which is legitimate use of the money for Streets and built into budget numbers the Council looked at last week. Councilman Johnson asked if HURF part of the 1% Sales Tax and staff replied in the affirmative. And he asked the building fund was what was used for bonding wise for the Police Facility and shorting that fund and moving from Street Fund to Building Fund. Mr. McCourt replied in the affirmative **CARRIED.**

**DISCUSSION/DECISION REGARDING RESOLUTION NO. 2010-30 FOR THE PURPOSE OF APPROVING AND ADOPTING THE REVISION TO SECTION 516 [CELLULAR (CELL) PHONE USAGE] OF THE WILLCOX EMPLOYEE HANDBOOK, ESTABLISHING THE EFFECTIVE DATE AND AUTHORIZING THE MAYOR TO EXECUTE THIS RESOLUTION AND DECLARING AN EMERGENCY TO EXIST.**

City Manager McCourt explained if Mayor and Council want to consider this the motion would be to take the motion from the table which was laid on the table at the last meeting which was to table cell phone or if not want to consider do not take it off the table. Staff has redrafted cell phone and hopefully more in line with Council request.

**MOTION:** Mayor Lindsey moved to take it off the table

**SECONDED:** Councilman Klump seconded the motion. **CARRIED.**

Mr. McCourt explained if the new draft meets their values it would be substituted for the previous one. Some of the language on the previous one felt not appropriate. If operate City vehicle can not use cell and for texting. Staff wrote exception for Public Safety due to sensitive nature they would need to operate cell phone in vehicles. Councilwoman Cronberg asked if been problems overall with cell phone use that requires them to modify policy to extent that they define no texting, no calls, no interruptions of work or would it be sufficient to simply add the exception for the Public Safety Department. Mr. McCourt stated do want the exception for Public Safety and staff wanted to be more explicit and people understood no cell phone means not just talking, texting or receiving other types of information. Councilman Johnson asked if have function to turn on as far as City phones. He asked are we talking about City Phones or personal phones. The City Manager said it would not matter if operating City vehicle whether personal or City phone. Councilman Johnson asked if City policy states personal phone can be used at worked or is that

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something that needed to be more defined. Mr. McCourt read that the current City policy under Section 516.5 Personal cell phones shall be turned off and left outside of the work place during working hours and that is not being done. Councilwoman Cronberg again asked is there on-going problem with cell phone usage that they really need to narrow it or is there leeway within current policy to deal with individuals on cell phone use. If using cell phone whether distributed by the City or personal cell phones inappropriately that at times it could be dangerous it needs to be dealt with. Mr. McCourt read the current policy provides "while driving your primary responsibility is driving safely and obeying rules of the road and for that reason the City prohibits employees from using cell phones to conduct business while they are driving a vehicle." The question becomes somebody says I was not conducting business. The Councilwoman stated now he is getting to her point and asked are we having a problem and do we need to take out "to conduct business." If using a cell phone while driving a vehicle that is really not good use of City time or our personal time and little bit dangerous as seen in other areas. Councilwoman Cronberg is wondering if really have to do some of the changes proposed. Mr. McCourt stated we believe is that most people or the vast majority voluntarily obey laws. Do not have to worry about them because they will use common sense it is the ones that don't that we have to worry about. Asking him if we have a problem the City Manager does not think there is a problem and wants to lay out rules clearly to avoid a problem. Councilman Johnson asked rules laid out now on this proposed addendum who is going to monitor it and how monitor and what time going to be used driving around watching people that use them or are we going to wait for accident to happen. City Manager McCourt stated that by clearly express desires of the Council we will not have an accident and not worry about expensive monitoring. Mayor Lindsey said his understanding the current policy does not address text messaging. Councilwoman Cronberg said can not text message on anything but a cell phone and if using cell phone to make a call or to text message then operating a vehicle in an unsafe manner. Mr. McCourt stated we had good discussion at staff meeting and as one Director stated if people used common sense we would not need any of these rules and unfortunately common sense not that common and that is why adopt these rules to tell people "don't do this."

City Attorney Figueroa addressed Mayor and Council and thinks heard two (2) questions. One question: are we having problems that we know of and (2) is there in current policy a way to enforce this. Personnel Handbook provides disciplinary actions for violation of any of the numerous policies the City has adopted. One question asked do we have to go to such great detail i.e. text messaging can only be made on a cell phone but if someone reprimanded or accident then you have built in additional liability to the City because they are in violation of the policy. There is nothing to preclude and exception does not have to be included but it is good policy. The Chief, Police Officers or Firemen they are not expected to stop on the side of the road on their way to a fire and reasonably they are exempted. Does not think City needs exemption because could not reprimand Police or Firemen in pursuit of their duty. If individual involved in a vehicle accident and he or she is texting on cell phone then yes they are reprimanded. Does it need to be included in each section "up to and including termination" his legal opinion is you don't because you have a general overall policy on how to handle reprimand. Mr. McCourt is asking what the wishes of the Mayor and Council are so that he can then present that to all his employees with a more clarified policy. The Attorney reminded the Mayor and Council that the City Manager or he do not run the City the Mayor and Council does and they set the policies for the City. And asked what is it that you want the policy could be by City Manager wants or he wants but he is not in charge he can only give guidance and City Manager can present that to staff. Councilwoman Cronberg thanked him and as stated before thinks we can write ourselves into corners and sometimes the more definitive you are the less leeway you have when situation arises. Her suggestion on 516.2 is to remove "to conduct business." Does think if you are driving City vehicle and need to take a call to pull over and stop the vehicle does not have a problem with that. If Public Safety would feel better with exemption stated she thinks that is good. Section 516.4 if use cell phone for business that is a given and do it appropriately. Section 516.5 still thinks it's rather difficult to ask people to leave cell phones outside of business especially when we have people with kids sometimes that are necessary avenue for communication and do not want to disrupt business hours. Most people realize that they are at work and not going to be overly use it and only for purposes for direct communication and taken care of. That one is tougher than it needs to be and thinks maybe muted and not miss an important call from a family member. Mayor Lindsey Section 516.5 terminology is in current policy and Councilman Johnson said except for violation of this policy. The Mayor asked do they want to direct staff to do further work on this. Councilwoman Cronberg said if need to refine policy that is her suggestion and incorporate other thoughts. Councilman Klump disagrees with cell phone turned off and left out. For years land telephone worked fine and in most cases employees will be around cell phone during the day with somewhat frequencies and thinks that should be left in there. The employees need to know what the violation could cost and if somewhere is in there and if in Cell Phone heading thinks good idea. Councilman Klump agrees with Councilwoman Cronberg. Councilman Johnson stated policy written as intended and said leave it alone. If other exemptions needed for Public Safety does not have a problem and be consistent. Councilman Norris from

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experience let them keep it then it is abused. If talking on cell phone you are not doing your work and talking about his shop not just the City. Councilwoman Cronberg if leave 516.5 as written. City Attorney asked the Chief about the Public Safety exemption agreed with him it should be there on common sense and leave in to serve Chief's purpose. Councilman Johnson asked text capabilities on City phones at Public Safety, Public Works, Library or Finance. Library Director Tom Miner said Library does not have cell phones. Chief Weaver explained the Public Safety Department officers do not have City cell phones they use personal cell phones at work. Asked for exception as related by Counsel there are certain situations and times radio transmission detrimental information to be kept quiet to Police Officers and Fire Fighters. Exception is not intended to replace communications and in the past information is safety issue in event police or fire observed on cell phone and operating City vehicle. Mayor Lindsey asked the question is send it back for further. Councilman Donahue asked if it would make more sense with work session instead of sending it back and forth. Perhaps motion table until work session. Mayor Lindsey does not think need works session we have gone back once and hearing different things. The Mayor does not know if the City Manager has enough direction to try it again. Mr. McCourt his understanding is in Section 516.2 take out the words "to conduct business." If that is consensus then direction to staff is for rewrite. Councilwoman Cronberg does not see much rewrite because okay with exception and include somewhere redundancy of failure to comply could in fact be caused for disciplinary action. Councilman Norris satisfied as written now.

**MOTION:** Councilman Norris accept it as drafted

**SECONDED:** Vice Mayor Schultz seconded the motion. **VOTE: Ayes-**Vice Mayor Schultz and Councilman Norris. **Nays-**Mayor Lindsey, Council members Johnson, Cronberg, Klump and Donahue.

**DISCUSSION/DECISION REGARDING RESOLUTION NO. 2010-38 APPROVING AND DESIGNATING AUTHORIZED SIGNATORIES FOR THE CITY OF WILLCOX INVESTMENTS IN THE CERTIFICATE OF DEPOSIT ACCOUNT REGISTRY SERVICE ("CDARS") AND AUTHORIZING THE MAYOR TO EXECUTE THIS RESOLUTION FOR THE PURPOSE DESIGNATING AUTHORIZED SIGNATORIES AND DECLARING AN EMERGENCY TO EXIST**

**MOTION:** Councilman Johnson moved to approve Resolution NO. 2010-38, as presented, relating to Designating Authorized Signatories for the City's Investments in CDARS.

**SECONDED:** Councilwoman Cronberg seconded the motion. **CARRIED.**

**DISCUSSION/DECISION REGARDING RESOLUTION NO. 2010-39 APPROVING AND AUTHORIZING THE APPLICANT CERTIFICATIONS FOR FY10 THE SOUTHEASTERN ARIZONA GOVERNMENTS ORGANIZATION ["SEAGO"] FOR THE PURPOSE OF AUTHORIZING THE MAYOR TO EXECUTE THIS RESOLUTION, THE CERTIFICATIONS AND DECLARING AN EMERGENCY TO EXIST**

**MOTION:** Councilman Johnson moved to approve Resolution No. 2010-39, as presented, relating to Applicant Certifications for FY10 SEAGO for the purpose of authorizing the Mayor to execute this Resolution.

**SECONDED:** Councilwoman Cronberg seconded the motion. **CARRIED.**

**DISCUSSION/DECISION REGARDING RESOLUTION 2010-40 APPROVING AND AUTHORIZING THE SUBMITTAL OF AN APPLICATION FOR CWSRF LOAN FROM THE WATER INFRASTRUCTURE FINANCE AUTHORITY OF ARIZONA (WIFA) FOR THE WASTE WATER TREATMENT PLANT AND SYSTEM AND AUTHORIZING THE MAYOR TO EXECUTE THIS RESOLUTION AND DECLARING AN EMERGENCY TO EXIST**

**MOTION:** Councilman Johnson moved to approve Resolution No. 2010-40, as presented, relating to application for CWSRF loan from the WIFA for the WWTP, as presented.

**SECONDED:** Councilwoman Cronberg seconded the motion. **DISCUSSION:** City Manager McCourt explained this resolution is to submit the application for the loan. At this time we do not have to accept which loan that will take some time. During interlude the Mayor and Council will chose which option they wish to pursue. Councilman Klump corrected the USDA statement made at the work session that it is not US Dairy. Councilman Norris asked if staff will continue looking for grant. City Manager replied we have 2-grants and will continue to pursue that. **CARRIED.**

**DISCUSSION/DECISION REGARDING RESOLUTION 2010-41 FOR THE PURPOSE OF AWARDING THE BID FOR CONTRACTED EMPLOYEE LEASING SERVICES TO SMARTWORKPLUS AND AUTHORIZING THE MAYOR TO EXECUTE THIS RESOLUTION, THE AGREEMENT AND DECLARING AN EMERGENCY TO EXIST.**

**MOTION:** Councilman Klump moved to approve Resolution No. 2010-41, as stated, relating to awarding a bid for contracted employee leasing services to Smartworksplus.

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**SECONDED:** Councilman Donahue seconded the motion. **DISCUSSION:** Councilwoman Cronberg asked what the situation is with a contracted employee on lease back should there be any problem or need to vacant that position. How does that manifest it self and how do we actually deal with something like that. Finance Director Ruth Graham explained a contracted employee is employee of Smartworks and if City has problem we report to Contractor and they give employee 30 days to resolve problem or if not resolved they could be terminated. Councilman Johnson said when brought this up at work session with Human Resources Sherry Van Allen they had additional questions and maybe missed something but did not get answers back on any of those or on the mock scenarios. Councilman Cronberg stated that is true. City Manager McCourt replied this is to select a company and not to approve any positions. Those will come back under a separate action. Councilman Johnson understands about selection and asked if this is something the City wants to do, is this something the Council wants to instruct staff to put together in order to do that, is this the direction the City wants go as far as contracted employees and this lots of questions not answered and maybe he missed that. Mayor Lindsey replied they did direct staff to go forward and Councilwoman Cronberg said they did with a bid process. Councilman Norris said there is no actual cost hiring this company until we do have somebody employed. City Attorney Figueroa stated they did authorize staff to go out to bid and received two (2) bids. The situation is if do enter into contract those services are available to any employee if employee i.e. Christy (Whelan) if she wanted to do this although knows doesn't want to do it and retire then they have to deal with her as voluntary decision to do so. If she decided to retire then it is her decision to seek if she can come back as contracted employee. Another voluntary decision is does she want a buy out on what ever benefits the City owes her. Does she want it as lump sum or 3-4-5 years to pay her back? The Mayor and Council do not have to approve when someone decides to retire and wants to work for this company and want you to hire them back they do not have to hire them. The Mayor and Council are not obligated to hire any eligible employees when they decide to retire you are not obligated to go to that service. That service is only available if that is what you want. Also two (2) Dispatchers available then up to Chief to come to Mayor and Council and say he really want this person(s). If agree to Dispatch and then Dispatch decides do not have to cater to Chief the Chief contacts the company and give employee the 30 days notice. The City is off the hook because not City employee it is between that service and employee. Do not have to be obligated to keep that employee either. Councilman Johnson asked who has authority to hire or fire or reprimand that employee. If it was the City Manage decided to do the Council is basically his hire and fire or if Dispatcher is it the Chief or anybody else it is their Director. City Attorney Figueroa said he does not know the details and before got into that they should be asking that if situation comes up. Just because approving service provider does not mean that you are giving your authority away because somebody retiring and they do whatever they want. Councilwoman Cronberg stated that basically by approving this tonight they are opening the door to contract with this particular provider. Ms. Graham added there are no upfront costs the costs are a percentage of the wages paid. Mayor Lindsey said the bid sheet the two plans are almost identical. The one plan does not charge for reimbursement for travel. **CARRIED.**

**REPORTS BY THE CITY MANAGER PAT McCOURT**

Consideration, discussion and/or decision regarding the following topics by the City Manager:

- **Census, Census, Census!**- Pat McCourt, City Manager reported the City of Willcox Census is below the return rate in 2000 and we have lowest percentage in returning the Census forms in Cochise County. Urged everyone to complete and return the forms if they have not done so. The City is sending out a letter to ask the assistance of the churches in town and asking to put something about the Census in their bulletins to encourage response. Staff along with the Chamber of Commerce is working on an Information Fair which will include the Census and encourage people to participate in that. It is estimated \$2,000/year for each additional person we can get reported in the Census for the City of Willcox. The City's shares comes from combination of Highway Users Fund based on population, our population versus the State as a whole and our population versus other places in Cochise County. State Sales Tax is based on population and State Shared Revenue too. All of those affect us directly in our ability to deliver services. Encouraged people to participate and complete and return the forms and it also affects our representation on Federal House of Representatives, State Senate and House seats and encouraged people to participate.
- **Report on Clean Up Day**-Pat McCourt, City Manager, proclamation early this evening and reported that the City has 2-Zones to clean up. Our employees are scheduled for Friday, April 23, 2010, and the City Wide Clean Up is Saturday, April 24, 2010. Everyone participating meets at Railroad Park.
- **Sale of City Property**-Pat McCourt, City Manager, advertised in the local newspaper, City bulletin boards, web site, several public places, and City newsletter of the Sale of City Property. Bid packets can be obtained from the City Clerk's office, Development Services office and on the web. All bids are due Friday, May 28, 2010 at 3:00 p.m. in the Office of the City Clerk. There have been several packets picked up from City Hall although none returned as of yet.

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- **Cancel Agenda Public Review** – Pat McCourt, City Manager will be out of town and requesting to cancel the 29<sup>th</sup> of April review of agenda. Staff will deliver packets.
- **Budget Work Session on Streets** - Pat McCourt, City Manager, budget work session will be held on Monday, April 26 at 6:00 p.m. and focusing on Streets.
- **Budget Work Session on Utilities** - Pat McCourt, City Manager, next budget work session will be held on Monday, May 3, 2010 regarding Utilities.
- **Proposition 100 Election May 18, 2010** - Pat McCourt, City Manager, the County-wide Proposition 100 Election will be held on May 18, 2010 here in the City Council Chambers, 300 W. Rex Allen Drive. Polls Open at 6:00 a.m. until 7:00 p.m. Encouraged all to get educated and aware and vote what you feel is appropriate.
- **NCCH Golf Tournament** - Pat McCourt, City Manager, NCCH Golf Tournament will be held on Saturday, May 15, 2010, at Twin Lakes Golf Course registration begins at 8:00 A.M. and Tournament begins at 9:00 A.M. Council agreed to play on that team and need to know to inform NCCH.
- **VFF Golf Tourney** - Pat McCourt, City Manager, announced the VFF Golf Tourney will be held on June 26, 2010 and encouraged to put on calendar and think about participating.
- **Clear Channel**-Pat McCourt, City Manager, they seemed to be receptive when it favors them and not our requests. At this point negotiations are breaking down. Contract has been extended to the end of May.
- **Special session on WWTP**- thinks need more discussion concerning that and need to get some decision made. This decision is going to affect us for the next 20-30 years. In lieu of budget session about May 10<sup>th</sup> which is Monday at 6:00 p.m. here in the Chambers.

**COMMENTS NOT FOR DISCUSSION FROM MAYOR AND COUNCIL MEMBERS.**

There were no comments from the Mayor or Council members.

**ADJOURN**

There being no further business before the Mayor and Council, Mayor Lindsey adjourned the meeting at 8:12 p.m.

**CERTIFICATION**

I hereby certify that the foregoing minutes are a true and correct copy of the minutes of the regular meeting of the City Council of the City of Willcox held on the 19<sup>th</sup> day of April 2010. I further certify that the meeting was duly called and held, and that a quorum was present.

**Dated this 28<sup>th</sup> day of April 2010**

/s/ Cristina G. Whelan, CMC  
City Clerk Cristina G. Whelan, CMC

**PASSED, APPROVED AND ADOPTED** this 3<sup>rd</sup> day of MAY 2010.

/S/ GERALD W. LINDSEY  
MAYOR GERALD W. LINDSEY  
Signed: May 4, 2010

ATTEST:

/s/ Cristina G. Whelan, CMC  
City Clerk Cristina G. Whelan, CMC