

152-O-18

AN ORDINANCE

Amending Title 8, Chapter 6, "Food Service and Retail Food Store Sanitation"

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF EVANSTON, COOK COUNTY, ILLINOIS:

SECTION 1: Title 8, Chapter 6, "Food Service and Retail Food Store Sanitation" of the Evanston City Code of 2012, as amended, is hereby further amended to read as follows:

CHAPTER 6 - FOOD SERVICE AND RETAIL FOOD STORE SANITATION

8-6-1. - ADOPTION BY REFERENCE.

(A) Pursuant to the authority granted by 65 ILCS 5/1-3-4 and pursuant to its home rule powers, the City hereby adopts by reference and incorporates herein the following:

1. The 2017 and all subsequent editions or amendments to the U.S. Food and Drug Administration Code mandated by the Illinois Department of Public Health which sets standards for the prevention of food borne illnesses in public eating establishments.

(B) All references in the U.S. Food and Drug Administration Code and in this Chapter to any "regulatory authority" shall be read as "Public Health Director and/or his or her designee." Any reference to "Municipality" or "City" shall mean the City of Evanston.

8-6-2. - DEFINITIONS.

As amendments to the state rules and regulations the following definitions are in addition to those definitions enumerated in Section 1-201.10 of the U.S. Food and Drug Administration Code.

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| <i>ADULTERATED.</i> | As defined in the Federal Food, Drug and Cosmetics Act §42. |
| <i>CFR.</i> | Code of Federal Regulations. Citations in this Code to the CFR refer sequentially to the Title, Part, and Section numbers, such as 40 CFR 180.194 refers to Title 40, Part 180, Section 194. |
| <i>FOOD ESTABLISHMENT.</i> | An operation that stores, prepares, packages, serves, vends or otherwise provides food for human consumption such as a restaurant; satellite or catered feeding location; catering operation if the operation provides food directly to a consumer or to a conveyance used to transport people; market; vending location; conveyance used to transport people; institution; or food bank; and that relinquishes possession of food to a consumer directly, or indirectly through a delivery service such as home delivery of grocery orders or restaurant takeout orders, or delivery service that is provided by common carriers. |
| | (A) A food establishment includes: |
| | 1. An element of the operation such as a transportation vehicle or a central preparation facility that supplies a satellite feeding location; and |
| | 2. An operation that is conducted in a mobile, stationary, temporary, or permanent facility or location; where consumption is on or off the premises; and regardless of whether there is a charge for the food. |
| | (B) A food establishment does not include: |
| | 1. An establishment that offers only prepackaged foods that are not time/temperature control for safety foods. |
| | 2. A produce stand that offers only whole, uncut fresh fruits and vegetables; |
| | 3. A food processing plant; |
| | 4. A kitchen in a private home if only food that is not potentially hazardous is prepared for sale or service at a function such as a |

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| | religious or charitable organization's bake sale if the consumer is informed by a clearly visible placard at the sale or service location that the food is prepared in a kitchen that is not subject to regulation and inspection by the public health director; |
| | 5. An area where food that is prepared in Subsection (B)4 of this definition is sold or offered for human consumption; |
| | 6. A kitchen in a private home, such as a small family daycare provider; or a bed and breakfast operation that prepares and offers food to guests if the home is owner occupied, the number of available guest bedrooms does not exceed six (6), breakfast is the only meal offered, the number of guests served does not exceed eighteen (18), and the consumer is informed by statements contained in published advertisements, mailed brochures, and placards posted at the registration area stating the food is prepared in a kitchen that is not regulated and inspected by the public health inspector; or |
| | 7. A private residential structure not open the public that receives catered or home delivered food or is leased to more than one (1) person and contains a communal kitchen used by the lessees and guests of the lessees. |
| | (C) Category I Facility: A food establishment that presents a high relative risk of causing food borne outbreaks and/or the type of population served by the facility. Category I facilities include those where the following operations occur: |
| | 1. Cooling of time/temperature control for safety foods as part of the food handling operation at the facility; |
| | 2. Time/temperature control for safety foods that are prepared hot or cold and held hot or cold for more than twelve (12) hours before serving; |
| | 3. Time/temperature control for safety foods cooked and cooled food that must be reheated; |

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| | 4. Time/temperature control for safety foods that are prepared for off premises service for which time-temperature requirements during transportation, holding and service are relevant; |
| | 5. Complex preparation of food or extensive handling of raw ingredients with hand contact for ready to eat foods that occurs as part of the food handling operations at the facility; |
| | 6. Vacuum packaging and/or other forms of reduced oxygen packaging are performed at the retail level; or |
| | 7. Where immunocompromised individuals (the elderly, children under age four (4), or pregnant women) comprise the majority of the consuming population. |
| | (D) Category II Facility: A food establishment that presents a medium relative risk of causing food borne illness based upon a few food handling operations typically implicated in food borne illness outbreaks. Category II facilities include those where the following operations occur: |
| | 1. Hot or cold foods are held at required temperatures for no more than twelve (12) hours and are restricted to same day service; |
| | 2. Food prepared from raw ingredients that requires only minimal assembly; or |
| | 3. Food that requires complex preparation (fresh, canned or frozen) is obtained from approved food processing plants, category I food establishments or retail food stores. |
| | (E) Category III Facility: A food establishment that presents a low relative risk of causing food borne illness based upon few or no food handling operations typically implicated in food borne illness outbreaks. Category III facilities include those where the following operations occur: |
| | 1. Only prepackaged foods are available or served in the facility and any time/temperature control for safety foods are |

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| | commercially prepackaged in an approved processing plant; |
| | 2. Only limited preparation of non-potentially hazardous foods and beverages (snack foods and carbonated beverages) occurs at the facility; or |
| | 3. Only beverages (alcoholic or nonalcoholic) are served at the facility. |
| <i>PERSON.</i> | An individual, or a firm, partnership, company, corporation, trustee, association, or public or private entity. |
| <i>PRIORITY ITEM</i> | <p>(1) A provision in this Code whose application contributes directly to the elimination, prevention or reduction to an acceptable level, hazards associated with foodborne illness or injury and there is no other provision that more directly controls the hazard.</p> <p>(2) Includes items with a quantifiable measure to show control of hazards such as cooking, reheating, cooling, handwashing; and</p> <p>(3) An item that is denoted in this Code with a superscript P^P.</p> |
| <i>PRIORITY FOUNDATION ITEM:</i> | <p>(1) A provision in this Code whose application supports, facilitates or enables one or more Priority Items.</p> <p>(2) Includes an item that requires the purposeful incorporation of specific actions, equipment or procedures by industry management to attain control of risk factors that contribute to foodborne illness or injury such as personnel training, infrastructure or necessary equipment, HACCP plans, documentation or record keeping, and labeling; and</p> <p>(3) An item that is denoted in this Code with a superscript Pf^{Pf}.</p> |
| <i>SEASONAL FOOD ESTABLISHMENT.</i> | A food establishment which operates for no more than six (6) months out of the calendar year. The menu of a seasonal food establishment will be limited based on the City of Evanston's Department of Health review of the establishment and its operations. All seasonal food establishments must be operated in |

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| | compliance with the Evanston retail food service code, and will be charged according to the fee schedule set out in Section 8-6-7, "License And Other Fees," of this Chapter. |
| <i>SQUARE FOOTAGE.</i> | The gross area of the entire food establishment premises, including the food service, storage and preparation areas. |
| <i>TEMPORARY FOOD ESTABLISHMENT.</i> | A food establishment that operates at a fixed location for a period of time of not more than fourteen (14) consecutive days in conjunction with a single event or celebration. |
| <i>TIME/TEMPATURE CONTROL FOR SAFTEY FOOD (FORMERLY "POTENTIALLY HAZARDOUS FOOD" (PHF)):</i> | A food that requires time/temperature control for safety (TCS) to limit pathogenic microorganism growth or toxin formation. |

8-6-3. - LICENSE REQUIRED; APPLICATION.

- (A) It shall be unlawful for any person to operate within the City a "food establishment," as defined in this Chapter, without first having obtained a license for that purpose.
- (B) Any person desiring to operate a food establishment shall make written application for such license to the Public Health Director. The application for such license shall be on forms provided by the Public Health Director and shall include:
1. The name, signature and address of each applicant; each corporate officer; and the name, location and type of proposed food establishment.
 2. The proposed scope of operations and a description of the premises where such food operation is to be conducted.
- (C) The licensee shall notify the health department in writing of any changes in the license application information within thirty (30) days of such change.
- (D) A valid license to operate a food establishment shall be posted at all times so as to be clearly visible to all patrons.
- (E) It shall be unlawful to transfer any such license from one person to another.

8-6-4. - ISSUANCE OF LICENSE.

- (A) Prior to issuance of a license, the Public Health Director shall cause to be made an inspection of the premises described in such application to determine whether said premises is in compliance with the requirements of this Chapter.
- (B) Prior to issuance of a license, the Director of Community and Economic Development shall cause an inspection to be made to ascertain that the premises may be used for the purpose in conformity with the zoning regulations and other ordinances of the City applicable thereto.
- (C) Prior to issuance of a license, the Fire Chief shall cause an inspection to be made to ascertain that the premises conforms with the requirements of the municipal codes and ordinances for fire and life safety.
- (D) The Public Health Director may issue a license to operate a food establishment if the proposed food establishment complies with the requirements of this Chapter and all other applicable ordinances.
- (E) The Public Health Director may deny a license to operate a food establishment if the proposed food establishment fails to comply with the requirements of this Chapter and all other applicable ordinances.
 - 1. The Public Health Director may deny a license based on:
 - a. Consistent documented poor performance on routine sanitation inspections;
 - b. Persistent sanitation complaints and/or illness outbreaks linked to the establishment; or
 - c. Violations of other applicable codes that negatively affect the health and welfare of Evanston residents.

8-6-5. - TRANSFER OF OWNERSHIP.

Whenever ownership of a food establishment is to be transferred from the licensee named in the license to a new owner who is applying for a license:

- (A) The transferee must obtain a new license. The transferee shall notify the Evanston health department in writing of the transfer and apply for a new license at least thirty (30) days prior to final transfer.
- (B) The transferor shall notify the department in writing at least thirty (30) days prior to final transfer. The transferor shall remain responsible for the operation of the food establishment until such time as a license is issued to the transferee.
- (C) The transferor and transferee shall remain jointly and severally liable for all penalties, except monetary fines, assessed against the food establishment which were imposed for violations occurring prior to transfer of ownership. The

transferor shall remain liable for all monetary penalties imposed on the food establishment prior to transfer of ownership.

8-6-6. - TERM OF LICENSES; RENEWAL.

All licenses provided in this Chapter shall expire on December 31 following the date of issuance. Failure to comply with all the provisions of this Chapter shall constitute grounds for nonrenewal.

8-6-7. - LICENSE AND OTHER FEES.

(A) License Fees.

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| 1. Category I food establishment: | |
| a. Less than 5,000 square footage | \$538.00 per year |
| b. 5,000 square footage or more | 1,194.00 per year |
| 2. Category II food establishment | 418.00 per year |
| 3. Category III food establishment | 239.00 per year |
| 4. Homeless shelters | 58.00 per year |
| 5. Soup kitchens | 58.00 per year |
| 6. Women's shelter | 58.00 per year |
| 7. Daycare centers: | |
| a. Category I food establishments | 144.00 per year |
| b. Category II food establishments | 104.00 per year |

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| c. Category III food establishments | 58.00 per year |
| 8. Temporary food establishments (other than those licensed in Subsections (A)1 through (A)3 of this Section) | 100.00 per event |
| 9. Beverage dispensing vending machines | 57.00 per machine |
| 10. Concession/snack dispensing vending machines | 57.00 per machine |
| 11. Food dispensing vending machines | 57.00 per machine |
| 12. Seasonal food establishments | 225.00 per season |

- (B)** Other Fees. Plan review per Section 8-6-18 of this Chapter, three hundred fifty seven dollars (\$357.00).
- (C)** Proration Of Fees. The fee to be paid for any license which shall expire less than six (6) months from the date such license was required to be issued shall be one-half ($\frac{1}{2}$) the annual fee provided by this Section.
- (D)** Late Payment Penalty. Failure to pay the annual renewal fee on any business license within six (6) weeks of license expiration shall result in an additional late charge of thirty percent (30%).
- (E)** Re-inspection Fees. A one hundred dollars (\$100.00) re-inspection fee shall be assessed to the licensee of any establishment for each re-inspection conducted by the Public Health Director or his/her designee to address a violation(s) not corrected on the first re-inspection.
- (F)** Increases. All fees will be increased annually based on the Cook County consumer price index. The fee schedule for each year will be available from the Public Health Director or his/her designee on or before December 1 of the year prior to it becoming effective.
- (G)** Exempt From License Fees.
1. Licensed long term care facilities;
 2. Licensed child residential care homes;

3. Licensed child daycare homes.

8-6-8. - SUSPENSION OF LICENSE.

- (A) The Public Health Director or his/her designee may, upon written notice, without prior warning, notice, or hearing, suspend any license to operate a food establishment if the holder of the license does not comply with the requirements of this Chapter, or if operation of the establishment otherwise constitutes a substantial hazard to the public health. When a license is suspended, food service operations shall immediately cease.
- (B) Whenever a license to operate a food establishment is suspended, the holder of the license to operate the food establishment, or the person in charge, shall be notified in writing that the license to operate the food establishment is, upon service of the notice, immediately suspended and that an opportunity for a hearing will be provided if a written request for a hearing is filed with the City Manager or his/her designee by the holder of the license within ten (10) days. If a written request is filed within ten (10) days, an opportunity for a hearing with the – Public Health Director or his/her designee shall be afforded within twenty (20) days of receipt of the request. If no written request for a hearing is filed within ten (10) days, the suspension is sustained. -Public Health Director or his/her designee shall end the suspension if the reasons for the suspension no longer exist.

8-6-9. - REVOCATION OF LICENSE.

- (A) The -Public Health Director or his/her designee may, after providing opportunity for a hearing, revoke a license for:
 1. Serious violations of this Chapter or State of Illinois or federal law; or
 2. Repeated violations of this Chapter found in consecutive inspections; or
 3. Interference with the City Manager or his/her designee in the performance of his/her duty to enforce or administer this Chapter.
- (B) Before revocation, -Public Health Director or his/her designee shall notify the holder of the license to operate the food establishment, or the person in charge, in writing, of the reasons for which such license is subject to revocation. The license to operate the food establishment shall be revoked at the end of the five (5) days following service of such notice unless a written request for a hearing is filed with the -Public Health Director or his/her designee by the holder of the license within such five (5) day period. If no request for hearing is filed within the five (5) day period, the revocation of the license to operate the food establishment becomes final.

8-6-10. - SERVICE OF NOTICE.

A notice provided for in this Chapter is properly served when it is delivered to the holder of the license to operate the food establishment, or when it is delivered to the person in charge, or when it is sent by registered or certified mail, return receipt requested, to the last known address of the holder of such license to operate a food establishment. A copy of the notice shall be filed in the records of the -Public Health Manager or his/her designee.

8-6-11. - HEARINGS.

As provided in Sections 8-6-8 and 8-6-9 of this Chapter, a hearing shall be conducted by the City Manager or his/her designee affording the licensee an opportunity to appear and defend against the charges. The -Public Health Director or his/her designee shall make a final decision in writing, including the reasons for such decision, and shall serve said decision on the licensee within ten (10) days after conclusion of the hearing. At all times, it shall be the licensee's burden to show cause why any license should not be revoked.

8-6-12. - APPLICATION FOR LICENSE AFTER REVOCATION.

Whenever a revocation of a license to operate a food establishment has become final, the holder of such revoked license may make written application for a new license to operate a food establishment as provided in this Chapter.

8-6-13. - INSPECTION FREQUENCY.

The inspection frequency of a food establishment shall be determined by the category of the food establishment.

8-6-14. - ACCESS.

- (A) The Public Health Director or his/her designee, after proper identification, shall be permitted to enter any food establishment at any reasonable time for the purpose of making inspections to determine compliance with this Chapter.
- (B) The Public Health Director or his/her designee shall be permitted to examine records of the establishment, wherever maintained, to obtain information pertaining to food and supplies purchased, received, or used. Denial of access as herein provided shall be deemed an interference with the City Manager or his/her designee in the performance of his/her duties, provided that the - Public Health Director or his/her designee has presented proper identification, if requested.

8-6-15. - REPORT OF INSPECTIONS.

Whenever an inspection is made of a food establishment, the findings shall be recorded in writing on an inspection report form provided for that purpose. The inspection report shall state the specific violations found and establish a reasonable time period within which such violations shall be corrected.

8-6-16. - CORRECTION OF VIOLATIONS.

- (A)** Correction of the reported violations shall be accomplished within the period specified on the inspection report form in accordance with the following provisions:
1. If the - Public Health Director or his/her designee determines that an imminent health hazard exists including, but not limited to, those as may be created by an extended loss of water supply, significant lack of refrigeration, significant vermin infestation, an extended power outage, or a sewage backup into the establishment, the establishment shall immediately cease affected food establishment operations. Such operations shall not be resumed until authorized by the City Manager or his/her designee.
 2. When priority items and priority foundation items, as defined in this Chapter, are identified, corrective action shall be taken immediately. All violations of priority and priority foundation items shall be corrected as soon as possible, but in any event, not to exceed ten (10) days following inspection.
 3. Within fifteen (15) days after the inspection, the licensee shall submit a written report to the -Public Health Director or his/her designee stating the action taken to correct the priority and priority foundation items and verifying that said violations have been corrected. Purchase orders of work contracts with a work completion date satisfactory to the -Public Health Director or his/her designee may be accepted as interim corrective action. A follow-up inspection shall be conducted to confirm correction.
 4. In the case of temporary food establishments, all violations shall be corrected immediately. If these violations are not corrected, the establishment shall immediately cease food operations until authorized to resume by the - Public Health Director or his/her designee.
- (B)** Failure to comply with Subsections (A)1 through (A)4 of this Section shall result in suspension of the license to operate the food establishment.
- (C)** Whenever a food establishment is required under any of the provisions of this Chapter to suspend operations, it shall not resume operations until the

establishment passes a re-inspection. Opportunity for re-inspection shall be offered within a reasonable time.

8-6-17. - EXAMINATION AND CONDEMNATION OF FOOD.

Food may be examined or sampled by the -Public Health Director or his/her designee as often as necessary for enforcement of this Chapter. The -Public Health Director or his/her designee may, upon written notice to the owner or person in charge, specifying with particularity the reasons therefor, place a hold order on any food which he/she believes is improperly labeled or adulterated or is in violation of any other Section of this Chapter. The -Public Health Director or his/her designee shall tag, label, or otherwise identify any food subject to the hold order. No food subject to a hold order shall be used, served, or moved from the establishment. The -Public Health Director or his/her designee shall permit storage of the food under conditions specified in the hold order, unless storage is not possible without risk to the public health, in which case immediate destruction shall be ordered and accomplished. The hold order shall state that a request for hearing may be filed per Section 8-6-11 of this Chapter. On the basis of the evidence produced at that hearing, the hold order may be vacated, or the owner or person in charge of the food may be directed by written order to denature or destroy such food or to bring it into compliance with the provisions of this Chapter.

8-6-18. - SUBMISSION OF PLANS.

Before construction or major remodeling of a food establishment, and whenever an existing structure is converted to use as a food establishment, properly prepared plans and specifications for such construction, major remodeling, or conversion shall be submitted to the -Public Health Director or his/her designee for review and approval. The plans and specifications shall be drawn to scale and indicate the proposed layout, arrangement, mechanical plans, construction materials of work areas, the type and model of proposed fixed equipment and facilities. The -Public Health Director or his/her designee shall approve the plans and specifications if they meet the requirements of this Chapter. No food establishment shall be constructed, extensively remodeled, or converted except in accordance with plans and specifications approved by the -Public Health Director or his/her designee.

A fee shall be charged for food establishment plan examination as provided in Section 8-6-7 of this Chapter.

8-6-19. - PREOPERATIONAL INSPECTION.

Whenever plans and specifications are required by this Chapter, the -Public Health Director or his/her designee shall inspect the food establishment prior to the start of operations to determine compliance with the approved plans and specifications and with the requirements of this Chapter.

8-6-20. - PROCEDURE WHEN INFECTION IS SUSPECTED.

When the -Public Health Director or his/her designee has reasonable cause to suspect possible disease transmission from any food establishment employee, he/she may secure a morbidity history of the suspected employee, or make any other necessary investigation and shall take appropriate action. The -Public Health Director or his/her designee may require any or all of the following measures:

- (A) The immediate exclusion of the employee from employment in food establishments;
- (B) The immediate closing of the food establishment concerned until, in the opinion of the -Public Health Manager or his/her designee, no further danger of disease outbreak exists;
- (C) Restriction of the employee's services to some area of the establishment where there could be no danger of transmitting disease;
- (D) Adequate medical and laboratory examination of the employee, of other employees, and of the body discharges of all employees.

8-6-21. - ADDITIONAL REGULATIONS.

(A) Refuse, Litter, And Debris.

1. Disposal Of Refuse, Litter And Debris. Each food establishment shall at least once in each twenty four (24) hour period, dispose of all paper, cups, plates, napkins, garbage and all other waste material accumulated upon the premises. Disposal shall be to a lawful location. It shall also be the duty of the owner, manager, or person in charge of said establishment to, at all times, keep the premises indoors, the premises outdoors, and within a two hundred fifty foot (250') radius of all property lines on which said establishment is located, free from rubbish, litter, and other waste materials and debris including food, beverages, napkins, straws, containers, bags, utensils, cups, plates, cans and other waste materials emanating from the establishment, its patrons, or from the outside waste receptacles used by such food establishment, or from any other source. Where the above two hundred fifty foot (250') radius encompasses private property, permission to encroach on said private property shall be obtained from the property owner.
2. Waste Receptacles And Required Signage For Type 2 Restaurants, As Defined In This Code. A waste receptacle shall be placed at each pedestrian exit from the restaurant building and each vehicular exit from the restaurant parking area. Conspicuous signage complying with the sign ordinance shall be posted within the building and at each waste receptacle location required above describing the requirements and penalties of the City ordinance applicable to litter.

3. Type 2 Restaurant Collection Plan Posted. Each Type 2 restaurant shall have its litter collection plan posted in conspicuous signage in its employee and public areas.
- (B) Operating Subject To Other Ordinances. Every owner, manager, or person in charge of a food establishment shall be subject, in the operation of said establishment, to any and all other applicable ordinances including, but not limited to, zoning ordinance requirements and other requirements that may be imposed by the City Council as a condition of special use approval.
- (C) Unnecessary Noise. No patron of a food establishment or any other person, shall make or cause to be made any loud or unnecessary noise or disturbance upon said premises in violation of Section 9-5-20 of this Code. The licensee of the restaurant shall be deemed responsible where repeated violations of Section 9-5-20 of this Code occur on the premises or frequent complaints are made of such violations, and the licensee has failed to make reasonable efforts to control the noises and disturbances.

8-6-22. - PENALTIES AND REMEDIES.

- (A) Any person who violates or fails to perform any duty imposed by this Chapter shall be guilty of an offense punishable by a fine of not less than five hundred dollars (\$500.00). A separate offense shall be deemed committed for each day that a violation continues.
- (B) The City Manager or his/her designee may seek to enjoin violations of this Chapter.

SECTION 2: All ordinances or parts of ordinances in conflict herewith are hereby repealed.

SECTION 3: If any provision of this ordinance or application thereof to any person or circumstance is held unconstitutional or otherwise invalid, such invalidity shall not affect other provisions or applications of this ordinance that can be given effect without the invalid application or provision, and each invalid provision or invalid application of this ordinance is severable.

SECTION 4: Ordinance 152-O-18 shall be in full force and effect on January 1, 2019, after its passage, approval, and publication in the manner provided by law.

SECTION 5: The findings and recitals contained herein are declared to be prima facie evidence of the law of the City and shall be received in evidence as provided by the Illinois Compiled Statutes and the courts of the State of Illinois.

Introduced: December 10, 2018


Adopted: January 14, 2019

Approved:

February 1, 2019

Stephen H. Hagerly
Stephen H. Hagerly, Mayor

Attest:


Devon Reid, City Clerk

Approved as to form:

Michelle L. Masoncup
Michelle L. Masoncup, Corporation
Counsel