

CULTURAL COMMISSION STAFF REPORT

MEETING DATE: March 19, 2013

AGENDA ITEM NUMBER: 3D

APPLICANT: Roger Moellendorf, Parks and Recreation Director
Vern L. Krahn, Park Planner

REQUEST: **For Possible Action:** To approve a Public Art Program Ordinance and request staff to begin a public review process involving the local arts and cultural community, developers, community and business leaders, and the public.

GENERAL DISCUSSION:

At the December 18, 2012, meeting of the Cultural Commission, the members voted to approve the DRAFT Public Art Program Ordinance with the addition of six sections (or inserts) from the City of Las Vegas' Office of Cultural Affairs Municipal Code. In further discussions with the Commission at this meeting, Parks and Recreation Department staff believed it was important to develop ordinance language dealing with the on-going maintenance issues associated with a public art program. Also, our department wanted to receive comments on the DRAFT document from the City's District Attorney's Office and Finance Department before moving forward with an aggressive public review process for the ordinance.

Upon legal advice from the City's District Attorney's Office, the proposed Public Art Program Ordinance language was incorporated into the existing Carson City Municipal Code, Title 2, Chapter 2.41 which originally created the Cultural Commission. In order for the Commission to more effectively review the proposed language changes to the existing ordinance, as it relates to the Public Art Program, all changes are underlined in the attached document (Refer to Exhibit A). In addition, there were a few other changes to the ordinance since the December 18th meeting. These were the removal of the "Eligible Project" definition, language requiring account fund balances to earn interest, and the Private Developer Donation section. The reasons for these removals are as follows:

- 1) The "Eligible Project" definition applied more to construction projects requiring a dedicated percentage of funds for incorporating art into a project instead of establishing a Public Art Trust Department.
- 2) The City does not typically apply interest earnings to these types of General Fund account balances.
- 3) The Private Developer Donation section was removed because the City's General Fund does not provide financing, loan guarantees, tax abatement, land, or other significant in-kind support to a private developer.

Other new highlights within the DRAFT Public Art Program Ordinance from the December 18th meeting are as follows:

- 1) **New terminology:** Appropriation language relating to - a General Fund transfer to the Capital Projects Fund for the City's general government capital program, the Board shall identify and appropriate one percent (1%) of the transfer from the General Fund for the Public Art Trust Department. Upon final acceptance of the City's annual budget, this amount shall be transferred to the Public Art Trust Department in the Capital Projects Special Revenue Fund.
- 2) **New Public Art Trust Maintenance Department section and associated funding source:** Language relating to all maintenance costs associated with any sponsored City Works of Art Projects shall be funded by using a one-quarter percent (25%) of the originally appropriated one percent (1%) from the General Fund transfer to the Capital Projects Special Revenue Fund for the Public Art Program.
- 3) **Establishment of Public Art Program:** Language relating to the establishment of the Public Art Program and summary language regarding the program's purpose and funding.

With the potential expenses for the on-going maintenance costs for the Public Art Program, staff is recommending that the Commission consider increasing the one percent (1%) transfer to a one and a quarter percent (1.25 %) transfer. Staff believes the Public Art Program should be self-sufficient in maintaining any public art purchased through the program and not rely on various City departments' operational budgets to be responsible for the program's on-going maintenance costs.

If the Commission approves the ordinance, Parks and Recreation Department staff will distribute the document in early April, 2013, to City department heads, the local arts and cultural community, developers, community and business leaders, and the public. It is staff's intention to receive comments on the ordinance through mid-May and provide those comments to the Cultural Commission at their June 18, 2013, meeting for consideration.

RECOMMENDED ACTION: (Two Options)

- 1) I move to approve a Public Art Program Ordinance, as presented and request staff to begin a public review process involving City department heads, the local arts and cultural community, developers, community and business leaders, and the public.
- 2) I move to approve a Public Art Program Ordinance with the following change(s):
 - A. To increase the one percent (1%) transfer to a one and a quarter percent (1.25 %) transfer to cover the Public Art Program's on-going maintenance costs.
 - B. Other Possible Changes ???

and request staff to begin a public review process involving City department heads, the local arts and cultural community, developers, community and business leaders, and the public.

Ordinance No. 2013-_____

Bill No. _____

AN ORDINANCE AMENDING THE CARSON CITY MUNICIPAL CODE, Title 2, ADMINISTRATION AND PERSONNEL, CHAPTER 2.41, CARSON CITY CULTURAL COMMISSION, BY ADDING NEW SECTIONS TO CHAPTER 2.41 SETTING ASIDE ONE PERCENT (1%) OF ANNUAL BUDGETED TRANSFERS FROM THE GENERAL FUND TO THE CAPITAL PROJECTS SPECIAL REVENUE FUND FOR THE CITY'S GENERAL GOVERNMENT CAPITAL PROGRAM TO BE USED FOR A PUBLIC ART PROGRAM, ADDING A NEW SECTION 2.41.005 – DEFINITIONS, AMENDING SECTION 2.41.080 – COOPERATION OF CARSON CITY CULTURAL COMMISSION WITH OTHER PRIVATE AND PUBLIC ENTITIES TO INCLUDE THE PUBLIC ART PROGRAM, ADDING A NEW SECTION 2.41.100 – CREATION OF SEPARATE DEPARTMENTS IN THE CAPITAL PROJECTS SPECIAL REVENUE FUND – DISSOLUTION, ADDING A NEW SECTION 2.41.110 – PUBLIC ART PROGRAM TO ESTABLISH THE PROGRAM, ADDING A NEW SECTION 2.41.120 – DONATIONS FOR FUNDING PUBLIC ART ARE EXEMPT FROM THE PROGRAM UNLESS DESIGNATED, ADDING A NEW SECTION 2.41.130 – ELIGIBLE PUBLIC ART PROGRAM EXPENSES, ADDING A NEW SECTION 2.41.140 – PUBLIC ART SELECTION CRITERIA, ADDING A NEW SECTION 2.41.150 – PUBLIC ART SECTION PROCESS, ADDING A NEW SECTION 2.41.160 – DISPLAY OF ART RECOMMENDATIONS TO THE BOARD OF SUPERVISORS, AND OTHER MATTERS PROPERLY RELATING THERETO.

NOW, THEREFORE, THE BOARD OF SUPERVISORS OF CARSON CITY DO ORDAIN:

Section 1: Title 2, Chapter 2.41 of the Carson City Municipal Code is hereby amended by adding new sections, as follows:

Chapter 2.41 - CARSON CITY CULTURAL COMMISSION

Sections:

2.41.005 – Definitions.

2.41.010 - Purpose of the Carson City cultural commission.

2.41.020 - Findings supporting the creation of the Carson City cultural commission.

2.41.030 - Creation of the Carson City cultural commission.

2.41.040 - Membership and terms of office of the Carson City cultural commission.

2.41.050 - Requirements for membership on the Carson City cultural commission.

2.41.060 - Duties and powers of the Carson City cultural commission.

2.41.070 - Functions of the Carson City cultural commission.

2.41.080 - Cooperation of Carson City cultural commission with other private and public entities.

2.41.090 - Duties of Carson City to support the Carson City cultural commission and other arts and cultural entities.

2.41.100 – Creation of separate departments in the Capital Projects Special Revenue Fund – dissolution.

2.41.110 – Public art program.

2.41.120 – Donations for funding public art.

2.41.130 – Eligible public art program expense.

2.41.140 – Public art selection criteria.

2.41.150 – Public art selection process.

2.41.160 – Display of art.

Section 2: Chapter 2.41 of the Carson City Municipal Code is hereby amended by adding a new section 2.41.005, as follows:

2.41.005 – Definitions.

As used in this chapter, unless the context otherwise requires:

1. “Artist” means any practitioner of the arts, including but not limited to architecture, landscape architecture, sculpture, painting, music, literature, drama, and/or dance, generally recognized by critics and peers as a professional in the field as evidenced by his/her education, experience, exhibition record, and artwork production.

2. “Artwork” or “work of art” means:

a. Two or three dimensional art that may be integrated into the structure of a public works project, building, landscape, or other fixture or element, in any material or media or combination thereof;

b. Two or three dimensional art of any material or media or combination thereof;

c. Enhancements to Public Works’ projects, buildings, landscapes or any standardized fixtures and elements that are designed by an artist or by a design team which includes an artist member; or

d. New genres including video, electronic and digital art, holography, video and additional technologically based forms as they evolve.

e. “Artwork or work of art” does not include:

i. Commercially mass produced objects of standard designs, except where these elements are integral parts of an original artwork.

ii. Reproductions, by mechanical or other means, of original works of art, except in cases of film, video, photography, printmaking or other media arts.

iii. Directional elements such as supergraphics, signage or color coding, except where these elements are integral parts of an artwork.

iv. Decorative, ornamental or functional elements which are not designed by an artist.

v. Landscape design and landscape gardening, except where these elements are designed by an artist or are an integral part of an

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artwork, or are both designed by an artist and an integral part of an artwork.

3. "Carson City Cultural Commission" means the Carson City Cultural Commission, established pursuant to this chapter.
4. "General Government Capital Program" means Carson City's program for capital asset acquisition, improvement, maintenance or development adopted by the Carson City Board of Supervisors and funded by transfers from the Carson City General Fund. .
5. "Public art collection" means the works of art donated or sold in whole or in part to the City as a result of this ordinance. For example, an artist may donate or sell to the City the right to non-exclusive use of the art while reserving the copyright to the art.
6. "Public art trust department" means a separate department in the Capital Projects Special Revenue Fund into which all monies generated under this ordinance or derived from gifts or donations for public art shall be deposited.
7. "Public place" means an area on public property that is accessible and visible to the general public.

* REMOVED "ELIGIBLE PROJECT" DEFINITION

2.41.010 - Purpose of the Carson City cultural commission.

The Carson City cultural commission will act as the primary advisory body for the Carson City board of supervisors for matters relating to arts and culture and will serve as the coordinator and catalyst bringing government, the arts and cultural community and public together for the cultural benefit of all Carson City's citizens.

2.41.020 - Findings supporting the creation of the Carson City cultural commission.

The Carson City board of supervisors finds that:

1. The creation of the Carson City cultural commission:
 - a. Is necessary to further develop our community's heritage as it relates to culture, history, the Arts and the Humanities.
 - b. Will enhance the interests of the peace, health, safety and welfare of the community.
2. The professions relating to the performing, fine arts and the humanities are essential to human needs and enhance the city's physical beauty, economic health and quality of life.
3. An increase in cultural amenities is crucial to further stimulate economic development and redevelopment.

2.41.030 - Creation of the Carson City cultural commission.

1. There is hereby established the Carson City Cultural Commission.
2. The creation of the Carson City Cultural Commission is consistent with the objectives of the community at large as those objectives relate to arts and culture in Carson City.

2.41.040 - Membership and terms of office of the Carson City cultural commission.

1. The Carson City cultural commission shall consist of seven members appointed by the board of supervisors.
2. Except as otherwise provided in this subsection, members shall be appointed for a term of 3 years which commence and end on January 1st and may serve for unlimited consecutive terms. For the initial terms of the members of the commission, 2 members shall be appointed to serve a term beginning on the date of appointment and ending on January 1, 2009; 3 members shall be appointed to serve a term beginning on the date of appointment and ending on January 1, 2010 and 2 members shall be appointed to serve a term beginning on the date of appointment and ending on January 1, 2011.
3. A member shall continue in office for the term for which that member was appointed or until a successor is appointed.
4. If a member has three unexcused absences from regularly scheduled meetings of the Carson City cultural commission in a single calendar year, the office of the member shall be declared vacant. Carson City staff assigned to assist the commission shall advise the Carson City board of supervisors of any member with 3 absences from regular meetings. Attendance at meetings called outside the regular schedule, are not subject to absence quotas.
5. The board of supervisors may remove any member of the commission for cause.
6. Vacancies, whether scheduled or unscheduled, shall be filled, by appointment by the board of supervisors.

2.41.050 - Requirements for membership on the Carson City cultural commission.

Members of the commission must meet the following qualification criteria:

1. Be residents of Carson City;
2. Have a broad and informed perspective of the arts along with a demonstrated knowledge and responsiveness to the existing arts community and community at large;
3. Represent a cross section of the city's age, multi-cultural, socio-economic, professional, artistic and volunteer diversity;
4. Have an appreciation for Carson City's rich cultural tradition.

2.41.060 - Duties and powers of the Carson City cultural commission.

1. At the first meeting of the Carson City cultural commission, and thereafter at its first meeting of each subsequent year, the members shall elect a chair and a vice chair. In the absence or disability of the chair and vice chair, the commission may designate a temporary chair.
2. The commission shall meet at least quarterly and all its meetings shall be open to the public pursuant to the Open Meeting Law.
3. The commission's chair or a majority of the commission may call special meetings.

4. A seat will be deemed filled once the city clerk has sworn in a nominee.
5. The commission shall keep minutes, which shall be available for public inspection, of all of its resolutions, proceedings, and other actions.
6. The commission shall adopt and amend, by the affirmative vote of a majority of the members, rules and regulations for the conduct of the commission's business. Such rules and regulations shall be submitted to the board of supervisors and shall not become effective until approved and ordered.
7. The commission shall submit an annual report and work-plan to the board of supervisors no later than May 1 of each year. Attendance records of members shall be included as part of the annual report.
8. Members of the commission shall be required to file annual statements of economic interest pursuant to the city's conflict of interest requirement pursuant to Nevada Revised Statutes. Members are expected to declare their conflicts of interest on associated agenda items and must abstain from any votes taken in relation to declared conflicts of interest.
9. The commission may create committees and subcommittees to advise the commission on any of the functions, duties or responsibilities of the commission.

2.41.070 - Functions of the Carson City cultural commission.

The functions of the Carson City cultural commission include, but are not limited to:

1. Advising the board of supervisors on matters pertaining to the city's arts and cultural programming.
2. Fostering public and private partnerships for providing arts and cultural programs for the citizens of Carson City, without directly engaging in program management deemed in competition with existing constituent organization programming.
3. Promoting access and awareness for the public to the highest quality arts opportunities possible.
4. Promoting an environment that supports the work and advancement of artists and arts groups and celebrate the city for its ethnic diversity, creativity and its leadership in arts and culture.
5. Making recommendations to the board of supervisors regarding grants-in-aid to individual and group of artists, cultural groups and arts organizations.
6. Encouraging the provision of cultural and artistic facilities and features in public and commercial construction.
7. Facilitating and promoting the establishment of an Art in Public places policy that supports the installation of publicly significant art installations, and encourage the inclusion of public art components in private development.
8. Helping to identify and designate cultural districts, neighborhoods and landmarks throughout the city.
9. Promoting a cultural environment that stimulates economic development, cultural tourism and enhanced public participation.
10. Promoting greater arts education in the schools and through programs accessible to the public.

Section 3: Chapter 2.41 of the Carson City Municipal Code is hereby amended by amending section 2.41.080, as follows:

2.41.080 - Cooperation of Carson City cultural commission with other private and public entities.

1. The commission may act in the capacity of a peer panel:
 - a. To select public art and art in public places;
 - b. To review and evaluate requests for funding; and
 - c. To advise on the allocation of funds from [~~a cultural trust fund~~] the Public Art Program and other general fund revenues appropriated to the arts.
2. From time-to-time, the commission shall make recommendations to the board of supervisors on the selection of professional management firms and staff to administer the city's [~~arts and cultural~~] Public Art Program and initiatives.
3. The commission will work with its partners in the community including, but not limited to, the Carson City Arts & Culture Coalition, Western Nevada College, Nevada Department on Cultural Affairs, Carson City's Convention & Visitors Bureau, the Carson City Redevelopment Authority and Carson City's future downtown business improvement district.

2.41.090 - Duties of Carson City to support the Carson City cultural commission and other arts and cultural entities.

Carson City shall provide staff support to the Carson City cultural commission, local and regional philanthropic organizations and foundations, and various partner organizations affiliated with the Carson City Arts & Cultural Coalition.

Section 4: Chapter 2.41 of the Carson City Municipal Code is hereby amended by adding a new section 2.41.100, as follows:

2.41.100 – Creation of separate departments in the Capital Projects Special Revenue Fund – dissolution.

The Carson City controller shall create separate departments and accounts in the City's Capital Projects Special Revenue Fund as follows:

1. Public Art Trust Department:
 - a. During the adoption of the City's annual budget, and provided that the Board of Supervisors appropriates a General Fund transfer to the Capital Projects Fund for the City's general government capital program, the Board shall identify and appropriate one percent (1%) of the transfer from the General Fund for the Public Art Trust Department. Upon final acceptance of the City's annual budget, this amount shall be transferred to the Public Art Trust Department in the Capital Projects Special Revenue Fund. Appropriations for purposes of acquiring works of art in order to carry out the provisions of this chapter shall be made in accordance with the Nevada Revised Statutes, City policy, and established budgeting procedures.

* REMOVED ACCOUNTS EARNING INTEREST ON FUND BALANCES

- b. The Carson City controller shall establish accounting records sufficient to identify and control these funds in accordance with the provision of this section.
- c. The Public Art Trust Department balance shall be carried forward from year to year, unless specifically terminated by the Board of Supervisors.
- d. The City shall be authorized to accept gifts, grants, and donations made to the City for works of art upon approval of the Board of Supervisors. These funds will be deposited in the public art trust account and can be restricted, committed or assigned for a specific purpose, project, or artwork purchase.
- e. All funds deposited in the Public Art Trust Department shall be used exclusively for the purpose or function for which they are appropriated, specified or donated. In the event that funds deposited in the Public Art Trust Department are unrestricted, the Carson City Cultural Commission shall make recommendations to the Board of Supervisors with respect to the use of these funds for purposes consistent with the function of the Public Art Program; and

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2. Public Art Trust Maintenance Department:

- a. The City will be responsible for all maintenance, refurbishing, and/or replacement costs associated with the City's Works of Art projects approved by the Cultural Commission and Board of Supervisors.
- b. All maintenance costs associated with any sponsored City Works of Art Projects shall be funded by using a one-quarter (25%) percent of the originally appropriated one percent (1%) from the General Fund transfer to the Capital Projects Special Revenue Fund for the Public Art Program.
- c. Funding for the Public Art Trust Maintenance shall be transferred into a separate account by the Carson City controller, who shall establish accounting records sufficient to identify and control these funds in accordance with provision of this section.
- d. The Public Art Trust Maintenance Department balance shall be carried forward from year to year, unless specifically terminated by the Board of Supervisors.
- e. In the event that the Public Art Trust Maintenance Department does not have enough money to pay for all the required maintenance, refurbishing, and/or replacement on the City's Works of Art Projects, the Carson City controller is authorized to use funds from the Public Art Trust Department to cover any of these expenses.
- f. At the discretion of the Cultural Commission and Board of Supervisors, the Public Art Trust Maintenance Department can be used for maintenance, refurbishing, and/or replacement costs of existing public art which was installed prior to the enactment of this ordinance.

NEW SECTION

- 3. Dissolution: In the event of the repeal of this section and the dissolution of the Carson City Cultural Commission, all funds remaining in the Public Art Trust and the Public Art Trust Maintenance Departments shall revert to Carson City's

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general fund, except that any restricted gift or donation shall be used for the purpose specified in the restriction or returned to the donor.

Section 5: Chapter 2.41 of the Carson City Municipal Code is hereby amended by adding a new section 2.41.110, as follows:

2.41.110 – Public art program.

1. There is hereby established a Public Art Program.
2. The Public Art Program shall be maintained by the diversion of one percent (1%) of budgeted general fund transfers to the Capital Projects fund as set forth in this chapter.
3. Appropriations from Carson City's general fund to the Capital Projects fund are subject to the discretion of the Carson City Board of Supervisors, upon which the appropriation shall include an amount equal to one percent (1%) of the budgeted transfer, to be used for artist design services and for the selection, acquisition, display, maintenance, and/or performance of public artworks as set forth in this chapter.

New Section

Section 6: Chapter 2.41 of the Carson City Municipal Code is hereby amended by adding a new section 2.41.120, as follows:

2.41.120 – Donations for funding public art.

If the City receives a private donation either in cash, land, services, or material goods, it shall be exempt from this ordinance unless specifically designated as a donation to the Public Art Program .

** PRIVATE DEVELOPER DONATIONS ITEM REMOVED*

Section 7: Chapter 2.41 of the Carson City Municipal Code is hereby amended by adding a new section 2.41.130, as follows:

2.41.130 – Eligible public art program expenses.

Eligible expenses for the public art program are limited to the following categories:

1. The artwork itself, including but not limited to:
 - a. Artists' design services, development of design concepts and models and the selection, acquisition, installation, fabrication and exhibition of works of art;
 - b. Artist's operating costs;
 - c. Travel related to the project;
 - d. Transportation of the artwork to the site and installation; or
 - e. Applicable permit or certificate fees.
2. Identification plaques and labels;

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3. Frames, mats, mountings, anchorages, containments, pedestals, or materials necessary for the installation, location, or security of the artwork;
4. Photographs of completed artworks;
5. Communication and other indirect costs, including insurance deductibles;
6. Expenses for special advisors or consultants;
7. Historical artifacts displaced by construction;
8. Public art management, maintenance, refurbishing and/or replacement.
9. Water works, electrical and mechanical devices and equipment which are an integral part of the works of art;
10. Walls, bases, pools or other architectural or landscaping elements on or in which the works of art are placed or affixed and which, in the opinion of the Carson City Cultural Commission, are an integral part of and contribute to the aesthetic and structural support of the works of art; or
11. Architectural or landscaping elements which themselves constitute some works of art.

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Section 8: Chapter 2.41 of the Carson City Municipal Code is hereby amended by adding a new section 2.41.140, as follows:

2.41.140 – Public art selection criteria.

Public Art Selection Criteria:

1. Each proposed project will be evaluated by the Carson City Cultural Commission as to artistic excellence; appropriateness in terms of scale, material, and content relative to the immediate and general architectural, social, and historic context; and long-term durability against vandalism, weather, theft, and excessive maintenance. A recommendation shall be provided by the Carson City Cultural Commission to the Board of Supervisors for consideration and possible approval.
2. Artists will be selected on the basis of their qualifications as demonstrated by past work, appropriateness of the proposal to the particular project, and its probability of successful completion as determined by the Carson City Cultural Commission and approved by the Board of Supervisors.
3. Upon advice from the Carson City Cultural Commission, the Board of Supervisors shall make the final selection at its discretion of artists and artworks, selecting those artists and artworks of the highest aesthetic quality and those which fulfill the purposes of the public art program.
4. In all cases, consideration will be given to materials, construction, durability, long term maintenance, public access, and safety.

Section 9: Chapter 2.41 of the Carson City Municipal Code is hereby amended by adding a new section 2.41.150, as follows:

2.41.150 – Public art selection process.

Public Art Selection Process – Selection of artwork will be made by one of the following methods:

1. Open Competition: Site and program advertised; proposals accepted from all artists; no proposal fee is paid to artist unless otherwise stipulated.
2. Limited/Invitational Competition: One or more artists are invited to submit proposals; no proposal fee is paid to artists unless otherwise stipulated.
3. Direct Purchase: A completed artwork is purchased in accordance with Carson City purchasing policy and/or Nevada Revised Statutes.
4. Carson City Staff Recommendation: With the assistance of local artists and community representatives, City staff can provide recommendations related to the donation or purchase of artwork.
5. The decision of the Carson City Board of Supervisors shall constitute a final decision for the purposes of any judicial remedy.

Section 10: Chapter 2.41 of the Carson City Municipal Code is hereby amended by adding a new section 2.41.160, as follows:

2.41.160 – Display of art.

The Carson City Cultural Commission may recommend and the Board of Supervisors shall determine at its discretion that works of art may be placed on public display, integral or attached to a public building or structure, detached within or outside a public building or structure, or as a part of the landscape or a public park, square or other outdoor public site or lands.

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Section 11: If any clause, sentence, section, provision or part of this chapter shall be adjudged to be unconstitutional or invalid for any reason by any court of competent jurisdiction, such judgment shall not invalidate, impair or affect the remainder of this chapter.

Section 12: That no other provisions of the Carson City Municipal Code are affected by this ordinance.

PROPOSED on _____ (month) _____ (day), 2013.

PROPOSED by _____.

PASSED _____ (month) _____ (day), 2013.

VOTE: AYES: SUPERVISORS: _____

NAYS: SUPERVISORS:

ABSENT: SUPERVISORS:

Robert Crowell, Mayor

ATTEST:

ALAN GLOVER
CLERK/RECORDER.

This ordinance shall be in force and effect from and after the ___ day of the month of _____ of the year, 2013.