

BOOK 26
June 21, 2023

BURLINGTON CITY COUNCIL REGULAR SESSION 6-21-2023

City of Burlington Governing Body met in Regular Session at City Hall's address, 1013 N. 4th Street, Burlington, Kansas, at 6:00 p.m. Wednesday, June 21, 2023. Mayor Luke called the meeting to order.

THE PLEDGE OF ALLEGIANCE

ROLL CALL: Stan Luke, Mayor

Council Members present:

<input checked="" type="checkbox"/> Jerilyn Curtiss	<input checked="" type="checkbox"/> Maxi Berryman	<input checked="" type="checkbox"/> Lewis Lenard (President of Council)
<input checked="" type="checkbox"/> Lila Van Horn	<input checked="" type="checkbox"/> Thomas P. Tschantz	<input checked="" type="checkbox"/> Martin Ernst

Superintendents Present:

<input checked="" type="checkbox"/> Kevin Boyce (Parks)	<input checked="" type="checkbox"/> Alan Schneider (Electric)	<input checked="" type="checkbox"/> Mark Davidson (Street)
<input checked="" type="checkbox"/> Doug Jones (Chief of Police)	<input checked="" type="checkbox"/> Danny Hawkins (Water/Wastewater)	

Also Present:

<input checked="" type="checkbox"/> Anne Brown (City Clerk)	<input checked="" type="checkbox"/> Mary Mader (Administrative Assistant)
<input checked="" type="checkbox"/> Philip Wright (City Attorney)	<input checked="" type="checkbox"/> Jimmy Hugunin (Zoning/Grants Clerk)
<input checked="" type="checkbox"/> Greg Holmquist (Assistant City Attorney)	<input type="checkbox"/> Kerri Weltha (Deputy City Clerk)

Media Present: Mark Petterson (Coffey County Republican)

VISITORS: John Kuhlmann, Paul Abendroth

AGENDA:

Council Member Lenard, "I move to approve the agenda as modified." Council Member Ernst, "Second." Motion unanimously carried, 6:0.

MINUTES 6/7/2023: Mayor Luke, "You have before you the draft minutes of our regular session of June 7, 2023. Are there any additions or corrections?"

Council Member Curtiss, "I move to approve the draft minutes of June 7, 2023, as presented." Council Member Ernst, "Second." Motion unanimously carried, 6:0.

APPOINTMENT: Ashley Rogers – No-Show

APPOINTMENT: John Kuhlmann – Illegal Road Closure & Conflict of Interest

John Kuhlmann, "Good evening, council members. Late May 2023, I uncovered Philip Wright's direct fraud and malice in my damage claim I delivered to Anne Brown on May 26, 2023, and my verbal claim and presentation to the council on July 7, 2022. I tried to present the evidence that is before us in this matter last year to the council but was interrupted during the meeting, and Philip Wright said that he did not care about my evidence. This is the three pounds that fell on my house last year, and these are the bits of evidence I tried to submit to various departments of legal being Burlington Police Department, Coffey County Sherriff's Department, your own city attorney here, and everybody refused.

"Philip Wright then told me in a private, without the council, that I had no recourse against the city because he disagreed with everything that I presented so that way he could begin to hide his illegal appointment that I would have uncovered in this disaster that the city of Burlington has created for my family every year since 2018. Philip Wright was illegally and ineligibly appointed and assigned to duties of city attorney from June 1st, 2020, to October 19, 2022, when Philip Wright instructed the city council to exempt his residency status, which was the cause of his ineligibility under K.S.A. 14-205. He was illegally paid for a position he should have never been appointed to because of his residency status per K.S.A. 14-205 at the time of his appointment. He corrected the legality but did not repay the unjustly paid salary given this illegal appointment for two years. It is not a formality. It is a state law. The removal from such office of any officer required to be qualified elector shall occasion of vacancy of such office. He was illegally paid for this and illegal for this ineligible appointment and did not pay it back. Just because you change the laws now does not change the way they were broken at the time as they were written.

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“More attempts at fraudulent actions which are dishonest and misrepresent the facts and complete lack of local city code understanding, a pattern which repeats. Philip knew that the lack of police reports and citations against the Giffords would severely hinder my ability to prove my case or even be heard past an insurance adjuster. This is why state statute requires this to be specially exempted to keep greedy attorneys from being city attorneys several towns away who have little knowledge or background of that city and that specific city code books. He is currently ineligible and illegally holding city attorney of New Strawn per K.S.A 15-209, which requires him to be a qualified elector of the county or adjoining county, just like Burlington was required to do so until he instructed the exemption.

“Philip Wright called me June 19, 2023, this Monday, a holiday, to advise me that my claim has been submitted to insurance. He then again tried to verbally dismiss my claims and the facts within it, such as the illegal road closure and how by tradition, the Giffords and the city of Burlington get to bypass written law. The closure is breaking city codes immediately, and after the fact, state laws are violated. 13-102-A, it shall be unlawful for any person to cause, create, or maintain any obstruction on any street, alley, sidewalk for a public way except may be specified by ordinance or necessitated by public improvement; this is Burlington city code. It repeats also down at 13 -317-A, the very same as above. The city code requires a city ordinance to legally close any road, alley, sidewalk, or public way. 1-112 resolutions motions except for a state statute or city ordinance specifically requires otherwise; all resolutions and motions shall be passed if voted upon favorably by majority present at the meeting. It specifically states in the ordinance otherwise, so the motion passed is not legal.

"Nobody else gets their road blocked to have a party to set off fireworks for 45 minutes. This isn't your typical walk outside and watch what your neighbors set off one firework at a time, like Philip Wright described. Steven Gifford setting off thousands of dollars and hundreds of fireworks off at a time for 30 minutes straight in a publicly advertised and organized display which happens concurrently with the city of Burlington's sponsored show at Kelley Park this year stretching thin the emergency response due to the city's sponsored firework display happening at the exact same time. I learned on June 15th, 2023, that the city of Burlington's firework display in Kelley Park does not go through the city code public firework display permit process either because, 'it is grandfather in,' per Anne Brown, the city clerk.

"I asked where is that in the city code, to which there was no response. In response to this, I looked up Garnett, Kansas city code to see if their city sponsors fireworks display was through a permit or ordinance. Garnett city council passed an ordinance in 2004 3557 for their yearly fireworks display, which is also done from a city park. Burlington has no such inclusion in its city code for its community-sponsored display or exclusion from the requirements of the city code fireworks display permit 7-304. 7-303c, it shall be unlawful for any person, firm, or cooperation to give any public display of fireworks without having first obtained a permit thereof. City code 12-117 – Fireworks prohibited in city parks: it shall be unlawful for any person, firm, or cooperation to fire, discharge fireworks within any city park within the city, ordinance 819, adopted 6-5-2013. No person shall require street closure for consumer fireworks even though it still is against Kansas administrative regulations to light fireworks in a public roadway and specifically is included in surrounding city codes because of that regulation.

“Now for the state laws. 21-5413 section one battery knowingly or recklessly causing bodily harm to another person, knowingly causing physical contact with another person when done in a rude, insulting, or angry manner. 21-5412a assault – assault is knowingly placing another person in reasonable apprehension of immediate bodily harm. 21-5815a criminal littering – criminal littering is recklessly depositing or causing to be deposited any object or substance into, upon, or about subsection two any private property without the consent of the owner or occupant of such property. Kansas statute 21-58131 criminal damage to property – knowingly damaging, destroying, defacing, or substantially impairing the use of any property in which another person that has an interest without the consent of such other person. And Kansas administrative regulation 22-6-9 discharge of fireworks – a person shall not ignite or discharge fireworks into under or from a vehicle whether moving or standing still or on a public roadway or the right of way adjoining in the public roadway.

“Now covering the city's direct gross negligence. The city's committing gross and longtime negligence and fraudulently, illegally, and maliciously obstructing the street per Burlington city code 13-102a. A block party is not improvements; you do not block the road via city ordinance; therefore, the obstruction is legal and a delay to Coffey County Fire District 1 per city code 7-210, the obstruction of any street, avenue, alley, fire hydrant or any other condition that might delay the Coffey County Fire District #1 and firefighting, is declared to be unlawful.

“Now the fireworks code 7-304b – no permit shall be issued if the location nature of the fireworks or other relevant factor is such as to create an undue hazard or risk of harm or damage to persons or property. This event

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would be deemed a hazard under the current law of writing no matter what type of fireworks are being used. It has caused damage to persons and property yearly. This is a huge violation of my rights as a property owner but as a U.S. citizen, more importantly. My body is being permitted by the city council of Burlington, Kansas, to be contacted and violated in a rude manner without my consent. My property to be damaged and littered upon without my consent so one person, Steven Gifford, can have a 30-minute public advertised fireworks display on an illegally closed public road.

"We could ignore the fireworks permit and still have a giant liability that the city creates every year willingly and knowingly by approving the illegal closure that causes damage and unwanted bodily contact. This is all direct effects of Philip Wright violating my rights as illegal city attorney last year to prosecute the criminal Steven Gifford, who battered my family, damaged my property, and littered pounds of garbage on my property, all without my consent, under state which he has no jurisdiction over. Those criminals get transferred to the sheriff for the county attorney to determine next actions per city code. Philip Wright illegally told law enforcement not to write any citations as this matter was for city council in July of 2022. Coffey County Sherriff deputies even refused to write valid lawful citations, which were discussed on July 5 and July 6 with Coffey County Sheriff's deputies.

"City code 10-103c pertaining to the police department – all persons arrested for violation of any law of the state and who shall not be charged with an offense under any law of the city shall be released to the custody of the Sheriff of the county, and such arrest shall be reported to the County Attorney. No person or government entity can impair one person's right to allow another person special control over said person's property or body, regardless of intent. I request the city council to revoke the illegal city closure for Steven Gifford for July 4th, 2023, based on the pending claim submitted by myself and the adopted, written code of Burlington, Kansas."

Mayor Luke, "I'm thinking for a moment." John Kuhlmann, "That's fine. I understand." Mayor Luke, "At this point in time, the governing body is not going to enter into public discussion on this matter. We will hold it as a discussion to look at. We have on record now all the ordinances and codes and state stuff, but beyond that, I haven't looked at all of that stuff." John Kuhlmann, "I submitted that in my claim May 26th and I requested it to be presented to the city council specifically." Mayor Luke, "At this point, we are going to move forward with the rest of our meeting." John Kuhlmann, "So, I am open to, currently, right now, pending damages to my home again because we are doing nothing on this action right now?" Mayor Luke, "I did not say we are not going to do anything. At this moment --." John Kuhlmann, "This is the only next meeting before this event is going to happen. So, that is my concern, and that is why I am here; especially presenting this evidence that I really don't want to pick up again this year or deal with the damage to my home and my person. I will be outside recording if the event is allowed to happen again."

PUBLIC COMMENTS:

ELECTRIC DEPARTMENT: DISTRIBUTION Update

General: Electric personnel have been doing many line locates, customer service requests, tree trimming, shop maintenance, preventative line maintenance, street light maintenance, and vehicle and equipment maintenance.

Tree Trimming: Superintendent Schneider, "We are busy trimming trees in the electric utility right of ways."

Training: Superintendent Schneider, "The apprentice linemen are still studying, and they are testing for the apprenticeship program."

Equipment Repairs: Superintendent Schneider, "We did do some maintenance and repair on our vac trailer since the last council."

Call Out: Superintendent Schneider, "We worked one call out Saturday, the 17th of June. The wind had broken a branch and fell onto a service wire of a single home. We cleared the limb, and the customer had no service interruptions during that."

USD #244 Assistance: Superintendent Schneider, "We helped the school district out by the football stadium. They were having trouble locating a line. They had a water leak. We helped them out with that."

ELECTRIC DEPARTMENT: PRODUCTION Update

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General: Power plant personnel have been performing normal power plant and equipment maintenance, over current relay maintenance, plant reports, DC power supply, and substation maintenance.

Training: Superintendent Schneider, “The men at the plant are still doing cross-training of the new staff.”

Reports: Superintendent Schneider, “We are completing in-house plant reports.”

KPP Energy: Superintendent Schneider, “We have completed our monthly generation availability reports to KPP Energy.”

Protective Equipment Testing: Superintendent Schneider, “PET (Protective Equipment Testing) out of Great Bend, was here today. They will be testing the line trucks, hoses, blankets, gloves, and things of that nature in the next day and a half.”

Generation Project: Superintendent Schneider, “The crews are onsite. We have a full welding crew in fitting pipes, welding, and assembling trays for the wiring like the high h voltage wire.”

Utility Boundary: Superintendent Schneider, “Also, I have been doing some research on our boundary maps for our electric utility. The KCC was very, very helpful in the matter. I'd also like to thank the mapping and GIS department at the county, Cara Mays, who was a very big help in helping me locate some of the mappings as well. I believe the committee has some of those maps, and I'd be happy to share those with anybody else that would like to see those.”

QUESTIONS/COMMENTS

Generation Project: Council Member Van Horn, “So, how far behind the schedule is the generator project? I thought it was supposed to be in May sometime.” Superintendent Schneider, “It was. You are correct. Like I said last council, they had health issues with two of their employees. They had some problems resourcing some of the materials they needed. I hate to put a date on that, but I would say early fall.” Council Member Van Horn, “That is a lot later.” Superintendent Schneider, “Yes, that is a lot of difference. I will say they are there working hard.” Council Member Van Horn, “Thank you.”

WATER AND WASTEWATER: Distribution Update

General: Personnel have been doing the normal duties: line locates, work orders, reading meters, meter rereads, cleaning sewer lift stations, maintenance on trucks and equipment, attending safety meetings, customer call-outs, and concerns.

Line Locates: Superintendent Hawkins, “We have had many line locates for local contractors.”

USD #244 Assistance: Superintendent Hawkins, “As Alan said, we were contacted by USD #244 to go up there and assist a little bit around the stadium. We found that the water was leaking.”

Meter Battery Replacement/ Thank You: Superintendent Hawkins, “I'd like to thank Tyrell Udy. He has been a big help with this situation. We had a batch of meters come in that the batteries were defective, and based on the serial numbers, they all are still under warranty; there are no issues. He really took the lead. So, basically, we have about 40 of them, that the batteries are starting to die. He went out in the field and started working with Preston on those. That has been going really well. Preston has already ordered them. It's at no expense to us. We already have another batch of batteries that we are putting in place, but they are getting replaced. I am grateful for his jumping in and working with that.”

WATER AND WASTEWATER: Production Update

General: Superintendent Hawkins, “The plant is running well.”

Water Usage: Superintendent Hawkins, “So far, we haven't had much rain, so the water usage is definitely going up. With the spring being so dry, we are starting to ramp up the water plant. We are starting to see quite a bit of usage. Right now, the guys worked today; we had about 670,000 gallons of water that they pumped today. I am thankful for those guys working on that.”

Douglass Pumping Assistance: Superintendent Hawkins, “I visited with Mike Douglass with Douglass Pumping with our project that is coming up here real shortly with the sludge press. I asked Mike to help assist us

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with safety A-frames on some of the heavy stuff. I just want to make sure that everything is done safely. He said he would assist us with that, so I am grateful for that. They won't be there for the whole project. It's just mainly for the heavy lifting and the safety part of it."

Pump Maintenance: Superintendent Hawkins, "We had one of our high service pumps, pump #1, the VFD went out on us completely. I am grateful for Jim Morrison with RW Vaught; they were Johnny on the spot. We got a VFD in there. Jim already has it installed, and it's completed. It's up and online right now."

Plant cleaning: Superintendent Hawkins, "The last thing that we have is we did our last spring clean as far as the 10-inch line in the reactors and the rapid mix. We got in there and got that done. So, we are ready for summer and ready to make some water."

STREET DEPARTMENT: Update

General: Personnel have been doing the normal duties: cleaning ditches, sweeping curb and gutter, fixing potholes and ruts, blading rock roads, repairing and re-rocking alleys, tree trimming, fixing and replacing street signs, and truck and equipment maintenance.

Bindweed Spraying: Superintendent Davidson, "We have been spraying for bindweed."

Storm Cleanup: Superintendent Davidson, "We removed the storm damage from Graceland Cemetery and several other dead trees."

Culvert Maintenance: Superintendent Davidson, "We replaced alley and driveway culverts."

Crack Filling: Superintendent Davidson, "Serviced the crack filling machine and started crack filling. In the last four or five days, we have done about 36 blocks of crack filling."

Waste Removal: Superintendent Davidson, "We have been hauling waste to the landfill."

Rock Hauling: Superintendent Davidson, "We also started hauling some rock from the Paxson Quarry out west of town."

POLICE DEPARTMENT: Update

General: Chief Jones, "Normal Duties."

Outside Agency Assists: Chief Jones, "We have worked several outside agencies assists, including one in El Dorado, and the officer we dealt with was Devin Haines."

Activities/ Cases: Chief Jones, "We have worked a number of welfare checks, particularly on some of our senior residents. Several non-injury accidents and, I believe, four arrests on city warrants. I think all of them are located outside the city. Two of them, the furthest distance we responded, bonded out, so we didn't even have to go get them. That worked out."

City Court: Chief Jones, "City court was last week that went quite well."

Holliman Trial: Chief Jones, "The Holliman trial, which we have been waiting on for 33 months, finally started this week with jury selection. I was supposed to be on the witness stand either Thursday or Friday. They wound up calling me in this afternoon. I spent a little over an hour on the witness stand today."

Personnel – Academy Dates: Chief Jones, "Our new officer Victor Burr is scheduled to attend the academy beginning August 7th with graduation November 17th."

Nuisance: Properties/Vehicles Update: Chief Jones, "We had some more property abated and some more progress being made on some of the nuisance properties we are working on."

POLICE DEPARTMENT: Personnel: Michael Roney – Evaluation

Chief Jones, "The last thing I have is Michael Roney's personnel evaluations for his one year."

Council Member Curtiss, "I move to accept Michael Roney's personnel evaluation as presented, and to grant a pay increase to \$23.97 per hour, effective June 17, 2023." Council Member Ernst, "I second the motion." Hearing no further discussion, Mayor Luke called for a vote. Motion unanimously carried, 6:0.

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PARKS DEPARTMENT: Update

General: Personnel have been doing the normal duties: cleaning public restrooms and buildings, and building and equipment maintenance.

Mowing: Superintendent Boyce, “Again, mowing has been taking most of our time and spraying weeds.”

Watering: Superintendent Boyce, “We have been watering flowers and trees.”

Nuisance: Grass/Weeds: Superintendent Boyce, “We mowed two nuisance properties, our normal ones, since the last meeting.”

QUESTIONS/COMMENTS

Council Member Lenard, "What about—have you begun spraying for mosquitos yet?" Superintendent Boyce, "I sit out about every evening, and at my house, I don't have any. We have not started. I don't feel the need for it yet unless somebody else sees it." Council Member Curtiss, "I haven't." Superintendent Boyce, “We don't have the moisture for it.”

FINANCE: Claims Ordinance & Payroll Ordinance

a. Claims Ordinance	2023-12	\$	<u>145,701.82</u>
b. Payroll Ordinance	2023-13	\$	<u>99,064.05</u>
	TOTAL	\$	244,765.87

CLAIMS 2023-12: *Council Member Lenard moved to approve City of Burlington Claims Ordinance 2023-12 for the amount of \$145,701.82 for payment of city bills. Council Member Curtiss gave the second.* City Clerk Brown, “The larger expenses we have tonight are Brenntag Southwest \$1,733.75, Kansas Power Pool \$22,565.21, Landis & Gear \$2,873.55, Superior Emergency Response Vehicle \$5,760.43, US Line Company \$5,090.93.” **Hearing no discussion, Mayor Luke instructed City Clerk Brown to poll Council for a vote. All votes were in favor. Mayor Luke declared, “Payroll Ordinance 2023-12 passed unanimously, 6:0.”**

PAYROLL 2023-13: *Council Member Tschantz moved to approve City of Burlington Payroll Ordinance 2023-13 in the amount of \$99,064.05, as presented. Council Member Ernst gave the second. Hearing no discussion, Mayor Luke instructed City Clerk Brown to poll Council for a vote. All votes were in favor. Mayor Luke declared, “Payroll Ordinance 2023-13 passed unanimously, 6:0.”*

PLANNING & ZONING: Update

General: Zoning Clerk Hugunin, “Normal duties.”

Permits: Zoning Clerk Hugunin, “I have been busy the last couple of weeks with building permits. I have had a lot of calls on sheds and fences and cargo containers.”

Office Duties: Zoning Clerk Hugunin, “I cleaned all the city vehicles today. I have just been busy in the office.”

Nuisance: Grass/Weeds Update: Zoning Clerk Hugunin, “I have a couple of letters going out tomorrow on some properties that need the ditches taken care of.”

Mayor Luke, “All the others are pretty much caught up?” Zoning Clerk Hugunin, “Pretty much, just down to my normal ones.”

OTHER COMMITTEE OR COUNCIL BUSINESS

ORDINANCE 894 - Amending Burlington City Code Chapter 7, Article 3, Regarding Public Displays of Fireworks Within the City

Attorney Wright, "So, the prior ordinance was a little bit vague as to what a public display was. There are federal regulations that really define both consumer fireworks and display fireworks. I sort of just adopted those into the ordinance, as you can see. A copy of the proposed ordinance is in your packet. I guess unless someone has questions for me, that is pretty much the brunt of it.”

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Council Member Lenard, “I move to adopt Ordinance 894, amending Burlington City Code Chapter 7, Article 3, Regarding Public Displays of Fireworks within the City.” Council Member Tschantz, “I second the motion.” Hearing no further discussion, Mayor Luke called for a vote. Motion unanimously carried, 6:0.

LEGAL DEPARTMENT: Update

General: Attorney Wright, “Normal duties.”

City Court: Attorney Wright, “Like Chief said, we had municipal court that went smoothly. I appreciate everyone's help in making that happen, the Police Department, and with the court. Lisa has been doing a fabulous job.”

CITY CLERK: Update

General: City Hall Staff have been busy with customers paying utility bills, many calls and inquiries, preparing work orders, vouchers for bill paying, payroll, and council meeting minutes.

Water Rate Analysis: City Clerk Brown, “I have sent out the preliminary notice of water rate increase to the city of New Strawn, City of Gridley, and the Rural Water Districts two and three. So, we are moving on the water rate increase on that.”

2024 Budget: City Clerk Brown, “I have been working on the 2024 budget.”

League Conference: City Clerk Brown, “I handed out to each of you the League Conference, which is October 7th through the 9th in Wichita. There is an early registration. So, if you get in before July 23, there is a discount price of \$250. If you would like to go, let me know as soon as possible, so I can get reservations made for that. Those don’t open up until July 1st.”

Closed: City Clerk Brown, “City Hall will be closed Tuesday, July 4th, for Independence Day.”

REPORT BY CITY OFFICERS:

MAYOR’S COMMENTS

FUTURE AGENDA ITEMS:

GENERAL: City Debt - How to fund projects Expense Tracking on Projects Budget 2023	GAAP - Infrastructure Capitalization City/County Grant Funds – Discussion on Matched Funding Council Discussions on Evaluations, Succession Planning, etc.
ELECTRIC DEPARTMENT: Power Plant - Additional Generation PARKS DEPARTMENT: Events in Parks (Updates)	<i>RICE NESHAP Compliance</i>
LEGAL DEPARTMENT: Municipal Court Updates PLANNING AND ZONING Work with Advantage Computers and City Departments to improve Cyber Security Nuisance Grass: Work with PD FIRM Floodplain Map Changes – Updates	Misc. Legal - Documents, Cases, Contracts, etc. Quarterly Construction Valuation Report Prepare Easements for any City-owned property without one Permits - Building/Zoning/etc. Burlington Corporate Boundary Updates on Map (Work with State)
POLICE DEPARTMENT Nuisances (Work with Zoning Clerk) Voice Stress Analyzer Project	Department Activities and Cases
STREET DEPARTMENT: Concrete St. Repairs/Free State Ct. Replacement/Repair Pavement Management System/Asset Management System	Street improvement Plan, Paving Gravel Streets, Crack Filling, Street Improvements 2023 Asphalt Project
WATER & WASTEWATER DEPARTMENT: Sewer Lagoon Maintenance/	Sensus Water Meter Replacement Sewer Lagoons - Analysis (KRWA/funds for dredging) Sewer Liftstations –Flushing Rags, etc.

Mayor Luke declared the meeting adjourned.

Approved by Governing Body and signed by Anne C. Brown, City Clerk