

## ORDINANCE NO. 4912

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ELLENSBURG, WASHINGTON, RELATING TO RIGHT OF WAY USES OTHER THAN TRANSPORTATION, ADDING A NEW CHAPTER ENTITLED "4.14A STREATERIES, PARKLETS, AND SIDEWALK CAFES" TO TITLE 4, AND RECODIFYING AND AMENDING SECTION 4.14.170 "SIDEWALK USE PERMIT" AS SECTION 4.14A.070 "SIDEWALK CAFÉ PERMITS," OF THE ELLENSBURG CITY CODE.

WHEREAS, due to the rising number of COVID-19 cases in Washington in 2020, Governor Inslee issued Proclamations 20-25, et seq., "Stay Safe - Stay Healthy," which at the time reduced restaurant operations occupancy; and

WHEREAS, Governor Inslee issued Proclamation 20-25.13, "Healthy Washington Roadmap to Recovery, on May 21, 2021, which moved all Washington counties into Phase 3, which also limited the capacity of restaurants and other businesses to serve customers; and

WHEREAS, as a result of the previous restrictions on restaurant capacities during the COVID-19 emergency, the Ellensburg City Manager, as authorized by City Council Resolution 2020-05, issued City Management Emergency Order 2020-03, which allowed restaurants in certain areas in the downtown area of the City of Ellensburg to obtain a permit to operate, under certain conditions, on the sidewalks adjacent to their storefronts and also operate "streateries" in portions of the street immediately in front of their businesses; and

WHEREAS, City Management Order 2020-03 was subsequently amended and extended by City Management Orders 2020-03-A, 2020-03-B and 2020-03-C, which was then extended to December 31, 2021 by City Council Resolution 2021-20; and

WHEREAS, City Council held a study session to discuss streateries on November 15, 2021, and directed City staff to provide recommendations for permanent regulation of streateries; and

WHEREAS, City Council adopted Resolution 2021-40 on December 20, 2021, extending all streateries permitted under City Management Order 2020-03, as amended, be allowed to continue operation until June 30, 2022, or such time as the effective date of City Council may adopt an ordinance regulating "streateries" on a permanent basis, whichever occurs first, following which the City Council adopted Resolution 2022-44 to extend the temporary permits until March 31, 2023; and

WHEREAS, no new streateries were permitted to operate until the City adopted permanent regulations for streateries. In addition, those temporary permitted streateries were to clear snow and debris in accordance with ECC 5.40.140 and required to remove their streatory structure for scheduled and emergency road or utility maintenance;

WHEREAS, the City Council adopted general and specific provisions for “Sidewalk Use Permits” on September 27, 2010, which were not codified in Ellensburg City Code 4.14.070;

NOW, THEREFORE, the City Council of the City of Ellensburg, Washington do hereby ordain as follows:

**Section 1. Section 4.14.170 of the Ellensburg City Code, as last amended by Section 1 of Ordinance 4574, is recodified and amended as Section 4.14A.070 of the Ellensburg City Code, as set forth in Section 2 of this Ordinance.**

**Section 2. A new chapter entitled “Streateries, Parklets, and Sidewalk Cafés” is hereby added to the Ellensburg City Code to read as follows:**

#### **4.14A**

#### **Streateries, Parklets, and Sidewalk Cafés**

- 4.14A.010 Purpose.**
- 4.14A.020 Definitions.**
- 4.14A.030 Right-of-way permits; applications.**
- 4.14A.040 Materials and colors.**
- 4.14A.050 Streateries.**
- 4.14A.060 Parklets.**
- 4.14A.070 Sidewalk café permit.**
- 4.14A.080 ADA accessibility.**
- 4.14A.090 Insurance requirements.**
- 4.14A.100 Hold harmless.**
- 4.14A.110 Appeal.**

#### **4.14A.010 Purpose.**

The purpose of this chapter is to establish reasonable regulations and permit requirements for right-of-way uses other than transportation, which are temporary in nature and do not involve permanent ground disturbance activities, including, but not limited to, streateries, parklets and sidewalk cafés. The requirements of this chapter do not apply to right-of-way uses that are separately regulated or permitted under this or other titles of Ellensburg City Code.

#### **4.14A.020 Definitions.**

In this chapter, the following definitions shall apply:

“Applicant” means any person who seeks a right-of-way use permit from the city under this chapter.

“City” means the city of Ellensburg.

“Director” means the community development director of the city of Ellensburg.

“Parklet” means the use of the public right-of-way designed to be used as a gathering space which is free and open to the public.

“Permit” means a permit issued by the community development department pursuant to this chapter.

“Right-of-way” means land acquired or dedicated for use as a public road, street, alley, and/or sidewalk, regardless of whether such land has been opened or improved for such use.

“Sidewalk café” means tables, seating, and other amenities such as umbrellas, landscaping or fencing adjacent to a lawfully operating business establishment in or on the public sidewalk, maintained by the owner of such establishment for the use of patrons of the business.

“Streatery” means the use of the public right-of-way, typically in a vehicle parking space, that has been designed to allow for food and beverage services.

“Traffic” means circulation or movement of vehicles, bicycles, and pedestrians.

#### **4.14A.030 Right-of-way permits; applications.**

A. Permit required. A right-of-way permit is required to use any portion of city right-of-way for streateries or parklets. Sidewalk café permits are issued separately pursuant to section 4.14A.070, below. This chapter does not include right-of-way construction permits required under chapter 4.06 of the Ellensburg City Code.

B. Application; permit. A completed “Application for Right-of-Way (Streatery/Parklet) Permit” must be submitted for any use of the right-of-way for streateries or parklets. Permits are issued for a maximum of one year. Once permitted, a permittee may apply for a new permit as set forth in subsection (D)(8), below. Permits shall not be renewed automatically. If there are more applicants for a city block than parking spaces permitted by this chapter, the permit(s) shall be selected based on when the application(s) was deemed complete by the director.

C. Complete application. A permit application is deemed complete for the purposes of this section when it meets the submittal requirements of this chapter even though additional information may be required or subsequent permit modifications may occur. The determination of completeness shall not preclude the director from requesting additional information either at the time of the determination of completeness or later if new information is required to complete review of the application or substantial changes in the permit application are proposed.

D. The application shall comply with the following requirements:

1. Payment of a \$50 non-refundable application fee required for the administrative costs associated with the permit request process.

2. Submission of a narrative describing the proposed design of the streatory or parklet, with a clear dimensional sketch including the width and height, and description of the location within the public right-of-way proposed for use. The boundary description shall also include the square footage of the request. Any temporary structure greater than 200 square feet or enclosed on two or more walls requires a building permit.
3. Submission of a list of construction materials and colors (with color names and cutsheets).
4. The requested permit period (if less than one year).
5. No more than four parking stalls per block (including both sides) shall be used for any combination of streateries and parklets.
6. An application for a streatory permit shall be submitted to the community development department. City review of an application will be completed within thirty (30) days of receipt of a complete application and include review by other city departments and the fire marshal, as appropriate. The director may extend the review period when reasonably necessary because additional information is required from the applicant or to allow time to consider comments received per subsection (7). The director may issue the streatory permit with any conditions necessary that are consistent with the requirements of this chapter, or any other local or state law.
7. An application for a streatory permit shall be published on the City's website and appropriate social media sites, and provide notice to the public of an opportunity to comment on the application for a period of ten (10) days from posting of the application. Public comment shall be limited to the issue of whether the proposed streatory meets the design criteria in section 4.14A.040, below. The director may, but is not required to, consider public comments when deciding whether to issue the streatory permit and/or any conditions on the permit.
8. A streatory or parklet permit application may be submitted no earlier than September 1 for use of the streatory or parklet the following year (or portion thereof). Permits are valid for one (1) year beginning January 1 each year.
9. Any streatory or parklet permitted under temporary regulations as of March 31, 2023 must be removed to allow for downtown street slurry work planned for mid-2023. Thereafter, the temporary permittee must comply with the design requirements of this chapter by submitting to the director the information required in subsections (2) and (3) above. The director will notify the temporary permittee of their approval of the design or any required changes within thirty (30) days of receipt of the information.

#### **4.14A.040 Materials and colors.**

A. Materials and colors used to construct streateries or parklets are limited to the following:

1. Metal, which may be painted or coated, and includes but is not limited to aluminum, stainless steel and/or copper;
2. Wood, which must be weather treated, stained, varnished or primed; and
3. Colors and paint must be compatible with those used on the adjacent building and storefronts, as well as match the associated business branding/identity.

B. Prohibited materials. The follow materials are prohibited from use in streateries or parklets:

1. Plastic panels or fencing;
2. Metal chain link fencing;
3. Whole pallets; however, recycled pallet wood is acceptable provided it is disassembled, the wood is painted, and it is assembled into a finished looking component;
4. Plastic plants or turf;
5. Fabric not rated for outdoor use with adequate fire-retardant rating;
6. Particle board;
7. Vinyl;
8. Tarps; or
9. Carpets and rugs not rated for exterior use.

C. Flat, shed or pergola roof structures are allowed to a maximum height of twelve (12) feet from grade. Paint or shingles used on roofs, if any, is subject to the design requirements of subsections (A) and (B), above.

#### **4.14A.050 Streateries.**

Streateries are subject to the following requirements:

A. A streatory may be permitted as a temporary type of right-of-way use in the parking stalls of any public one-way street within the downtown core on a block where restaurant service is provided. Streateries may be located on one-way streets between Water Street and Ruby Street, and between 1<sup>st</sup> Avenue and 5<sup>th</sup> Avenue.

B. Streateries must meet applicable city and state statutes, including for fire, electrical, and building safety, as well as for liquor service and other applicable agency requirements.

C. Streateries must be operated in a manner that complies with health district standards for food and beverage service or with this chapter, whichever is stricter.

D. The fee for a streatory permit is based on the number of parking stalls, or portions thereof, being utilized in the city right-of-way. The fees shall be:

1. A concession fee of \$0.80 per square foot per month based on the total floor size of the streatory;
2. \$25.00 per parking stall, or portion thereof, per month;
3. The amount payable by the City for the leasehold excise tax assessed for the private use of the City's parking stalls; and
4. A \$150 annual application fee.

All fees shall be due and payable at the time of issuance of the permit.

E. Location.

1. A streatory must be located fully or partially adjacent to the business that it serves; provided, that if the business is not adjacent to one or more suitable parking spaces, another business or property owner whose location is adjacent to the applicant may give written permission for the parking space in front of it to be used for a streatory.
2. Streateries shall be located entirely within the approved space(s) and shall not extend to within two feet of the travel lane of the public right-of-way to allow for a required clear zone/buffer between the outside edge of any streatory and the travel lane. The travel lane is defined as the area between the end of the marked diagonal parking stalls on both sides of the street.
3. Streateries shall not be located in ADA parking stalls, in front of fire hydrants or bus stops, or over the top of a city storm catch basin, water valve, gas valve, electrical vault, or sewer manhole.
4. Where only one parking stall exists between two streateries, or a streatory and parklet, on a block face, each of the two streateries (or streatory/parklet) must be set back at least one foot from the intervening parking space.

#### F. Other Site Requirements.

1. Streateries must be protected at their end(s) from any adjacent vehicle parking space by a city-approved barrier or buffer. Each barrier or buffer must include adequate lighting or reflective markings for nighttime visibility to drivers. All barriers or buffers must be approved by the city engineer.
2. A solid wall or screening is required on at least three sides the streatory to provide separation from automobile traffic and parking as follows:
  - a. A solid wall or screening material shall be meet the design criteria in subsections (A) and (B), above;
  - b. Screening it shall primarily consist of: (1) lattice, picket, or solid fencing; (2) fabric material; or (3) containerized plantings;
  - c. In all cases, the wall or screening shall be between 42 inches and twelve (12) feet in height while allowing for unobstructed views into the streatory between 30 inches and 42 inches high to ensure sight visibility between parked vehicles and vehicles in the travel lane; and
  - d. An applicant may propose a different material that provides both external views and a sense of separation, subject to approval by the director.
  - e. Reflecting markings or lighting, as approved by the city engineer, are required along the traffic side for nighttime visibility to drivers.
3. Fuel-burning heaters and open flames, such as candles, torches and fire pits, are not allowed within three feet of any fabric (including tents and canopies) unless approved by the fire marshal.
4. Follow all relevant fire and electrical code requirements. All electrical service shall be installed overhead at a minimum height of eight (8) feet and used for lighting purposes only. Sidewalks must be free of trip hazards.

G. Signage. No more than one sign shall be allowed on commercial structures in city right-of-way, as permitted under this chapter. The sign must be no greater than 18 inches in length and eight inches in height and must not be internally lit nor have components that wave or otherwise appear to move. Signs shall not be attached to the ground, but may be attached to or part of the structure so long as it does not interfere with traffic or sight visibility.

H. Maintenance. The permittee is responsible for maintenance of all streatory components, including surface and furniture cleaning, and keeping the area underneath and adjacent to the streatory free of obstruction so that stormwater can flow freely at the curb.

#### I. Installation and Removal.

1. The permittee is responsible for providing and installing all components of the streatory and for removing the components when the permit has expired. No permanent attachments to the street or sidewalk are allowed.
2. The city may also require removal of the streatory, as needed, to address emergency conditions or infrastructure maintenance or repair. When possible, the city will provide a 90-day written notice for scheduled maintenance.
3. The permittee is responsible the moving of the streatory for emergencies or scheduled maintenance. If the streatory is not moved by the permittee as requested by the city, all costs incurred by the city to remove or relocate structures due to emergency and/or scheduled maintenance are the responsibility of the permittee.

J. City staff may provide additional details or guidance for permittees to implement this section, consistent with direction from the city engineer and the community development director or their respective designees.

#### K. Permit revocation; removal.

1. Permits approved under this chapter are temporary and shall not create any property interest or vested rights, and may be revoked at the sole discretion of the city upon thirty (30) days' written notice. The city may also revoke a permit without notice if it finds that the permit has been issued based upon false information, when the permittee exceeds the scope of the permit, or the activities occurring under the permit are found to cause unreasonable impacts to public health, safety or welfare or city operations and maintenance, or a structure has not been constructed, maintained or used in accordance with the provisions of this chapter.
2. Permits may also be revoked if:
  - a. Following written notice of the lapse of insurance policy required to be maintained by under this chapter, the permittee fails to supply a valid certificate of insurance within seven (7) days of notification by the city of the lapse; or
  - b. Following written notice of the non-payment of an annual application fee or fees for the exclusive use of the right-of-way, the permittee fails to bring fees/account current within seven (7) days of the notice.
3. The structural components of a streatory must be completed and approved by the city (if required) within 30 days of street use permit approval or the commencement of operations, whichever is first, or the city may revoke the permit to avoid leaving the parking space



unavailable for use. A notice of potential revocation shall be provided by the city to the permittee at least ten (10) days in advance of revocation.

4. If any such structure, obstruction, use or occupancy is not discontinued following notice of revocation by the city, the city engineer may remove any structure or obstruction, or make such repairs upon the structure or obstruction as may be necessary to render the same secure and safe, at the expense of the permittee, and such expense may be recorded as a lien and otherwise collected in the manner provided by law.

L. Bond. Streatery permit applicants shall post a refundable cash bond to secure removal of the streatery, at the time of application, in the amount of one thousand dollars (\$1,000). The bond shall not relieve the permit holder from payment to the city of any expenses in excess of the bond amount incurred by the city for removal of the streatery.

#### **4.14A.060 Parklets.**

A. Location. A parklet may occupy up to two parking stalls or loading zone space located at either end of a city block and adjacent to a traffic bump-out node but shall not include any structural components such as a roof or walls. No food or beverage services or other commerce is allowed within a parklet.

B. Permission required. A parklet permit may be issued to a business or non-profit organization with the written permission of the adjacent business. The permit holder is responsible to maintain the space according to the standards set forth in this chapter.

C. Fencing required. Parklets must have fencing of between 30 inches to 36 inches high that encloses both sides and the end facing the street. Allowed fencing includes: 1) lattice, picket, or solid fencing; (2) fabric material; or (3) containerized plantings where the container is at least 30 inches in height, but not exceeding 36 inches in height. Any fencing or screening from the traffic lane above 36 inches in height must allow for views into the parklet to ensure sight visibility between parked vehicles and vehicles in the travel lane.

D. No signage. No signs shall be allowed on or in parklets.

E. Fee. The fee for a parklet permit is based on the number of parking stalls, or portions thereof, being utilized in the city right-of-way. The fees shall be \$25.00 per parking stall, or portion thereof, per month. All fees shall be due and payable at the time of issuance of the permit.

#### **4.14A.070 Sidewalk café permit.**

Sidewalk cafés are subject to the follow requirements:

A. Permit required. A sidewalk café permit (“sidewalk use permit”) is required for use of a limited portion of city sidewalk area for the service of food and beverage (“sidewalk service area”) as an extension of the applicant’s business fronting directly upon said sidewalk. The sidewalk use permit

allows for the placement of tables and chairs only, and related barriers when required in conjunction with the service of alcoholic beverages.

B. Application required. A completed "Sidewalk Use Permit" application must be submitted for any business use as a sidewalk service area as an extension of the applicant's business fronting directly upon said sidewalk area. Application can only be made by the owner of such business.

1. Clear dimensional plans shall depict the proposed location of all tables, chairs, and barriers (when required), as well as the location of all present fixed and moveable objects located in or upon the affected sidewalk area shall be submitted with the application. The plans shall include specific measurements of all distances between the various tables, chairs, barriers, objects, curb and adjacent building or property line.

2. City review of an application will be completed within thirty (30) days of receipt of a complete application and include review by other city departments and the fire marshal, as appropriate. The director may extend the review period when reasonably necessary because additional information is required from the applicant and may issue the sidewalk use permit with any conditions necessary that are consistent with the requirements of this chapter, or any other local or state law.

C. General provisions.

1. Placement of tables, chairs, and any barriers must allow for a minimum of five linear feet (5') of unobstructed passage for passersby between any table, chair or barrier and the outside edge of the sidewalk, and between any table, chair or barrier and any other object located in or upon the sidewalk.

2. Table size limitations. Tables may be circular, square, or rectangular only, and no side or diametrical dimension of such a table shall exceed thirty-two inches (32") in length.

3. The number of chairs authorized for use under this permit shall not exceed twice the number of tables placed for use under this permit.

4. There shall be a maximum of one table and two chairs for each ten (10) linear feet of the permittee's business fronting directly upon the sidewalk.

5. All tables, chairs and barriers placed on the sidewalk under this permit must be directly visible from the interior of the business.

6. The allowed hours of use of the sidewalk service area shall be 7:00 a.m. to 10:00 p.m.

7. The placement, use and removal of all tables, chairs and barriers authorized by this permit shall be at no cost to the city.

8. A sidewalk café must be ADA-accessible. A wheelchair user must be able to access at least one seat at a table, unless the business has other dining that is ADA-compliant and available for customer use.

9. The permittee, and permittee's officers and employees, shall comply with all applicable local, state, and federal laws, ordinances and regulations.

D. Additional provisions when alcoholic beverages are served in a sidewalk café area. The permittee's use of the sidewalk café area identified may include the service of alcoholic beverages if the following additional provisions are satisfied:

1. The sidewalk café area shall have a perimeter barrier during all hours of use, and the barrier shall be at least forty-two inches (42") in height. The barrier shall consist of a physical structure, such as a folding metal gate or moveable fence, that bars movement between two areas. Barriers may not be affixed to the sidewalk, nor may the sidewalk be disturbed in any way.

2. Service of alcoholic beverages and use of the sidewalk service area must be in accordance with all applicable provisions of Chapter 66 RCW ("Alcoholic Beverage Control") and Title 314 WAC ("Liquor Cannabis Board").

E. Fees. The fee for a sidewalk café is based on the number of tables placed on the city sidewalk. The annual fee shall be twenty-five dollars (\$25.00) for each table authorized for use and the amount payable by the City for the leasehold excise tax assessed for the permit, due and payable at the time of issuance of the permit. There shall be no pro-ratio or refund of fees for only a portion of a year, regardless of the reason the use is for less than a full year.

F. Revocation and Removal.

1. A sidewalk café permit is non-assignable revocable and may be terminated, revoked or suspended at the sole discretion of the city upon thirty (30) days' written notice. No vested rights shall accrue to the applicant hereunder.

2. Except in cases of emergency, in which case no prior notice need be given to revoke or suspend the use herein permitted, the city will give permit holder thirty (30) days' advance notice of the effective date of the termination, revocation or suspension of this permit.

3. Permittees are required to remove its property from the city's sidewalk upon city termination, revocation or suspension of this permit. Permittee shall be liable for all costs of removal and storage incurred by city, and any unclaimed property will be deemed abandoned in accordance with applicable state law.

4. In the event the city suspends, revokes or terminates this permit, requiring removal of the permittee's property, permittee shall not be entitled to any compensation.

G. The provisions of sections 4.14A.090, 4.14A.100 and 4.14.A.110 shall apply to sidewalk cafes.

**4.14A.080 ADA accessibility.**

A. A streatory must be ADA-accessible. Platforms must be ADA-accessible from the public sidewalk and upon entering the streatory, a wheelchair user must be able to access at least one seat at a table on the platform. Exception: A streatory may be allowed without a platform if the business has other dining that is ADA-compliant and available for customer use.

B. Parklets must include street access or ADA-accessible ramps that allow transition from the sidewalk into the parklet.

**4.14A.090 Insurance Requirements.**

A. The applicant for any permit under this chapter shall provide commercial general liability insurance with minimum limits of \$1,000,000 per occurrence and \$2,000,000 general aggregate, a certificate of insurance naming the city as an additional insured, with respect to liability, and providing that it shall be primary as to any other policy of insurance. Certificates of insurance and all necessary endorsements shall be submitted to the city for approval prior to permit issuance. Acceptability of insurance is subject to approval by the office of the city attorney. The applicant is responsible for ensuring that insurance requirements as detailed herein, or as may be revised, are maintained throughout the duration of the permitted right-of-way use. The director, in consultation with the city attorney, may waive or modify the insurance requirements contained herein when the permitted activity poses minimal risk to persons and property.

B. If alcohol service is permitted in the right-of-way use by the Washington State Liquor and Cannabis Board, the permittee shall procure and maintain for the duration of the permit Liquor Liability insurance in the amount of not less than \$1,000,000 per occurrence. The city must be named as an additional insured on the Liquor Liability insurance.

**4.14A.100 Hold harmless.**

As a condition to the issuance of any permit under this chapter, the applicant shall execute and deliver to the city upon a form approved by the city attorney and agreement to defend, indemnify and hold harmless the city, its officers, employees and agents, for any and all suits, claims or liabilities caused by, or arising out of, any negligent acts or omissions or intentional misconduct of the applicant, its officers, agents, or employees in connection with the right-of-way use.

**4.14A.110 Appeal.**

Except for revocation of a permit by the city pursuant to sections 4.14A.050(M)(1) or 4.14.070(F)(1), any affected person may appeal the interpretation, implementation, and/or decision of the city concerning any aspect of this chapter to the city clerk. The appeal notice shall be in writing and submitted to the hearing examiner within 10 calendar days of the date of the action or

decision being appealed. The notice shall include, at a minimum, the following information: name, address, telephone number of applicants, location and type of right-of-way use involved in the appeal, decision being appealed, reference to any applicable code or ordinance, and a concise statement of the reasons for the appeal.

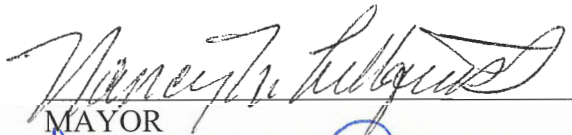
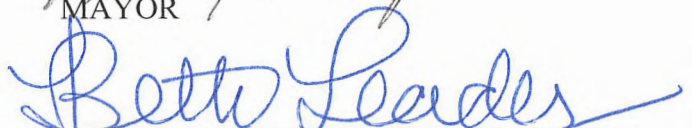
**Section 3. Severability.** If any portion of this ordinance is declared invalid or unconstitutional by any court of competent jurisdiction, such holding shall not affect the validity of the remaining portion(s) of this ordinance.

**Section 4. Corrections.** Upon the approval of the City Attorney, the City Clerk and the codifiers of this ordinance are authorized to make necessary corrections to this ordinance including, but not limited to, the correction of scrivener's/clerical errors, references, ordinance numbering, section/subsection numbers and any references thereto.


**Section 5. Effective Date.** This ordinance shall take effect and be in force five (5) days after its passage, approval and publication.

The foregoing ordinance was passed and adopted at a regular meeting of the City Council on the 20<sup>th</sup> day of March, 2023.

ATTEST:

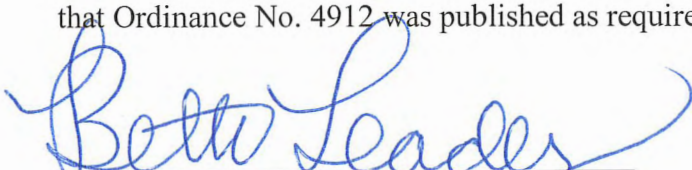
  
MAYOR  
  
CITY CLERK

Approved as to form:

  
CITY ATTORNEY

Publish: 3-23-2023

I, Beth Leader, City Clerk of said City, do hereby certify that Ordinance No. 4912 is a true and correct copy of said Ordinance of like number as the same was passed by said Council, and that Ordinance No. 4912 was published as required by law.

  
BETH LEADER