



EL DORADO

THE FINE ART OF LIVING WELL

City of El Dorado, KS
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TO: City Commission
FROM: Tabitha Sharp, City Clerk
SUBJ: Work Session Meeting Agenda
DATE: August 15, 2018

A Work Session is scheduled for August 15, 2018 at 4:00 pm in the Commission Chambers at City Hall, 220 E. First Avenue. The following items will be presented:

I. ITEMS FOR PRESENTATION AND DISCUSSION

- a. Elks Lodge Sales Tax Funds Discussion
- b. Tax Abatement/IRB Policy
- c. Partner Agency Discussion
- d. Dangerous Animal Ordinance Revision

II. AUGUST 6TH REGULAR AGENDA REVIEW

- a. Consent Agenda
 - i. City Commission Minutes
- b. New Business
 - i. Tax Abatement/IRB Policy
 - ii. El Dorado Inc. MOU and Work Plan

III. REPORTS

- a. City Commission Reports
- b. City Manager's Report

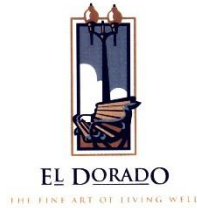
2018 Commission Priorities

Water Sales • Community Image • Industrial and Business Parks • Parks and Recreation • Public Safety

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City Manager's Office
David B. Dillner
City Manager
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TO: City Commission
FROM: David Dillner, City Manager
SUBJ: Proposed Industrial Revenue Bond/Tax Abatement Policy
DATE: August 13, 2018

Background: The City has had a policy to guide the approval of tax abatement and industrial revenue bond (IRBs) requests since the early 1990s. The most recent time the policy was amended was in 2004, when Resolution No. 2475 amended the fees for IRB renewal applications and established the Administrative Review Committee.

The City has approved many millions of dollars in tax abatements and IRBs since the adoption of a formal policy, although a complete record of the incentives does not readily exist. Most recently, the City has approved ten-year tax abatements for BG Products, Inc. and Pioneer Balloon.

Staff has reviewed the current policy and recommends several changes to better align with the City's economic development goals to target specific industries and businesses as well as target development in certain geographic areas of the community.

Key Highlights: Important changes in the proposed policy include:

- **Establishment of base tax abatement of 50%.** All tax abatements approved under the proposed policy would receive at least a 50% tax abatement. Additional increments of abatement may be granted based on meeting criteria established in the policy.
- **Establishment of tax abatement criteria.**
 - Targeted industries will receive an additional 25% abatement. Proposed target industries include: Water-Intensive Businesses; Agribusiness and Agricultural Manufacturing; Industrial Products Manufacturing; Transportation Distribution and Wholesale; Health Services; Food and Beverage Processing; Aerospace; Advanced Manufacturing; Alternative Energy; Bioscience; Food Processing; Logistics and Distribution; and Office Development.
 - Development occurring in targeted areas will receive an additional 5%. Proposed targeted areas include: Downtown Business District, El Dorado Business Park, and El Dorado Industrial Park.
 - The City can define businesses to exclude from IRBs or tax abatements. Presently, the proposed policy does not define any excluded businesses, although such businesses may need to be added to the policy to define businesses that we do not want to incentivize to locate in El Dorado. An example of such a business might be a business type that would not align with the community's values.
 - The City will preserve the existing tax base and will not provide a tax incentive that takes a property off of the tax rolls, except in circumstances where a property is included in an Opportunity Zone or other federal or state designated special investment area.

- Speculative construction will be eligible for tax abatements and IRBs pursuant to the City's "Speculative Construction Policy" that must be developed. This provision allows the City to grant the incentive for these types of requests, but will require a policy to be developed for this specific use prior to it being used.
- **Amendment of process.** Applicants will submit an application and an application fee of \$2,500, along with all the required documents prior to being considered. The Administrative Review Committee, comprised of the city manager, city clerk, Inc. president, Inc. executive director, and member of the City Commission will review application and make a recommendation to the City Commission. The mayor served on this committee prior to the proposed policy. An independent cost-benefit analysis is conducted, and the information is provided to the applicant, committee, and other taxing jurisdictions for review. A public hearing is scheduled for the matter to be heard in a meeting of the City Commission. The City Commission approves a Resolution of Intent expressing its intent to grant the abatement.
- **Establishment of fees.** The proposed policy amends the application fee to \$2,500, and charges an origination fee of 0.05% of the issuance for economic development purposes. The applicant will also reimburse the City for the actual out-of-pocket expenses of the City related to the issuance.

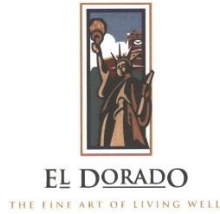
Fiscal Impact: The proposed policy has no immediate fiscal impact as it addresses requests for future industrial revenue bonds and tax abatements. Projects receiving the incentives contained in the policy may not contribute all or a portion of property and sales taxes normally required of projects.

Legal Review: A legal review has not been conducted on the proposed policy at this time. A legal review will be conducted on the proposed policy if the City Commission desires to have the City Attorney review it.

Staff Recommendation: Staff recommends approval of the proposed Industrial Revenue Bond/Tax Abatement Policy.

Commission Actions: The City Commission has the following options with respect to this issue (*listed in no particular order*):

- **Approve the IRB/Tax Abatement Policy as provided.**
- **Request modifications to the proposed IRB/Tax Abatement Policy.**
- **Request additional information from the City Manager.** The City Manager will collect such other information as may be necessary to assist the City Commission in making an informed decision on this matter. The City Commission will need to specify the information desired if this option is selected.



INDUSTRIAL REVENUE BOND AND CONSTITUTIONAL TAX ABATEMENT POLICY

1. PURPOSE

The purpose of this Policy is to establish the official policy and procedures of the City for the issuance of industrial revenue bonds and the granting of constitutional property tax abatements by the City of El Dorado, Kansas. The governing body has recognized the need for the responsible application of economic development incentives because of the potential impact on the City and the other taxing authorities. While each request for economic development incentives must be considered on its own merits, the governing body recognizes the need and desirability of a policy statement outlining general requirements for such requests.

2. POLICY

To meet the economic goals of the City, it shall be the policy of the governing body to consider either a fifty percent (50%) real property tax abatement or a negotiated fixed payment-in-lieu-of-taxes ("PILOT") payment for portions of a project that qualify for tax abatement under Kansas law, provided the project meets the criteria listed in Section 3. Depending on how the tax abatement is structured over the term, the percentage tax abatement or PILOT payment for a project may be different from year to year, and may exceed or be less than an overall average of fifty percent.

It shall also be the policy of the City that economic development projects pay their fair share of applicable property taxes, special improvement districts assessments, and cost of utility services. Economic development projects shall have a positive financial benefit to the City, and the City reserves the right to approve the cost-benefit analysis model used to determine the financial impact.

3. ABATEMENT CRITERIA

It shall be the policy of the City to consider a request for the issuance of its industrial revenue bonds ("IRBs") or for a constitutional property tax abatement for economic development purposes if, in the opinion of the governing body, the request satisfies all statutory requirements and if the economic development project being considered meets the following local criteria:

- a. Existence of Economic Benefit:** The project must add to the El Dorado economy and demonstrate how it helps the City achieve its economic goals. Evaluation criteria to be used in determining benefit to the community shall include, but not be limited to the following: the amount of capital investment; whether the project produces value-added products and services; and whether the project provides a positive fiscal and economic benefit, as determined by a cost-benefit analysis prepared by an independent party selected by the City.
- b. Type of Business:** The project shall be of a nature that has been identified by the governing body as desirable to stimulate the local economy and improve the quality of

life for its citizens. The project should be one in which a substantial part of its total products and/or services are either exported from the El Dorado area, or they would add jobs and replace purchases now being made by El Dorado citizens in areas outside of the City if the items are for local consumption. Additional considerations may include whether the project would be considered a business “headquarters,” whether a project has the effect of supporting or spurring retail development, and whether a project would help the City achieve successful completion of an existing commercial or industrial park or the development of a new commercial or industrial enterprise. The City will also consider providing incentives to encourage the expansion of existing El Dorado businesses who would not otherwise qualify to receive incentives as set forth herein.

- c. **Targeted Industries:** An abatement adjustment for an additional twenty-five percent (25%) may be considered for projects that are in designated targeted industries including: Water-Intensive Businesses; Agribusiness and Agricultural Manufacturing; Industrial Products Manufacturing; Transportation Distribution and Wholesale; Health Services; Food and Beverage Processing; Aerospace; Advanced Manufacturing; Alternative Energy; Bioscience; Food Processing; Logistics and Distribution; and Office Development.

At any time, the El Dorado Inc. Advisory Board may provide the City with a revised targeted industry list for consideration by the City Commission. The City Commission may exceed the five percent adjustment for any project it determines to be of extraordinary benefit to the City.

- d. **Targeted Area:** An abatement adjustment for an additional five percent (5%) may be considered for projects that locate in a targeted area and which meet the minimum investment thresholds set forth in Section 3. The targeted areas include the El Dorado Downtown Business District as identified in **Exhibit A**, the El Dorado Business Park as identified in **Exhibit B**, and the El Dorado Industrial Park as identified in **Exhibit C**.

At any time, the El Dorado, Inc. Advisory Board may provide the City with a revised targeted area list for review and consideration by the City Commission. Projects which locate in a targeted area may receive property tax abatement for new construction or an abatement of the increase in value resulting from improvements made to an existing structure that increase the valuation of the property. The City Commission may exceed the twenty-five percent adjustment for any project it determines to be of extraordinary benefit to the City which does not meet the minimum investment thresholds set forth in Section 3.

- e. **Excluded Businesses:** The City shall not grant a property tax abatement on any property used for an exempt purpose as defined by K.S.A. 79-201, or other businesses and industries that may be excluded by this policy, as amended. They are currently no industries excluded by local policy.

As a general rule, the City will also refrain from providing a tax abatement or issue industrial revenue bonds for a project involving a property that has previously received a tax abatement or where industrial revenue bonds have been previously issued, except in the case where the project involves an expansion of the previously existing property or building. In this case, the City may grant a tax abatement and/or issue industrial revenue bonds, under the terms of this Policy, for the portion of the property directly involved in

the expansion. The previously existing portion of the property or building will not be eligible for the incentive.

The City may, at its sole discretion, waive any of these prohibitions if the applicant demonstrates compelling and unique circumstances regarding its project.

- f. Maintain Existing Tax Base:** To facilitate new development, the City and El Dorado, Inc. shall assist new industries that invest in new buildings, building expansion or install or locate new machinery and equipment in the City. However, the amount of property taxes or special assessments on the existing land and facilities shall under no circumstances be reduced for new development projects.

The City will consider granting tax abatements to properties included in the existing tax base as a taxable use if such property is included in an area designated as an Opportunity Zone by the State of Kansas, or other federal or state designated special investment area or program, and where such project has the potential to serve as a significant catalyst for revitalization and investment within the designated area.

- g. Definitions of Existing Business and Existing Small Business:** A business shall be an “Existing Business” if it has had facilities and operations in the corporate limits of the City for a period exceeding one year prior to submitting an application for issuance of industrial revenue bonds in accordance with this Policy. All other businesses shall be defined as “New Businesses” for the purposes of this policy.

A business shall be defined as an “Existing Small Business” if it meets the criteria to be considered an Existing Business and 1) proposes to make an investment in its facilities between \$1 million and \$4.5 million financed by the proceeds of industrial revenue bonds, and 2) such investment would represent at least a 50% increase in its real property investment made in El Dorado prior to submitting an application for issuance of industrial revenue bonds in accordance with this policy.

- h. Sales Tax Exemption on Building Materials and/or Personal Property:** The City will consider on a case-by-case basis, issuance of industrial revenue bonds for the sole purpose of enabling a project to obtain a sales tax exemption certificate on its building materials and/or personal property without granting a real property tax abatement. This consideration may include, but not be limited to, whether a project will result in the adaptive re-use of an underutilized property; whether a project is included in a tax increment financing district (TIF), transportation development district (TDD), or community improvement district (CID); and whether, but-for issuance of bonds to obtain a sales tax exemption certificate on building materials/personal property, the project would not occur. The City will not consider issuance of bonds to obtain a sales tax exemption certificate on building materials/personal property for investments of less than \$2 million, or for development of a greenfield site not otherwise associated with a TIF, TDD, or CID.
- i. Speculative Construction.** The City will consider granting tax abatements under the auspices of this policy for speculative construction pursuant to its Speculative Construction Policy, as approved by the City Commission.
- j. Investment not Limited to Bond-Financed Project Costs:** For purposes of determining compliance with the required investment thresholds herein, the term

“investment” includes all costs of a project requesting issuance of industrial revenue bonds regardless of whether those costs are financed with bond proceeds. Such project costs may include, but not be limited to, bond issuance costs, professional fees, and machinery and equipment and/or other personal property costs related to the project.

Per Article 11, Section 13 of the Kansas Constitution, constitutional tax abatements for ad valorem taxation must be used exclusively by a business for the purpose of: 1) manufacturing articles of commerce; 2) conducting research or development; or 3) storing goods or commodities which are sold or traded for interstate commerce.

4. INDUSTRIAL REVENUE BOND PROCESS

Pursuant to applicable state law, the City shall consider granting IRBs and associated tax abatements after completion of a completed application, cost-benefit analysis, and remittance of the required fees as described herein.

- a. Application:** The City shall consider issuing its industrial revenue bonds and granting property tax incentives after receipt of a completed application on the form prescribed by the City and payment of the application fee. The application shall not be forwarded to the City Commission for review and consideration until the Administrative Review Committee and Bond Counsel have had sufficient time to review the application and any other required information. The Administrative Review Committee will make a recommendation on the request, to include an appropriate rate of abatement, for the City Commission’s consideration. Following such review, the City Manager shall forward the completed application and recommendation to the City Commission with a request for either approval or denial of the tax incentive request.

The City reserves the right to request any additional information needed supplement the application prior to consideration by the City Commission.

- b. Administrative Review Committee:** The Administrative Review Committee shall be comprised of the City Manager, City Clerk, El Dorado Inc. President, El Dorado Inc. Executive Director, and a member of City Commission.
- c. Cost-Benefit Analysis; Public Hearing:** The City shall cause to be prepared, a cost-benefit report analyzing the costs and benefits of any requested property tax abatement. The cost-benefit analysis shall include the effect of any requested property tax abatement on state and other local taxing jurisdictions’ revenues, to include the applicable school district, Butler County, and Butler Community College. The report shall be prepared by an independent party selected by the City.

Following receipt and review of the cost-benefit analysis, the City shall schedule a public hearing on the requested issuance of IRBs and property tax abatement. The public hearing shall be conducted at a regular meeting of the City Commission. Notification of the public hearing shall be published in the official newspaper, and provided to the Butler County Board of Commissioners, Butler Community College Board of Trustees, and the applicable school district in the manner required by law. The City will provide these local taxing entities with a copy of the cost-benefit analysis and the Administrative Review Committee recommendation prior to the public hearing.

The City will consider issuance of IRBs or granting of a constitutional tax abatement if the cost-benefit analysis demonstrates a positive economic benefit of the project to the

City. The City will also carefully consider the economic benefit to other taxing jurisdictions that may be affected by the issuance of IRBs or a constitutional tax abatement.

- d. **Resolution of Intent:** After holding the public hearing and considering the cost-benefit report, the City Commission may consider a Resolution of Intent evidencing its intent to proceed with granting tax incentives for the project. The Resolution of Intent shall evidence the intent of the City Commission to issue industrial revenue bonds or grant a constitutional property tax abatement for the project. After the adoption of the Resolution of Intent, the owner and the owner's contractor shall be entitled to use the City's tax exemption certificate for eligible project-related expenses if the project is to be financed with industrial revenue bonds.
- e. **Assignment Resolution:** The owner of the property may only transfer or assign all or a portion of its interest in the Resolution of Intent with the consent of the City Commission. The owner shall request an assignment on a form provided by the City. The City Manager shall present the request to the City Commission for consideration. If the assignment resolution is for a portion of the Resolution of Intent, the City shall: a) prepare, or cause to be prepared, a cost-benefit analysis for that portion of the project proposed for assignment, and b) schedule a public hearing on the property tax abatement being requested.
- f. **Ordinance:** The City Commission, upon request of the owner, may consider an ordinance authorizing the issuance of industrial revenue bonds or granting a constitutional tax abatement at any time prior to the completion of the project. Completion of projects shall be defined as provided in Section 6.
- g. **Board of Tax Appeals:** At least seven days prior to the issuance of any IRBs, the City shall file a statement with the State Board of Tax Appeals containing information required by the Board for the review and consideration of the request by the Board.

5. SCHEDULE OF ABATEMENT

The schedule of property tax abatement shall be determined by the City Commission using the criteria in Section 2 and the facts and circumstances unique to each project. Generally, projects shall receive the following base percentage of property tax abatement which is based on the investment in land and buildings:

<u>Capital Investment</u>	<u>Base Abatement</u>
Less than or equal to \$15 million	50% for ten years
Greater than \$15 million	75% for ten years

If the application for abatement is for a business park or other facility that will be constructed in multiple phases, the capital investment of the project will be based on the investment in the entire project and not a portion of the project, unless the City Commission deems otherwise.

6. COMMENCEMENT OF ABATEMENT

The abatement term for projects under the authority of Section 13 of Article 11 of the Kansas Constitution shall begin in the calendar year after the calendar year in which the business commences operations or the calendar year in which expansion of an existing business is completed, as the case requires. The abatement term for a project or phase of a project under the

authority of K.S.A. 12-1740 through 12-1749 and 79-201a shall commence on the January 1st of the calendar year in which the bonds are issued for each phase of the project.

7. PERFORMANCE AGREEMENT

The applicant for each project shall execute and deliver a performance agreement or payment-in-lieu-of-taxes (“PILOT”) agreement, and such other documents as staff and bond counsel shall require for each project that receives property tax abatement.

8. FEES

The City Commission hereby establishes the following fees for the issuance of its industrial revenue bonds and property tax abatement:

a. Application Fee:

i. Initial Application Fee. A non-refundable fee in the amount of \$2,500 shall accompany the application for the issuance of industrial revenue bonds and/or for constitutional tax abatement.

ii. Origination Fee. The City will charge an origination fee based on the maximum amount of bonds being issued or the amount of constitutional tax abatement being requested. The origination fee shall be calculated as follows:

1. **Amount of Origination Fee.** The City shall charge an origination fee equal to 0.05% of the amount requested by the applicant for industrial revenue bonds and/or constitutional tax abatement and authorized by the City Commission.

2. **Payment of the Origination Fee.** The entire origination fee is due and payable at the time the bonds are issued for a project or the ordinance is adopted for constitutional abatement projects. If the origination fee exceeds \$25,000, the City will, upon the request of the applicant, allow the applicant to pay the origination fee over a ten-year period of time. If the applicant elects to pay the origination fee over time, \$25,000 shall be due at the time the bonds are issued or the ordinance is adopted, as applicable. The remainder of the application fee shall be treated as a loan, amortized at the rate of 4%, and paid in twenty equal installments due on the first day of January and July of each year. If the origination fee is to be paid over time, the terms of repayment shall be included in either the performance or payment-in-lieu-of-tax agreement or a promissory note to be delivered to the City by the applicant.

3. **Use and Deposit of Origination Fees.** All origination fees shall be used exclusively for local economic development initiatives. The origination fees shall not be used to pay any administrative costs of the City. The City shall deposit all origination fees in a separate fund or account to ensure that all origination fees are not commingled with other funds of the City. To ensure compliance with this policy, the City Commission shall adopt a resolution approving all expenditures of origination fees and appropriating such funds for said purposes. The City Manager shall, at least once a year, deliver a report to the City Commission detailing the amount of origination fees collected by the City, the uses authorized by

the City Commission and describing the actual use of the origination fees.

- b. Actual Costs.** The applicant shall reimburse the City for all costs associated with administering and supervising the property tax abatement. These costs include preparation of the cost-benefit analysis, all legal publication notices, application fees to the Court of Tax Appeals, reimbursement for the City's bond counsel fees and all other miscellaneous costs. The City will invoice the applicant for all administrative expenses. The applicant shall remit payment for such expenses promptly after receiving the invoice from the City.

9. WAIVER OF REQUIREMENTS

The City Commission reserves the right to deviate from any policy or procedure if the Governing Body determines that such deviation is of exceptional benefit to the City or extraordinary circumstances prevail. Notwithstanding the foregoing, the City shall at all times comply with all procedures required by state law.

EXHIBIT A
Downtown Business District

[Insert Map]

DRAFT

EXHIBIT B

El Dorado Business Park

[Insert Map]

DRAFT

EXHIBIT C
El Dorado Industrial Park

[Insert Map]

DRAFT

2018 Commission Priorities

Water Sales • Community Image • Industrial and Business Parks • Parks and Recreation • Public Safety

TO: City Commission
FROM: Brad Meyer, Director of Public Works
SUBJ: Dangerous Animal Ordinance Revision Proposal
DATE: August 15, 2018

Background:

The City Commission passed an ordinance in 2014 strengthening our code's language regarding dangerous animals as well as allowing the Staffordshire Terrier in the city limits with certain restrictions. The ordinance was revised in 2015 to reflect changes in the Kansas State Statutes. Staff are requesting a new revision that reflects various situations that have come to light over the last few years. These changes include altering the definition of Staffordshire Terrier, removing all references to pit bulls, specifics regarding sterilization, providing specific language regarding service animal verification, and changing the time within which someone might have been convicted of a crime involving drugs or violence and still be able to own a Staffordshire Terrier. Staff will be present to discuss the specific changes, the previous ordinances have been included in the packet.

Policy Issue:

The City Commission must approve all changes to the municipal code.

Alternatives:

The Commission may choose to leave the ordinance the way it is, or suggest alternatives to what staff have proposed.

Fiscal Impact:

There is no fiscal impact for this ordinance.

Trade-offs:

N/A

Staff Recommendation:

Allow the suggested changes to be placed in the existing dangerous animal ordinance.

Commission Actions:

No action will be taken at the work session.

ORDINANCE NO. G-1187

AN ORDINANCE OF THE CITY OF EL DORADO AMENDING TITLE 6 OF THE EL DORADO MUNICIPAL CODE RELATING TO NUISANCE AND DANGEROUS ANIMALS

NOW, THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF EL DORADO, KANSAS:

Section 1: Section 6.04.010 of the El Dorado Municipal Code is amended to read as follows:

6.04.010 Definitions “Pit Bull” means:

1. Bull Terrier breed of Dog
2. Staffordshire bull terrier breed of dog
3. American pit bull terrier breed of dog
4. American Staffordshire terrier breed of dog
5. Dogs of mixed breed or of other breeds than above listed, which breed or mixed breed is known as pit bulls, pit bull dogs or pit bull terrier.
6. Any dog which has the appearance and characteristics of being predominantly of the breeds of bull terrier, Staffordshire bull terrier, American bull terrier, American Staffordshire terrier; any other breeds commonly known as pit bulls, pit bull dogs or pit bull terriers; or a combination of any of these breeds.

6.04.010 Definitions “Public Nuisance” means any animal or animals which:

1. Without provocation: molests chases or interferes with persons or vehicles in the public right-of-way by jumping upon, chasing, barking or biting at persons or vehicles.
2. Threatens or endangers the health or well-being of persons or other animals, or injures other animals.
3. Trespasses on school grounds.
4. Is repeatedly at large, specifically three or more times per twelve (12) month period.
5. Damages public or private property other than that of its owner or harbinger by its activities.
6. Creates excessive noise; including barks, howls, whines, brays or cries, which cause an unreasonable annoyance, disturbance or discomfort to the complainant.
7. Defecates upon any public or private property, other than the property of the owner of the animal, unless promptly removed by the animal owner or harbinger (including domestic cats). This Section shall not apply to a blind person while walking his/her dog.
8. Creates noxious or offensive odors or unclean conditions sufficient to annoy persons living in the vicinity.
9. Creates an insect breeding or attraction site due to the accumulation of excreta.

10. Scatters refuse that is bagged or otherwise contained.
11. Is unconfined while in heat.
12. Is ridden on public property and obstructs or interferes with vehicular or pedestrian traffic.

6.04.010 Definitions “Tethering” means any animal or animals which:

Tethering refers to any chain, leash, rope, cable, string, leather or nylon strap or any other material used to fasten a dog to a stationary object, pulley run line or a stake.

Section 2: Section 6.04.025 of the El Dorado Municipal Code will read as follows:

6.04.025 Nuisance Animals

It shall be unlawful for the owner of any animal to keep or maintain such animal in the City of El Dorado so as to constitute a nuisance.

- A. No animal may be declared a nuisance if, at the time of violations, the person or animal was teasing, tormenting, abusing or assaulting the alleged nuisance animal.
- B. No animal may be declared a nuisance if the animal was protecting or defending a human being within the immediate vicinity of the animal from an unjustified attack or assault.

Section 3: Section 6.04.050 of the El Dorado Municipal Code shall be amended to read as follows:

6.04.050 Violation – Penalty

- A. Any person, firm or corporation violating any of the provisions of this chapter shall, upon conviction thereof, be fined in a sum of not less than sixty-seven dollars and fifty cents (\$67.50) nor more than one hundred dollars (\$100.00) for the first offense and a sum of not less than eighty-two dollars and fifty cents (\$82.50) nor more than two hundred dollars (\$200.00) for the second offense or any subsequent offenses.
- B. It shall be a separate offense under this Subsection for any person owning, keeping or harboring any animal deemed a nuisance animal to permit, or allow the animal to run at-large within the City.

Section 4: Section 6.16.017 of the El Dorado Municipal Code shall read as follows:

6.16.017 Tethering

- A. It shall be illegal for any animal to be tethered or chained for more than one hour in the city limits. This ordinance requires that a dog must be untethered for three hours before being tethered again.
 - a. No person shall use any tether shorter than 10 feet in length.
 - b. No person shall use chains weighing more than 1/8 of the animal's weight, or inhibiting the free movement of the animal.
 - c. No person shall tether a dog on a choke chain.
 - d. No person shall tether a dog without access to proper protection from the elements.
 - e. No person shall tether a dog in an open area where it can be teased by people or in an area that does not provide protection from attack by other animals.
 - f. No person shall tether an animal where no steps have been taken to prevent the surface from becoming wet and muddy in the event of precipitation.

Section 4: Section 6.20.020 of the El Dorado Municipal Code shall be amended to read as follows:

6.20.020 Dangerous Animals

- A. It shall be unlawful for the owner of any animal to keep or maintain such animal in the City so as to constitute a dangerous animal. A dangerous animal is any animal which has done any of the following:
 - a. Caused injury, other than killing or serious physical harm, to any person;
 - b. Killed another animal;
 - c. Been the subject of a second or subsequent violation of Section 6.04.025
- B. Notwithstanding the definition of a dangerous animal above, no animal may be declared dangerous if any injury or damage is sustained by a person or animal who at the time such injury or damage was sustained, was upon premises occupied by the owner or keeper of the animal, or was teasing, tormenting, abusing or assaulting the dog or was committing or attempting to commit a crime, or if the animal was protecting or defending a human being within the immediate vicinity of the animal from an unjustified attack or assault.
- C. Any dangerous animal which is in the custody of an Animal Control Officer and which in the judgment of the Director of Public Works, or his or her designee, would constitute a menace to the health, safety or welfare of the public if released from custody, may be held pending a hearing on any charges or complaints filed in the Municipal Court to determine the disposition thereof.

Section 5: Section 6.20.040 of the El Dorado Municipal Code shall be amended to read as follows:

6.20.40 Restrictions on the ownership of Staffordshire Terriers and Mix Breeds Thereof

- A. Registration and Reporting: The owner or keeper of a Staffordshire Terrier and mix breeds thereof shall properly license the dog pursuant to section 6.12.010 of this code, and pursuant to the provisions set forth in this subsection. In addition to having, or obtaining, the license required by section 6.12.010, an owner or keeper shall submit a completed registration form for the keeping of a Staffordshire Terrier and mix breeds thereof to the City Clerk or his/her designee within thirty (30) business days after the publication of this ordinance.
- B. The owner or keeper of the Staffordshire Terrier and mix breeds thereof shall pay a \$50.00 annual registration fee for each dog, and such fee shall be submitted to the City Clerk or his or her designee with the registration form for the keeping of Staffordshire Terrier and mix breeds thereof.
- C. No dog shall be considered to be unlicensed under the terms of this subsection, if the owner or keeper has timely filed a completed application, until such application has been denied.
- D. All adult pit bulls within the City of El Dorado are required to have an identification microchip implanted in the dog traceable to the current owner and registered with the City of El Dorado. Such microchip information shall be included in the dog's annual license application with the City of El Dorado. The owner, keeper or harborer shall pay all costs associated with the microchip procedure.
- E. It shall be unlawful for any person to own, keep or harbor more than two Pit Bulls.
- F. It shall be unlawful for more than two adult Pit Bulls, to be owned, kept, or harbored on the same premises or dwelling.
- G. Any person, who owns a Pit Bull, shall have thirty days (30) thereafter the final adoption of this ordinance, to microchip and surgically sterilize such animal. Sterilization of the Pit Bull shall not be required upon certification, presented to the City Clerk or his or her designee, by a licensed veterinarian that such sterilization would be injurious to such dog due to its health or age.
- H. Any owner, keeper or harborer failing to provide documentation of the sterilization procedure as required by this section shall be deemed guilty of a misdemeanor.
- I. Any individual who fails to comply with the requirements of this section shall be guilty of a misdemeanor.
- J. The owner or keeper of the Staffordshire Terrier and mix breeds thereof shall maintain with the city clerk or his/her designee the address where the dog is

primarily kept or harbored. The owner or keeper shall notify the city clerk or his/her designee within five (5) business days if any of the following occurs:

- a. A change in the primary address where the dog is kept or harbored, whether in or out of the city limits; or,
- b. A change in the person who is owning, keeping or harboring the dog; or,
- c. The death of the dog; or,
- d. Any change in the information supplied in the application for the dog license, or in the information submitted along with such application; or,
- e. Harbor, keep or maintain a dog on property not owned by the person without the written consent of the land owner.

Section 6: Section 6.20.045 of the El Dorado Municipal Code shall read as follows:

6.20.045 Keeping of Staffordshire Terriers and Mix Breeds Thereof

- A. It is unlawful for an owner or keeper of a Pit Bull dog to permit the dog to be outside an approved or secure enclosure or fence unless the dog is restrained by a substantial chain or leash and under physical restraint by a responsible person who is at least 18 years of age or older and possesses sufficient strength for physical control of the animal.
- B. The same above requirements shall also be in effect for the purpose of transportation to and from a veterinarian for medical treatment.
 - a. In all such events, the Pit Bull dog shall be securely restrained with a chain or leash not exceeding four feet in length, and shall be under the direct control and supervision of the owner or keeper of the Pit Bull dog.
- C. Pit Bull dogs shall be securely confined indoors or in a securely enclosed and locked pen, kennel or fence, except when leashed as provided above.
- D. The owner, keeper or harborer shall allow the access to the property where the Pit Bull dog is being harbored to facilitate inspections and insure compliance for the duration of the life of the animal.
- E. It is unlawful for anyone having prior felony convictions defined in articles 34, 35, 36, and 43 of Chapter 21, and article 41 of Chapter 65 of the Kansas Statutes Annotated to possess, harbor, own or reside on any premises with a Pit Bull dog.
- F. It shall be unlawful for any person to:
 - a. Harbor, keep or maintain a Pit Bull dog on property not owned by the person without the written consent of the land owner; or
 - b. Sell, barter or give away to another person a Pit Bull dog; or
 - c. Own, keep or harbor more than two Pit Bull dogs.

- G. Should a Pit Bull dog be found running at large in violation of this section attack or inflict injury upon any person, the Judge of the Municipal Court shall, in addition to any other penalty provided in Chapter 6, order the dog destroyed. Provided, however, the Judge of the Municipal Court may, at his or her discretion, consider whether the attack or injury was sustained by a person who, at the time, was committing a criminal trespass or other tort upon the premises of the owner of the dog, or was tormenting, abusing, or assaulting the dog, or has, in the past, been observed or reported to have tormented, aroused, or assaulted the dog or was committing or attempting to commit a crime.

Section 7: Section 6.20.050 of the El Dorado Municipal Code shall be amended to read as follows:

6.20.050 Keeping of Dangerous Animals

Upon conviction of keeping a dangerous animal described in section 6.20.020, and the animal returning to its owner, the animal shall be kept subject to the following standards:

- A. Registration and Reporting: The owner or keeper of a dangerous dog shall properly license the dog pursuant to section 6.12.010 of this code, and pursuant to the provisions set forth in this subsection. In addition to having, or obtaining, the license required by section 6.12.010, an owner or keeper of a dangerous dog shall submit a completed application for a dangerous dog license to the City Clerk or his/her designee within five business (5) days of the date upon which the dog has been deemed to be dangerous under the provisions of this section, if such occurs after the publication of this ordinance.
- a. The application for a dangerous dog license shall be submitted on forms provided by the city clerk, and to be considered a completed application it shall be accompanied by all documents and other information required hereunder.
 - b. Upon issuance, the dangerous dog license shall be effective for one (1) year from the date of issuance, or for the duration of the liability insurance required by this section, whichever is shorter, and shall be reapplied for prior to its expiration.
 - c. Such dangerous dog license shall not be transferable, and shall expire whenever changes occur that would make the owner or keeper ineligible to obtain a license.
 - d. The owner or keeper of the dangerous dog shall pay a \$50.00 annual registration fee for each dangerous dog, and such fee shall be submitted with the application for a dangerous dog license.
 - e. No dog shall be considered to be unlicensed under the terms of this

subsection, if the owner or keeper has timely filed a completed application, until such application has been denied.

- f. The owner or keeper of the dangerous dog shall maintain with the city clerk or his/her designee the address where the dangerous dog is primarily kept or harbored. The owner or keeper shall notify the city clerk or his/her designee within five (5) business days if any of the following occurs:
 1. A change in the primary address where the dangerous dog is kept or harbored, whether in or out of the city limits; or,
 2. A change in the person who is owning, keeping or harboring the dangerous dog; or,
 3. The death of the dangerous dog; or,
 4. Any change in the information supplied in the application for the dangerous dog license, or in the information submitted along with such application; or,
 5. Harbor, keep or maintain a dangerous dog on property not owned by the person without the written consent of the land owner.
- B. Leash and Muzzle. No person shall permit a dangerous animal to go outside its kennel or pen unless such dog is securely leashed with a leash no longer than four (4) feet in length. No person shall permit a dangerous animal to be kept on a chain, rope or other type of leash outside its kennel or pen unless a person is in physical control of the leash. Such dogs may not be leashed to inanimate object such as trees, posts, buildings, etc. in addition, all dangerous animals on a leash outside the animal's kennel must be muzzled by a muzzling device sufficient to prevent such animal from biting persons or other animals.
- C. Confinement. All dangerous animals shall be securely confined indoors or in a securely enclosed and locked pen or kennel, except when leashed and muzzled as above provided. Such pen, kennel or structure must have secure sides and a secure top attached to the sides. All structures used to confine dangerous animals must be locked with a key or combination lock. Such structure must have a secure bottom or floor attached to the sides of the pen or the sides of the pen must be embedded in the ground no less than two (2) feet. All structures erected to house dangerous animals must comply with all zoning and building regulations of the City. All such structures must be adequately lighted and ventilated and kept in a clean and sanitary condition.
- D. Confinement Indoors. No dangerous animal may be kept on a porch, patio or in a part of a house or structure that would allow the animal to exit such building on its own volition. In addition, no such animal may be kept in a house or structure when the windows or screen doors are the only obstacle preventing the animal from exiting the structure.
- E. Signs. All owners, keepers or harborers of dangerous animals within the City shall

within 10 days of conviction, display in a prominent place on their premises a signs easily readable by the public using the words Beware of Dog or Beware of Dangerous Animal, whichever is applicable.

- F. Insurance. All owners, keepers or harborers of dangerous animals must within 10 days of conviction provide proof to the City Clerk or his/her designee, of public liability insurance in a single incident amount of \$1,000,000 for bodily injury to or death of any person or persons or for damage to property owned by any persons which may result from the ownership, keeping or maintenance of such animal. The insurance policy will provide that no cancellation or changes of the policy will be made unless 10 days written notice is first given to the El Dorado Animal Shelter.
- G. Identification Photographs. All owners, keepers or harborers of dangerous animals must within 10 days of conviction provide to the City Clerk or his/her designee, two (2) color photographs of the registered animal clearly showing the color and approximate size of the animal.
- H. Microchip. All owners, keepers or harborers of dangerous animals must within 10 days of conviction microchip the animal and provide microchip information to the City Clerk or his/her designee, to register the animal as dangerous.
- I. Spaying/Neutering. All owners, keepers or harborers of dangerous animals must within 10 days of conviction spay or neuter the animal and provide proof of sterilization to the City Clerk or his/her designee.
- J. Sale or Transfer of Ownership Prohibited. Sale - No person shall sell, barter or in any other way dispose of a dangerous animal registered with the City to any person within the City unless the recipient person resides permanently in the same household and on the same premises as the registered owner of such animal; provided that the registered owner of a dangerous animal may sell or otherwise dispose of a registered dog or the offspring or such dog to persons who do not reside within the City.
- K. Failure to Comply: It shall be unlawful for the owner or keeper of a dangerous animal to fail to comply with the keeping requirements and conditions set forth in this Article. Any animal found to be the subject of a violation of this Article shall be subject to immediate seizure and impoundment. In addition, failure to comply with the provisions of this Article is deemed a separate offense. Upon conviction, the Court shall order the revocation of the license of such animal resulting in the immediate removal of the animal from the City of El Dorado. In addition to the foregoing penalties, any person who violates this Article shall pay all expenses, including shelter, food, handling veterinary care and testimony necessitated by the enforcement of this Article.

Section 8: Section 6.20.080 of the El Dorado Municipal Code shall be amended to read as follows:

6.20.080 Violation – Penalty

- A. Any person violating or permitting the violation of Sections 6.20.020, 6.20.030, 6.20.040 and 6.20.050 of this chapter shall, upon conviction in municipal court be fined a sum not less than one hundred dollars (\$100.00) nor more than five hundred dollars (\$500.00). In addition, the court may order the permit, license or registration of the subject animal revoked and/or the animal removed from the city. Should the defendant refuse to remove the animal from the city, the municipal judge shall find the owner in contempt and order immediate confiscation and impoundment of the animal. Each day that a violation continues shall be deemed a separate offense. In addition to the foregoing penalties, any person who violates this chapter shall pay all expenses, including shelter, food, handling, veterinary care and testimony necessitated by the enforcement.
- B. Upon conviction of keeping a dangerous animal, the Municipal Court Judge may order restitution be paid to the victim of the violation of Section 6.20.020.
- C. Upon conviction of keeping a dangerous animal, and the animal returning to its owner, the animal shall be kept subject to the standards identified in Section 6.20.080 (D).
- D. It shall be unlawful for any person to violate the provisions of this Article. Any person found guilty of violating the provisions of this Article shall be assessed, fined, and the animal disposed of, as provided below:
 - a. At-Large/Registration. Any dangerous dog that is not confined or registered as required pursuant to this Article shall be impounded by an animal control officer or a law enforcement officer. In addition to all costs for impoundment, the owner or keeper shall pay a Two Hundred Fifty Dollar (\$250.00) fine. For a second offense within twenty-four (24) months, in which the dog is not confined or registered as required pursuant to this Section, in addition to all costs for impoundment, the owner or keeper shall pay a Five Hundred (\$500.00) fine and the animal control officer or law enforcement officer is empowered to impound the dog, and after the expiration of a five (5) day waiting period, exclusive of Sundays and holidays, shall order said dog removed from the City of El Dorado.
 - b. Attack on Human. If any dangerous dog shall attack, assault, wound, bite, or otherwise injure or kill, or assist in such injury or killing, a human being, the owner or keeper, in addition to other possible penalties, shall pay a Five Hundred Dollar (\$500.00) fine and the animal control officer or law enforcement officer is empowered to impound the dog, and after the expiration of a ten (10) day waiting period, exclusive of Sundays and holidays, shall order the dog removed from the City of El Dorado, or destroy said dog.

- c. Attack on other animal. If any dangerous dog shall kill or wound, or assist in killing or wounding, any domestically owned animal while off the owner or keeper's property, the owner or keeper shall pay a Two Hundred Fifty Dollar (\$250.00) fine. For a second offense within twenty-four (24) months, in which the same dog is involved in attack on another animal while off the owner or keepers property as required pursuant to this Section, in addition to all costs for impoundment, the owner or keeper shall pay a Five Hundred (\$500.00) fine and the animal control officer or law enforcement officer is empowered to impound the dog, and after the expiration of a ten (10) day waiting period, exclusive of Sundays and holidays, shall order said dog removed from the City of El Dorado, or destroy said dog.
- d. If the owner or keeper of a dog impounded pursuant to this Section shall believe that there shall not have been a violation of the provisions of this Section, such owner may petition the Municipal Court, on forms approved by the Municipal Judge, requesting that the impounded dog not be destroyed. The impounded dog shall not be destroyed pending the resolution of such owner's petition if the petition shall have been filed within five (5) days of impoundment of such dog and notice shall be have been delivered within five (5) days of the impoundment of such dog to the City of El Dorado Animal Shelter. The dog shall remain impounded pending the determination of the petition. If the court shall find that there shall not have been a violation, such dog shall be released to the custody of the owner upon the payment of the expenses by the owner or keeper.
- e. All regulations shall be explained to the owner of the dangerous animal, a copy of which shall be given to and signed for by the owner, keeper or harbored.
- f. In addition to the fines provided in this Section, the Municipal Judge shall have the authority to sentence the person adjudicated guilty of this Article

Section 9: All ordinances or parts of ordinances in conflict herewith are hereby repealed.

Section 10: That if any section, subsection, sentence, clause or phrase of this ordinance is, for any reason, held to be unconstitutional, such decision shall not affect the validity of the remaining portions of this ordinance. The Commission hereby declares that it would have passed this ordinance, and each section, subsection, clause or phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses and phrases be declared unconstitutional.

Section 11: That nothing in this ordinance shall be construed to affect any suit or proceeding impending in any court, or any rights acquired, or liability incurred, or any cause or causes of action acquired or existing, under any act or ordinance hereby repealed as cited in this ordinance;

nor shall any just or legal right or remedy of any character be lost, impaired or affected by this ordinance.

Section 12: That the City Clerk is hereby ordered and directed to cause this ordinance to be published twice on consecutive weeks in the official city newspaper.

PASSED AND APPROVED by the Governing Body on this 20th day of October, 2014.

(SEAL)

Michael A. Fagg, Mayor

ATTEST

Tabitha Sharp, City Clerk

APPROVED AS TO FORM

James I. Murfin, City Attorney

ORDINANCE NO. G-1194

**AN ORDINANCE OF THE CITY OF EL DORADO AMENDING TITLE
6 OF THE EL DORADO MUNICIPAL CODE RELATING TO
NUISANCE AND DANGEROUS ANIMALS**

NOW, THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF EL DORADO, KANSAS:

Section 5: Section 6.20.040 of the El Dorado Municipal Code shall be amended to read as follows:

6.20.40 Restrictions on the ownership of Staffordshire Terriers and Mix Breeds Thereof

- A. Registration and Reporting: The owner or keeper of a Staffordshire Terrier and mix breeds thereof shall properly license the dog pursuant to section 6.12.010 of this code, and pursuant to the provisions set forth in this subsection. In addition to having, or obtaining, the license required by section 6.12.010, an owner or keeper shall submit a completed registration form for the keeping of a Staffordshire Terrier and mix breeds thereof to the City Clerk or his/her designee within thirty (30) business days after the publication of this ordinance.
- B. The owner or keeper of the Staffordshire Terrier and mix breeds thereof shall pay a \$50.00 annual registration fee for each dog, and such fee shall be submitted to the City Clerk or his or her designee with the registration form for the keeping of Staffordshire Terrier and mix breeds thereof.
- C. The City of El Dorado shall request and obtain conviction information in Articles 54, 55, 56, 57 and 63 in Chapter 21, and in Article 41 of Chapter 65 from the Kansas Bureau of Investigation as a part of the registration process.
- D. No dog shall be considered to be unlicensed under the terms of this subsection, if the owner or keeper has timely filed a completed application, until such application has been denied.
- E. All adult pit bulls within the City of El Dorado are required to have an identification microchip implanted in the dog traceable to the current owner and registered with the City of El Dorado. Such microchip information shall be included in the dog's annual license application with the City of El Dorado. The owner, keeper or harborer shall pay all costs associated with the microchip procedure.
- F. It shall be unlawful for any person to own, keep or harbor more than two Pit Bulls.

- G. It shall be unlawful for more than two adult Pit Bulls, to be owned, kept, or harbored on the same premises or dwelling.
- H. Any person, who owns a Pit Bull, shall have thirty days (30) thereafter the final adoption of this ordinance, to microchip and surgically sterilize such animal. Sterilization of the Pit Bull shall not be required upon certification, presented to the City Clerk or his or her designee, by a licensed veterinarian that such sterilization would be injurious to such dog due to its health or age.
- I. Any owner, keeper or harbinger failing to provide documentation of the sterilization procedure as required by this section shall be deemed guilty of a misdemeanor.
- J. Any individual who fails to comply with the requirements of this section shall be guilty of a misdemeanor.
- K. The owner or keeper of the Staffordshire Terrier and mix breeds thereof shall maintain with the city clerk or his/her designee the address where the dog is primarily kept or harbored. The owner or keeper shall notify the city clerk or his/her designee within five (5) business days if any of the following occurs:
 - a. A change in the primary address where the dog is kept or harbored, whether in or out of the city limits; or,
 - b. A change in the person who is owning, keeping or harboring the dog; or,
 - c. The death of the dog; or,
 - d. Any change in the information supplied in the application for the dog license, or in the information submitted along with such application; or,
 - e. Harbor, keep or maintain a dog on property not owned by the person without the written consent of the land owner.

Section 6: Section 6.20.045 of the El Dorado Municipal Code shall read as follows:

6.20.045 Keeping of Staffordshire Terriers and Mix Breeds Thereof

- A. It is unlawful for an owner or keeper of a Pit Bull dog to permit the dog to be outside an approved or secure enclosure or fence unless the dog is restrained by a substantial chain or leash and under physical restraint by a responsible person who is at least 18 years of age or older and possesses sufficient strength for physical control of the animal.
- B. The same above requirements shall also be in effect for the purpose of transportation to and from a veterinarian for medical treatment.
 - a. In all such events, the Pit Bull dog shall be securely restrained with a chain or leash not exceeding four feet in length, and shall be under the direct

control and supervision of the owner or keeper of the Pit Bull dog.

- C. Pit Bull dogs shall be securely confined indoors or in a securely enclosed and locked pen, kennel or fence, except when leashed as provided above.
- D. The owner, keeper or harbinger shall allow the access to the property where the Pit Bull dog is being harbored to facilitate inspections and insure compliance for the duration of the life of the animal.
- E. It is unlawful for anyone having prior felony convictions defined in Articles 54, 55, 56, 57 and 63 of Chapter 21, and Article 41 of Chapter 65 of the Kansas Statutes Annotated to possess, harbor, own or reside on any premises with a Pit Bull dog.
- F. The City of El Dorado shall request and obtain conviction information from the Kansas Bureau of Investigation as part of the registration process.
- G. It shall be unlawful for any person to:
 - a. Harbor, keep or maintain a Pit Bull dog on property not owned by the person without the written consent of the land owner; or
 - b. Sell, barter or give away to another person a Pit Bull dog; or
 - c. Own, keep or harbor more than two Pit Bull dogs.
- H. Should a Pit Bull dog be found running at large in violation of this section attack or inflict injury upon any person, the Judge of the Municipal Court shall, in addition to any other penalty provided in Chapter 6, order the dog destroyed. Provided, however, the Judge of the Municipal Court may, at his or her discretion, consider whether the attack or injury was sustained by a person who, at the time, was committing a criminal trespass or other tort upon the premises of the owner of the dog, or was tormenting, abusing, or assaulting the dog, or has, in the past, been observed or reported to have tormented, aroused, or assaulted the dog or was committing or attempting to commit a crime.

Section 9: All ordinances or parts of ordinances in conflict herewith are hereby repealed.

Section 10: That if any section, subsection, sentence, clause or phrase of this ordinance is, for any reason, held to be unconstitutional, such decision shall not affect the validity of the remaining portions of this ordinance. The Commission hereby declares that it would have passed this ordinance, and each section, subsection, clause or phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses and phrases be declared unconstitutional.

Section 11: That nothing in this ordinance shall be construed to affect any suit or proceeding impending in any court, or any rights acquired, or liability incurred, or any cause or causes of action acquired or existing, under any act or ordinance hereby repealed as cited in this ordinance; nor shall any just or legal right or remedy of any character be lost, impaired or affected by this

ordinance.

Section 12: That the City Clerk is hereby ordered and directed to cause this ordinance to be published twice on consecutive weeks in the official city newspaper.

PASSED AND APPROVED by the Governing Body on this 16th day of March, 2015.

(SEAL)

Michael A. Fagg, Mayor

ATTEST

Tabitha Sharp, City Clerk

APPROVED AS TO FORM

James I. Murfin, City Attorney