



City Council
City Council Chambers ♦ 314 West Stephenson Street ♦ Freeport, IL 61032

COMMITTEE OF THE WHOLE
MINUTES
REGULAR MEETING
MONDAY, APRIL 10, 2017 AT 6:00 P.M.

CALL TO ORDER

The regular meeting of the City of Freeport, Illinois, Committee of the Whole was called to order in council chambers by Mayor James L. Gitz with a quorum being present at 6:05 p.m. on April 10, 2017.

ROLL CALL

Present on roll call: Mayor Gitz and council members Tom Klemm, Peter McClanathan, Art Ross, Jodi Miller, Patrick Busker, Sally Brashaw, Mike Koester, and Andrew Chesney (8).

Present from the City: Contract Attorney Michael Phillips, Esq., Community Development Director Alex Mills, Public Works Director Tom Dole, Fire Chief Scott Miller, Police Chief Todd Barkalow, City Clerk Meg Zuravel, and Deputy City Clerk Dovie Anderson.

PLEDGE OF ALLEGIANCE

The Pledge of Allegiance was led by Alderperson Miller. She then became the chairperson of the meeting.

APPROVAL OF AGENDA

Alderperson Brashaw moved for approval of the agenda, seconded by Alderperson Ross. Motion prevailed by voice vote without dissent.

PUBLIC COMMENTS

Tim Mellentine stated he is a life-long resident of the City. He spoke about how awful he feels our City can look, specifically when vineyards are planted in front yards and mountains of trash accumulate on property. "Clean" is his vision for every neighborhood and home in the City. He is in favor of implementing any tools that can help this vision.

APPROVAL OF MINUTES

Alderperson Busker moved for approval of the minutes from the meeting held on March 13, 2017, seconded by Alderperson Koester. Motion prevailed by voice vote without dissent.

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ITEM #7 - REVIEW ORDINANCE #2017-29 AND PROVIDE A RECOMMENDATION TO CITY COUNCIL ON ORDINANCE AMENDING SECTION 202.99 (GENERAL CODE PENALTY; COMPLICITY; SCHEDULE OF FINES) OF CHAPTER 202 (GENERAL PROVISIONS) OF THE CODIFIED ORDINANCES OF THE CITY OF FREEPORT, ILLINOIS

Chief Barkalow presented an ordinance in response to the Council's request to review the most frequently used ordinances typically addressed by the Police Department. He pointed out that City ordinance fines, which are levied for lower degree violations, are also lower monetarily than fines mandated by the State. Ordinance violations are imposed when the elements of the defense do not measure up to a state charge. These City violations involve such instances as loud noises, dogs barking at night, and disorderly conduct. He explained "Noise, Generally" covers, for instance, when a bar closes and there is a gathering of people who are generating noise at 2:30 a.m. Chief Barkalow stated he spoke with Attorney Tony Coon regarding minimum fines. Attorney Coon pointed out that, if there is no minimum fine stated, it reverts back to 202.99, the General Code Penalty, which currently indicates a \$50 fine. Whether or not the judge adheres to the \$50 fine is beyond the control of Chief Barkalow. Regarding chronic problems, such as monthly disruptive gatherings, Attorney Coon proposed a step increase for second offenses. Chief Barkalow has a concern that a \$100 minimum fine may lead to collection problems, but he also does not want to leave the minimum fine too low. Chief Barkalow stated he defers that decision to the Council.

Aldersperson Koester thanked Chief Barkalow for his time and work. He stated that when he suggested a \$100 fine for violations related to tobacco sales, he had been working with Contract Attorney Michael Phillips who felt that \$100 would be the amount a judge would be willing to enforce. When talking with Chief Barkalow, the amount of \$500 was discussed, but Contract Attorney Phillips felt a judge would not enforce that. Aldersperson Koester asked Contract Attorney Phillips if he felt a judge would enforce \$150. Contract Attorney Phillips stated he felt \$150 is high when the amount of additional court costs is considered. Additionally, when a judge imposes court supervision, the amount of the fine becomes irrelevant. Contract Attorney Phillips had followed up with Attorney Coon to confirm that court supervision is still imposed. Aldersperson Koester favors the \$100 or \$150 fine, because he feels there needs to be tougher consequences to the individual employees who violate tobacco sale ordinances in addition to fines imposed upon the store owner.

Aldersperson Brashaw addressed Contract Attorney Phillips regarding the amount of associated court costs imposed in addition to minimum fines. She asked if \$120 per case in court costs was accurate. Contract Attorney Phillips stated that court costs have grown astronomically during his tenure and he believes \$120 would be a minimum. Aldersperson Brashaw read the specific offenses into record and summarized by stating that an increase in the minimum fine from \$50 to \$100 per infraction would increase the total cost, including fine and court costs, to \$220. Further, if the minimum fine is increased to \$150, this would increase total costs, including court costs, to \$170. Chief Barkalow added that Attorney Coon did not think that \$150 for a minimum fine was out of line.

Aldersperson Klemm agrees that there should be firm consequences to breaking ordinances, such as dogs barking all night.

Aldersperson McClanathan thanked Chief Barkalow for putting together the figures and talking with Attorney Coon. Aldersperson McClanathan stated that court costs escalate in proportion to the base

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fine, not a set fee. He encourages referring the Ordinance back, but looking at the figures tonight. He believes \$150 seems a little high to jump all at once but is not outrageous. He agrees the fees should have a deterrent effect but does not want to clog the court system with offenders repetitively returning after 30 days unable to pay fines or making small installment payments. Some of these are then turned over to public service cases. He recommends finding out what other municipalities do and the actual court costs on a \$100 fine. Then, make a final decision next week.

Aldersperson Chesney agrees with Aldersperson Klemm regarding a minimum fine of \$100 to \$150 with especially, for instance, charges of disorderly conduct. He favors leaning towards the higher side of \$150.

Aldersperson Klemm asked Chief Barkalow about the line item referencing solicitors. Regarding Electrical Aggregation, he asked if we can prohibit other electrical and natural gas suppliers from soliciting within City limits. Chief Barkalow stated that that is a constitutional issue. He is considering making a laminated placard with our logo on it stating "No Solicitors" that can be handed out at City Council and Neighborhood Watch meetings. If solicitors solicit where this type of sign is clearly displayed, then it becomes an ordinance violation. Other communities have done this.

Aldersperson Ross agrees with Aldersperson Chesney, especially on disorderly conduct and consumption of alcohol in a public way. He is in favor of a higher fine to help deter repeat offenders from doing it again. Regarding the other ordinance violations, he feels those do not necessarily need to be \$150.

Aldersperson Klemm recommended moving this ordinance forward if all Council members were in agreement. Mayor Gitz replied that since this is in first reading, it will be in second reading at the next regular Council meeting. However, an amendment can always be added and Council can defer the second reading at Council level if there is not agreement.

Aldersperson Koester made a motion to move the decision to the next council meeting with recommendation for approval based upon (1) Chief Barkalow's recommendations in the attached memo of proposed fines and (2) information received at that time regarding the amount of court costs in addition to the minimum fine to decide if the minimum fine should stay at the newly recommended amount of \$150 or lowered to \$100, seconded by Aldersperson Klemm.

Aldersperson McClanathan gave his thoughts on drafting the next version of this ordinance. Regarding the proposed maximum fine of \$500, he has never seen a State or City maximum fine imposed in his nine years of experience. However, that does give us a wide range of flexibility. He agrees that a higher fine is appropriate for some offenses, such as barking dogs. He has concerns regarding setting the minimum fine and the offender's inability to pay. In his experience, he sees a large number of people who are not paying fines. Then it is up to the City to prove ability to pay on it. He would like to suggest caution when setting the minimum fine and feels \$150 is probably too high. He added that we have discretion with repeat offenders.

Aldersperson Busker pointed out that in addition to the discretion used within the court system, there is also the discretion of police officers. In the case of a one-time offense, the officer does not have to impose a fine the first time. There are other ways to give someone a fair chance before a fine is written. He believes people need to "police" themselves, too, and feels a \$150 minimum fine is acceptable.

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Police Chief Barkalow agreed with Alderperson Busker's point. The Police Department does not always write a ticket immediately on the first call, even open alcohol. They will first try to give a verbal warning. However, in the case of disorderly conduct, such as fisticuffs in the street, that type of violation will get ticketed. They will often transport to the Police Department to remove the disruption from the area, book, ticket, and let them go--just to break it up.

Chief Barkalow then asked if we want to look at Chapter 202.99 and change the minimum fine to avoid changing all of the individual offenses. It is currently \$50. Alderperson McClanathan agreed that we would want to change that to set the default minimum fine because most of the line items we are discussing will default to the minimum fine.

The motion to move forward for approval draft Ordinance #2017-29 for approval pending (1) Chief Barkalow's recommendations in the attached memo of proposed fines and (2) information received at that time regarding the amount of court costs in addition to the minimum fine to decide if the minimum fine should stay at the newly recommended amount of \$150 or lowered to \$100 prevailed by voice vote without dissent.

ITEM #8 - REVIEW ORDINANCE #2017-30: AN ORDINANCE TO SUPPLEMENT THE APPROPRIATION ORDINANCE FISCAL YEAR 2016-2017 FOR THE CITY OF FREEPORT, ILLINOIS (THIRD SUPPLEMENTAL)

Financial Director Bernadelle presented the Third Supplement to the Appropriation Ordinance. There will not be a lot of changes before next week. Legal fees are unknown but will change. He contacted the auditors because he did not see any supplemental for Water and Sewer written in the past. He only went back five years so there will be some changes there as well. Director Bernadelle confirmed that this ordinance is strictly housekeeping in nature to get ready for the end of the fiscal year.

The council was provided the opportunity to ask questions.

This Ordinance will be brought to the next council meeting for approval.

ITEM #8 - REVIEW ORDINANCE #2017-32: AN ORDINANCE CREATING CHAPTER 873 (FOOD TRUCK VENDOR LICENSING AND REGULATION) OF PART EIGHT, TITLE TWO (BUSINESS REGULATION) OF THE CODIFIED ORDINANCES OF THE CITY OF FREEPORT, ILLINOIS

Community Development Director Mills pointed out that the revisions were made to the licensing date to January 1. A provision was also removed regarding operating on public property. A food truck vendor has reached out since this was posted last Wednesday and Director Mills is passing along his input: (1) the original licensing deadline of March 1 was more convenient for him because his business is somewhat seasonal and he is making business plans for the year around March and (2) he has a question regarding the Part (d) (9) provision that all food trucks be tended during posted business hours. Does this prohibit him from posting a "back in 15 minutes" sign for him to run to the bank or to replenish supplies? Director Mills said the main intent was to prohibit someone from closing for several hours (during regularly posted hours) just because business was slow and return later hoping for a steadier stream of business. He feels wording can easily be added to address "temporary closure for the purpose of restocking supplies or other tasks".

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Aldersperson Brashaw clarified that we are trying to clean up our licensing regulations. Director Mills explained the previous Transient Merchant License covers vendors who are selling items, such as a door-to-door vacuum cleaner salesperson. He explained that the Food Truck Vendor license was developed in response to comments from the community and increased interest. Aldersperson Brashaw then expressed her support of the Food Truck Vendors in trying to make compliance "more friendly", specifically the request to return to the March 1 deadline and the Part (9)(d) requirement for up to a 20 minute break.

Chairperson Miller asked for an explanation of returning the date to March 1. Director Mills explained that many vendors put their equipment away in the winter to avoid freezing conditions and do not operate in the winter months. During that time, they scout locations. Therefore, March would be "getting ready for a season". Chairperson Miller asked for the Clerk's input. City Clerk Zuravel explained that many vendors come in when they need the license, which is in the spring, not January. We do not mail reminders to Transient Merchants. They typically come in when they are ready to begin sales.

Chairperson Miller addressed the hours of operation. She is in favor of following bar hours which is until 1:00 a.m. Sunday through Thursday and 2:00 a.m. on Friday and Saturday. She asked if Chief Barkalow would have any problem with that. Chief Barkalow responded that he would for the following reasons: he has a different perspective and he looks for the problems in a scenario. He believes there could be potential problems for the food truck operator. They could be setting themselves up to be victims. Bar hours are when people are going home from having a good time. The lack of bathrooms could become an issue. He believes the police department could ultimately be called in to monitor so that there are no problems. He has experience with closing down large gatherings, which sometimes move their gathering to other locations. He would not want a similar gathering to move to a food trailer. He realizes there may not be any problems, but he needs to think of potential concerns that might occur at 2:00 a.m. Chief Barkalow realizes the food truck vendors may make a little more money, but he feels he needs to look at the risks. He then speculated that perhaps the risk is up to the individual vendor to decide. Chairperson Miller feels the vendors should be given the option to stay open until 2:00 a.m.

Aldersperson Chesney asked Chief Barkalow how a food vendor truck differs from a drive through. Chief Barkalow responded that the former Country Kitchen had some pretty good brawls inside the restaurant after bar hours. On a case by case basis, the police department could talk with the food truck vendor if problems should develop to remedy any problems that would require a police officer to monitor the business after bar hours.

Aldersperson Chesney also suggested that a food vendor's license could be taken away if too many problems developed. He is in favor of allowing the food truck vendors to operate until bar hours and, if there are problems, then look at the violations and make a determination if they will be allowed to continue to operate.

Aldersperson Klemm expressed his concern that if he were a food truck vendor, sitting in a lot where the gas station was closed, he would be concerned for his safety. He feels the vendor could be a "sitting duck" to all types of concerns. On the other hand, that is his choice.

Aldersperson McClanathan agreed with Chief Barkalow that between the hours of 11:00 p.m. to 2:00 a.m., the food truck vendors are transient vehicles. Burger King, for instance, does not move. He can

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see where it would be difficult for the Police Chief to position his officers accordingly. While the risk may not be great, he does not think the sales at that time of night would be worth it.

Aldersperson Busker asked Community Development Director what the original concern was regarding the posted hours and the need to leave to get supplies. Director Mills pointed out that the new ordinance states that the food truck vendors need to move their vehicle every 48 hours. So, clients would not get used to a pattern anyway. He also added that it has come to mind that if business hours are posted until bar hours and clientele come to find the vendor closed, the clientele could do damage to the vendor's vehicle. Regarding visibility, he would need to consider how to word that appropriately. He realizes vendors want customers so hopefully they would create their signs so that passersby could see them clearly. He also mentioned that many vendors advertise their hours in various ways such as Facebook.

Aldersperson Koester is not in favor of staying open later. He agrees with the Police Chief on the safety concerns. He asked if Director Mills could ask vendors if there is a need for later hours. Director Mills has already spoken with two vendors regarding this issue. They would be in favor of later hours but would not put their workers at risk and would then adjust their hours to safer hours of operation.

Director Mills pointed out that there may need to be an exception made for caterers who are using a parking lot past the hours of operation set forth in the ordinance.

Aldersperson McClanathan moved to refer this matter to the full Council with consideration of amendments, seconded by Aldersperson Koester. Chairperson Miller asked for clarification of the amendments to the ordinance regarding attendance requirements during open hours and returning the deadline to March 1. She questioned if the hours of operation were going to stay as proposed or extended to bar hours. She then asked if just the hours of operation could be voted upon. Clerk Zuravel stated that that was possible, but that there was already a motion on the floor. Aldersperson McClanathan then withdrew his original motion and Aldersperson Koester withdrew his second.

Chairperson Miller made a motion to extend the hours of operation to bar hours. Aldersperson Chesney seconded. Aldersperson Brashaw asked Contract Attorney Phillips if the ordinance is passed, if it is possible to amend the ordinance later if a particular vendor has issues with disruptive behavior. Contract Attorney Phillips responded that a more reasonable solution may be to talk to that individual vendor and discuss the condition of that particular license rather than change the ordinance which affects everyone. Aldersperson Brashaw countered that her main concern is for the vendor who does not initiate any of the concerns but the patrons who causing problems. Mayor Gitz answered that an ordinance can be amended. Aldersperson Brashaw then stated that she is in favor of extending the hours until such time that it is proven that the late hours are causing undue problems or concerns. A voice vote resulted in a tie four (4) to four (4). Miller, Busker, Brashaw, and Chesney voted in favor and Koester, Klemm, McClanathan, Ross were the dissenting votes. Discussion ensued whether the Mayor votes in the case of a tie during the Committee of the Whole. Aldersperson Klemm pointed out that this ordinance will go to the full Council with another opportunity to vote upon the matter. The Mayor suggested moving it forward.

Mayor Gitz pointed out, however, that his personal opinion is that "nothing good happens after midnight" including taking into account the safety of the food vendors and neighborhoods. Another

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thing that has not yet been discussed is the liability imposed upon the property owner who has given permission to the food vendor to locate their food truck there. On the other hand, he is open to allowing the food truck vendors to give the later hours a try. He reiterated that this is not final action that is being taken tonight and he is comfortable with the Council expressing what amendments they would like to see and preparing another draft ordinance for the next regular Council meeting.

Clerk Zuravel stated she felt the original intent of the food truck ordinance was for preparing food. She pointed out that, as this ordinance is written, there are two food vendors who come to Freeport four times a year. One sells fruit at the Farm & Fleet parking lot and one sells frozen shrimp at Rogers Hair Care Center. She feels they should continue under the Transient Merchant license. Mayor Gitz agreed and added that wording regarding "prepared food" could be added to the Food Truck Vendor license to make this distinction.

Aldersperson McClanathan made a motion to refer back to Council for second reading with two amendments, one as proposed by Director Mills and one approved by Council, Aldersperson Klemm seconded. Motion passed 7-1 with Aldersperson Koester opposed.

ITEM #10 – DISCUSSION OF STREET SWEEPER AS CONTINUED FROM THE CITY COUNCIL MEETING HELD ON APRIL 3, 2017

Director Dole discussed the City's sweeping routines at last week's Council meeting. He distributed a handout with three options for Pelican sweepers from the same vendor including a 2009 Elgin Pelican for \$99,976, a 2012 for \$150,000, and then a new machine for \$201,000. Any of the machines would work. There is also the option to finance.

The Council was provided the opportunity to ask questions.

Aldersperson Klemm asked what the normal number of hours would be on a sweeper. Director Dole responded that he did not know the actual hours on the current older sweeper, but explained that it is 16 years old and is used for nine hours per day many months of the year. We currently have a 1999 which needs to be replaced and a 2004.

Aldersperson Koester pointed out that there is about a \$50,000 difference between the two proposed machines. He asked if the 2012 would have enough remaining life to justify the \$50,000. Director Dole responded that the current machine was purchased new and has lasted 16 to 17 years with routine maintenance. He feels that either one of these used machines would have gone through the line at the factory and comes out as good as it can be. With proper maintenance, they can last a long time. Aldersperson Koester would not be opposed to spending \$50,000 more if it were justifiable.

Chairperson Miller stated that she spoke with Director Dole regarding the obvious need to replace our older sweeper, but she suggests waiting for the City Manager to weigh in on this decision with a couple of stipulations: (1) no more money be spent on the old machine and (2) the funds will remain in next year's budget.

Aldersperson Busker agrees with waiting for the City Manager. He feels that the used proposed sweepers are nearing the end of their 10-year life. He suggests purchasing a new machine. Aldersperson

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Chesney agrees with waiting for the City Manager. Alderperson Klemm agrees that no more funds should be expended on the old sweeper. Director Dole stated that other than repairing a flat tire and an oil change, no further funds would be expended.

Alderperson Koester asked what the turnaround time would be on acquiring any of these vehicles and would they still be available in the future. Director Dole responded that they are for sale on the market and there would be no guarantees of them still being available. Spring is the time of year that municipalities are gearing up for street cleaning. However, there has always been equipment available whenever he has looked in the past. Alderperson Busker asked about the turnaround time for a new one. Director Dole can look into the answer to that.

Mayor Gitz stated that the purpose of the Committee of the Whole is to make recommendations. In absence of a motion, it will not be moved forward.

Alderperson Busker moved that the recommendation be moved to the June Committee of the Whole meeting, Alderperson Brashaw seconded. The motion passed 7-0 with Alderperson Koester dissenting.

ITEM #11 – DISCUSSION OF TREE STUMPS AS NUISANCES AND THE REGULATION OF ORCHARDS IN THE CITY OF FREEPORT, ILLINOIS

Director Mills gave a history of circumstances leading to the need for considering regulating tree stumps and orchards. Zoning ordinances have been used to prevent an orchard from being planted on a large lot, because it would have been considered an agricultural use due to the large number of trees that were proposed. Another lot has had all of its trees clear cut and it was a battle to get the brush removed. The stumps still remain on that lot. There is yet another lot that routinely has complaints from neighbors about a large number of trees and grapevines planted in the front and side yards. The proposed ordinance does two things: (1) declare tree stumps a public nuisance and require their removal after 30 days to four inches below grade and (2) add a definition to our zoning code that prohibits orchards as a non-conforming use and would prescribe a period that the orchard would need to be terminated.

Alderperson Chesney agrees with this ordinance as an appropriate response. He is concerned about how many properties may be affected that have existing tree stumps. Director Mills proposed that we could explore quantities and state “over two” to “over six” or sizes and state “over eight inches” or “over twelve inches”. He suggests adding further definition.

Mayor Gitz stated that this ordinance was presented to Council in draft form knowing that it contained imperfections. He has spoken with Contract Attorney Phillips regarding this. One difficulty is that there is not a lot of precedence set with “tree stump ordinances” in Illinois. He proposes that this be included along with other things such as long grass in a nuisance ordinance. Another option is to include them in a landscape ordinance. He cautions that we do not want to become the “tree stump police” but it is disheartening that entire stands of trees have been removed with no intent of improving the landscaping but leaving it the way it is.

Mayor Gitz stated if it is the will of the Council to get something done regarding this issue, then we will work on this ordinance more this week and develop some genuine tools to deal with this. Either the

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property can be cleaned up, or fines can be paid, or the City will intervene to initiate clean up. He feels the neighbors have legitimate complaints.

Aldersperson McClanathan agrees with the concept. One of the details he would like worked out is clarity on what constitutes an orchard. He also asked for wording to exclude someone who wants one or two cherry trees. He also agrees with clarifying the quantity or size of tree stumps.

Aldersperson Chesney also agrees in principle. He will also be asking for a suspension of the rules in consideration of the adjoining neighbors.

Aldersperson Koester asked about clarification about the amount of time required for removal of tree stumps existing prior to passage of the ordinance. He suggests extending the time for existing stumps. He is concerned that there may not be enough contractors to remove all the stumps that already exist.

Aldersperson Brashaw agreed with Aldersperson Koester as there is often a waiting period for stump removers. She asked if the word "saleable" could be added to "produce production".

Aldersperson Brashaw moved and Aldersperson Busker seconded that this matter be moved forward to the next regular Council meeting. Motion prevailed by voice vote without dissent.

PUBLIC COMMENTS – AGENDA OR NON-AGENDA ITEMS

Tom Teich shared a picture of a fundraiser sponsored by Cimino's.

Mary Blake stated that she has lived for years next to the property with grapevines and orchards in their front yard. She pointed out that she has no problem with the grapevines and orchards but the condition in which the yard is kept. There are cockleburs, weeds, weedy trees, a large compost pile, and plastic barrels. She has provided pictures to Community Development Director Mills and has been asking for years that the trash be cleaned up.

Aldersperson Chesney asked Director Mills if weeds are already covered as nuisances that could be addressed today. Director Mills stated that the owner of the property in question is in his 80's or 90's and lives out of state making enforcement very difficult on this and other properties that he owns given that he is not actually the person causing the nuisances. If this ordinance passes next Monday, it could be used to address the non-conforming use and the rest of the property.

Aldersperson Koester commented on his wife's hospitalization and health. He thanked everyone for their wishes, calls, and support. It has been greatly appreciated.

Aldersperson Ross mentioned that in his ward residents constantly ask about an overgrown piece of property and he is looking forward to passage of an ordinance that can address these properties.

ADJOURNMENT

Upon a motion duly made by Aldersperson Koester and seconded by Aldersperson Ross, the Committee of the Whole meeting adjourned at 7:30 p.m.

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s/ Dovie L. Anderson

Dovie L. Anderson
Deputy City Clerk