

**STATEMENT OF TOWN COUNCIL AND ORDINANCE AMENDING THE OFFICIAL ZONING DISTRICT MAP OF THE TOWN OF APEX TO CHANGE THE ZONING OF APPROXIMATELY 243.48 ACRES LOCATED AT 314, 450, 482, 472, 546, 610, 696, 527, 0 & 0 NC HWY 751; 0, 0, & 0 US 64 HWY E; 0 & 44 NEW HILL ROAD FROM LIGHT INDUSTRIAL-CONDITIONAL ZONING (LI-CZ #22CZ26) TO LIGHT INDUSTRIAL-CONDITIONAL ZONING (LI-CZ) & PLANNED COMMERCIAL-CONDITIONAL ZONING (PC-CZ)**

**#23CZ15**

**WHEREAS**, Gray Harrell, Beacon Development, owner/applicant (the "Applicant"), submitted a completed application for a conditional zoning on the 1st day of August 2023 (the "Application"). The proposed conditional zoning is designated #23CZ15;

**WHEREAS**, the Planning Director for the Town of Apex, Dianne Khin, caused proper notice to be given (by publication and posting) of a public hearing on #23CZ15 before the Planning Board on the 8<sup>th</sup> day of January 2024;

**WHEREAS**, the Apex Planning Board held a public hearing on the 8<sup>th</sup> day of January 2024, gathered facts, received public comments and formulated a recommendation regarding the application for conditional zoning #23CZ15. A motion was made by the Apex Planning Board to recommend approval; the motion passed unanimously for the application for #23CZ15;

**WHEREAS**, pursuant to N.C.G.S. §160D-601 and Sec. 2.2.11.E of the Unified Development Ordinance, the Planning Director caused proper notice to be given (by publication and posting), of a public hearing on #23CZ15 before the Apex Town Council on the 23<sup>rd</sup> day of January 2024;

**WHEREAS**, the Apex Town Council held a public hearing on the 23<sup>rd</sup> day of January 2024. Amanda Bunce, Current Planning Manager, presented the Planning Board's recommendation at the public hearing;

**WHEREAS**, all persons who desired to present information relevant to the application for #23CZ15 were allowed to present evidence at the public hearing before the Apex Town Council. No one who wanted to speak was turned away;

**WHEREAS**, the Apex Town Council finds that the approval of the rezoning is partially consistent with the 2045 Land Use Plan and other adopted plans in the the 2045 Land Use Map designates the area north of Highway 64 as Industrial Employment and the area south of Highway 64 as Commercial Services/Industrial Employment. Approval of this rezoning will automatically amend the area to be zoned Planned Commercial-Conditional Zoning north of Highway 64 to Commercial Services. These designations on the 2045 Land Use Map include the zoning districts Light Industrial-Conditional Zoning (LI-CZ) and Planned Commercial-Conditional Zoning (PC-CZ) and the Apex Town Council has further considered that the proposed rezoning to Light Industrial-Conditional Zoning (LI-CZ) and Planned Commercial-Conditional Zoning (PC-CZ) will maintain the character and appearance of the area and provide the flexibility to accommodate the growth in population, economy, and infrastructure consistent with that contemplated by the 2045 Land Use Map;

**WHEREAS**, the Apex Town Council finds that the approval of the rezoning is reasonable and in the public interest in that: The rezoning includes only minor amendments to the existing zoning conditions in the LI-CZ zoned areas and the proposed PC-CZ districts will allow for greater variety in the types of commercial uses allowed. The additional commercial uses will benefit the employees and users of the development in the LI-CZ zoned areas as well as the residential areas in the general vicinity. The proposed rezoning will encourage compatible development of the property and allow for uses that will generate jobs and increase the tax base; and

**WHEREAS**, the Apex Town Council by a vote of 5 to 0 approved Application #23CZ15 rezoning the subject tract located at 314, 450, 482, 472, 546, 610, 696, 527, 0 & 0 NC HWY 751; 0, 0, & 0 US 64 HWY E; 0 & 44 New Hill Road from Light Industrial-Conditional Zoning (LI-CZ #22CZ26) to Light Industrial-Conditional Zoning (LI-CZ) & Planned Commercial-Conditional Zoning (PC-CZ).

## Ordinance Amending the Official Zoning District Map #23CZ15

**NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF APEX**

**Section 1:** The lands that are the subject of the Ordinance are those certain lands described in Attachment “A” – Legal Description which is incorporated herein by reference, and said lands are hereafter referred to as the “Rezoned Lands.”

**Section 2:** The Town of Apex Unified Development Ordinance, including the Town of Apex North Carolina Official Zoning District Map which is a part of said Ordinance, is hereby amended by changing the zoning classification of the “Rezoned Lands” from Light Industrial-Conditional Zoning (LI-CZ #22CZ26) to Light Industrial-Conditional Zoning (LI-CZ) & Planned Commercial-Conditional Zoning (PC-CZ) District, subject to the conditions stated herein and in attached exhibits.

**Section 3:** The Planning Director is hereby authorized and directed to cause the said Official Zoning District Map for the Town of Apex, North Carolina, to be physically revised and amended to reflect the zoning changes ordained by this Ordinance.

**Section 4:** The “Rezoned Lands” are subject to all of the following conditions which are imposed as part of this rezoning:

### **Limitation of Uses:**

The Rezoned Lands may be used for, and only for, the uses listed immediately below. The permitted uses are subject to the limitations and regulations stated in the UDO and any additional limitations or regulations stated below. For convenience, some relevant sections of the UDO may be referenced; such references do not imply that other sections of the UDO do not apply.

### **Permitted Uses and Limitations: Light Industrial-Conditional Zoning (LI-CZ)**

1. Government service
2. Communication tower, commercial (SUP)
3. Utility, minor
4. Wireless support structure
5. Wireless communication facility
6. Broadcasting station (radio & television)
7. Radio and television recording studio
8. Commissary
9. Restaurant, general
10. Retail sales, general
11. Medical or dental office or clinic
12. Medical or dental laboratory
13. Office, business or professional
14. Building supplies, wholesale [subject to additional use condition restrictions]
15. Laboratory, industrial research [subject to additional use condition restrictions]
16. Machine or welding shop [retained at the request of the neighbors with existing shop or welding businesses on NC-751]
17. Warehousing, general [subject to additional use condition restrictions]
18. Woodworking or cabinetmaking
19. Wholesaling distribution center [subject to additional use condition restrictions]
20. Warehousing fulfillment center [subject to additional use condition restrictions]
21. Brewery [subject to additional use condition restrictions]
22. Distillery [subject to additional use condition restrictions]
23. Manufacturing & processing [subject to additional use condition restrictions]
24. Microbrewery or Microdistillery
25. Research facility
26. Glass sales [subject to additional use condition restrictions]
27. Health/Fitness center or spa
28. Manufacturing & processing, minor
29. Entertainment indoor
30. Entertainment outdoor (SUP)
31. Greenway
32. Pet services
33. Parking lot, public
34. Day care facility (%)
35. Veterinary clinic or hospital
36. Vocational school [subject to additional use condition restrictions]
37. Drop-in or short-term day care
38. Botanical garden
39. Park, active
40. Park, passive

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### Permitted Uses and Limitations Planned Commercial-Conditional Zoning (PC-CZ)

1. Daycare facility
2. Drop-in or short-term day care
3. Veterinary clinic or hospital
4. Communication tower, commercial (SUP)
5. Communication tower, constructed stealth (SUP)
6. Utility minor
7. Wireless support structure
8. Wireless communication facility
9. Entertainment, indoor
10. Entertainment, outdoor (SUP)
11. Greenway
12. Park, active
13. Park, passive
14. Youth or day camps
15. Bar, nightclub, wine bar, or taproom
16. Restaurant, drive-through (subject to additional use restrictions)
17. Restaurant, general (subject to additional use restrictions)
18. Medical or dental office or clinic
19. Medical or dental laboratory
20. Office, business or professional
21. Bed and breakfast
22. Hotel or motel
23. Barber and beauty shop
24. Book store
25. Convenience store
26. Convenience store with gas sales (subject to additional use restrictions)
27. Financial institution
28. Floral shop
29. Gas and fuel, retail (subject to additional use restrictions)
30. Greenhouse or nursery, retail
31. Grocery, general
32. Grocery, specialty
33. Health/fitness center or spa
34. Laundromat
35. Newsstand or gift shop
36. Personal services
37. Pharmacy
38. Printing and copying services
39. Real estate sales
40. Retail sales, general
41. Studio for art
42. Tailor shop
43. Theater
44. Pet services
45. Microbrewery
46. Parking lots, public

### Zoning Conditions:

#### Use Conditions LI-CZ:

1. Machine or welding shop: This use is allowed with the exception of welding associated with automobiles.
2. Manufacturing and processing: This use shall be prohibited on any parcels south of US 64 and prohibited within 500' of the northern boundary of the area to be rezoned.
3. Laboratory, industrial research: This use shall be prohibited within 500' of the northern boundary of the area to be rezoned and prohibited within 500' of the centerline of New Hill Road and New Olive Chapel Road.
4. Retail sales, general: This use shall be allowed in both freestanding retail buildings as well as mixed use buildings with no gross floor area percentage restrictions. Such use shall not be required to be associated with an Industrial use.
5. Building supplies, wholesale: This use shall not exceed 200,000 square feet north of US 64 and shall not include more than 15% of the building's square footage as outdoor storage. This use shall not exceed 50,000 square feet south of US 64 and shall not include more than 15% of the building's square footage as outdoor storage. This use shall be prohibited within 500' of the centerline of New Hill Road and New Olive Chapel Road. Outdoor storage to be screened with 10' slotted fence.
6. Manufacturing and processing, minor: This use shall be prohibited within 500' of the centerline of New Hill Road and New Olive Chapel Road.

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7. Glass sales: This use shall be prohibited within 500' of the centerline of New Hill Road and New Olive Chapel Road. This use shall be all indoors except what is stored on trucks. Outdoor truck parking must be fully screened from any public right-of-way.
8. Brewery: This use shall be prohibited within 500' of the centerline of New Hill Road and New Olive Chapel Road.
9. Distillery: This use shall be prohibited within 500' of the centerline of New Hill Road and New Olive Chapel Road.
10. Vocational school: This use is allowed with the exception of a truck driving school, or related programing that would require the use of trucks.
11. There shall be a minimum of 3 acres in the LI-CZ zoning acreage, reserved north of US 64 that will allow for the following uses: Restaurant, general; Medical or dental office or clinic; Office, business or professional; Retail sales general; Pet services; Health / Fitness center or spa; Veterinary clinic or hospital; Day care facility; Drop-in or short-term day care;
12. Warehousing, general: This use shall not exceed 95,000 total square feet south of US 64. This use shall be prohibited within 500' of the centerline of New Hill Road and New Olive Chapel Road.
13. Warehousing fulfillment: This use shall not exceed 95,000 total square feet south of US 64. This use shall be prohibited within 500' of the centerline of New Hill Road and New Olive Chapel Road.
14. Wholesaling distribution center: This use shall not exceed 95,000 total square feet south of US 64. This use shall be prohibited within 500' of the centerline of New Hill Road and New Olive Chapel Road.

### Use Conditions PC-CZ:

1. The approximately 12.07-acre tract at the south east corner of the US 64 and NC 751 intersection, framed between Hwy 64, New Hill Road, and New Hill Olive Road, shall exclude the following uses: Gas and fuel, retail and Convenience store with gas sales.
2. The approximately 12.07-acre tract at the southeast corner of the US 64 and NC 751 intersection, between New Hill Road and New Hill Olive Chapel Road, shall contain no more than two (2) Restaurant, drive-through uses and no more than two (2) Restaurant, general uses.
3. In addition to the allowable UDO signage requirements, two larger sign installations that shall be limited to 14-feet in height and have a maximum area of no greater than 180 square feet shall be allowed in the PC-CZ rezoning area. These signs will serve as project branding for the Apex Gateway development.
4. The "Convenience store with gas sales" use shall be limited to a single store location, and be prohibited in any acreage north of the US 64 or to the east of New Hill Road.

### Environmental Conditions:

1. On the north side of US 64, within existing PIN's 071200461386, 071200460876, 071200470121, 071200367945, 071200378303, 071200376549, 071200372751, 071200261673, 071200350755, 071200245813, 071200245419, 071200246438, and a portion of 071200435356, existing trees greater than 18" in diameter that are removed by site development shall be replaced by planting a 1.5" caliper native tree from the Town of Apex Design and Development Manual either on-site or at an alternative location approved by the Town Planning Staff, above and beyond UDO requirements.
2. On the south side of US 64, within existing PIN 071200435356 (Lots 2 and 3), existing trees greater than 24" in diameter that are removed by site development shall be replaced by planting a 1.5" caliper native tree from the Town of Apex Design and Development Manual either on-site or at an alternative location approved by the Town Planning Staff, above and beyond UDO requirements.
3. The northern property boundary of the rezoning limits shall have the following buffers: PIN 0712-00-26-1673 – 100' average buffer; PIN 0712-00-37-2751 – minimum 100' buffer. The approximate location of the buffer is shown in Exhibit 3.
4. Post development peak runoff shall not exceed pre-development peak runoff for the 24-hour, 1-year, 10-year, and 25-year storm events in accordance with the Unified Development Ordinance.

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Additionally, the developer shall commit to a minimum of 2 acres of wetlands to be constructed north of US 64 to facilitate additional nutrient removal above the Unified Development Ordinance requirements.

5. On site stormwater treatment shall also include Green Stormwater Infrastructure measures within the project limits (above Town of Apex Unified Development Ordinance requirements). At least two of the following Green Stormwater Infrastructure measures shall be included prior to the 3<sup>rd</sup> building CO: bio-retention areas totaling a minimum of 6,000 sf; a minimum of 5,000 sf of permeable pavement systems; and rainwater harvesting (cisterns) with a minimum capacity of 2,500 gallons. Educational signage will be displayed where Green Stormwater Infrastructure devices are located, and such locations shall be open to the public and community groups for educational purposes.
6. The project shall install at least one (1) sign per SCM about not using fertilizer near an SCM drainage area. The sign(s) shall be installed in locations that are publicly accessible, such as adjacent to amenity centers, sidewalks, greenways, or side paths.
7. The project shall preserve a minimum of 10% of the existing tree canopy.
8. The project shall preserve an additional 30' of buffer along intermittent and perennial streams north of US 64 above the Town of Apex requirements.
9. To improve energy efficiency, the project area to the north of US 64 shall plant evergreen trees on the northern side of all buildings to act as a windbreak. This shall not apply where loading docks are proposed along a building facade.
10. To improve energy efficiency, a combination of large and small deciduous shade trees shall be planted on the southern side of any buildings. This shall not apply to commercial outparcels with highway frontage or where loading docks are proposed along a building facade.
11. The project shall plant only drought tolerant native plants. Landscaping shall be coordinated with and approved by the Planning Department at the time of Site Plan or Master Subdivision Plan review.
12. At least (1) information sign or other marking shall be provided at the boundary of an area dedicated as Resource Conservation Area (RCA) indicating that the area beyond the sign is RCA and is not to be disturbed.
13. The project shall install light timers or other smart lighting technology on at least 50% of the fixtures in the parking lot so they are automatically turned off or reduced in level of lighting when the business is closed.
14. Outdoor lighting shall be shielded in a way that focuses lighting to the ground.
15. Outdoor lighting shall have a color temperature of no more than 3000 Kelvins.
16. Development shall construct an activated open space / outdoor amenity along the proposed multi-use path committed in Transportation Condition #5, and shall also include an adjacent pollinator garden. Approximate location depicted in Exhibit 2. The multi-use path and amenity programming / pollinator garden shall be constructed in conjunction with the development of these parcels (and shall not be required until development commences on the parcels).
17. Removal of trees greater than 10" in diameter onsite for the sole purpose of making room to replant trees shall not be allowed.
18. To further illustrate the project's commitment to preserving and re-establishing tree canopy in our region, prior to Site Plan approval, the developer will provide a donation of \$100,000 to the Triangle Land Conservancy and an additional \$100,000 donation to Trees for the Triangle.
19. There shall be no tree clearing within the riparian buffer zones with the exception of required Town of Apex utilities and public street connections.
20. Any required public road crossing within a riparian buffer shall be narrowed to the greatest extent possible, subject to Town of Apex design requirements and staff approval, in order to limit environmental impacts.

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### Architectural Conditions - Industrial

1. EIFS or synthetic stucco shall not be used in the first four feet above grade and shall be limited to only 25% of each building façade.
2. The buildings shall have more than one parapet height.
3. Windows and glazing shall be divided to be either square or vertical in proportion so that each section is taller than it is wide.
4. The main entry shall be human scaled and emphasized through the use of features such as, but not limited to, columns, piers, windows, recessed entries, sheltering elements, rooflines, trim, color change, material change and masonry patterns. Recessed arcades, entries flush with the building face and small entries without adjacent windows shall be avoided.

### Architectural Conditions - Commercial

1. Buildings shall have vertical proportions. Expanses of blank wall shall not exceed sixty (60) feet in width without being interrupted with an architectural feature such as, but not limited to, a column, recess in or projection from the building façade. Permitted setbacks can be used to articulate bays of a building to break up its width. Architectural features such as, but not limited to, columns, piers, rooflines, and brick patterns can be used to divide and create vertical orientation on building facades. This would also include reveals in concrete tilt construction with integrated thin brick and contrasting paint colors, which add visual interest. The percentage of brick required on the facades will be 65 percent for a single-story building, 50 percent for a two story building, and only the first floor for a three story building.
2. The main entry shall be human scaled and emphasized through the use of features such as, but not limited to, columns, piers, windows, recessed entries, sheltering elements, rooflines, trim, color change, material change and masonry patterns. Recessed arcades, entries flush with the building face and small entries without adjacent windows shall be avoided.
3. Buildings on corners are to be treated as gateways with quality design.
4. Corner buildings shall match or exceed the height of adjacent commercial buildings.
5. Corner buildings shall have two facades which maintain a relationship to each other although they do not need to be identical.
6. The orientation of drive-thru lanes, pick-up windows, and other utilitarian building functions should not be oriented toward or located adjacent the street. If drive-thru lanes must be located adjacent to a street, they shall be screened through the use of low walls and/or landscaping. Pick-up windows shall be de-emphasized through screening and/or architectural elements.
7. Each façade shall have a rhythm that is repeated through the pattern of wall and openings. The building façade shall have an identifiable base, body, and cap with horizontal elements separating these components. The body of the building shall constitute a minimum of 50% of the total building height. Buildings shall not have blank side walls creating a false front appearance.
8. The street level of the facades shall provide human scaled entries including, but not limited to, recessed entries, sheltering elements and adjacent storefront windows. Facades shall incorporate a minimum of two (2) continuous details refined to the scale of twelve (12) inches or less within the first ten (10) feet of the building wall, measured vertically at street level. Recessed arcades, entries flush with the building face, and small entries without adjacent windows shall be avoided.
9. Windows and storefront glazing shall be divided to be either square or vertical in proportion so that each section is taller than it is wide.
10. Simple parapet roof edges with varying coping shall be used on most buildings. The roofline height shall vary from building to building as well as within buildings with wide street frontage.
11. The building shall have more than one parapet height.
12. Roof features may include hip roofs or awnings with metal or shingle roofs.
13. Buildings shall be architecturally compatible by way of colors and use of materials. The building exterior shall have more than one material color.

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14. The exterior materials shall include a combination of building materials. The primary (front) façade of the main buildings to be considered include:
  - a. Brick masonry
  - b. Decorative concrete block (either integrally colored or textured)
  - c. Stone accents
  - d. Aluminum storefronts with anodized or pre-finished colors.
  - e. EIFS cornices and parapet trim.
  - f. Precast concrete
  - g. Concrete tilt with a base wall paint color in conjunction with varying complimentary accent paint colors and integral thin brick, with associative percentages as outlined in item 1 above.
15. Exterior materials that shall not be allowed are as follows:
  - a. Vinyl siding
  - b. Painted, smooth faced concrete block (decorative blocks are acceptable)
  - c. Metal walls
16. EIFS or synthetic stucco shall not be used in the first four feet above grade and shall be limited to only 25% of each building façade
17. Soffit and fascia materials shall be EIFS, architectural metal panels (ACM), or tongue and groove wood.

### Transportation Conditions

1. Development shall dedicate public right-of-way for the future interchange at US 64 and NC 751 consistent with the area shown in Exhibit 1. This area is based on the outside limits of the interchange concept known as "ALT 1" evaluated by the North Carolina Department of Transportation at the time of rezoning. This dedication shall be included in development plans and occur at the time of Subdivision Final Plat or Site Plan Final Plat, whichever occurs first, for any parcel(s) adjacent to US 64 and NC 751 as applicable. If NCDOT has approved an interchange design prior to the first Subdivision Final Plat or Site Plan Final Plat that is less than shown on Exhibit 1, the development shall only be required to dedicate the right-of-way shown in the approved interchange design.
2. All collector roads (as reflected in Exhibit 1) shall be constructed to Town of Apex major collector street standards. Development shall construct and dedicate a 60-foot right-of-way from NC 751 to the eastern boundary of the rezoning limits. Exhibit 2 reflects approximate location of connection that shall be further defined at site plan. This shall not be required until these parcels are developed.
3. Development shall construct and dedicate a 60-foot right-of-way from NC 751 to the western boundary of the rezoning limits. Exhibit 2 reflects approximate location of connection that shall be further defined at site plan. This shall not be required until these parcels are developed.
4. Development shall increase the sidewalk width to a 10' multi-use path for a portion of the road committed in Transportation Condition #3 from NC 751 to the eastern stream buffer as depicted on Exhibit 2. This shall not be required until these parcels are developed.
5. Development shall connect the multi-use path committed in Transportation Condition #4 back to NC 751 along the approximate location shown on Exhibit 2. Multi-use path shall be at a minimum 10' wide and of stone material. This shall not be required until these parcels are developed.
6. The development shall construct a minimum of two stub street connections to adjacent parcels that have no frontage along public streets or only have frontage along NC 751. The location of the stub streets shall be subject to Town review and approval.
7. Development shall construct a 5-foot sidewalk on the west side of NC 751 along the frontage of existing PIN's 071200277607 and 071200278263 at the time of development of the northwest quadrant (existing PIN's 071200261673 and 071200350755) subject to readily available right-of-way or easement from the property owner(s).

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8. A 10 ft shared use path shall be provided along the northern property boundary of existing PIN 71200435356 Lot 2 (south of NC 64 and west of New Hill Road) at the time this parcel is developed.
9. Development shall, in conjunction with NCDOT, investigate the feasibility of the addition of a 10' multi-use path or it's easement area from the terminus of the Reedy Branch Greenway at the intersection of New Hill Olive Chapel Road and Amberlight Road to the proposed multi-use path stated in Transportation Condition #5 at the time this parcel (PIN 071200435356 Lot 3 – South of NC 64 and east of New Hill Road) is developed.
10. Development shall construct a 5-foot sidewalk on the east side of NC 751 along the frontage of existing PIN 071200452843 at the time of development of the northeast quadrant subject to readily available right-of-way (and NC DOT approval) or easement dedication from the property owner.
11. The development shall construct and designate 10 park and ride spaces for public use within Apex Gateway Phase 2. Park and ride spaces shall be located south of US 64 and no more than 1,000 feet from the center of the US 64 and NC 751 intersection.

**Section 5:** The "Rezoned Lands" shall be perpetually bound to the conditions imposed including the uses authorized, unless subsequently changed or amended as provided for in the Unified Development Ordinance. Site plans for any development to be made pursuant to this amendment to the Official Zoning District Map shall be submitted for site plan approval as provided for in the Unified Development Ordinance.

**Section 6:** This Ordinance shall be in full force and effect from and after its adoption.

Motion by Council Member \_\_\_\_\_

Seconded by Council Member \_\_\_\_\_

With \_\_\_\_ Council Member(s) voting "aye."

With \_\_\_\_ Council Member(s) voting "no."

This the \_\_\_\_ day of \_\_\_\_\_ 2024.

**TOWN OF APEX**

\_\_\_\_\_  
Jacques K. Gilbert  
Mayor

**ATTEST:**

\_\_\_\_\_  
Allen Coleman, CMC, NCCCC  
Town Clerk

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Town Attorney