

CITY OF MEDINA, WASHINGTON

Ordinance No. XXXX

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MEDINA, WASHINGTON, AMENDING THE MEDINA TREE MANAGEMENT CODE, CHAPTER 16.52, AMENDING SECTIONS 16.52.060, 16.52.080.A, 16.52.090.D.3, 16.52.170.A.3, 16.52.200.E.2 TO CREATE CLARITY IN THE CODE AND ADMINISTRATION THEREOF, ADDING A NEW SECTION 16.52.250 REGARDING PENALTIES FOR VIOLATIONS, AMENDING 1.15.030 AND 1.15.330 TO MAKE CODE ENFORCEMENT CHAPTER CONSISTENT WITH CHAPTER 16.52, PROVIDING FOR SEVERABILITY AND CORRECTIONS, AND ESTABLISHING AN EFFECTIVE DATE.

WHEREAS, Medina values its tree canopy for the beauty that trees provide, as well as for the benefits in absorbing stormwater and making the environment cleaner; and

WHEREAS, revisions to the Tree Management Chapter are recommended for clarity and consistency as well as to adopt a clear penalty provision with grounds for waiver of the same; and

WHEREAS, this Ordinance was submitted to the Department of Commerce for 60-day expedited review on _____, 2024; and

WHEREAS, on _____, 2024, the City's SEPA official issued a determination of nonsignificance for the proposed amendments, which was published and provided to the public in accordance with WAC 197-11-510, and there have been no appeals; and

WHEREAS, the City issued a Notice of Public Hearing for the proposed code amendment at least 15 days prior to the public hearing before the City's Planning Commission which was published in the City's official newspaper and provided to the public in accordance with Title 16 MMC; and

WHEREAS, following the public hearing, the Planning Commission voted to recommend approval of this Ordinance to the City Council; and

WHEREAS, the City Council reviewed this Ordinance along with the recommendation from the Planning Commission during its regularly meeting on _____, 2024; and

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WHEREAS, the City Council determines that it is in the public interest, safety and welfare to clarify when non-administrative variances are appropriate and the scope of such approvals; **NOW, THEREFORE**,

THE CITY COUNCIL OF THE CITY OF MEDINA, WASHINGTON, DO ORDAIN AS FOLLOWS:

Section 1. Section 16.52.060 of the Medina Municipal Code is hereby amended to read as follows:

16.52.060 Designation of significant tree species.

- A. A list of suitable tree species consisting of coniferous and deciduous trees is set forth in the document entitled "City of Medina List of Suitable Tree Species," adopted by Ordinance No. 923 and on file with the city for the purpose of establishing significant tree species on private property, public property, and city rights-of-way; and tree species that are eligible for credits in this chapter.
- B. The director shall maintain the "City of Medina List of Suitable Tree Species" document at Medina City Hall and may administratively modify the list consistent with the following criteria:
 - 1. The designation of coniferous trees should include all species excluding tree species known to have invasive root structures and to be fast growing such as Leyland cypress and should also exclude trees planted, clipped or sheared to be used as a hedge;
 - 2. The designation of deciduous trees should include those suitable to United States Department of Agriculture Plant Hardiness Zones 8 and 9, excluding those trees with crown diameter of ten feet or less at maturity;
 - 3. Addition of non-native deciduous trees to expand the selection of suitable deciduous trees for supplemental and restoration planting options when those trees will add to the beauty of Medina provided such species are not unsuitable for other reasons, like excessive shallow root growth; and
 - 4. Plantings of the following tree species within the city's rights-of-way shall be prohibited: London plane, quaking aspen, Lombardy poplar, bolleana poplar, cottonwood, and bigleaf maple.
- C. The director shall submit proposals to modify the "City of Medina List of Suitable Tree Species" to the city council for their consideration. The city council may approve, modify or deny the proposed modifications. The city council may also decline to take action on the proposed modifications, in which case the modifications shall be incorporated into the list and take effect five days after the date the city council declines to take action.

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- D. The "City of Medina List of Suitable Tree Species" is used in conjunction with the definition of significant tree set forth in MMC 16.12.200 to denote the term significant tree as used in this chapter.

Section 2. Section 16.52.080.A of the Medina Municipal Code is hereby amended to read as follows:

16.52.080 Legacy and landmark tree protection measures.

This section applies to trees designated as legacy and landmark trees, which are native trees that because of their age, size and condition are recognized as having outstanding value in contributing to the character of the community. Legacy and landmark trees within the shoreline jurisdiction are regulated in MMC 16.66.050.

- A. A legacy or landmark tree shall be designated by meeting the following criteria:

1. Legacy tree:

- a. The tree species is denoted as a legacy tree on the "City of Medina List of Suitable Tree Species"; and
- b. The diameter breast height of the tree is 36 inches or larger but less than 50 inches; and
- c. The city arborist determines the tree to be healthy with a likelihood of surviving more than ten years based on assumptions that:
 - ~~i. The tree is properly cared for; and~~
 - ~~ii. The risk of the tree declining or becoming a nuisance is unenhanced by any proposed development.~~

2. Landmark tree:

- a. The tree species is denoted as a legacy tree on the "City of Medina List of Suitable Tree Species"; and
- b. The diameter breast height of the tree is 50 inches or larger; and
- c. The city arborist determines the tree to be healthy with a likelihood of surviving more than ten years based on assumptions that:
 - ~~i. The tree is properly cared for; and~~
 - ~~ii. The risk of the tree declining or becoming a nuisance is unenhanced by any proposed development.~~

* * * * *

Section 3. Section 16.52.090.D.3 of the Medina Municipal Code is hereby amended to read as follows:

16.52.090 Minimum preservation standards for land under development.

* * * * *

D.

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3. The quantity of supplemental trees is determined by:

Assigning a tree unit to each supplemental tree using Table 16.52.090(D);

Two supplemental trees shall be required for replacing each existing significant tree having a diameter breast height of 24 inches and larger subject to the limitation in subsection (D)(3)(d) of this section, and consistent with subsection (D)(2) of this section these shall be counted first;

The quantity of supplemental trees shall be of a sufficient number that their total assigned tree units added to the net existing tree units shall equal or exceed the minimum required tree units established in subsection (B) of this section; and

~~Supplemental trees in excess of those needed to meet the minimum required tree units shall not be required.~~

* * * * *

Section 4. Section 16.52.170.A.3 of the Medina Municipal Code is hereby amended to read as follows:

16.52.170 Tree preservation plan.

- A. Permits for lands under development and permits for removing city trees in city rights-of-way shall include a tree preservation plan containing the following information:
 - 1. A survey plan prepared by a state licensed surveyor that includes the following:
 - a. Topography of the site at two-foot contour intervals;
 - b. Critical areas as defined in Chapters 16.50 and 16.67 MMC.
 - 2. A site plan drawing showing the following:
 - a. Proposed improvements, alterations or adjustments to the subject property including, but not limited to, buildings, driveways, walkways, patios, decks, utilities, and proposed contours.
 - b. Existing structures, whether proposed to remain or proposed for removal.
 - c. The shoreline jurisdiction as defined in RCW 90.58.030, if applicable to the property.

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3. A tree-planting plan prepared by a professional arborist that includes:

* * * * *

Section 5. Section 16.52.200.E.2 of the Medina Municipal Code is hereby amended to read as follows:

16.52.200. City tree removals.

* * * * *

E.

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2. Replacement trees shall meet the following standards:

- a. To be eligible as a replacement tree, the tree species must be selected from the appropriate list in the "City of Medina List of Suitable Tree Species" established in MMC 16.52.060;
- b. Replacement trees shall be planted within the city right-of-way adjoining the subject lot;
- c. Each replacement tree shall have a minimum caliper of two inches or, if the tree is coniferous, it shall have a minimum height of six feet at the time of final inspection by the city;
- d. Replacement trees shall be planted in a manner of proper spacing and lighting that allows them to grow to maturity;
- e. At least one replacement city tree shall be of the same plant division (coniferous or deciduous) as the city tree removed;
- f. The replacement tree(s) shall be of a type that will achieve the same or similar canopy coverage at maturity as the tree(s) which were removed; and
- g. Approval to remove a city tree shall include conditions to make certain that replacement trees remain healthy and viable for at least five years after inspection by the city, including measures to replace those replacement trees that do not remain healthy and viable;

* * * * *

Section 6. A new section 16.52.250 is hereby added to the Medina Municipal Code to read as follows:

16.52.250. - Violations.

A. Application and Scope.

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1. This section establishes fines, penalties, violation procedures, and information relative to trees and tree canopy that are removed or damaged in the City of Medina without prior or proper authorization from the City and/or without compliance with the regulations in MMC Chapter 16.52-Tree Management Code.

B. Definitions.

The following definitions apply for the purposes of implementing this chapter.

1. “Private property” or “parcel” means all land and property not included within the definitions of “right of way”, “ROW”, or “public property” as set forth in Section B.2 below.

2. “Right of way”, “ROW”, and “public property” each mean and include any and all land and/or property rights held by the City of Medina whether for the benefit of the City and/or for the public.

3. “Tree activity permit” means a permit issued with or without conditions by the City of Medina permitting the removal of one or more trees.

4. “Tree damage” means a tree found to have its health and/or viability substantially or permanently degraded due to improper implementation of or failed maintenance of tree protection requirements. “Tree damage” also includes damage resulting from other unnatural causes.

5. “Tree removal” means the act of physically removing a tree by any means, or damaging a tree to a point it is no longer healthy or viable.

6. “Viable” means capable of surviving or living successfully.

7. “Violator” means the person, persons, and/or entity(s) determined by the Director to be responsible for or having committed any improper or unpermitted tree removal or tree damage.

C. Tree Removals Occurring on Private Property. Each tree removed from private property is subject to all of the following:

1. Fines. Fines shall be assessed for each tree removed as follows; each fine is cumulative:

- a. \$1,000 per tree; and
- b. \$1,000 per inch DBH; and
- c. \$25,000 maximum per tree; and

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d. The fine for legacy or landmark tree removal shall be three times the maximum calculated fine per tree; and

e. The fine for tree removal occurring within a critical area or a critical area buffer shall be three times the calculated fine per tree.

2. One time exemption. The owner of a single-family parcel not under a pending or issued development permit may seek a one-time exemption from all or a portion of the foregoing fines in Section C.1 above for a maximum of one tree removal if the Director finds that all of the following apply:

i. The removed tree is not a legacy or landmark tree.

ii. The removed tree is not within a critical area or its buffer.

iii. No more than one tree is removed.

iv. There has been no prior exemption granted for a tree removal on the single-family property during the period of a continuous ownership.

2. Reimbursement and Recovery of City Costs. The following City costs and expenses incurred for or related to each tree removal shall be tabulated by the Director and periodic invoices therefore shall be presented to the violator, who shall reimburse the City in the full amount thereof within 30 days of presentation of such invoice.

a. All costs and expenses of enforcement or remediation incurred by the City shall be recovered, including:

i. Professional consultant and contract costs, including without limitation arborists, technicians, City Hearing Examiner, City Attorney, and any other consultant or contractor performing work or activities related to the tree removal.

ii. Hourly City staff costs.

3. Tree Activity Permit Requirements.

a. Permit fees for work performed without benefit of an issued tree activity permit shall be doubled.

4. Hardships. The owner of a private single-family residential property who is determined by the City to have committed an unpermitted tree removal on such property, or on City property, and to whom the City has assessed fines for violations of this section, may petition the Hearing Examiner for a reduction of the City's assessed fines and penalties pursuant

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to this subsection C.4, and may seek reduction of any enforcement costs assessed. The City's intent is to recognize individuals who have limited financial assets, such that the assessed fines or costs represent a significant and substantial financial burden on the owner.

a. The owner of private single-family residential property who wishes to petition the Hearing Examiner due to financial hardship shall:

i. File a petition to the Hearing Examiner no later than the date of the appeal deadline to a City-issued Notice of Violation or other Order issued by the City regarding the unpermitted tree removal in accordance with MMC 1.15.220.

ii. The petition shall be delivered to the City of Medina Development Services Director via certified mail or by hand-delivery to City Staff at Medina City Hall "to the attention of the Development Services Director" and shall include full payment of the Hearing Examiner's fee as listed within the current Medina Fee Resolution.

iii. The City shall provide the petitioner with a notice of receipt via regular mail.

iv. The petitioner shall provide substantial credible evidence of monetary burden, personal and household impact, and hardship due to the City's assessed fines and/or costs imposed, including evidence provided under penalty of perjury of household income, assets, size of household, and other extenuating circumstances. Documents that may be used to establish income for the purposes of applying for the hardship exception include, but are not limited to:

- Salary/wages/tips, etc. (W-2)
- Interest/dividends (1099-INT/1099-DIV)
- Alimony/spousal maintenance (State/DSHS stmts.)
- Business income, include rental property income and/or rental payments, co-tenant (1040 + Schedule C)
- Capital gains/losses (1040 + schedule D)
- IRA withdrawals (1099-R)
- Pension/veteran's/annuities (1099-R)
- Railroad retirement benefits (RRB-1099)
- Unemployment/labor and industries (1099-G)
- Social Security statement (SSA, SSI, SSDI 1099)
- Gifts/cash
- Work study earnings

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- Military pay/benefits

v. Financial hardship may be deemed to exist by the Hearing Examiner when the petitioner's household needs substantially all of his/her/their current and anticipated income and liquid assets to meet current and anticipated ordinary and necessary living expenses during the projected period of collection. Financial hardship will not be found to exist when the petitioner merely establishes that the repayment causes a financial burden, *i.e.*, when it is inconvenient to pay the penalties or costs. If there are anticipated changes in income or expenses that would allow for the recovery of the overpayment at a later date, or over time, the Hearing Examiner may defer the collection of the penalties and/or costs until a future date or may allow payment over time.

A. *Considerations.* Pertinent considerations in determining whether full and prompt payment of the penalties and/or costs would cause financial hardship include the following:

(1) The petitioner does not have the ability to pay the penalties and/or costs when due, or

(2) The petitioner provides evidence that he/she/they has/have a household income that is equal to or less than 80 percent of King County Area Median Income (AMI), or

(3) There is an immediate and heavy financial need of one or more a members of the petitioner's household that is due to no fault of the petitioner or household member, such as medical needs, which makes it very difficult for the petitioner to timely and fully pay the penalties and/or costs.

B. For purposes of determining financial hardship "ordinary and necessary living expenses" include rent, mortgage payments, utilities, maintenance, food, clothing, insurance (life, health and accident), taxes, installment payments, medical expenses, support expenses when the individual is legally responsible, and other miscellaneous expenses which the individual can establish as being ordinary and necessary, provided, however, that expenses that are in excess of

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200 percent of the then-applicable “National Standards for food, clothing, and other items” established annually by the Internal Revenue Service, shall not be considered “ordinary and necessary living expenses” for purposes of determining financial hardship.

vi. Hearing Examiner Discretion; Burden of Proof.

The Hearing Examiner shall have discretion over the petition and may grant (in whole or in part) or deny the petition, provided, however, that the petition may only be granted if the petitioner has provided evidence of household income and assets under penalty of perjury and such evidence proves that the full and prompt payment of the penalties or/or costs would be a financial hardship to the petitioner. The Hearing Examiner shall consider the petitioner’s ability to pay, based on both household income and assets and make a determination whether the prompt and full payment of the penalties and/or costs will create an undue hardship for the petitioner. If payment over time will reduce the financial hardship, the Hearing Examiner may allow payment of the penalties and/or costs to be made over time so as to reduce the financial hardship for the petitioner. The burden of proof shall be on the petitioner to establish that full and prompt payment of the penalties and/or costs would be a financial hardship and will be based on the considerations and information set forth in subsections iv and v above.

viii. Hearing Procedure. The Hearing Examiner shall consult with the parties and set the date for the hearing no later than 90-days following receipt of the complete petition and shall set dates for the submission of an answer by the City to the petition and a response thereto by the petitioner. The hearing shall be conducted in accordance with the Hearing Examiner's Rules of Procedure. The Hearing Examiner shall issue a Notice of Decision to the petitioner and the Director within 30 days of the close of the hearing, which Notice shall briefly explain the Examiner's decision and either grant, in whole or in part, or deny the petition.

D. Tree Removals Occurring on Public Property or City ROW. Each tree regulated by MMC Ch. 16.52 which is removed from City or public property or ROW is subject to all of the following:

1. Fines. Fines shall be assessed for each tree removed as follows; each fine is cumulative.

- a. There is no minimum diameter of tree limitation.
- b. \$1,000 per tree; and
- c. \$1,000 per inch DBH; and

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d. The fine for each tree removed shall be three times that calculated per subsections D.1.a, .b and .c.

2. Reimbursement of City Costs. The following City costs and expenses incurred for or related to each tree removal shall be tabulated by the Director and periodic invoices therefore shall be presented to the violator, who shall reimburse the City in the full amount thereof within 30 days of presentation of such invoice.

a. All costs and expenses of enforcement and remediation incurred by the City shall be recovered, including:

i. Professional consultant and contract costs, including without limitation arborists, technicians, City Hearing Examiner, City Attorney, and any other consultant or contractor performing work or activities related to the tree removal.

ii. Hourly City staff costs.

iii. All site restoration activities, including debris, tree material and stump removal; grading; clean-up; infrastructure repair and replacement; site and public protective actions.

iv. All subsequent remedial and implementation activities, including estimated or anticipated costs to assure health, viability and protection of each remediation tree, including advance deposits therefor as periodically determined by the Director. Such amounts shall minimally include the estimated costs for three years of watering and other maintenance by City staff, and for five consecutive years to cover health and viability observation and/or response by the City Arborist.

3. Remediation of Tree Removal and Denigration of Tree Canopy. Immediate steps to replace and restore the total area of removed tree canopy are required, including the following:

a. The area of canopy remediation shall be based upon the City Arborists estimation of canopy area lost.

b. Utilize tree species listed within the Medina Lists of Suitable Trees.

c. Tree sizes as necessary to reduce the quantity of replacement trees.

d. Replant within the immediate area of the tree and canopy removal.

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e. Utilize additional replanting in locations determined appropriate by the City Arborist.

f. Recovery of the City's expenses of remediation, including replacement trees, professional planting, delivery, and sales tax, and ongoing maintenance thereof, as set forth in Section C.2 above.

g. Contribution(s) to the Medina Tree Fund shall comply with Section 16.52.200.E.3.

h. At its discretion the City may perform the remediation work required or the City may use preferred consultants of its choice.

i. Modifications may be applied to remediation requirements as determined appropriate by the Director.

4. Tree Activity and Right of Way Use Permit Requirements.

a. Fees for work performed without benefit of an issued tree activity and right of way use permit shall be doubled.

E. Tree Protection Requirements and Standards During Development.

1. Failure to Implement or Maintain Tree Protection. Failure to implement or maintain tree protection as required during development projects shall result in a minimum fine of \$1,000 per tree.

2. Damaged Trees. Trees found to have their health and/or viability substantially or permanently damaged due to improper or failed implementation or maintenance of tree protection requirements shall be subject to fines, fees, cost reimbursement, and remediation as though the tree had been removed without benefit of permit.

F. Financial Guarantees and Supplemental Provisions. The following provisions apply to all actions occurring under this Section:

1. A financial guarantee acceptable to the City, including a bond, cash, or bank cash set-aside account (collectively Guarantee) is required for all time deposits under this Section.

2. A minimum Guarantee in the amount of \$4,000 is required per remediation tree. Said Guarantee shall be held for 5-years beginning with the date of replanting.

3. Guarantees shall be replenished within 60 days of written notice from the City that the current deposit amount is at 25% or less of the original deposit.

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4. All or portions of a Guarantee may be used by the City to cover total cost to replant if needed.

5. A portion of a Guarantee may be used for assuring a new 3-year watering and maintenance program, and concurrent 5-year period of City arborist observations.

Section 7. Section 1.15.030 of the Medina Municipal Code is hereby amended to read as follows:

1.15.030 Applicability.

This chapter applies to any violations of:

- A. MMC Title 16, Unified Development Code;
- B. Chapter 8.04 MMC, Nuisances;
- C. Chapter 8.06 MMC, Noise;
- D. Chapter 12.08 MMC, Construction in Streets;
- E. Chapter 12.32 MMC, Structures in Unimproved Portions of Public Rights-of-Way;
- F. Chapter 13.06 MMC, Stormwater;
- G. Chapter 16.75 MMC, Construction Activity Permit;
- H. Chapter 16.50 MMC, Critical Areas; ~~and~~
- I. Chapter 16.52 MMC, Tree Management Code; and
- J. Other Medina Municipal Code sections that make reference to this chapter.

Section 8. Section 1.15.330 of the Medina Municipal Code is hereby amended to read as follows:

1.15.330. Monetary penalties.

- A. Monetary penalties for a citation, other than as set forth in subsection C and D below, shall be in accordance with Table 1.15.330:

Table 1.15.330

Code Provision	First Violation	Second Violation	Third and Subsequent Violations

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Exceeding noise standards	\$100.00	\$200.00	\$500.00
Failure to comply with code of conduct or construction mitigation plan	\$100.00	\$400.00	\$750.00
Failure to comply with erosion control measures and best management practices	\$100.00	\$200.00	\$500.00
Illicit discharges of or into stormwater, illegal dumping of or into stormwater and/or illicit connections to a stormwater facility	\$300.00	\$600.00	\$900.00
Failure to comply with a stop work order	\$300.00	\$750.00	\$1,500.00
Failure to obtain a tree removal permit	\$300.00	\$500.00	\$750.00
Failure to obtain and/or comply with a right-of-way permit	\$100.00	\$400.00	\$750.00
Placement of a prohibited structure or object in city right-of-way	\$50.00	\$100.00	\$300.00

B. Monetary penalties for a notice of violation shall be as follows:

1. First day of each violation, \$100.00;
2. Second day of each violation, \$200.00;
3. Third day of each violation, \$300.00;
4. Fourth day of each violation, \$400.00;
5. Each additional day of violation beyond four days, \$500.00 per day.

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- C. Violations involving the tree regulations set forth in Chapter 16.52 MMC shall be as set forth in MMC 16.52.250.
- D. Violations involving and the shoreline master program set forth in Chapters 16.60 through 16.67 MMC shall have the monetary penalties prescribed by this section assessed on a per tree basis.

Section 9. Severability. If any section, sentence, clause, or phrase of this ordinance should be held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity of any other section, sentence, clause, or phrase of this ordinance.

Section 10. Publication. This Ordinance shall be published by an approved summary consisting of the title.

Section 11. Corrections. Upon the approval of the city attorney, the city clerk, and/or the code publisher is authorized to make any necessary technical corrections to this ordinance, including but not limited to the correction of scrivener's/clerical errors, references, ordinance numbering, section/subsection numbers, and any reference thereto.

Section 12. Effective Date. This ordinance shall take effect five days after publication as provided by law.

**PASSED BY THE CITY COUNCIL ON THIS XX DAY OF _____, 2024
BY A VOTE OF X FOR, X AGAINST, AND X ABSTAINING, AND IS SIGNED IN
AUTHENTICATION OF ITS PASSAGE ON THE XX DAY OF _____,
2024.**

Jessica Rossman, Mayor

Approved as to form:
Inslee Best Doezie & Ryder, P.S.

Attest:

Jennifer S. Robertson, City Attorney

Aimee Kellerman, City Clerk

PUBLISHED:
EFFECTIVE DATE:
ORDINANCE NO.: / AB