

## ORDINANCE NO. 2018-02

AN ORDINANCE OF THE COMMON COUNCIL OF THE TOWN OF CAREFREE, MARICOPA COUNTY, ARIZONA, ADOPTING AMENDMENTS TO CHAPTER 5 OF THE CAREFREE, ARIZONA TOWN CODE; PROVIDING FOR REPEAL OF CERTAIN PROVISIONS OF THE CAREFREE, ARIZONA TOWN CODE; PROVIDING FOR SEPARABILITY; ADOPTION AND APPROVAL BY THE MAYOR AND COMMON COUNCIL OF THE TOWN AS REQUIRED BY LAW AND DIRECTING THE TOWN CLERK OF THE TOWN OF CAREFREE TO INCORPORATE THIS AMENDMENT INTO THE CAREFREE, ARIZONA TOWN CODE.

BE IT ORDAINED BY THE MAYOR AND COMMON COUNCIL OF THE TOWN OF CAREFREE, MARICOPA COUNTY, ARIZONA, AS FOLLOWS:

- Section 1: The Mayor and Common Council deem it necessary, in order to conserve, promote, and protect the public health, safety and welfare, to amend that certain document known as the Town of Carefree Zoning Ordinance.
- Section 2: All ordinances and portions of ordinances in conflict with the provisions of this Ordinance, or inconsistent with the regulations of this Ordinance, are hereby repealed to the extent necessary to give this Ordinance full force and effect.
- Section 3: The Amendments are made to Chapter 5 Health and Safety, Amended as follows (additions are shown in double underline, and deleted language is ~~crossed out~~):

### Article 5-6 ILLICIT DISCHARGE AND CONNECTION

- Section 5-6-1 Purpose and Intent
- Section 5-6-2 Definitions
- Section 5-6-3 Applicability
- Section 5-6-4 Responsibility for Administration
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- Section 5-6-9 Compliance Monitoring
- Section 5-6-10 Requirement to Prevent, Control, and Reduce Stormwater Pollutants by the Use of Best Management Practices.
- Section 5-6-11 Notification of Spills
- Section 5-6-12 Violations, Enforcement, And Penalties
- Section 5-6-13 Appeal of Notice Of Violation

- Section 5-6-14 Enforcement Measures after Appeal
- Section 5-6-15 Cost of Abatement Of The Violation
- Section 5-6-16 Violations Deemed A Public Nuisance
- Section 5-6-17 Remedies Not Exclusive

**Section 5-6-1 PURPOSE AND INTENT**

The purpose of this ordinance is to provide for the health, safety, and general welfare of the citizens of Carefree through the regulation of non-storm water discharges to the storm drainage system to the maximum extent practicable as required by federal and state law. This ordinance establishes methods for controlling the introduction of pollutants into the municipal separate storm sewer system (MS4) in order to comply with requirements of the National Pollutant Discharge Elimination System (NPDES) permit process. The objectives of this ordinance are:

- A. To regulate the contribution of pollutants to the MS4 by illicit storm water discharges by any user.
- B. To prohibit illicit connections and discharges to the MS4.
- C. To establish legal authority to carry out all inspection, surveillance, monitoring, and enforcement procedures necessary to ensure compliance with this ordinance.

**Section 5-6-2 DEFINITIONS**

- A. For the purposes of this ordinance, the following shall mean: "ADEQ" means Arizona Department of Environmental Quality.
- B. "Authorized Enforcement Agency." means employees or designees of the Town.
- C. "Best Management Practices (BMPs)" means schedules of activities, prohibitions of practices, general good housekeeping practices, pollution prevention and educational practices, maintenance procedures, and other management practices to prevent or reduce the discharge of pollutants directly or indirectly to storm water, receiving waters, or storm water conveyance systems. BMPs also include treatment practices, operating procedures, and practices to control site runoff, spillage or leaks, sludge or water disposal, or drainage from raw materials storage.
- D. "Clean Water Act." means the federal Water Pollution Control Act (33 U.S.C. § set seq.) and any subsequent amendments thereto.
- E. "Construction Activity" means activities subject to NPDES Construction Permits. These include construction projects resulting in land disturbance

of one acre or more. Such activities include but are not limited to clearing and grubbing, grading, excavating and demolition.

- F. “Facility” or “Activity” means any NPDES point source” or any other facility or activity (including land or appurtenances thereto) that is subject to regulation under the NPDES program.
- G. “Hazardous Material” means any material, including any substance, waste or combination thereof, which because of its quantity, concentration, or physical, chemical, or infectious characteristics may cause, or significantly contribute to, a substantial present or potential hazard to human health, safety, property, or the environment when improperly treated, stored, transported, disposed of, or otherwise managed.
- H. “Illegal Discharge” means any direct or indirect non-storm water discharge to the storm drain system except as exempted in Section 8 of this ordinance.
- I. “Illicit Connection” is defined as either of the following:
1. Any drain or conveyance, whether on the surface or subsurface that allows an illegal discharge to enter the storm drain system including but not limited to any conveyances that allow any non-storm water discharge including sewage, process wastewater, and wash water to enter the storm drain system and any connections to the storm drain system from indoor drains and sinks, regardless of whether said drain or connection had been previously allowed, permitted, or approved by an authorized enforcement agency or,
  2. Any drain or conveyance connected from a commercial or industrial land use to the storm system that has not been documented in plans, maps, or equivalent records and approved by an authorized agency.
- J. “Industrial Activity” means activities subject to NPDES Industrial Storm Water Permits as defined in 40 CFR, Section 122.26(b)(14).
- K. “Municipal Separate Storm Sewer System (MS4)” means the system of conveyances (including sidewalks, roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, man-made channels, or storm drains) owned and operated by the Town of Carefree and designed or used for collection or conveying storm water, and that is not used for collection or conveying sewage.
- L. “National Pollutant Discharge Elimination System (NPDES) Storm Water Discharge Permit” means a permit issued by EPA, through the Arizona Department of Environmental Quality, that authorizes the discharge of pollutants to waters of the United States, whether the permit is applicable on an individual, group, or general area-wide basis.

- M. “Non-Storm Water Discharge” means any discharge to the storm drain system that is not composed entirely of storm water.
- N. “Person” means any individual, association, organization, partnership, firm, corporation or other entity recognized by law and acting as either the owner or as the owner’s agent.
- O. “Pollutant” means anything which cause or contributes to pollution. Pollutants may include, but are not limited to: paints, varnishes, and solvents; oil and other automotive fluids; non-hazardous liquid, swimming pool water, and solid wastes and yard wastes; refuse, rubbish, garbage, litter or other discarded or abandoned objects, ordinances, and accumulations, so that same may cause or contribute to pollution; floatables; pesticides, herbicides, and fertilizers; hazardous substances and wastes; sewage, fecal coliform and pathogens; dissolved and particulate metals; animal wastes; wastes and residues that result from construction a building or structure; and noxious or offensive matter of any kind.
- P. “Premises” means any building, lot parcel of land, or portion of land whether improved or unimproved including adjacent sidewalks and parking strips.
- Q. “Storm Drainage System” means publicly-owned facilities by which storm water is collected and/or conveyed, including but not limited to any roads with drainage systems, municipal streets, gutters, curbs, inlets, piped storm drains, pumping facilities, retention and detention basins, natural and human-made or altered drainage channels, reservoirs, and other drainage structures.
- R. “Storm Water” means any surface flow, runoff, and drainage consisting entirely of water form any form of natural precipitation, and resulting from such precipitation.
- S. “Storm Water Management Plan” means a document which describes the Best Management Practices and activities to be implemented by a person or business to identify sources of pollution or contamination at a site and the actions to eliminate or reduce pollutant discharges to Storm Water, Storm Water Conveyance Systems, and/or Receiving Waters to the Maximum Extent Practicable.
- T. “Wastewater” means any water or other liquid, other than uncontaminated storm water, discharged from a facility.
- U. “Watercourse” includes and is not limited to the following: natural or artificial rivers, creeks, streams, washes, arroyos, recorded drainage easements, channels, ditches, canyons, ravines, sheet flows or other potential flood hazards or flood plain areas or other bodies of water having

banks and/or beds through which waters flow on a recurrent basis.

**Section 5-6-3            APPLICABILITY**

This ordinance shall apply to all water entering the storm drain system generated on any developed and undeveloped lands unless explicitly exempted by ADEQ or the Town as applicable.

**Section 5-6-4            RESPONSIBILITY FOR ADMINISTRATION**

The Town of Carefree shall administer, implement, and enforce the provisions of this ordinance. Any powers granted or duties imposed upon the Town of Carefree may be delegated in writing by the Town Administrator to persons or entities acting in the beneficial interest of or in the employ of the Town.

**Section 5-6-5            SEVERABILITY**

The provisions of this ordinance are hereby declared to be severable. If any provision, clause, sentence, or paragraph of this ordinance or the application thereof to any person, establishment, or circumstances shall be held invalid, such invalidity shall not affect the other provisions or application of this ordinance.

**Section 5-6-6            DISCHARGE PROHIBITIONS**

A. Prohibition of Illegal Discharges

No person shall throw, drain, or otherwise discharge, cause, or allow others under its control to throw, drain, or otherwise discharge into the MS4 any pollutants or waters containing any pollutants, other than storm water.

The commencement, conduct or continuance of any illegal discharge to the storm drain system is prohibited except as described as follows:

1. The following discharges are exempt from discharge prohibitions established by this ordinance: water line flushing, landscape irrigation, diverted stream flows, rising ground waters, uncontaminated ground water infiltration, uncontaminated pumped ground water, discharges from potable water sources, foundation drains, air conditioning condensation, irrigation water, springs, water from crawl space pumps, footing drains, lawn watering, individual residential car washing, flows from riparian habitats and wetlands, dechlorinated swimming pool discharges, and street wash water.
2. Discharges or flows from firefighting, and other discharges specified in writing the Town of Carefree as being necessary to

protect public health and safety.

3. These prohibitions shall not apply to any non-storm water discharge permitted under an NPDES permit, waiver, or waste discharge order issued to the discharger and administered under the authority of the United States Environmental Protection Agency (EPA), provided that the discharger is in full compliance with all requirements of the permit, waiver, or order and other applicable laws and regulation, and provided that written approval has been granted for any discharge to the storm drain system.

#### **B. Prohibition of Illicit Connections**

1. The construction, use, maintenance or continued existence of illicit connections to the storm drain system is prohibited.
2. This prohibition expressly includes, without limitation, illicit connections made in the past, regardless of whether the connection was permissible under law or practices applicable or prevailing at the time of connection.
3. A person is considered to be in violation of this ordinance if the person connects a line conveying sewage to the MS4, or allows such a connection to continue.
4. Improper connections in violation of this ordinance must be disconnected and redirected, if necessary, to an approved onsite wastewater management system or the sanitary sewer system upon approval of the Town.
5. Any drain or conveyance that has not been documented in plans, maps, or equivalent, and which may be connected to the storm sewer system, shall be located by the owner or occupant of that property upon receipt of written notice of violation from the Town requiring that such locating be completed. Such notice will specify a reasonable time period within which the location of the drain or conveyance is to be determined, that the drain or conveyance be identified as storm sewer, sanitary sewer or other, and that the outfall location or point of connection to the storm sewer system, sanitary sewer system or other discharge point be identified. Results of these investigations are to be documented and provided to the Town.

#### **Section 5-6-7 WATERCOURSE PROTECTION**

Every person owning property through which a watercourse passes, or such person's lessee, shall keep and maintain that part of the watercourse within the property free of trash, debris, excessive vegetation, and other obstacles that would pollute, contaminate, or significantly retard the flow of water through the watercourse. In

addition, the owner or lessee shall maintain existing privately owned structures within or adjacent to a watercourse, so that such structures will not become a hazard to the use, function, or physical integrity of the watercourse.

**Section 5-6-8 INDUSTRIAL OR CONSTRUCTION ACTIVITY DISCHARGES**

**A. Submission of ADEQ Notice of Intent Certificate to Town of Carefree**

1. All owners/operators of construction activities, new or redeveloped land, and industrial and commercial facilities shall minimize the discharge of pollutants to the MS4 through the installation, implementation, and maintenance of stormwater control measures.
2. Any person subject to an industrial or construction activity NPDES storm water discharge permit shall comply with all provisions of such permit. Proof of compliance with said permit may be required in a form acceptable to the Town prior to the allowing of discharges to the MS4.
3. The operator of a facility, including construction sites, required to have an NPDES permit to discharge storm water associated with industrial or construction activity shall submit a copy of the certificate provided by ADEQ ("ADEQ Notice of Intent Certificate") to construction site operators, granting coverage under the Construction General Permit, to the Town at the same time the operator submits the original ADEQ Notice of Intent Certificate to the EPA as applicable.
4. A person commits an offense if the person operates an industrial facility or construction site that is discharging storm water associated with the industrial or construction activity without having submitted a copy of the ADEQ Notice of Intent Certificate to do so to the Town.

**Section 5-6-9 COMPLIANCE MONITORING**

**A. Right of Entry: Inspection and Sampling**

The Town shall be permitted to enter and inspect facilities subject to regulation under this ordinance as often as may be necessary to determine compliance with this ordinance.

1. If a discharger has security measures in force, which require proper identification and clearance before entry into its premises, the discharger shall make the necessary arrangements to allow access to representatives of the Town.

2. Facility operators shall allow the Town ready access to all parts of the premises for the purposes of inspection, sampling, examination and copying of records that must be kept under the conditions of an NPDES permit to discharge storm water, and the performance of any addition duties as defined by state and federal law.
3. The Town shall have the right to set up on any permitted facility such devices as are necessary in the opinion of the Town to conduct monitoring and/or sampling of the facility's storm water discharge.
4. The Town has the right to require the discharger to install monitoring equipment as necessary. The facility's sampling and monitoring equipment shall be maintained at all times in a safe and proper operation condition by the discharger at its own expense. All devices used to measure storm water flow and quality shall be calibrated to ensure their accuracy.
5. Any temporary or permanent obstruction to safe and easy access to the facility to be inspected and/or sampled shall be promptly removed by the operator at the written or oral request of the Town and shall not be replaced. The costs of such access shall be borne by the operator.
6. Unreasonable delays in allowing the Town access to a permitted facility is a violation of a storm water discharge permit and of this ordinance. A person who is the operator of a facility with an NPDES permit to discharge storm water associated with and industrial or construction activity commits an offense if the person denies the Town reasonable access to the permitted facility for the purpose of conducting any activity authorized or required by this ordinance.

#### B. Search Warrants

If the Town has been refused access to any part of the premises from which storm water pollution is discharged, and he/she is able to demonstrate probable cause to believe that there may be a violation of this ordinance, or that there is a need to inspect and/or sample as part of a routine inspection and sampling program designed to verify compliance with this ordinance or any order issued hereunder, or to protect the overall public health, safety, and welfare of the community, the Town may seek issuance of a search warrant from any court of competent jurisdiction.

#### Section 5-6-10 REQUIREMENT TO PREVENT, CONTROL, AND REDUCE STORMWATER POLLUTANTS BY THE USE OF BEST MANAGEMENT PRACTICES.

The Town will adopt requirements identifying Best Management Practices for an activity, operation, or facility, which may cause or contribute to



pollution or contamination of storm water, the storm drain system, or waters of the United States. The owner or operator of such activity, operation, or facility shall provide, at their own expense, reasonable protection from accidental discharge of prohibited materials or other wastes into the municipal storm drain system or watercourses through the use of these structural and non-structural BMPs. Further, any person responsible for a property or premise that is, or may be, the source of an illicit discharge, may be required to implement, at said persons expense, additional structural and non-structural BMPs to prevent the further discharge of pollutants to the MS4. Compliance with all terms and conditions of a valid NPDES permit authorizing the discharge of storm water associated with the industrial or construction activity, to the extent practicable, shall be deemed compliance with the provisions of this section. These BMPs shall be part of a storm water management plan (SWMP) as necessary for compliance with the requirements of the NPDES permit.

#### **Section 5-6-11 NOTIFICATION OF SPILLS**

- A. Notwithstanding other requirements of law, as soon as any person responsible for a facility or operation, or responsible for emergency response for a facility or operation has information of any known or suspected release of materials which are resulting or may result in illegal discharges or pollutants discharging into storm water, the storm drain system, or waters of the United States, said person shall take all necessary steps to ensure the discovery, containment, and cleanup of such release.
- B. In the event of such a release of hazardous materials said person shall immediately notify emergency response agencies of the occurrence via emergency dispatch services.
- C. In the event of a release of non- hazardous materials, said person shall notify the Town in person or by phone or facsimile no later than the next business day.
1. Notifications in person or by phone shall be confirmed by written notice addressed and mailed to the Town within two business days of the phone notice.
  2. If the discharge of prohibited materials emanates from a commercial, industrial, or construction establishment or activity, the owner or operator shall also retain an on-site written record of the discharge and the actions taken to prevent its recurrence.
- D. Failure to provide notification of a release as provided above is a violation of this Ordinance.

**Section 5-6-12 VIOLATIONS, ENFORCEMENT, AND PENALTIES**

**A. Violations**

It shall be unlawful for any person to violate any provision or fail to comply with any of the requirements of this ordinance. Any person who has violated or continues to violate the provisions of this ordinance, may be subject to the enforcement actions outlined in this section or may be restrained by injunction or otherwise abated in a manner provided by law.

In the event the violation constitutes an immediate danger to public health or public safety, the Town is authorized to enter upon the subject property, without giving prior notice, to take any and all measures necessary to abate the violation and/or restore the property. The Town is authorized to seek the costs of the abatement as outlined in Section 17.

**B. Notice of Violation**

Whenever the Town finds that a person has violated a prohibition or failed to meet a requirement of this ordinance, the Town may order compliance by written notice of violation to the responsible person.

**C. Compensatory Action**

In lieu of the enforcement proceedings, penalties, and remedies authorized by this ordinance, the Town may impose upon a violator alternative compensatory action such as storm drain stenciling, attendance at compliance workshops, wash cleanup, etc.

**D. Suspension of MS4 Access**

**1. Emergency Cease and Desist Orders**

When the Town finds that any person has violated, or continues to violate, any provision of this ordinance, or any order issued hereunder, or that the person's past violations are likely to recur, and that the persons violation(s) has (have) caused or contributed to an actual or threatened discharge to the MS4 or waters of the United States which reasonably appears to present an imminent or substantial endangerment to the health or welfare of persons or to the environment, the Town may issue an order to the violator directing it immediately to cease and desist all such violation and directing the violator to:

- a. Immediately comply with all ordinance requirements;  
and,

- b. Take such appropriate preventive action as may be needed to properly address a continuing or threatened violation, including immediately halting operations and/or terminating the discharge.

Any person notified of an emergency order directed to it under this Subsection shall immediately comply and stop or eliminate its endangering discharge. In the event of a discharger's failure to immediately comply voluntarily with the emergency order, the Town may take such steps as deemed necessary to prevent or minimize harm to the MS4 or waters of the United States, and/or endangerment to persons or to the environment, including immediate termination of a facility's water supply, sewer connection, or other municipal utility services. The Town may allow the person to recommence its discharge when it has demonstrated to the satisfaction of the Town that the period of endangerment has passed, unless further termination proceedings are initiated against the discharger under this ordinance. A person that is responsible, in whole or in part, for any discharge presenting imminent endangerment shall submit a detailed written statement, describing the causes of the harmful discharge and the measures taken to prevent any future occurrence, to the Town within five (5) days of receipt of the emergency order. Issuance of an emergency cease and desist order shall not be a bar against or a prerequisite for, taking any other action against the violator.

## 2. Suspension Due to Illicit Discharges in Emergency Situations

The Town may, without prior notice, suspend MS4 discharge access to a person when such suspension is necessary to stop an actual or threatened discharge, which presents or may present imminent and substantial danger to the environment, or to the health or welfare of person, or to the MS4 or waters of the United States. If the violation fails to comply with a suspension order issued in an emergency, the Town may take such steps as deemed necessary to prevent or minimize damage to the MS4 or waters of the United States, or to minimize danger to persons.

## 3. Suspension Due to the Detection of Illicit Discharge

- a. Any person discharging to the MS4 in violation of this ordinance may have their MS4 access terminated if such termination would abate or reduce an illicit discharge. The Town will notify a violation of the proposed termination of its MS4 access. The violator may petition the Town for a reconsideration and hearing.

- b. A person commits an offense if the person reinstates MS4 access to premises terminated pursuant to this Section, without the prior approval of the Town.

E. Civil Penalties

In the event the alleged violation fails to take the remedial measures set forth in the notice of violation or otherwise fails to cure the violation described therein within five (5) days, or such greater period as the Town shall deem appropriate, after the Town has taken one or more of the actions described above, the Town may impose a penalty not to exceed seven hundred and fifty dollars (\$750.00) (depending on the severity of the violation) for each day the violation remains unremedied after receipt of the notice of violation.

Section 5-6-13 APPEAL OF NOTICE OF VIOLATION

Any person receiving a Notice of Violation may appeal the determination of the Town. The notice of appeal must be received within five (5) days from the date of the Notice of Violation. Hearing on the appeal before the Town Administrator or his designee shall take place within five (5) days from the date of receipt of the notice of appeal. The decision of the Town Administrator or their designee shall be final.

Section 5-6-14 ENFORCEMENT MEASURES AFTER APPEAL

If the violation has not been corrected pursuant to the requirements set forth in the Notice of Violation, or, in the event of an appeal, within five (5) days of the decision of the Town Administrator or his designee upholding the decision of the Town, then representatives of the Town shall enter upon the subject private property and are authorized to take any and all measures necessary to abate the violation and/or restore the property. It shall be unlawful for any person, owner, agent or person in possession of any premises to refuse to allow the governmental agency or designate contractor to enter upon the premises for the purposes set forth above.

Section 5-6-15 COST OF ABATEMENT OF THE VIOLATION

A. Notwithstanding any other provision of this Chapter, when a nuisance, source of pollution or cause of sickness exists on private property, the Town shall order the owner or occupant to remove it within twenty-four (24) hours at the expense of the owner or occupant. The order may be delivered to the owner or occupant in the same manner as provided for service of process under the Arizona Rules of Civil Procedure. If the order is not complied with, the Town in addition to any other remedies allowed under this Chapter shall cause the nuisance, source of pollution or cause of sickness to be removed, and expenses of removal shall be paid by the owner, occupant or other person who caused the nuisance, source of filth or cause of sickness.

B. Any nuisance as defined in this Chapter may be abated as provided in Chapter 6, Offenses, Section 6-2-2 of this Code.

**Section 5-6-16 VIOLATIONS DEEMED A PUBLIC NUISANCE**

In addition to the enforcement process and penalties provided, any condition caused or permitted to exist in violation of any of the provisions of this ordinance is deemed to be a threat to public health, safety, and welfare, and is declared and deemed a nuisance, and may be summarily abated or restored at the violator's expense, and/or a civil action to abate, enjoin, or otherwise compel the cessation of such nuisance may be taken.

**Section 5-6-17 REMEDIES NOT EXCLUSIVE**

The remedies listed in this ordinance are not exclusive of any other remedies available under any applicable federal, state or local law and it is within the discretion of the Town to seek cumulative remedies.

The Town may recover all attorneys' fees, court costs and other expenses associated with enforcement of this ordinance, including sampling and monitoring expenses.

Section 4: If any section, subsection, sentence, clause, phrase or portion of this Ordinance or any part of the amendments of this Ordinance is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions thereof.

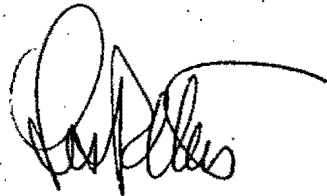
Section 5: The immediate operation of the provision of this Ordinance is necessary for the immediate preservation of the public peace, health and safety; and emergency is hereby declared to exist; and this ordinance shall be effective immediately and in full force and effect from and after its passage, adoption and approval by the Mayor and the Common Council of the Town of Carefree as required by law.

Section 6: The Town Clerk of the Town of Carefree shall incorporate the Amendment set forth herein in to the Town of Carefree Zoning Ordinance, Carefree, Arizona.

PASSED, ADOPTED AND APPROVED BY THE MAYOR AND COMMON COUNCIL OF THE TOWN OF CAREFREE, ARIZONA, this 4th day of September, 2018.

Ayes 6 Noes 0 Abstentions 0 Absent 1

TOWN OF CAREFREE

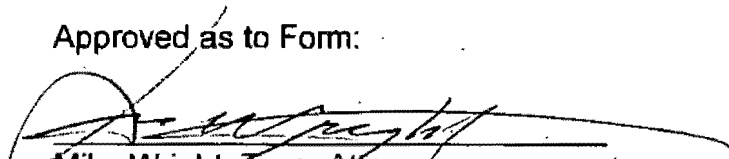


Les Peterson, Mayor

Attest:

  
Kandace French Contreras, Town Clerk

Approved as to Form:

  
Mike Wright, Town Attorney