



City of
Peterborough

To: **Members of the General Committee**

From: **Jasbir Raina, Commissioner of Infrastructure and Planning Services**

Meeting Date: **January 23, 2023**

Subject: **Pre-Application Consultation and Technical Review By-law, Report IPSPL23-003**

Purpose

A report to recommend the adoption of a Pre-Application Consultation and Technical Review By-law and to provide an update on implementation measures for **Bill 109, More Homes for Everyone Act, 2022**.

Recommendations

That Council approve the recommendations outlined in Report IPSPL23-003, dated January 23, 2023, of the Commissioner of Infrastructure and Planning Services as follows:

- a) That Report IPSPL23-003 be received for information; and
- b) That the Pre-Application Consultation and Technical Review By-law attached as Appendix A to Report IPSPL23-003 be approved.

Budget and Financial Implications

Bill 109 and its amendments to the Planning Act have substantial financial implications, particularly with respect to new requirements to refund planning application fees where a decision or approval is not issued within legislated timeframes. Any refund of application fees would need additional support through the general tax levy or Reserve funds.

The City's Application Fees (as established annually through the City's Budget approval) will need to be amended to reflect the new Pre-Consultation and Pre-Application Technical Review process. The City is completing a review of planning fees through the Province's Streamline Development Approval Fund to secure full cost recovery of development application reviews and the necessary City staffing levels to deliver predictable timelines to process planning applications. New planning fees have been prepared in the 2023 Budget package.

Background

In December 2021, the Minister of Municipal Affairs and Housing established a Housing Affordability Task Force with the mandate of delivering a report with recommendations to increase housing supply and address housing affordability in Ontario. The Task Force was comprised of industry experts from development groups, professional associations academia and non-profit housing providers.

The report of the Task Force was released on February 8, 2022. The Report includes 55 recommendations targeted to increase the supply of housing and support the goal of building 1.5 million homes over the next ten years. Generally, the Task Force attributed the issues of housing affordability with a shortage in housing supply. Correspondingly, the recommendations of the Task Force focus on reducing red tape, accelerating timelines, increasing opportunities for density and intensification and addressing the backlog of Ontario Land Tribunal cases. The Province has adopted the Housing Affordability Task Force Report and recommendations as Ontario's long-term housing roadmap.

Building on the recommendations of the Task Force, the Ontario government introduced **Bill 109, the More Homes for Everyone Act, 2022**, on March 30, 2022. Bill 109 received Royal Assent on April 14, 2022 and amended five pieces of legislation, including the Planning Act. The changes to the **Planning Act** through Bill 109 represents the initial step to implementing the Province's More Homes for Everyone Plan. The amendments to the **Planning Act** via Bill 109 of relevance to the City of Peterborough include:

- Requiring municipalities to refund a portion or all fees for applications submitted on or after January 1, 2023 for a combined Official Plan Amendment and Zoning By-

law Amendment (OPA/ZBLA), Zoning By-law Amendment (ZBLA), and Site Plan Approval (SPA), in accordance with Table 1;

- Mandating Council delegation of site plan approval to an officer, employee or agent for site plan applications submitted on or after July 1, 2022;
- Providing the Minister new discretionary authority to stop the 120-day clock for a decision from the Minister on official plan matters and to refer all or parts of an official plan to the Ontario Land Tribunal for recommendation or a decision;
- Extending the decision timeframes for site plan applications from 30 days to 60 days and requiring approval within that timeframe;
- Applying complete application requirements to site plan approval and establishing an appeal mechanism if an application has not been deemed complete within 30 days;
- Establishing Ministerial regulation-making authority to require public reporting on development applications and approvals;
- Introducing a Community Housing and Infrastructure Accelerator tool to enable municipalities to request an order similar in nature to Minister Zoning Orders to regulate the use of land to permit certain types of development and expedite the standard planning process;
- Establishing Ministerial regulation-making authority to prescribe what cannot be imposed as a condition of subdivision approval and to authorize applicants to stipulate the type of surety bonds used to secure obligations associated with development approvals; and,
- Establishing discretionary authority for municipalities to reinstate draft plans of subdivision that have lapsed within the last five years.

Table 1: Refund Timeframes

Application Type	No Refund	50% Refund	75% Refund	100% Refund
ZBLA	Decision made within 90 days	Decision made within 91-149 days	Decision made within 150-209 days	Decision made 210 days or later
Combined OPA/ZBLA	Decision made within 120 days	Decision made within 121-179 days	Decision made within 180-239 days	Decision made 240 days or later
SPA	Approval within 60 days	Approval within 61-89 days	Approval within 90-119 days	Approval within 120 days or later

To further address the new refund provisions for application fees under the Planning Act, City Planning staff are proposing to establish a formal requirement for Pre-Consultation and Pre-Application Technical Review and update the requirements for an application to be deemed complete.

Pre-Application Consultation and Technical Review

Pre-Application Consultation, also known as Pre-Consultation, is a preliminary meeting between City staff and a development proponent to discuss the development proposal and identify the need for, and the scope of information and materials considered necessary by the City and external agencies to allow for a comprehensive assessment of the development application. The Planning Act enables municipalities to require pre-application consultation prior to the submission and acceptance of applications for any official plan amendment, zoning by-law amendment, site plan, draft plan of subdivision and draft plan of condominium. To formalize the requirement for pre-consultation, municipalities need to pass a by-law.

Pre-Consultation is identified as a best practice amongst municipalities in Ontario. A number of Ontario municipalities have adopted a mandatory Pre-Consultation By-law, including Guelph, London, Ottawa, Mississauga, Markham, Brampton and Hamilton. In anticipation of the refund provisions coming into effect on January 1, 2023 via Bill 109, many municipalities are adopting or updating their Pre-Consultation By-laws.

Both the City's current Official Plan and the Council-adopted Official Plan contain policies requiring Pre-Consultation. The City has established a formal process for Pre-Consultation and has held Pre-Consultation meetings since September 2019.

The current Pre-Consultation process requires the applicant to have a discussion with a City Planner prior to the submission of a Pre-Consultation application to discuss the preliminary proposal and the requirements for a Pre-Consultation application. The Pre-Consultation meeting schedule is organized by Planning Division staff and an application must be received at least 24 days in advance of a scheduled Pre-Consultation meeting date. The meeting is attended by the applicant, staff from various City departments and relevant external agencies, including the Peterborough Utilities Group and Otonabee Region Conservation Authority. Following the Pre-Consultation meeting, the City provides applicants with a letter outlining the meeting minutes and the required information for a complete application. This letter is valid for one year, after which further Pre-Consultation will be required where a planning application has not been made within the one-year period or substantive changes have been made to the application.

While the current Pre-Consultation process enables the municipality to clarify the requirements for a complete application, it is not uncommon that after an application is deemed complete, the materials (e.g., reports, studies or drawings) submitted with an application are still missing information or do not adequately meet the requirements of the City and external agencies. It is also not uncommon for an applicant to make

several attempts and take several months to respond to comments or provide resubmissions. Often, two to four resubmissions and technical review cycles are needed after an application is deemed complete, thereby making it challenging or impossible to meet the legislated decision-making timeframes since the timeclock does not stop during this period. Bill 109 makes no allowances for delays that are outside of the municipality's control (e.g., substandard or incomplete submissions and the time needed for applicants to make revisions to submission materials).

For these reasons, modifications to the current Pre-Consultation process are necessary to ensure the City can meet legislated timeframes. The proposed Pre-Application Consultation and Technical Review By-law attached in Appendix A introduces a two-stage process for development proponents to follow prior to the formal submission of a planning application. This process will enable the City to obtain greater certainty in the quality and completeness of submissions before an application is formally submitted and subject to the legislated timeframes within the Planning Act. This new process would involve the following stages:

a) Stage 1: Pre-Consultation

The first stage would resemble the existing Pre-Consultation process where the applicant completes a preliminary discussion with a City Planner to discuss the Pre-Consultation application. A formal Pre-Consultation meeting is then held between the applicant, City departments and external agencies to provide feedback on the development proposal and identify information and materials required to allow for a comprehensive assessment of the development application. The City provides the Applicant with a written record of the Pre-Consultation meeting and a list of the information and materials required to advance to Stage 2. The written record is valid for a period of one (1) year, during which time the applicant can submit the required information and materials to the City and begin Stage 2 of the process.

b) Stage 2: Pre-Application Technical Adequacy Review

The second stage would resemble the current process to deem an application complete or incomplete pursuant to the Planning Act. The applicant submits the required information and materials identified in Stage 1 and the City circulates the materials to commenting agencies and completes a detailed review of the submission. The applicant may be required to resubmit materials to address the comments and requirements of the City and external agencies and attend additional meetings. Based on the application type, the applicant may also be required to host a public information meeting during this stage. Once the City has determined that the quality of the submission is acceptable, the City provides the applicant with a written record acknowledging that the requirements of the Pre-Application Technical Adequacy Review process has been fulfilled. The written record is valid for a period of six months, during which time the applicant may proceed with the submission of a formal planning application.

Through the new two-stage process, a substantial portion of comments from the City and external agencies regarding the development proposal, including the quality and completeness of the submission, will be addressed before a formal application is made and subject to the legislated timeframes in the Planning Act.

To further mitigate the refund provisions of the Planning Act, additional authority is also proposed to require an applicant to restart the pre-application process where substantial changes are made to their development proposal. Noting the increasing complexity and volume of planning applications, the proposed changes to the pre-application process are necessary to meet multiple objectives, including reducing the number of premature submissions, improving the quality of submission materials, meeting legislated timeframes and mitigating the financial risks associated with the refund of any application fees.

The Pre-Application Consultation and Technical Review By-law will not be subject to appeal and will come into full force and effect upon approval. For those applications that have completed a Pre-Consultation meeting but have not submitted a formal application before the proposed By-law comes into full force and effect, the City may amend the required information and materials described in Stage 1 and/or require the applicant to complete the process for Stage 2.

Complete Application Requirements

The Planning Act enables municipalities to establish requirements to deem an application complete. These requirements ensure that the technical aspects and merits of a development proposal can be adequately assessed and that the interests of the municipality are met. Prior to Bill 109, this provision only applied to applications for official plan amendment, zoning by-law amendment, draft plan of subdivision and draft plan of condominium. Changes to the Planning Act through Bill 109 now enable municipalities to deem an application for site plan as 'complete'. Bill 109 also introduced an appeal mechanism where an applicant may dispute the completeness of an application to the Ontario Land Tribunal if the municipality fails to deem an application complete within 30 days. Under the Planning Act, the municipality must notify the applicant regarding the completeness of their application within 30 days from the date of payment of the application fee.

A complete application includes all of the prescribed information and materials under the relevant Ontario Regulations of the Planning Act and any additional materials identified in the Official Plan. The Planning Act allows the municipality to request any other information and materials to allow for full consideration and review of a planning application where the Official Plan contains provisions relating to any additional requirements.

By-law Number 1988-174 currently prescribes the requirements for complete applications and requires, at a minimum, that all planning fees, application forms, verification of the ownership of the land and all outstanding taxes be submitted as part

of a complete application. The proposed Pre-Application Consultation and Technical Review By-law will repeal and replace this by-law to update the requirements for complete applications.

In addition to the requirements of By-law Number 1988-174, the proposed By-law will also require the submission of all information and materials identified through the pre-application process and clarify the requirement for all prescribed materials under the Planning Act. Further, the proposed By-law will provide the City with additional discretion in certain instances to deem an application incomplete. This includes instances where the submission materials do not meet the quality standards of the City or relevant external agencies, prerequisite planning approvals are not in effect or consultation with the public and Indigenous Communities has not occurred. It is anticipated that the latter may be further contemplated through consultation with Treaty 20 First Nations and the adoption of Indigenous Consultation Standards or Protocol.

Considerations for Ongoing Implementation

Further to the changes through the Pre-Consultation and Pre-Application Technical Review process, the following items are also proposed for ongoing consideration and implementation of Bill 109:

Terms of Reference and Study Guidelines

Terms of Reference and study guidelines establish clear and consistent expectations regarding the scope and required contents for individual studies which are required to support development applications. The City does not currently have a set of accepted Terms of Reference and study guidelines available to applicants for all potential required submission materials. The development of Terms of Reference and study guidelines for key submission materials is considered a high priority as part of the implementation of Bill 109, as these would support the Pre-Application Technical Adequacy Review process and any disputes to the Ontario Land Tribunal regarding the completeness of a planning application.

Due to the large number of potential submission materials and level of collaboration and public consultation required to formulate Terms of Reference and study guidelines, implementation will need to be an on-going endeavour. This endeavour is also identified in the City's new Official Plan, which contains policy commitments for the City to establish urban design guidelines and Environmental Impact Study Guidelines/Terms of Reference.

Under the Streamline Development Approval Fund Initiative, the City is in the process of completing urban design guidelines for the Central Area, Development Engineering Procedures and Guidelines and Tree Protection and Urban Forestry Guidelines. These guidelines are scheduled for completion in February 2023.

Service Standards

Noting that the new Pre-Consultation and Pre-Application Technical Review process is a significant change from the current application intake and review process, Planning Staff intend to communicate service standards to offer predictable and reasonable application processing timelines to the development community. The communication of these service standards is intended to demonstrate a commitment on behalf of the municipality to process planning applications in an efficient and timely manner under the new process.

Summary

The Province has implemented sweeping changes to the land use planning system in order to increase the supply of housing, reduce red tape and accelerate planning approvals. The amendments to the Planning Act through Bill 109 requiring municipalities to refund a portion or all fees for planning applications will result in substantial changes to the planning application intake and development review process. The changes through the new Pre-Consultation and Pre-Application Technical Review process are necessary to maintain the long-established principle that growth pays for growth and minimize any financial implications associated with the new refund provisions in the Planning Act.

Submitted by,

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Attachments:

Appendix A – Pre-Application Consultation and Technical Review By-law



The Corporation of the City of Peterborough

By-Law Number 23-[Clerk's Office will assign the number]

Being a By-law to require applicants to consult with the City prior to the submission of certain planning applications and to repeal By-law Numbers 1988-174 and 1988-193

Whereas Subsections 22(3.1), 34(10.0.1), 41(3.1) and 51(16.1) of the Planning Act, R.S.O. 1990, c. P.13, as amended, authorizes municipalities to pass by-laws to require applicants to consult with the municipality prior to submitting applications for any Official Plan Amendment, Zoning By-law Amendment, Site Plan Approval and Plan of Subdivision or Condominium;

And Whereas the City of Peterborough Official Plan, December 7, 1981, as amended, contains policies requiring pre-consultation and identifying the types of information and materials that may be requested to assist in the review of an application before the application is deemed complete;

And Whereas the City of Peterborough Official Plan, November 2021 contains policies requiring consultation with the City prior to the submission of an application for an Official Plan Amendment, Zoning By-Law Amendment, Draft Plan of Subdivision, Draft Plan of Condominium, Site Plan Approval and Consent;

And Whereas the City of Peterborough Official Plan, November 2021 contains policies identifying the types of information and materials that may be requested to assist in the review of an application before the application is deemed complete;

And Whereas Subsections 22(6), 34(10.3), 41(3.5) and 51(19) of the Planning Act, R.S.O. 1990, c. P.13, as amended, authorizes the approval authority to deem an application for an Official Plan Amendment, Zoning By-Law Amendment, Site Plan and Plan of Subdivision or Condominium complete or refuse to accept or further consider the application;

And Whereas Subsections 22(6.1), 34(10.4), 41(3.6) and 51(19.1) of the Planning Act R.S.O. 1990, c. P.13, as amended, requires the approval authority to notify the applicant whether the information and materials provided in support of an Official Plan Amendment, Zoning By-Law Amendment, Site Plan and Plan of Subdivision or Condominium application is complete within 30 days of the payment of the required fee for an application;

And Whereas the Council of the City of Peterborough passed By-laws Number 1988-174 and 1988-193 to identify the requirements of a complete application;

And Whereas the Council of the Corporation of the City of Peterborough deems it expedient to require applicants to consult with the City prior to the submission of planning applications;

Now Therefore, The Corporation of the City of Peterborough by the Council thereof hereby enacts as follows:

1. Definitions

“Applicant” means a person or public body, including the property owner or their authorized agent who makes or intends to submit a development application, but shall exclude the City;

“Director” means the Director of Planning, Development and Urban Design of the City of Peterborough, or any successor thereto, or their designate;

“Complete Application” means an application which includes the prescribed information and material under the Planning Act and any other information and material deemed necessary by the City for the evaluation of an application in accordance with the provisions of the Planning Act and the City of Peterborough Official Plan;

“Pre-Consultation” means a documented process and meeting(s) between the Applicant and the City prior to the submission of a Planning Application to the City to discuss the proposed Planning Application and submission requirements;

“Planning Application” means an application pursuant to the Planning Act for an Official Plan Amendment, a Zoning By-law Amendment, Site Plan Approval, Draft Plan of Subdivision or Draft Plan of Condominium.

“Pre-Screen Meeting” means a meeting between the Applicant and a City of Peterborough Planner to discuss the requirements for a Pre-Consultation application;

“Planning Act” means the Planning Act, R.S.O. 1990, c. P.13, as amended, or any successor thereto; and,

“Record of Pre-Consultation” means a written record issued by the City to the Applicant acknowledging:

- a) That a Pre-Consultation meeting has taken place; and,
- b) The information and materials required by the City and other affected agencies to proceed with the Pre-Application Technical Adequacy Review process.

“Record of Pre-Application Technical Adequacy Review” means a written record issued by the City to the Applicant acknowledging:

- a) The information and materials required by the City and other affected agencies to constitute a Complete Application;
- b) That the requirements of the Pre-Application Technical Adequacy Review have been met; and,
- c) That the Applicant may proceed with the submission of a formal planning application.

2. Pre-Consultation Requirements

- a) An Applicant is required to complete Pre-Consultation prior to the submission of the following Planning Applications to the City:
 - i) Official Plan Amendment;
 - ii) Zoning By-law Amendment;
 - iii) Site Plan;
 - iv) Draft Plan of Subdivision; and,
 - v) Draft Plan of Condominium.
- b) A Pre-Screen Meeting is required prior to submitting a Pre-Consultation application.

- c) An Applicant is required to submit a Pre-Consultation application form and the required supporting material as described in the application form prior to the item being scheduled at a Pre-Consultation meeting.
- d) The City shall provide the Applicant with a Record of Pre-Consultation following the Pre-Consultation meeting. The Record of Pre-Consultation shall remain valid for a period of one (1) year from date of issuance.
- e) Further Pre-Consultation will be required where an Applicant has not submitted within one (1) year, the required information and materials as identified in the Record of Pre-Consultation. Further Pre-Consultation may also be required where applicable City or Provincial policies are amended or substantive changes are made to the proposed application.
- f) The Pre-Consultation process shall be subject to a fee as set out in City's User Fees By-law or equivalent, as amended from time to time.

3. Pre-Application Technical Adequacy Review Requirements

- a) Following a Pre-Consultation meeting, the Applicant is required to submit a Pre-Application Technical Adequacy Review application, together with all information and materials described in the Record of Pre-Consultation to the satisfaction of the City and, where applicable, external agencies.
- b) The City shall circulate the pre-application submission to all commenting agencies and departments for technical review to determine the adequacy of the submitted information and materials.
- c) An Applicant shall make revisions and resubmit information and materials, as required by the City and/or external agencies to conform with City or Agency requirements and/or applicable Guidelines, Standards and Terms of Reference.
- d) An Applicant may be required to attend additional meetings with the City and external agencies and/or to host a public information meeting, where identified in the Record of Pre-Consultation.
- e) The City shall issue a Record of Pre-Application Technical Adequacy Review when the Applicant submits all information and materials to the satisfaction of the City and, where applicable, external agencies. The Record of Pre-Application Technical Adequacy Review shall remain valid for a period of six (6) months from date of issuance.
- f) The Pre-Application Technical Adequacy Review process shall be subject to a fee as set out in City's User Fees By-law or equivalent, as amended from time to time.

4. Complete Application Requirements

- a) Following the Pre-Consultation and Pre-Application Technical Adequacy Review process described in Sections 2 and 3 of this By-law, an Applicant shall submit the following to the City as part of a Complete Application:
 - i) All requisite application forms, including any required authorization;
 - ii) All required fees pursuant to the City's User Fees By-law or equivalent and Section 69 of the Planning Act;
 - iii) All information and materials required pursuant to Ontario Regulations 543/06, 544/06, and 545/06, as amended;
 - iv) Plans, studies, materials and any other information prescribed in the Official Plan and deemed necessary by the City in the Record of Pre-Application Technical Adequacy Review; and,

- v) All outstanding realty taxes, penalties and municipal fines levied in regard to the property that is the subject matter of the Planning Application, or satisfactory security in lieu thereof where the Applicant is not the registered property owner.
- b) Notwithstanding Section 4(a) of this By-law, the Director may deem a Planning Application incomplete, where:
 - i) Materials and information submitted pursuant to the Record of Pre-Application Technical Adequacy Review do not meet City or Agency requirements and/or applicable Guidelines, Standards and Terms of Reference;
 - ii) The Record of Pre-Application Technical Adequacy Review is not valid;
 - iii) In the case of an application for Official Plan Amendment, Zoning By-law Amendment, Plan of Subdivision or Condominium, the Applicant has not completed a public consultation strategy and consultation report in accordance with the City's requirements and Record of Pre-Consultation;
 - iv) Meaningful consultation with Indigenous Communities has not occurred;
 - v) The Applicant is proposing public infrastructure through a Zoning By-law Amendment application or Site Plan application;
 - vi) Prerequisite planning approvals are not in full force and effect; or,
 - vii) Required Peer Reviews of materials are not completed or are not considered satisfactory at the discretion of the Director and the cost of the peer review has not been reimbursed in full to the City.
- c) The Director may refuse to accept or further consider any application that is not determined to be a Complete Application.
- d) Where two or more Planning Applications are submitted concurrently to support a single development proposal on the same land, the Director may deem only one Planning Application as a Complete Application and may require each application type to be processed in sequential order, at the Director's discretion.
- e) Where a Planning Application has been deemed complete and the Applicant proposes substantive changes to the proposed development, the Applicant may be required to restart the application process, including Pre-consultation and Pre-Application Technical Adequacy Review, at the discretion of the Director.

5. **Delegation of Authority**

Council hereby delegates to the Director, the authority to:

- a) Administer this By-law, including but not limited to establishing the documented process, application forms, procedures and meeting schedule for Pre-Consultation;
- b) Conduct the Pre-Consultation and Pre-Application Technical Adequacy Review;
- c) Identify and advise the Applicant during Pre-Consultation and Pre-Application Technical Adequacy Review of the need for, and the scope of other information and materials required for a Complete Application;

- d) Deem a Planning Application complete and notify the Applicant in accordance with the Planning Act with respect to the completeness of any Planning Application; and,
- e) Deem a Planning Application incomplete and refuse to accept or further consider any Planning Application pursuant to Section 4 of this By-law.

6. **Exemption**

Despite Sections 2 and 3 of this By-law, the Director may waive the requirement for Pre-Consultation and Pre-Application Technical Adequacy Review where the Director determines that due to the nature of the proposal, the need for and scope of the required information and materials can be determined without formal consultation.

7. **Consent, Permission and Minor Variance Requirements**

- a) A preliminary discussion or meeting with a City of Peterborough Planner is required prior to submitting an application for consent pursuant to Section 53 of the Planning Act and an application for permission or minor variance pursuant to Section 45 of the Planning Act.
- b) An Applicant shall submit the following to the City as part of a Complete Application:
 - i) All requisite application forms, including any required authorization;
 - ii) All required fees pursuant to the City's User Fees By-law or equivalent and Section 69 of the Planning Act;
 - iii) All information and materials required pursuant to Ontario Regulations 197/96 and 200/96, as amended;
 - iv) Plans, studies, materials and any other information prescribed in the Official Plan and deemed necessary by the City; and,
 - v) All outstanding realty taxes, penalties and municipal fines levied in regard to the property that is the subject matter of the Planning Application, or satisfactory security in lieu thereof where the Applicant is not the registered property owner.
- c) An application for consent, permission or minor variance that is incomplete shall not be submitted to the Committee of Adjustment or further considered by the approval authority.

8. **Application of By-law**

This By-law shall apply to all lands within the City of Peterborough.

9. **Repeal of By-laws**

By-law Numbers 1988-174 and 1988-193 shall be repealed upon this By-law coming into effect.

10. **Transition**

The City may amend the required information and materials described in the Record of Pre-Consultation and/or require the applicant to complete the process for Pre-Application Technical Adequacy Review for any development applications whereby a detailed review of a submission has not occurred prior to February 1, 2023.

11. **Enactment**

This By-law shall come into force and take effect upon the final passing thereof.

12. **Short Title**

 This By-law may be referred to as the “Pre-Application Consultation and Technical Review By-law”.

By-law passed this [DAY] day of [Month], 2023.

Jeff Leal, Mayor

John Kennedy, City Clerk