

**ORDINANCE NO. 2024-**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF NEW BRAUNFELS, TEXAS, AMENDING THE NEW BRAUNFELS CODE OF ORDINANCES, CHAPTER 144 ZONING, SECTION 1.4 DEFINITIONS, SECTION 5.23 TEMPORARY VENDING OPERATIONS, AND 5.26, MOBILE FOOD COURTS; REPEALING ALL ORDINANCES IN CONFLICT; PROVIDING FOR SEVERABILITY; CONTAINING A SAVINGS CLAUSE; AND ESTABLISHING AN EFFECTIVE DATE.**

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**WHEREAS**, Chapter 211 of the Texas Local Government Code empowers a city to enact zoning regulations and provide for their administration, enforcement and amendment; and

**WHEREAS**, the City Council of the City of New Braunfels, Texas, deems it necessary and desirable to establish zoning regulations to provide for the orderly development of property within the City by governing the use of land in order to promote the public health, safety, morals and general welfare of the residents of the City; and

**WHEREAS**, the Comprehensive Plan, Envision New Braunfels, has multiple action items supporting updates that improve regulations, including Action Item 1.11: Update policies and codes to achieve development patterns that implement the goals of this plan; and Action Item 3.6: Pro-actively provide a regulatory environment that remains business and resident friendly; and

**WHEREAS**, the City Council has directed that regulations dealing with the use and development of land be reviewed by the Planning Commission to make recommendations concerning improving those regulations; and

**WHEREAS**, the City Council heard a presentation on this topic at their regular meeting on July 15, 2024 at which time they directed city staff to bring forward for consideration amendments that would address citizen concerns; and

**WHEREAS**, the Planning Commission held a public hearing on the proposed amendments on August 7, 2024; and

**WHEREAS**, the City Council held a public hearing and first reading on said amendments on August 26, 2024, and a second reading on September 9, 2024; and

**WHEREAS**, the City Council hereby finds and determines that adopting these amendments will clarify the rules, update terms, reduce redundancy, improve

consistency, streamline processes, facilitate flexibility, address identified issues ahead of the Land Development Ordinance, and are in the best interest of the citizens of New Braunfels. **Now, therefore,**

**BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF NEW BRAUNFELS, TEXAS:**

**SECTION 1**

**THAT** Chapter 144, Zoning, Section 1.4, Definitions, are hereby amended with additions as underlined:

**Sec. 144-1.4. Definitions.**

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*Mini-warehouse/self-storage* means small individual storage units for rent or lease, restricted solely to the storage of items. The conduct of sales, business or any other activity within the individual storage units, other than storage, shall be prohibited.

*Mobile food court* means three or more mobile food units congregating to offer food or beverages for sale to the public. This definition does not apply to this activity at special events.

*Mobile food unit*: often referred to as a “food truck”; see definition in Chapter 62.

*Mobile home* means a structure that was constructed before June 15, 1976, transportable in one or more sections, which, in the traveling mode, is eight body feet or more in width or 40 body feet or more in length, or, when erected on-site is 320 or more square feet, and which is built on a permanent chassis designed to be used as a single dwelling with or without a permanent foundation when connected to the required utilities, and includes the plumbing, heating, air conditioning, and electrical systems.

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*Temporary outdoor retail sales* means the display and sales of products outside of a building or structure which is not an accessory use to the retail store on the tract on which the temporary sales will be located.

*Temporary vending operation* means a retail or service use intended for limited duration and that does not involve the construction or alteration of any permanent structure. These temporary operations occur on private property, hosted by an existing permanent business, and typically within the host’s parking lot or other portion of their property.

*Tower* means any structure that is designed and constructed primarily for the purpose of supporting one or more antennas, including self-supporting lattice towers, guy towers, or

monopole towers. The term includes radio and television transmission towers, microwave towers, common-carrier towers, cellular telephone towers, and the like.

## SECTION 2

THAT Chapter 144, Zoning, Section 5.23. Temporary vending operations, is hereby amended with additions as underlined and deletions as stricken:

### Sec. 144-5.23. Temporary vending operations.

5.23-1. *Applicability.* The following rules for temporary vending operations do not alleviate such operations or uses from also adhering to other applicable municipal-~~or~~, state, or federal rules and regulations.

- (a) ~~On improved property, a temporary vending operation may operate as long as a permit is issued.~~ Temporary vending operations are ~~permitted~~allowed in all non-residential districts. Anyone wishing to temporarily peddle, solicit, or vend from private property may do so as long as all applicable codes and ordinances of the city are met, and a temporary vending operation permit is issued by the city. ~~There can be no such activity on vacant, unimproved property.~~
- (b) No permanent ~~or temporary~~ foundation may be placed or constructed for a temporary vending operation. All structures (including but not limited to booths, vehicles, trailers and any ancillary equipment and furnishings such as generators, tables and decks) employed for temporary vending operations must be removed from the subject property at the end of the permitted period.
- (c) This section does not apply to:
  - (1) Individual food trucks (mobile food units) or other food-related temporary uses. Mobile food units are governed by Chapter 62.
  - (2) Mobile food courts; see §5.26.
  - (3) Special Events; see Chapter 91.
  - (4) Farmer's markets.

5.23-2. *Permit and fee.*

- (a) An application processing fee per appendix D of ~~this City's~~ Code of Ordinances is required for each temporary vending operation permit application. No fee is required for applications with non-profit status. ~~P~~; proof of tax-exemption from the IRS is required.
- (b) Temporary vending operation permits are not transferable. A permit at any location is valid for one temporary vending operation regardless of any sale, lease, name change or any ownership transfer of the temporary vending operation.

~~5.23-3. Merchandise. All merchandise offered for sale must be consistent with this chapter.~~

~~5.23-4. Temporary vending operation. For purposes of this section, a temporary vending operation shall be considered any individual, business, company, firm, association or organization conducting business pursuant to this section.~~

5.23-~~53~~. Temporary/Time. ~~The~~A temporary vending operation permit is valid for a period not to exceed ninety (90) consecutive days~~11 months~~. After the permit has expired, the temporary vending operation shall leave the property, parcel, lot or address where the vending has occurred for a minimum of thirty (30) consecutive days after which time the temporary vending operation may return to the same location with approval of a new permit ~~renewal~~. Temporary vending operations exceeding the term of the permit shall void their temporary status and shall come into compliance with all permanent structure and use regulations.

~~5.23-6. Parking.~~

- ~~(a) Required parking allocated for the patronage of the primary, permanent host business shall not be utilized for set up or parking of the temporary vending operation. Additional parking spaces must be available from the primary business.~~
- ~~(b) All vehicles (motorized or non-motorized), trailers, tents, structures, etc. associated with the temporary vending operation, including those from which vending occurs, must be located within the parking lot.~~
- ~~(c) One space is required per temporary vending operation except within the area exempt from required parking spaces (as shown in Figure 3, Sec. 5.1 Parking, loading, stacking and vehicular circulation).~~
- ~~(d) No seating may be provided for temporary vending operations unless the property has parking spaces in excess of the minimum requirement. In such cases, one parking space shall be required per four seats for patron use.~~

5.23-~~74~~. Location.

- (a) All vending activities must occur on private property. There can be no such activity on vacant, unimproved property.
- (b) No activity, parking, or signage may be located on public property or street right-of-way or within 25 feet of a street intersection, as measured at the right-of-way line, as to create a visual distraction.
- (c) Building setbacks do not apply to temporary vending operations except that sight distance triangles at intersections of streets and driveways shall be maintained in accordance with §5.21-1(d).
- (d) Temporary vending operations shall not impede traffic nor visually impair any motorist or pedestrian within a parking lot, driveway, street, sidewalk, bike path, or trail.

~~Anyone wishing to sell, take orders for immediate or future delivery, collect money or property, or attempt to do any of the foregoing, in exchange for a good or service, is prohibited from peddling, soliciting, or vending or advertising from any public street or park in the city. This provision does not apply to mobile catering/mobile vending as regulated in the Code of Ordinances.~~

5.23-~~85~~. *Refuse*. A sufficient quantity of garbage receptacles shall be provided and maintained so that permitted sites are kept clean of all debris, trash, and litter at all times. Trash generated on site is not allowed to blow or spill onto abutting or surrounding sites or onto the public right-of-way.

5.23-~~96~~. *Noises*. No temporary vending operation shall use a sound device, including, but not limited to a bell, horn, whistle, or voice (amplified or not) to attract attention. Temporary vending operations and all associated mechanical equipment shall comply with the city's noise provisions in Chapter 82.

5.23-7. *Lighting*. All lighting associated with a temporary vending operation shall comply with the lighting requirements in this chapter as well as Chapter 82.

5.23-~~408~~. *Codes and ordinances*. The existing property ~~and~~ uses, and temporary vending operation must be and remain in compliance with all applicable codes and ordinances. ~~The accessory use of the temporary vending operation will be in compliance with all applicable codes and ordinances (e.g. temporary vending operation will meet zoning requirements, fire codes, health codes, etc.). Building setbacks do not apply to temporary vending operations except that sight distance triangles shall be maintained.~~

5.23-~~419~~. *Restroom facilities*. ~~Restrooms shall be provided in compliance with all applicable, current health codes.~~ No portable restrooms may be erected or used ~~except as permitted under subsection 5.23-19 (Special events).~~

5.23-~~120~~. *Utilities*. No permanent water, sewer, electric, fuel, or phone facilities may be connected to the vending operation. Connections must have a quick disconnect. Any use of extension cords must be no longer than ~~a maximum of~~ 50 feet, including multiple cords. A maximum of two cords may be utilized. Extension cords crossing areas of traffic (vehicular, pedestrian, etc.) must be encased in a cable protector rated for the specific traffic. Documentation of this rating must be provided.

5.23-~~131~~. *Maximum number of vendors*. An existing non-residential property may have a maximum number of two (2) permitted temporary vending operations at any one time.

~~5.23-14. *Temporary food vendor operations*. Temporary establishments that provide food services and must be registered and inspected by the city health division. For purposes of this section, "food vendor" shall be defined as "restaurant" under section 62-81, Definitions.~~

5.23-~~152~~. *Storage of inventory*. All storage must be within a building or container.

5.23-~~163~~. *Signage*. All temporary vending operations must comply with chapter 106, Signs. Sandwich boards, banners attached to a building or vending structure, and pennants are allowed. No banners may be utilized which stand independently utilizing stakes, t-posts, or otherwise attached to the ground.

~~5.23-17. *Provision of recreational activities*. No recreational activities may be permitted through the temporary vending operation permit.~~

~~5.23-18. *Reserved*.~~

5.23-~~194~~. *Application procedures*. An application shall be submitted to the planning division city for review and decision in accordance with this section. ~~All temporary vending~~

~~operations providing food or drink services shall also submit an application to the health division.~~

~~The planning director shall have the authority to make decisions concerning the site plan and other information provided during the consideration of a vendor permit. The planning director will approve or deny the permit application.~~

5.23-~~20~~15. *Application elements.*

- (a) A temporary vending operation shall provide with the application a letter and drawing from the owner of the property stating:
  - (1) The name and home address of the temporary vending operation;
  - (2) The purpose of the temporary vending operation (for example, "sell ~~watermelons~~Christmas light decorations");
  - (3) The dates and times of the temporary vending operation;
  - (4) A site plan showing the location on the property where the temporary vending operation will take place, along with any external structures (decks, stairs, etc.);
  - (5) Miscellaneous information necessary to determine the compliance of the property, improvements, and vendor operations with city applicable codes and ordinances.
- (b) The temporary vending operation shall provide with the application a copy of a state sales tax certificate issued for the proposed temporary vending operation if the vended items are taxable.
- (c) The permit must be visibly posted on all temporary vending operations with the expiration date.

5.23-~~21~~6. *Penalties.*

- (a) Permits may be revoked by the ~~director of planning, chief of police, or other city authority~~ for any of the following causes:
  - (1) Fraud, misrepresentation, or a false statement contained in the application for the permit;
  - (2) Fraud, misrepresentation, or a false statement made in the course of conducting business;
  - (3) Any violation of any city code or ordinance that has not been brought into compliance within 24 hours of notification.
  - (4) Conviction of any crime or misdemeanor involving moral turpitude;
  - (5) Conducting the business in an unlawful manner so as to constitute a breach of the peace or a menace to the health, safety, or general welfare of the public.
- (b) If a temporary vending operation has violated this or any other applicable part of the city's municipal code while conducting business with a permit issued under this section, the business owner shall be penalized as follows:

- (1) The first offense shall result in a warning and the operation shall bring the temporary vending operation into compliance within 24 hours or the permit shall be revoked. \$500.00 for each offense per day.
  - (2) The second offense shall result in the operation having the permit revoked immediately and the temporary vending operation shall be prohibited from obtaining a permit under this section for one year from the date of the offense. \$1,000.00 for each offense per day.
  - (3) The third offense shall result in the operation having the permit revoked immediately and the temporary vending operation shall be prohibited from obtaining a permit under this section indefinitely. \$2,000.00 for each offense per day.
- (c) If a host business has violated this or any other applicable part of the City Code while allowing temporary vending operations to be conducted with or without a permit issued under this section, the business owner shall be penalized as follows:
- (1) The first offense shall result in a warning and the host shall correct the violation within 24 hours or the permit shall be revoked. \$500.00 for each offense per day.
  - (2) The second offense shall result in the operation having the permits of all the host's temporary vending operations revoked immediately and the host shall be prohibited from hosting temporary vending operations for one year from the date of the offense. \$1,000.00 for each offense per day.
  - (3) The third offense shall result in the operation having the permits of all the host's temporary vending operations revoked immediately and the host shall be prohibited from hosting temporary vending operations indefinitely. \$2,000.00 for each offense per day.

5.23-~~22~~17. *Appeal procedures.*

~~(a)~~ Enforcement of this section may be appealed to the zoning board of adjustment in accordance with section 144-2.2 of this chapter.

~~(b) Appeal actions.~~

~~(1) An appeal shall be submitted to the planning and development services department. The requirements to file an appeal are outlined in section 144-2.2 of this chapter.~~

~~(2) The appeal shall be scheduled for consideration on the next available agenda of the board.~~

~~(3) The board shall review the appeal and shall approve, approve subject to certain conditions, or disapprove the appeal.~~

~~(4) The zoning board of adjustment shall determine final approval or disapproval of all appeals.~~



### SECTION 3

THAT Chapter 144, Zoning, Section 5.26. Mobile food courts, is hereby amended with additions as underlined and deletions as stricken:

#### Sec. 144-5.26. Mobile food courts.

5.26-1. *Purpose.* Establish development and operational standards for outdoor food venues so as to minimize potential negative impacts on surrounding property while enhancing additional dining experiences within the community.

#### ~~5.26-2. Definitions.~~

~~*Mobile food court.* A "mobile food court" is a parcel of land where two or more mobile food establishments congregate to offer food or beverages for sale to the public as the principal use and permanent use of the land. This definition shall not be interpreted to include a congregation of mobile food establishment as a secondary, accessory use, and/or temporary use on existing commercially developed land as regulated under section 5.23, Temporary vending operations.~~

~~*Mobile food unit.* A "mobile food unit" is a business that serves food or beverages from a self-contained unit, either motorized or in a trailer on wheels, and conducts all or part of its operations on premises other than its own and is readily movable, without disassembling, for transport to another location. The term "mobile food unit" shall not include individual non-motorized vending carts.~~

~~*Mobile food vending, base of operation.* The location where a mobile food vending vehicle originates, and is returned for cleaning, storing or stocking. Food preparation for catering is permitted. A mobile food vending base of operation shall not include activities associated with the "mobile food court" as defined in this section.~~

#### ~~5.26-3. Reserved.~~

#### 5.26-42. *Mobile food court location.*

- (a) Mobile food courts ~~shall be permitted~~ are allowed in those zoning districts allowing restaurants ~~s/prepared food sales.~~
- ~~(b) Each mobile food court shall be located at least 150 feet away from any one- or two-family use or one- or two-family district measured from property line to property line.~~
- (e) All activity, signage and advertisement must occur on private property outside of the public right-of-way unless the city has executed a license agreement authorizing such activity.

(d) Mobile food units shall be allowed to change out daily.

#### 5.26-~~5~~3. *Site development standards.*

- (a) No more than ten individual mobile food units are permitted per mobile food court site.
- (b) All setback requirements in the underlying zoning district shall be adhered to. No mobile food unit, structures associated with the mobile food court, nor any



associated seating areas shall be located in a required zoning setback, buffer yard, access easement, drainage easement, floodplain, floodway, driveway, utility easement and/or fire lane(s). Sight distance triangles at intersections of streets and driveways shall be maintained in accordance with §5.21-1(d).

- (c) There shall be at least ten (10) feet of clearance between all individual mobile food units and all permanent, accessory or non-accessory structures.
- (d) Each mobile food unit shall be located on asphalt, concrete, pavers or an all-weather surface pad as approved by the building official or the city engineer.
- (e) Vehicular drive-through service of food and/or beverages shall not be permitted unless ~~permitted~~ it is allowed in the underlying zoning district. Compliance with additional drive-through requirements as specified within the City's Code of Ordinances is required.
- (f) All mobile food ~~unit court~~ related activity, such as seating or recreation, must occur ~~within 25 feet from the associated mobile food unit or within a communal arrangement serving all of the mobile food units~~ on site.
- (g) All mobile food units and related activities must be located in compliance with the city's adopted fire code standards regarding the storage or dispensing of flammable combustible liquid or gas.
- (h) ~~The placement of the mobile food unit~~ Mobile food courts shall not impede traffic nor visually impair any motorist ~~vehicle operation or pedestrian~~ within a parking lot, driveway ~~or~~ street, sidewalk, bike path, or trail.
- (i) A fire lane shall be provided within a mobile food court as required in the city's adopted fire code.
- (j) All lighting associated with ~~the occupancy a mobile food court~~ shall comply with the lighting requirements of this chapter as well as Chapter 82, sections 82-14 through 82-20 of chapter 82, Offenses and miscellaneous.
- (k) Accessible restroom facilities shall be provided within a permanent structure in accordance with adopted building and plumbing codes, ~~excludes. No portable restrooms may be erected or used~~ porta-potties and trailer toilets.
- (l) Electrical service may be provided to the mobile food units by permanent permitted connections provided by an electric utility, a permitted temporary electrical connection, ~~(or other permitted connection provided by an electric utility)~~ or on-board generators. The use of on-board generators shall require sound absorbing devices used to contain or deflect noise from any external generator.
- (m) ~~A minimum of one 100-gallon garbage receptacle shall be provided for each mobile food unit. However, a~~ Refuse.
  - (1) A sufficient quantity of garbage receptacles shall be provided and maintained so the mobile food court ~~shall be free~~ is kept clean of trash, debris and litter at all times.
  - (2) Trash generated on site is not allowed to blow or spill onto abutting or surrounding sites or onto the public right-of-way.

(3) The garbage receptacles shall be maintained in compliance with the Texas Food ~~Code Chapter 229 Establishment Rules,~~ including:

~~(i) Such receptacles are rodent-resistant. Unprotected plastic bags and paper bags, or baled units that contain materials with food residue may not be stored outside.~~

~~(ii) Refuse, recyclables, and returnables shall be removed from the premises at a frequency that will minimize the development of objectionable odors and other conditions that attract or harbor insects and rodents.~~

(4) Mobile food courts shall comply with all solid waste and refuse requirements of the City's Code of Ordinances.

(n) Above-ground grease traps are not allowed at mobile food courts.

#### 5.26-~~64~~. Performance standards.

(a) The visual and structural integrity of ~~the~~ each mobile food ~~establishment~~ unit must be maintained continuously.

(b) No outside sound amplifying equipment, or noisemakers, such as bells, horns, or whistles shall be ~~permitted~~ allowed. Mobile food courts and all associated activity and mechanical equipment including any generators shall comply with the city's noise provisions in Chapter 82.

~~(c) Mobile food establishment units providing food services shall be registered, inspected, and permitted by the city's health department.~~

~~(d)~~ All signage shall be on private property and not in the right-of-way, and shall comply with chapter 106, Signs.

~~(1-)~~ For the purposes of on-premise signs, a mobile food court shall be allowed the following:

(i) Freestanding sign(s) allowed in the underlying zoning district to identify the name of the mobile food court in compliance with chapter 106.

(ii) One sandwich board per mobile food unit that must be placed within ten feet of the mobile food unit.

(iii) Signs attached to the exterior of the mobile food unit, excluding roof signs, shall be considered wall signage and exempt from permitting.

~~(2-)~~ Prohibited signs.

(i) Temporary signs, including banners.

(ii) Off-premise signs.

(iii) Digital display signs.

~~(e)~~ Mobile food unit off-street parking standards. A minimum of two parking spaces per mobile food unit or one parking space for each four seats for patron use, whichever is greater, shall be required. Any off-street parking lots provided shall be constructed in accordance with section 5.1 of this chapter. ~~Mobile food units may not be located within the parking lot.~~

~~(f) The noise level of mechanical equipment and generators used in association with a mobile food unit shall not violate the provisions of section 82-9 of chapter 82, Offenses and miscellaneous.~~

5.26-~~75~~. *Permit required and procedures.*

- (a) A commercial permit for a mobile food court ~~permit~~ shall be required to ensure conformance with the provisions of this section and all other applicable adopted city codes and ordinances.
- (b) The commercial permit ~~A~~ application ~~for a mobile food court permit~~ shall ~~be presented to the building division on forms furnished by the city and may~~ include, but not be limited to, plans ~~in duplicate~~ drawn to scale showing the location, dimensions, and specifications of proposed and required facilities as indicated in this section. Additional information to assist in determining compliance with adopted codes and ordinances ~~this section~~ may be required.
  - (1) ~~The applicant should understand that a mobile food court permit is only a permit to indicate compliance with this section; a building permit and health permit must be obtained for the construction and operation of the identified improvements.~~ As part of the commercial permit process all plans for site work, installation, construction, utility connection, and signs must be reviewed by the building safety division, health and food safety division, planning division, fire marshal's office, and other divisions and departments as applicable for compliance with adopted codes and ordinances.
  - (2) ~~The mobile food court permit application may be filed with the application for building permit or separately prior to application for building permit. When filed separately prior to application for building permit, three complete sets of plans, sealed by a Texas registered engineer, architect or land surveyor are required.~~ Mobile food courts and individual mobile food units shall be registered, inspected, and additionally permitted by the city's health and food safety division in accordance with Chapter 62.-
  - (3) ~~The mobile food court~~ All permit applications shall include the ~~following information:~~ corresponding fee(s) as indicated in Appendix D of the City's Code of Ordinances.
    - (i) ~~Completed mobile food court permit application form.-~~
    - (ii) ~~A permit fee per appendix D of this Code.-~~

5.26-~~86~~. *Conflict.* Where there is conflict between the code adopted in this section and any city, state, or federal law, the more restrictive requirements shall govern unless the less restrictive requirements are preemptive under state or federal law.

#### SECTION 4

It is hereby declared to be the intention of the City Council that the sections, paragraphs, sentences, clauses and phrases of this Ordinance are severable and, if any phrase, clause, sentence, paragraph or section of this Ordinance should be declared invalid by the final judgment or decree of any court of competent jurisdiction, such

invalidity shall not affect any of the remaining phrases, clauses, sentences, paragraphs and sections of this Ordinance.

**SECTION 5**

**THAT** all provisions of the Code of Ordinances of the City of New Braunfels not herein amended or repealed shall remain in full force and effect.

**SECTION 6**

**THAT** all other ordinances or parts of ordinances in conflict herewith are hereby repealed to the extent of such conflict only.

**SECTION 7**

**THAT** in accordance with the provisions of the City Charter, this Ordinance may be read and published by descriptive caption only. This Ordinance has been publicly available in the office of the City Secretary prior to its adoption.

**SECTION 8**

**THAT** this Ordinance shall become adopted and effective upon its second reading, signature required by City Charter, and filing with the City Secretary's Office. This Ordinance must also be published in a newspaper of general circulation at least one time within ten (10) days after its final passage, as required by the City Charter of the City of New Braunfels, Texas.

**PASSED AND APPROVED:** First reading this 26<sup>th</sup> day of August, 2024.

**PASSED AND APPROVED:** Second reading this 9<sup>th</sup> day of September, 2024.

**CITY OF NEW BRAUNFELS**

\_\_\_\_\_  
**NEIL LINNARTZ, Mayor**

**ATTEST:**

**GAYLE WILKINSON, City Secretary**

**APPROVED AS TO FORM:**

**VALERIA M. ACEVEDO, City Attorney**