



## City Attorney's Office

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April 8, 2011

The Honorable Ann Campbell, Mayor  
and Members of the City Council  
of the City of Ames, Iowa

Re: Ordinance Permitting Temporary Portable Signs on Sidewalks in Downtown Service Center

Dear Mayor Campbell and Members of the City Council:

Currently the Ames Municipal Code prohibits the placement of signs on or over any public property. Last year representatives from the Main Street Cultural District met with city staff members to discuss options for permitting "sandwich board" signs in front of downtown businesses. Feedback was received from the businesses and from the City departments that might be involved in issuing sign permits and enforcing sign regulations. The results of those discussions were reported to the City Council in a staff report.

On September 28, 2010, the City Council considered several options described in the staff report, and then directed staff to prepare a draft ordinance permitting the placement of temporary portable signs on sidewalks in the Downtown Service Center (DSC) zoning district. Council's direction was to prepare an ordinance that would do the following:

- Establish a permit process for temporary sidewalk signs in the DSC;
- Require businesses to remove signs at the closing time or 10:00 PM, whichever is earlier;
- Allow all businesses within each building to be eligible for a sidewalk sign permit;
- Limit the size of signs to 2 ½ feet in width and 4 feet in height;
- Require applicants to provide an indemnification agreement and liability insurance;
- Prohibit illuminated signs and signs attached to sidewalks, poles, or furniture;
- Provide for the ability of the City to terminate permits and remove signs to protect public safety;
- Require a minimum of four feet of unobstructed sidewalk space.

The attached ordinance draft is modeled after the Cedar Falls ordinance. It complies with the September 28 staff report and the specific direction given by Council with one exception, and that is the minimum unobstructed sidewalk space required for placement of a sign. The staff report considered by Council suggested a minimum unobstructed sidewalk space of four feet, which is the same as the City requires for sidewalk cafes and temporary obstructions. The draft ordinance would require a minimum unobstructed space of five feet, however, and is based on recommendations contained in pedestrian safety guides and ADA guidelines.

As explained in the Pedestrian Safety Guide:

The width of a sidewalk depends primarily on the number of pedestrians who are expected to use the sidewalk at a given time — high-use sidewalks should be wider than low-use sidewalks. "Street furniture" and sidewalk cafes require extra width, too. A sidewalk width of 1.5 m (5 ft) is needed for two adult pedestrians to comfortably walk side-by-side, and all sidewalks should be constructed to be at least this width. The minimum sidewalk widths for cities large and small are:

Local or collector streets -- 1.5 m (5 ft)

Arterial or major streets -- 1.8 to 2.4 m (6 to 8 ft)

CBD areas -- 2.4 to 3.7 m (8 to 12 ft)

Along parks, schools, & other major pedestrian generators -- 2.4 to 3.0 m (8 to 10 ft)

Many 1.2-m (4-ft) sidewalks were built in the past. This width does not provide adequate clearance room or mobility for pedestrians passing in opposite directions. All new and retrofitted sidewalks should be 1.5 m (5 ft) or wider.

The ADA considers sidewalks to be "accessible routes." The U.S. Access Board's ADA Accessibility Guidelines require wider sidewalks for new construction, but they do allow older, narrower sidewalks to function as accessible routes as long as they comply with minimum standards. ADAAG Section 4.13.7 requires that any sidewalk with less than five feet of clear width must provide for regular "passing zones" of at least five feet by five feet. While a sign ordinance with a minimum clear width of four feet might comply with the ADA guidelines as long as wider passing zones remain available on every block, a wider unobstructed space is recommended. The Cedar Falls ordinance on which the Ames draft is based provides for a minimum of five feet of unobstructed sidewalk space. The Matthews Model Municipal Ordinance requires a minimum of six feet of unobstructed space.

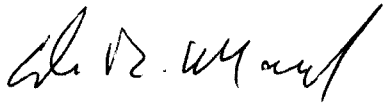
If the Council proceeds with passage and adoption of the ordinance providing for five feet of unobstructed sidewalk space, it would be my recommendation to later amend the sidewalk café and temporary obstruction permit ordinances to also require five feet of clear space. If, however, the Council wants to proceed with adoption of a sidewalk sign ordinance specifying a minimum of four feet of clear space, that can be done by oral amendment at first passage.

The Council gave direction that the permit fee for sidewalk signs should be set at thirty-five dollars (\$35.00). Since fees are set annually by resolution of Council rather than by ordinance, the draft ordinance does not specify a fee. The Council may adopt a fee by resolution upon third passage of the ordinance. The Council also suggested that businesses with sign permits be required to identify their signs by affixing a permit number. The City Clerk uses a similar procedure for issuing permit stickers for placement on newspaper vending machines, and that procedure could also be made applicable to sidewalk signs.

The draft ordinance does provide that if a sidewalk sign permit is denied or revoked, the decision may be appealed to the Building Board of Appeals. The ordinance also specifies that a business holding a valid sidewalk café permit does not need to pay an additional permit fee and does not need to post additional liability insurance to obtain a sidewalk sign permit for the same location.

The draft ordinance has been reviewed by the staff of the Inspections Division and the City Clerk's office. I understand that both offices found the draft to provide an efficient and manageable procedure for issuing and enforcing sidewalk sign permits.

Yours truly,

A handwritten signature in black ink, appearing to read "Douglas R. Marek". The signature is fluid and cursive, with a prominent initial "D" and "M".

Douglas R. Marek  
City Attorney

c: Diane Voss, David Brown

**ORDINANCE NO.**

**AN ORDINANCE TO AMEND THE MUNICIPAL CODE OF THE CITY OF AMES, IOWA, BY ENACTING A NEW SECTION 21.134, REPEALING SECTION 22.24A AND ENACTING A NEW SECTION 22.24A THEREOF, FOR THE PURPOSE OF PERMITTING CERTAIN TEMPORARY PORTAGBLE SIGNS UPON THE PUBLIC SIDEWALKS WITHIN THE DOWNTOWN SERVICE CENTER (DSC) ZONE; REPEALING ANY AND ALL ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT TO THE EXTENT OF SUCH CONFLICT; PROVIDING A PENALTY; AND ESTABLISHING AN EFFECTIVE DATE.**

**BE IT ENACTED**, by the City Council for the City of Ames, Iowa, that:

Section One. The Municipal Code of the City of Ames, Iowa shall be and the same is hereby amended by enacting a new Section 21.134 as follows:

**“Sec. 21.134 Temporary Portable Signs on Public Sidewalks in DSC Permitted.**

“Notwithstanding any other provisions of this chapter, certain temporary portable signs shall be allowed on public sidewalks within the Downtown Service Center (DSC) Zoning District, subject to the conditions and requirements hereinafter provided. Any proprietor of a business establishment may use a portion of the public sidewalk or parking strip, for the purpose of displaying one temporary portable sign for such establishment. For purposes of this section “proprietor” shall mean the owner or manager of a business establishment located in the DSC. The displaying of a temporary portable sign as permitted by this section is subject to the following restrictions:

(1) The portion of the public sidewalk that may be used by the proprietor of such business establishment for the display of such signs is the area of the public sidewalk that extends from the storefront of the establishment to the adjacent street curb and between the side property lines of the building in which the establishment is located, as such side property lines are extended to the adjacent street curb.

(2) There must nevertheless be a minimum of five feet of unobstructed public sidewalk between such storefront and the edge of the sign closest to the storefront, or between the edge of the sign closest to the street and the inside edge of the street curb, in order to allow for the free passage of pedestrian traffic on the public sidewalk, provided, however, that the city may, in granting a permit under this subsection, require more than five feet of unobstructed public sidewalk clearance if, in the reasonable determination of the city, such additional clearance is necessary in the interest of public safety, health, or welfare, in light of the peculiar circumstances involved with the physical characteristics of the public sidewalk area in question; and provided, further, that all such temporary portable signs must in all events maintain at least a two-foot setback from the outside edge of said sign to the inside edge of the street curb.

(3) No such temporary movable sign shall be attached in any manner to the public sidewalk, or to any public fixtures located on the public sidewalk, such as tables, chairs, or other fixtures, or on top of any temporary elevations such as fill material or snowbanks.

(4) No such temporary sign shall exceed two and one half (2.5) feet in width and four (4) feet in height in outer frame measurements, with such height measured from the natural grade of the sidewalk surface adjacent to such establishment. No more than one such sign may be placed in front of any single store-front at any one time, except that for store-fronts of buildings in which more than one business establishment is located one sign per business establishment may be permitted. All such signs must be well-maintained and kept in good repair.

(5) No such temporary movable sign shall be illuminated internally or externally.

(6) By the closing time of such establishment each day or 10:00 o’clock P.M., whichever time is earlier, each such sign shall be moved inside the building adjacent to which the sign is displayed, restoring the public sidewalk to its normal condition as a pedestrian walkway.

(7) Before the proprietor of any such an establishment may lawfully place any such temporary sign on the public sidewalk in front of such establishment, the proprietor shall file an application for a permit with the city clerk of the city, on a form furnished by the city clerk, and shall pay a non-refundable annual permit fee therefor, in such amount as shall be determined from time to time by resolution of the city council and listed in Appendix D. The application and an accompanying diagram or site plan shall show:

- (i) the dimensions, including the length and width, of the public sidewalk and parking strip that is adjacent to said establishment, as described in this subsection;
- (ii) the five-foot area of unobstructed public sidewalk which is to be reserved for pedestrian use, and the two-foot setback from the outside edge of said sign to the inside edge of the street curb;
- (iii) the approximate location where the sign shall be positioned, and the size of said sign, including its outer dimensions;
- (iv) proof that the applicant holds a valid license or permit to operate the business establishment;
- (v) the written consent to the filing of said application from the owner of the building in which such establishment is located, if the applicant is not the owner of the building;
- (vi) proof of insurance and compliance with the indemnification requirements set forth in subparagraph 15 of this subsection; and
- (vii) such other information and documentation as the city may require in order to demonstrate that the proprietor complies with the requirements of this subsection.

(8) The city clerk shall forward a copy of the proprietor's application, together with all other information and documentation required in connection with said application, to the building official for review as to compliance with the requirements of this subsection, and compliance with the interest of public safety, health, or welfare. If the application is approved by the building official as being in compliance with the requirements of this subsection, the city clerk shall issue a permit therefor to the applicant. If the application is not approved by the building official, the city clerk shall notify the applicant of the reason or reasons the application was not approved. The applicant shall be afforded a period of 30 days from the date of the city clerk's notice, within which to revise the application in an effort to comply with the requirements of this subsection and to correct the reasons for denial thereof. If the revised application is approved by the building official, the city clerk shall issue a permit. If the revised application is not approved by the building official, the city clerk shall not issue a permit. In that event, the applicant shall have a period of 20 days from the date of notice of denial to appeal the denial to the Building Board of Appeals as provided in Municipal Code chapter 5, Division VI. The Building Board of Appeals shall conduct a hearing on the appeal of the denial of the application within 30 days, and shall afford the applicant an opportunity to present information in support of the application, and shall issue a decision to either approve the application, which may be conditioned on one or more requirements, or to deny the application. The decision of the Building Board of Appeals shall be final, and the building official shall take prompt action in accordance with the decision of the Board.

(9) Any permit issued under this subsection shall be issued for a period of one-year, and may be renewed upon the filing of an application by the proprietor for renewal of the permit before its expiration, and by payment of the required annual fee. The application for renewal shall state whether or not any of the contents of the original application are being revised, failing which the contents of the application for renewal shall be deemed to be the same as contained in the original application.

(10) In the event that ownership of the business establishment holding the permit is sold, conveyed or transferred to another person or entity, the permit shall not thereby be transferred, and the new owner shall be required to file a new and separate application for such a permit, as provided in this subsection.

(11) The city reserves the right to limit the number of permits issued under this subsection if necessary to maintain adequate pedestrian flow, to permit adequate access to building entrances, to safeguard pedestrian and traffic safety, to preserve the aesthetic quality of the surrounding area, or for any other valid public purpose. The city reserves the right to either deny an application which otherwise meets the requirements of this subsection, or to require the proprietor to meet additional terms and conditions for issuance of a permit beyond the requirements set forth in this subsection if, in the reasonable determination of the city, either granting the permit, or granting it without such additional terms and conditions, would not adequately protect and preserve the rights, privileges, and

property of the city or its residents, or would not adequately protect or preserve the peace, safety, health, welfare, comfort or convenience of the city's residents.

(12) The City Manager may order the immediate removal of any such temporary sign in the event such sign is causing a hazard to public safety, health or welfare, is interfering with the unobstructed passage of pedestrians, is unsightly in appearance, is interfering with the removal of ice and snow from the public sidewalks, or for any other reason affecting public safety, health or welfare.

(13) A permit issued under this subsection shall be revoked by the city if the proprietor holding the permit does any of the following:

- (a) Fails to maintain a valid license or permit covering the establishment adjacent to which the sign is located;
- (b) Fails to remove the sign from the public right of way by the time required in this subsection;
- (c) Fails to pay the fee for issuance or renewal of the permit;
- (d) Fails to operate in strict compliance with all of the provisions of this subsection, of all other city ordinances, and of state law; or
- (e) Creates or allows the existence of a safety hazard in connection with the placement of the sign.

Upon occurrence of any of the events described in this subparagraph, the city clerk shall give the proprietor of such establishment seven days' written notice of revocation of the permit, and the permit holder shall thereupon immediately cease to place any such sign on the public sidewalk or parking strip adjacent to the proprietor's establishment.

(14) The permit holder may appeal the revocation of the permit by written notice of appeal mailed or delivered to the city clerk within ten days of the date of notice of revocation. The Building Board of Appeals shall conduct a hearing within 30 days of the date of the notice of appeal. The permit holder shall be notified in writing of the time and place of hearing thereon, and shall be afforded an opportunity to present information to the Board, following which the Board shall issue a written decision within thirty days of the date of the hearing, either affirming or reversing the revocation of the permit. The decision of the Building Board of Appeals is final. During the pendency of the appeal, the permit holder shall not be allowed to place the sign on the public sidewalk.

(15) The city shall retain the right to terminate any permit granted under this subsection upon seven (7) days' written notice, and may require the removal of the sign from the public sidewalk adjacent to an establishment, if the city council, after due consideration, determines that there is a reasonable and substantial need for the use of the public right-of-way being occupied by such sign, for a valid public purpose. The determination of the city council shall be final, and there shall be no right of appeal from such decision.

(16) A permit for a temporary movable sign shall not be issued under this subsection unless the applicant, at the time of filing an application for issuance or renewal of a permit, furnishes proof of insurance and indemnification of the city that meets the following requirements:

(a) Comprehensive insurance coverage in the amount of \$500,000.00 combined single limit, with coverage at least as broad as the ISO Form Number CG0001, covering commercial general liability written on an occurrence basis only, with the city to be named as an additional insured on the policy, with an endorsement to be issued as part of the insurance policy evidencing compliance with this requirement, and with a copy of the current insurance certificate maintained on file with the City Clerk; and

(b) An indemnification agreement on a form furnished by the City Clerk, under which the proprietor agrees to indemnify and hold the city harmless from any liability for damages arising out of the placement of the temporary movable sign in the public right-of-way. “

Section Two. The Municipal Code of the City of Ames, Iowa shall be and the same is hereby amended by repealing Section 22.24A thereof and enacting a new Section 22.24A as follows:

**Sec. 22.24A. SIDEWALK CAFÉ PERMITS.**

The purpose of this subsection is to set forth the conditions and requirements under which a sidewalk cafe, as defined, may be permitted to operate by Sidewalk Cafe Permit on a public sidewalk within the City of Ames. The fee for a Sidewalk Cafe Permit is listed in Appendix D.

(a) **Definition.** A sidewalk cafe is any group of tables and chairs, and its authorized decorative and accessory devices, situated and maintained upon the public sidewalk for use in connection with ordering, purchasing and consuming food and non-alcoholic beverages sold to the public from, or in, an adjoining indoor restaurant, or other indoor business selling food for consumption on the premises.

*(Ord. No. 3537, Sec. 1, 9-28-99)*

(b) **Where Permissible.** A sidewalk cafe shall be permitted only in zoning districts which allow indoor restaurants, or other indoor business selling food for consumption on the premises, and then only if the sidewalk cafe is contiguous to an indoor restaurant, or other indoor business selling food for consumption on the premises, and the cafe's operation is incidental to and a part of the operation of such contiguous indoor restaurant, or other indoor business selling food for consumption on the premises. A sidewalk cafe shall be located on the public sidewalk immediately contiguous to and abutting the indoor restaurant, or other indoor business selling food for consumption on the premises, which operates the cafe, provided that the area in which the sidewalk cafe is located extends no farther along the sidewalk's length than the actual sidewalk frontage of the operating indoor restaurant, or other indoor business selling food for consumption on the premises, and all other applicable provisions of this article are fulfilled.

*(Ord. No. 3537, Sec. 1, 9-28-99)*

(c) **Alcoholic Beverages and Smoking Prohibited.** Service of alcoholic beverages, consumption of alcoholic beverages, and smoking are prohibited at a sidewalk cafe, and a permittee shall enforce prohibition of such conduct.

(d) **Number of Sidewalk Cafes.** An indoor restaurant, or other indoor business selling food for consumption on the premises, shall be permitted to operate only one sidewalk cafe, and each sidewalk cafe shall be confined to a single location on the sidewalk.

*(Ord. No. 3537, Sec. 1, 9-28-99)*

(e) **Sidewalk Clearances.** A sidewalk cafe shall be permitted only where the sidewalk is wide enough to adequately accommodate both the usual pedestrian traffic in the area and the operation of the proposed cafe. A sidewalk cafe shall not occupy more than 50 percent of the sidewalk's width at any point as measured from the curb, and there shall be a minimum of four (4) feet of sidewalk width clear of obstructions.

*(Ord. No. 3437, Sec. 1, 5-27-97)*

(f) **Table and Chairs, Location and Requirements of Furniture.** All tables and chairs comprising a sidewalk cafe shall be set within the 50 percent of the sidewalk measured from the indoor restaurant, or other indoor business selling food for consumption on the premises, building exterior wall, and shall not be situated within eight feet of any designated bus stop, and 20 feet from any street intersection.

All outdoor dining furniture, including tables, chairs, umbrellas, and authorized accessory items, shall be readily movable. "Readily movable" shall mean that no object as stated above, which is part of the sidewalk cafe, shall be leaded, cemented, nailed, bolted, power riveted, screwed-in or affixed, even in a temporary manner, to either the sidewalk on which the sidewalk cafe is placed, to the building, or to any other structure which the sidewalk cafe abuts. Umbrellas must be secured with a minimum base of not less than 60 pounds. Outdoor heaters, fans, air conditioners, amplified sound, or speakers are prohibited.

*(Ord. No. 3537, Sec. 1, 9-28-99)*

(g) Signs shall not be allowed at any outdoor café, except for the name of the establishment on an awning or umbrella fringe. Notwithstanding any provision of the Code to the contrary, however, within the Downtown Service Center (DSC), temporary portable signs may be permitted at any outdoor café pursuant to a permit issued as provided in Municipal Code Chapter 21.

(1) A proprietor of a business establishment located within the DSC who holds a valid Sidewalk Cafe Permit issued pursuant to this section and who applies for a permit for a temporary portable sidewalk sign

permit for the same location shall be required to pay only one application fee for both permits, the applicable fee being the one, if the fees are different, that is the greater of the two.

(2) A proprietor of a business establishment located within the DSC who holds a valid Sidewalk Cafe Permit issued pursuant to this section and who applies for a permit for a temporary portable sidewalk sign permit for the same location shall be required to maintain on file with the city clerk only one insurance certificate if applicable to both permits.

(h) **Reserved.**

(i) **Delineating Sidewalk Cafe Area.** The sidewalk cafe shall be delineated by barriers separating patrons from the pedestrian traffic on the sidewalk. The detailed requirements for each sidewalk cafe will be determined as warranted. The barriers will be within the 50 percent of the sidewalk designated for the sidewalk cafe, or to ensure a minimum of four (4) feet of sidewalk width clear of obstructions.

(j) **Food and Beverages.** A sidewalk cafe shall serve only food and non-alcoholic beverages prepared, or stocked for sale, at the adjoining indoor restaurant, or other indoor business selling food for consumption on the premises.

*(Ord. No. 3537, Sec. 1, 9-28-99)*

(k) **Service Requirements.** The outdoor preparation of food and busing, or service stations, are prohibited at sidewalk cafes. The presetting of tables with utensils, glasses, napkins, condiments, and the like is prohibited. All exterior surfaces within the sidewalk cafe shall be easily cleanable, and shall be kept clean at all times by the permittee. Restrooms for the cafe shall be provided in the adjoining indoor restaurant, or other indoor business selling food for consumption on the premises, and the cafe seating shall be counted in determining the restroom requirements of the indoor restaurant, or other indoor business selling food for consumption on the premises.

*(Ord. No. 3537, Sec. 1, 9-28-99)*

(l) Trash and refuse storage for the sidewalk cafe shall not be permitted within the outdoor dining area, or on adjacent sidewalk areas, and the permittee shall remove all trash and litter as they accumulate. The permittee shall be responsible for maintaining the outdoor dining area, including the sidewalk surface and furniture, and adjacent areas in a clean and safe condition.

(m) **Days and Hours of Operation.** Sidewalk cafes shall operate on days whenever fair weather would enhance outdoor dining from the dates of April 1, to October 31, of the said given year that the Sidewalk Cafe Permit was issued. The hours of operation are limited to between 7:00 a.m. and 11:00 p.m. Tables, chairs and all other furniture used in the operation of an outdoor cafe shall be removed from the sidewalk and stored indoors at night, and whenever the cafe is not in operation.

The City shall have the right and power, acting through the City Manager or his designee, to prohibit the operation of a sidewalk cafe at any time because of anticipated or actual problems of conflicts in the use of the sidewalk area. Such problems and conflicts may arise from, but are not limited to, scheduled festivals and similar events, parades or marches, repairs to the street or sidewalk, or from demonstrations or emergencies occurring in the area. To the extent possible, the permittee shall be given prior written notice of any time period during which the operation of the sidewalk cafe will be prohibited by the City, but any failure to give prior written notice shall not affect the right and power of the City to prohibit the cafe's operation at any particular time.

(n) **Findings and Conditions.** In connection with granting approval for any Sidewalk Cafe Permit, the City Manager shall make findings that the proposed operation meets the limitations of this subsection, and the Manager may impose such conditions in granting approval as are needed to assure that the proposed operation will meet the operating requirements and conditions set forth in this article, and to assure that the public safety and welfare will be protected.

(o) **Term and Renewal.** A Sidewalk Cafe Permit shall be approved by the City Manager for a maximum period of one year. Thereafter, the City Manager, if an extension application is filed prior to any expiration date of the Sidewalk Cafe Permit, may extend the permit for additional periods, not to exceed one year each, following review and approval of the cafe's operations. In the event the City Manager decides additional or revised conditions are necessary, to which the applicant objects, or if the City Manager decides that the permit should not be renewed at all, the application shall be referred to the City Council, which shall hold a public hearing and thereafter decide the matter. The City Manager may make any renewal of a Sidewalk Cafe Permit subject to additional and revised conditions and requirements. Any renewal granted by the City Manager shall not exceed a



period of one year. All applications shall be filed with the City Clerk, who shall refer them to the City Manager. The City Clerk shall maintain the records of permits issued, denied, or revoked.

(p) **Revocation.** A Sidewalk Cafe Permit may be revoked by the City Manager, following notice to the permittee and a hearing, upon a finding that one or more conditions of the permit or of this article have been violated, or that the sidewalk cafe is being operated in a manner which constitutes a nuisance, or that the operation of the sidewalk cafe unduly impedes or restricts the movement of pedestrians past the sidewalk cafe.

*(Ord. 3125, 4-9-91)*

(q) **Insurance.** An insurance certificate naming the City of Ames, its officers, and employees as an additional insured with comprehensive general liability limits in the amount of \$500,000 combined single limit shall be in full force and effect during the life of a Sidewalk Cafe Permit. The coverage shall be at least as broad as the ISO Form Number CG0001 covering commercial general liability written on an occurrence basis only. A copy of the

current insurance certificate shall be maintained on file with the City Clerk.

*(Ord. No. 3968, 9-9-08)*

Section Three. Violation of the provisions of this ordinance shall constitute a municipal infraction punishable as set out by law.

Section Four. All ordinances, or parts of ordinances, in conflict herewith are hereby repealed to the extent of such conflict, if any.

Section Five. This ordinance shall be in full force and effect from and after its passage and publication as required by law.

Passed this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

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Diane R. Voss, City Clerk

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Ann H. Campbell, Mayor