

**AMENDED SWAIN COUNTY FIRE MARSHAL  
AND FIRE PREVENTION ORDINANCE**

BE IT ORDAINED by the Board of Commissioners of Swain County (the "Board of Commissioners") as follows:

**§ 1. TITLE.**

This Chapter shall be known and cited as the Amended Swain County Fire Marshal and Fire Prevention Ordinance.

**§ 2. AUTHORITY.**

This ordinance is adopted under authority provided in N.C.G.S. §153A-121, §153A-233, §153A-234 and §143-138(e).

**§ 3. INTENT.**

(a) The intent of this ordinance is to express authority for the creation of an Office of the Fire Marshal and for the appointment of a Fire Marshal, and to prescribe regulations consistent with nationally recognized good practice for the safeguarding of life and property within the unincorporated limits of Swain County (the "County") from the hazards of fire and explosion arising from the storage, handling and use of hazardous substances, materials and devices, and from hazardous conditions in the use or occupancy of buildings or premises.

(b) This ordinance shall also be controlling within the corporate limits of any municipality within the County upon request by resolution from the governing body of the municipality and upon approval of the Board of Commissioners by resolution.

(c) This ordinance shall not be construed to hold the County responsible or liable for any damage to persons or property by reason of the inspection or re-inspection authorized in this ordinance, or failure to inspect or re-inspect, or the permits issued or denied as pursuant to this ordinance, or by reason of the approval or disapproval of any equipment authorized pursuant to this ordinance.

**§ 4. ADOPTION BY REFERENCE.**

(a) This ordinance adopts by reference and incorporated into this ordinance is "*Fire Prevention*" section of the North Carolina State Building Code. Not less than one copy of the adopted standards and codes shall be filed in the Fire Marshal's Office (the "Fire Marshal") and the provisions thereof shall be controlling within the County.

(b) This ordinance adopts by reference and incorporates hereto N.C.G.S. Article 11 Chapter 153A ("Fire Prevention").

(c) Any law, statute, code, standard, rule or regulation adopted by reference and incorporated into this ordinance is deemed to include any amendments that may be made to the law, statute, code, standard, rule or regulation.

(d) Amendments to anything adopted by reference and incorporated into this ordinance, which amendments are adopted and published by the North Carolina State Building Code Council, shall be effective in the County at the time the amendments become a part of the fire code expressed within or adopted by the North Carolina State Building Code. Amendments to anything else adopted by reference herein shall be effective in the County when duly adopted by the agency responsible for their adoption under governing North Carolina law.

#### **§ 5. APPOINTMENT OF FIRE MARSHAL.**

Under authority provided in N.C.G.S. Article 11, Chapter 153A, the Board of Commissioners may establish for the County the Office of the Fire Marshal and may appoint a Fire Marshal. The Board of Commissioners may rely on the County Manager to form the office and select an appointee; provided, however, that the Board of Commissioners shall retain approval authority over the formation of the office and the appointment of a person to be Fire Marshal.

#### **§ 6. FIRE MARSHAL IS COUNTY EMPLOYEE.**

The Fire Marshal and any one else employed in the Office of the Fire Marshal shall be County employee(s) for purposes of compensation and benefits, but shall be under the control of the County Manager for all other purposes, including but not limited to: employment, termination of employment, disciplinary actions, and supervision.

#### **§ 7. FIRE MARSHAL – GENERAL ADMINISTRATIVE DUTIES.**

The Fire Marshal shall report to the County Manager, and shall serve as the liaison between the Board of Commissioners and fire departments that are subject to this ordinance.

The Fire Marshal shall have the following administrative duties and responsibilities:

- (a) To advise County authorities in developing policies and plans to improve the fire safety conditions of the community;
- (b) To advise County authorities about the state and conduct of his office and persons therein;
- (c) To plan budgets for the Office of the Fire Marshal;
- (d) To transmit or present the budgets of the Office of the Fire Marshal and the administration of the program to the County Manager and Board of Commissioners, as is appropriate;

- (e) To prepare instructions and forms for the reports required by this ordinance;
- (f) To maintain required records;
- (g) To submit a required reports;
- (h) To provide for the good management and conduct of Office of the Fire Marshal;
- (i) To further the intent of this ordinance and the public safety;
- (j) To have other duties and responsibilities as the General Assembly and Board of Commissioners may assign.

**§ 8. FIRE MARSHALL – DUTIES RELATED TO PUBLIC SAFETY.**

The Fire Marshal’s duties shall include, but are not limited to, the duties expressed in N.C.G.S. §153A-234. Further, the Fire Marshal has the duty to enforce this ordinance and all laws and ordinances governing the following:

- (a) The prevention of fires;
- (b) The storage, sale and use of combustible, flammable or explosive materials;
- (c) The installation and maintenance of automatic and other fire alarm systems, and fire extinguishing equipment;
- (d) The maintenance and regulation of fire escapes;
- (e) The means and adequacy of exit in case of fire from factories, schools, hotels, lodging houses, asylums, hospitals, churches, halls, theaters, amphitheaters;
- (f) The maintenance of fire cause and loss records;
- (g) The Fire Marshal may organize a “Fire Investigative Support Team” (hereafter “FIST”) but is not required to do so;
- (h) Other duties and responsibilities as the General Assembly and Board of Commissioners may assign.

**§ 9. DELEGATION OF DUTIES.**

The Fire Marshal may designate a representative or representatives who shall have the responsibility to carry out the duties delegated by the Fire Marshal. Wherever this ordinance refers to the Fire Marshal and his or her performance of duty, the reference shall be deemed to include the representative the Fire Marshal has authorized to perform the duty.

**§ 10. BUDGET.**

- (a) The budget for the Fire Marshal shall be developed and approved by the Board and presented to the Board of Commissioners and the Board of Aldermen at least 90 days prior to the end of the current fiscal year and the Board of Commissioners and the Board of Aldermen shall approve and disapprove said budget presented by the Board at least 30 days prior to the end

of the current fiscal year.

(b) The approved budget for the Fire Marshal program shall be paid as follows:

70% by County of Swain; and  
30% by the Town of Bryson City.

(c) Swain County and/or the Town of Bryson City may withdraw from participation in this Joint Ordinance at the end of any fiscal year, but must elect to do so 45 days or more prior to the beginning of the subsequent fiscal year. The withdrawing governmental entity must provide written notice of its intention to withdraw to the remaining governmental entity 45 days or more prior to the beginning of the subsequent fiscal year.

**§ 11. AUTHORITY TO SET FEES.**

The Fire Marshal shall create a fee schedule including fees for permits, certificates, approvals and other functions performed under this ordinance. The fee schedule shall be submitted to the Board of Commissioners for approval and shall not be in effect until approved by the Board. Once the fee schedule is approved by the Board of Commissioners, the fee established shall accompany each application for permit, approval, certificate, or other fee related code provision or function. No fee shall be charged unless approved by the Board of Commissioners. Fees collected under the authority of this section are to be deposited to the account of the County so that the fees may be expended as authorized by budgetary approvals. The Fire Marshal shall report at least every six months to the Board of Commissioners as to receipts received under this ordinance. Fees collected under this section shall not be used to replace any other funds, either state or local, for the program for which the fees were collected.

**§ 12. INSPECTIONS.**

The Fire Marshal shall inspect all premises periodically for compliance with this ordinance and other applicable fire prevention rules, regulations, permits and certificates. Inspections shall be performed at least as often as the intervals expressed in this section, and may be performed more frequently upon the Fire Marshal's discretion.

Minimum Inspection Frequency

Every Six Months

Every Year

Every Two Years

Every Three Years

Premises

Public Schools

Non-public Schools, Day Cares, Foster Homes, Family Care Homes, Hazardous, Institutional, Hospitals, Nursing Homes, Other Care facilities, All Restaurants.

Industrial, Business, Mercantile and storage buildings

Churches, Synagogues, public buildings, assembly buildings

### **§ 13. FINDING AND REMEDIATING HAZARDS.**

(a) If the Fire Marshal or his or her designee finds in any building, or upon any premises or other places, combustible or explosive matter or dangerous accumulations of waste paper, boxes, shavings, or any highly flammable materials, and which is situated as to endanger property or human safety; or finds obstructions to or on fire escapes, stairs, passageways, doors, windows, likely to interfere with operations of a fire department or egress of occupants; or of any violation listed in the fire code expressed within or adopted by the North Carolina State Building Code, the inspector shall order the remediation of the hazard.

(b) Any owner or occupant who fails to comply with an order for hazard remediation within the time period expressed in the order shall be subject to the greater of the applicable penalty expressed in Appendix A to this ordinance or a penalty of \$100.00 for each violation that endangers "Life Safety" and a \$25.00 penalty for each other violation. A violation endangers "Life Safety" if it is of such a nature as to endanger the life or limb of any person. Any violation that is not corrected within seven (7) days of the imposition of a penalty shall be deemed a continuing violation and the owner or occupant shall thereafter be subject to the specified penalty for each day the violation continues.

(c) Any owner or occupant may appeal an order for hazard remediation to the North Carolina Building Code Council through the procedure provided for by the North Carolina Building Code.

### **§ 14. FIRE INCIDENT REPORTS.**

(a) Whenever a fire department responds to a fire alarm or fire, the chief of that department shall, within thirty (30) days of the response, or any lesser time that may be required by the Department of Insurance, complete or cause to be completed a fire incident report. The report shall be made on a form prescribed by the Department of Insurance and submitted in the manner and to the proper authority as prescribed by the Department of Insurance, which if so authorized may include electronic reporting using the National Fire Incident Reporting Service (NIFRS). When such report is made without fraud, bad faith, or actual malice, the person making the report is not subject to liability for libel or slander.

(b) The fire department shall keep a copy of each fire incident report required in subsection (a) for not less than five (5) years. In addition to the requirements of subsection (a), the Fire Marshal may at any time require that a copy of any and all fire incident reports be provided to him or her for review or storage.

(c) At the request of any person, the county fire marshal or county commissioners shall provide such person, for a reasonable copying charge, a certified copy of the report.

(d) Fire incident reports shall include all facts concerning the fire, including injuries, deaths, rescue of persons and statistics as to the extent of such fires and the damage caused thereby, and whether such losses were covered by insurance, and if so, in what amount.

(e) Nothing in the section shall prevent the fire chief of any fire department or his or her designee from investigating any fire occurring within his or her jurisdiction.

#### **§ 15. REPORTS TO BOARD OF COMMISSIONERS.**

The Fire Marshal shall submit a report of activities to the Board of Commissioners when requested by the Board of Commissioners. The report shall contain all proceedings under this ordinance and any recommendations for amendments which the Fire Marshal deems appropriate.

#### **§ 16. INCIDENT COMMANDER.**

The Fire Marshal may be present at any structure fire or other type of fire. However, the Fire Marshal shall not be the incident commander at a structure fire or any other type of fire. The Fire Chief of any fire department or his or her designee of the jurisdiction where the fire is occurring shall be the Incident Commander.

#### **§ 17. FALSE ALARMS.**

Repeated false alarms due to alarm malfunctions, improper care of fire protection equipment or testing of systems may result in a fine not to exceed \$100 per alarm under authority of this ordinance.

#### **§ 18. WARNING SIGNS.**

The Fire Marshal may require warning signs to be posted wherever hazardous materials are stored, processed, or handled. Warning signs shall be conspicuously lettered in accordance with the fire code expressed within or adopted by the North Carolina State Building Code; however, nothing in this section shall be held to be in conflict with N.C.G.S. Article 18, Chapter 95 ("Identification of Toxic and Hazardous Substances").

#### **§ 19. INSPECTION OF BUILDINGS AND PREMISES.**

Subject to the limitations and conditions stated in this ordinance or in the North Carolina State Building Code, the Fire Marshal's office shall inspect or to cause to be inspected as often as the Fire Marshal deems necessary or appropriate all buildings, structures, and premises within the Fire Marshal's jurisdiction for the purposes of ascertaining and causing to be corrected any condition which may cause fire or explosion, endanger life from fire or explosion, or any violations of this ordinance.

#### **§ 20. PERMITS.**

(a) *Fire Prevention Permits.*

- (1) This ordinance shall require permits from the Fire Marshal's Office as set forth in the fire code expressed within or adopted by the North Carolina State Building Code.
- (2) It shall be the duty of the Fire Marshal's Office or the Fire Inspector to evaluate applications and issue, if approved, the permits for those conditions as prescribed in the fire code expressed within or adopted by the North Carolina State Building Code and this ordinance.
- (3) No person shall maintain, store or handle materials or conduct processes which produce conditions hazardous to life or property or install equipment used in connection with such activities without first obtaining a permit as required by the Fire Marshal's Office and prescribed in the fire code expressed within or adopted by the North Carolina State Building Code and this ordinance. Before a permit may be issued, the Fire Marshal's Office shall inspect and approve the receptacles, vehicles, buildings, structures, storage areas, devices, processes and conditions related to the permit.
- (4) A permit may be revoked pursuant to the provisions of the fire code expressed within or adopted by the North Carolina State Building Code and this ordinance. Any person with standing to appeal may appeal the revocation to the Board of Commissioners by filing with the Fire Marshal's Office and the Board of Commissioners a written notice of appeal within thirty (30) days from the date of revocation.
- (5) To provide for efficient, timely handling of duties set forth in N.C.G.S. §14-284, §14-284.1, §14-410 and §14-413, and with greater convenience to the public, the Fire Marshal's Office is authorized to act as the agent of the Board of Commissioners to approve or disapprove issuance of permits and licenses for the storage of explosives and the exhibition of pyrotechnics at public celebrations.

(b) *Other Permits.*

This ordinance shall not exempt a person who has obtained a permit pursuant to this ordinance from any other permits required by other applicable state, federal, and local laws.

**§ 21. SERVICE OF ORDERS OR NOTICES.**

(a) Orders and notices for the correction of violations of this ordinance shall be served upon the owner of the premises, the occupant, or other person responsible for the conditions related to the violation, either by personally delivering a copy of the order or notice to that person, or by delivering the order or notice to and leaving it with person of suitable age and discretion who is in charge of the premises, or by sending a copy of the order or notice by

certified or registered mail to the last known address of the owner, occupant or other person responsible for the conditions.

(b) When premises are occupied by someone who is not the owner, such as under a lease, the orders or notices issued to correct violations of this ordinance shall apply to and be served upon the occupant of the premises; provided, however, that where the order requires changes to the premises, which changes may become part of the real property of the owner, then the orders or notices shall also be served on the owner. Failure to deliver an order or notice to the owner, if the owner is not the occupant, shall not invalidate any order or notice duly served on the occupant.

(c) Any order or notice may be served upon the occupant to whom it is directed, either by delivering a copy to the occupant personally, or by leaving it with any person in charge of the premises of suitable age and discretion, or if no such person is found upon the premises, by affixing a copy thereof in a conspicuous place or on the door to the entrance of the premises. Where the order cannot be served either by delivering to or leaving with the occupant or other person of suitable age and discretion, or if the owner is absent from the jurisdiction of the officer issuing the order, the order may be served by certified mail, return receipt requested, to the owner's last known address.

## **§ 22. EMERGENCY ENTRY.**

(a) The Fire Marshal or his authorized representatives have the right to enter any structure or premises without permission or warrant if there is a dangerous condition or emergency situation constituting an immediate threat to human life, property, or the public safety for the purpose of eliminating, controlling, or abating the dangerous condition or emergency.

(b) If entry or access is denied so as to limit the duties authorized in this ordinance, the Fire Marshal or his authorized representatives may seek and obtain an administrative search warrant pursuant to N.C.G.S. §15-27.2.

## **§ 23. FIRE INVESTIGATIONS.**

The Fire Marshal's Office shall cooperate with the law enforcement agency having jurisdiction of any fire. The Fire Marshal's Office may investigate and may designate a team of trained investigators to determine the cause and origin of any fire and may assist in their efforts by supplying and equipping resources or other methods as possible and deemed feasible by the Fire Marshal's Office. Investigations shall remain the responsibility of the appropriate fire chief until he or she deems it necessary to release the scene to the authorized representatives of the Fire Marshal's Office. In the event of loss of life during a fire or when other circumstances are deemed by the Fire Marshal to warrant an investigation, the Fire Marshal shall investigate. Any information obtained in the investigation shall be treated as public or confidential according to the state public records laws and N.C.G.S. Chapter 58, Article 79.

**§ 24. MAINTAINING A FIRE HAZARD.**

No person shall knowingly maintain a fire hazard.

**§ 25. CARELESSNESS WITH FIRE.**

No person shall deliberately, or through recklessness, carelessness or negligence, set fire to or cause the burning of any person or property, except as the burning of property may be authorized by permit, and then only within the scope of the permit.

**§ 26. PARKING IN FRONT OF A FIRE HYDRANT, FIRE STATION, OR FIRE LANE.**

(a) No person shall park a vehicle or permit it to stand, whether attended or unattended, within 15 feet in either direction of a fire hydrant or fire station entrance.

(b) No person shall park a vehicle or permit it to stand unattended in any area designated as a fire lane. Persons loading or unloading supplies or merchandise may park temporarily in a fire lane located in a shopping center or mall parking lot as long as the vehicle is clearly designated as a delivery vehicle. The prima facie rule of evidence created by N.C.G.S. § 20-162 shall apply to prosecutions for violation of this section. The operator of a vehicle parked in violation of this section shall be charged with a civil penalty for fire code violations pertinent to the type of occupancy where it occurred not to exceed \$25.00.

**§ 27. ENFORCEMENT.**

(a) This ordinance shall be enforced by the Fire Marshal or the Fire Inspector as certified by the North Carolina Code Officials Qualification Board or as otherwise provided herein by County policies.

(b) This ordinance and the fire code expressed within or adopted by the North Carolina State Building Code may be enforced by any methods authorized by N.C.G.S. §153A-123. Each day's continuing violation shall constitute a separate offense. Such methods shall be carried out in accordance with the procedures outlined below.

(c) Any of the penalties and remedies that are expressed or that may be imposed under this ordinance for violations of this ordinance may be imposed singularly or in any combination.

**§ 28. PENALTIES AND REMEDIES FOR VIOLATIONS.**

(a) *Criminal Penalties.* Violation of this ordinance is a general misdemeanor punishable by a fine not to exceed \$500 or imprisonment for not more than thirty (30) days or both. Each day's violation shall be treated as a separate offense.

- (1) Warning Report. Upon an initial violation of a particular provision of this ordinance an individual may be issued a warning report. The warning report shall identify the particular practice which violates this ordinance and shall state the time, date and place of the violation.
  - (2) Warrant. If an individual violates this ordinance within the six (6) months following the issuance of a warning report in a manner that is similar to the violation specified in the warning report, the Fire Marshal by and through a Fire Inspector may cause a warrant to be issued for the arrest of the individual.
- (b) Civil Penalties. Violation of this ordinance may be subject to civil penalties as set out below. Each day's violation shall be treated as a separate offense.
- (1) Compliance Order. Upon making a determination that a person is in violation of this ordinance, the Fire Marshal's Office shall issue a compliance order to the person in violation of this ordinance. The order shall identify the circumstances giving rise to the violation, including the times, dates, and places of the violation. The order shall further identify the action which is necessary to comply with this chapter. The order shall state that if the violator does not comply within a reasonable time not to exceed 45 days the individual will be subjected to a civil penalty. If circumstances exist such that the violator cannot come into compliance within forty-five (45) days, the Fire Marshal's Office may grant an extension of time commensurate with the magnitude of the violation. The compliance order shall further state that failing to comply with the terms of the order will subject the violator to a civil penalty, and shall state the amount of the civil penalty.
  - (2) Civil Penalty. Failure to comply with the terms of a compliance order issued by the Fire Marshal's Office within the time stated in the order shall subject the violator to a civil penalty as set out in Appendix A to this ordinance, which appendix shall express penalties that are not less than the same penalties as those imposed for violations of the fire code expressed within or adopted by the North Carolina State Building Code. Each day that the violation continues shall be considered a separate offense and may subject the violator to an additional civil penalty for each such separate offense. The Fire Marshal's Office may cause to be instituted legal action to collect accrued civil penalties.
- (c) Equitable Remedies. This ordinance may be enforced by equitable remedies, and any unlawful condition existing in violation of this ordinance may be enforced by injunction and order of abatement in accordance with N.C.G.S. §153A-123.
- (1) Injunction. Where necessary to effectuate compliance with this ordinance, the Fire Marshal's Office may institute an action in a court of competent jurisdiction for an injunction against the further violation of this ordinance.

- (2) Order of Abatement. Where necessary to abate a condition existing upon land or structures in violation of this ordinance or a use made of land or structures in violation of this ordinance the Fire Marshal's Office may institute an action in a court of competent jurisdiction seeking an order of abatement of the use or condition of land or structures in violation of this ordinance. The action may be joined to an action for an injunction and/or an action to recover civil penalties accrued against an individual for the use or condition of land or structure in violation of this ordinance.
- (3) Other Equitable Remedies. This ordinance may be enforced by any other equitable remedy which a court of competent jurisdiction deems just and proper.

**§ 29. EQUAL APPLICATION OF ORDINANCE.**

This ordinance shall apply equally to both public and private property, and all structures and their occupancies, unless otherwise expressly excepted from this ordinance or in the fire code expressed within or adopted by the North Carolina State Building Code, and shall be liberally construed as an exercise of the police powers of the County.

**§ 30. CONFLICT WITH OTHER LAWS.**

(a) Nothing in this chapter shall be construed to conflict with N.C.G.S. Article 18, Chapter 95 ("Identification of Toxic or Hazardous Substances"), as enacted and as may be amended from time to time.

(b) Where a conflict exists between this ordinance and the requirements of the fire code expressed within or adopted by the North Carolina State Building Code, the requirements of the State Building Code shall prevail.

**§ 31. REPEAL OF CONFLICTING OR INCONSISTENT ORDINANCES.**

This ordinance is intended to repeal any conflicting provision of any former ordinance.

**§ 32. SEVERABILITY.**

If any expression or part of this ordinance is declared to be invalid, that expression or part shall be severable, and any expression or part not severed shall remain in effect.

**§ 33. EFFECTIVE DATE.**

This ordinance shall take effect when it is adopted by the Board of Commissioners.

**APPENDIX A**

**CIVIL PENALTY SCHEDULE**

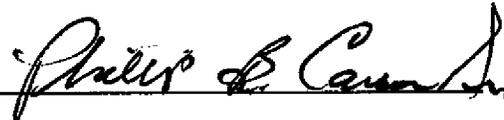
A.	Violations of the Ordinance not covered by the Building Code	25.00
B.	Violations covered by the Building Code	<i>Dollar Amount</i>
	<i>Chapter</i>	
	1. Administration	.00
	2. Definitions and Abbreviations	.00
	3. Recognized Standards and Publications	.00
	4. Permits and Certifications	25.00
	5. General Precautions Against Fire	25.00
	6. Fire Protection	25.00
	7. Electrical	25.00
	8. Maintenance of Exit Ways	100.00
	9. Flammable and Combustible Liquids	25.00
	10. Application of Flammable Finishes	25.00
	11. Bowling Establishments	25.00
	12. Dry Cleaning Plants	25.00
	13. Manufacturing of Organic Coatings	25.00
	14. Oil-Burning Equipment	25.00
	15. Compressed Gases	25.00
	16. Liquefied Natural Gas	25.00
	17. Liquefied Petroleum Gases	25.00
	18. Cryogenic Fluids	25.00
	19. Explosives, Blasting Agents, Ammunition	25.00
	20. Fireworks	25.00
	21. Prevention of Dust Explosions	25.00
	22. Hazardous Chemicals	25.00
	23. Cellulose Nitrate Plastic (Pyroxylin)	25.00
	24. Cellulose Nitrate Motion Picture Film	25.00
	25. Fruit Ripening Processes	25.00
	26. Fumigation and Thermal Insecticidal Fogging	25.00
	27. Magnesium	25.00
	28. Mechanical Refrigeration	25.00
	29. Welding and Cutting, Calcium Carbide and Acetylene	25.00
	30. Airports, Heliports, and Helistops	25.00
	31. Assembly Occupancies	100.00
	32. Automobile Tire Rebuilding Plants	25.00
	33. Combustible Fibers	25.00

34. Covered Mall Buildings	25.00
35. Garages	25.00
36. High-Piled Combustible Stock	25.00
37. Lumber Yards and Woodworking Plants	25.00
38. Ovens, Industrial Baking and Drying	25.00
39. Tents and Air Supported Structures	25.00
40. Wrecking Yards, Junk Yards or Waste Material Handling Plants	25.00
41. Decorative Materials	25.00
42. Hazardous Production Material (HPM) Facilities	25.00
43. Furnishings	25.00

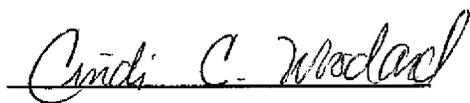
This Ordinance shall become effective the 11 day of December 2012.

SWAIN COUNTY, NORTH CAROLINA

(SEAL)

by:   
 Phillip Carson  
 Chairman, Board of Commissioners

ATTEST:

  
 Cindi C. Woodard  
 Clerk to the Board