

**CITY OF PROSPECT, KENTUCKY**  
**Ordinance No. 601, Series 2020**

**AN ORDINANCE AMENDING CHAPTER 39 OF THE CITY OF PROSPECT CODE OF ORDINANCES ADDING DEFINITIONS; CLARIFYING THE QUALIFICATIONS, APPOINTMENTS, AND CONFLICTS OF INTEREST OF THE REGULAR AND ALTERNATE MEMBERS OF THE CODE ENFORCEMENT BOARD; EXPLAINING MEETINGS AND MINUTES, ENFORCEMENT PROCEEDINGS AND HEARINGS OF THE CODE ENFORCEMENT BOARD; ADDING AN ADDITIONAL FUNCTION SERVING AS THE FIRST STEP IN THE DETERMINATION PROCESS FOR REQUESTS FOR WAIVERS, EXCEPTIONS, AND VARIANCES; AND INCORPORATING THE PENALTY SECTIONS OF PROSPECT ORDINANCES UNDER THE PURVIEW OF THE CODE ENFORCEMENT BOARD**

**WHEREAS**, the Prospect City Council recognizes the enforcement of ordinances as critical to maintaining property values and quality of life of residents; and

**WHEREAS**, the City of Prospect has established a Code of Ordinances and a Code Enforcement Board; and

**WHEREAS**, the Prospect City Council periodically reviews and amends the Code of Ordinances to reflect changing needs.

**NOW, THEREFORE, BE IT ORDAINED AS FOLLOWS:**

**Section 1.** Chapter 39 of the City of Prospect, Kentucky Code of Ordinances is hereby amended and modified as herein set forth with old language struck through and bracketed and new language underlined, reading as follows:

**CHAPTER 39: CODE ENFORCEMENT BOARD**

Section

- 39.01 Definitions
- 39.02 Creation, qualifications, and membership
- 39.03 Civil Powers
- 39.04 Appointment of members; appointment of alternate members; terms of office; removal from office; oath; compensation
- 39.05 Organization of Board; meetings; quorum; open meetings; voting; minutes
- 39.06 Conflict of interest
- 39.07 Jurisdiction
- 39.08 Powers of the Code Enforcement Board
- 39.09 Enforcement proceedings
- 39.10 Hearing; notice; failure to appear; procedure; final order
- 39.11 Legal counsel
- 39.12 Appeals; final judgment
- 39.13 Ordinance fines
- 39.14 Lien; fines; charges; fees

39.15 Additional functions of the Code Enforcement Board

**§39.01 DEFINITIONS.**

For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

**ABATEMENT COSTS.** The City of Prospect's necessary and reasonable costs for and/or associated with clearing, preventing unauthorized entry to, or demolishing all of a portion of a structure or premises, or taking any other action with regard to a structure, premises, tree, debris, vehicle, or other actions necessary to remedy a violation and to maintain and preserve the public health, safety, and welfare in accordance with any City of Prospect Ordinance by fine, lien or other appropriate method.

**ALTERNATE.** Member who serves in the absence of a regular member and shall only vote when standing-in for an absent regular member.

**CODE ENFORCEMENT BOARD.** An administrative body created and acting under the authority of the Local Government Code Enforcement Board Act, KRS 65.8801 to 65.8839.

**CODE ENFORCEMENT OFFICER.** A Prospect police officer, safety officer, citation officer, or other public law enforcement officer with the authority to issue a citation.

**FINAL ORDER.** Any order:

(A) Issued by the Code Enforcement Board following a hearing in accordance with Section 39.10,

(B) Created because a violator neither paid nor contested the citation within seven (7) days, or

(C) Created because a violator failed to appear at a hearing the violator requested to contest the citation as provided in Section 39.10.

**IMMINENT DANGER.** A condition which is likely to cause serious or life-threatening injury or death at any time.

**ORDINANCE.** An official action of ~~{ a local government body }~~ the Prospect City Council, which is a regulation of a general and permanent nature and enforceable as a local law and shall include any provision of ~~{ a }~~ the ~~{ e }~~ Code of ~~{ o }~~ Ordinances adopted by the ~~{ city legislative body }~~ Prospect City Council which ~~{ embodies }~~ contains all or part of an ~~{ o }~~ Ordinance.

**OWNER.** A person, association, corporation, partnership, or other legal entity having a legal or equitable title in real property.

**PREMISES.** A lot, plot, or parcel of land, including any structures and trees upon it.

**§39.02 CREATION, QUALIFICATIONS, AND MEMBERSHIP.**

There is hereby created pursuant to KRS 65.8801 through KRS 65.8839 within the ~~{ e }~~ City of Prospect, a Code Enforcement Board which shall be composed of five regular members and one alternate member, each of whom shall be at least 21 years of age, and a resident of the ~~{ e }~~ City

of Prospect for a period of at least one year prior to his or her appointment and, shall reside there throughout his or her term in office.

### **§39.03 CIVIL POWERS.**

(A) The Code Enforcement Board shall have the power to issue remedial orders and/or to impose civil fines or as a method of enforcing City of Prospect Ordinances when a violation of the Ordinance has been classified as a civil offense.

(B) The Code Enforcement Board shall not have the authority to enforce any Ordinance the violation of which constitutes a criminal offense under any provision of the Kentucky Revised Statutes, including specifically, any provision of the Kentucky Penal Code and any moving motor vehicle offense.

### **§39.04 APPOINTMENT OF MEMBERS; APPOINTMENT OF ALTERNATE MEMBERS; TERMS OF OFFICE; REMOVAL FROM OFFICE; OATH; COMPENSATION.**

(A) Members of the Code Enforcement Board shall be appointed by the ~~{executive authority}~~ Mayor of the {c} City of Prospect, subject to the approval of the ~~{legislative body}~~ Prospect City Council, The Prospect City Council may recommend appointees to the Mayor. A member, regular or alternate, may not participate in the meetings of the Prospect Code Enforcement Board until the Prospect City Council has voted to approve the member.

(B) (1) The initial appointments to the five-member Code Enforcement Board shall be as follows:

- (a) One regular member appointed to a one-year term.
- (b) Two regular members appointed to a two-year term.
- (c) Two regular members and the alternate member appointed to a three-year term.

(2) All subsequent appointments shall be for a term of three years. Any member may be reappointed, subject to the approval of the ~~{legislative body}~~ Prospect City Council. The Prospect Code Enforcement Officer or other staff member designated by the Mayor will maintain a roster of the Code Enforcement Board members and their respective terms of office and will inform the Prospect Mayor and City Council in sufficient time to name replacements or reappointments at regularly scheduled meetings of the Prospect City Council.

(C) The ~~{executive authority}~~ Prospect Mayor may appoint, subject to the approval of the ~~{legislative body}~~ Prospect City Council, or the Prospect City Council may recommend to the Mayor, {two} one alternate member{s} to serve on the Code Enforcement Board in the absence of a regular member{s}. The {A}alternate member{s} shall meet all the qualifications and shall be subject to all the requirements that apply to regular members of the Code Enforcement Board.

(D) Any vacancy on the Code Enforcement Board ~~{shall}~~ may be filled for the remainder of the unexpired term by the ~~{executive authority}~~ Mayor, subject to approval of the ~~{legislative body}~~ Prospect City Council within 60 days of the vacancy. If the vacancy is not filled within that time period, the remaining Code Enforcement Board members shall fill the vacancy. The Prospect City Council may recommend appointees to the Mayor

(E) A Code Enforcement Board member may be removed from office by the ~~{executive authority}~~ Mayor for misconduct, inefficiency, or willful neglect of duty. The ~~{executive authority}~~ Mayor must submit a written statement to the member and the ~~{legislative body}~~ Prospect City Council setting forth the reasons for removal. The member so removed shall have the right of appeal to the Circuit Court.

(F) All members of the Code Enforcement Board must, before entering upon the duties of their office, take the oath of office prescribed by Section 228 of the Kentucky Constitution.

(G) Members of the Code Enforcement Board shall receive no compensation for their services but may be reimbursed for actual expenses attendant to the performance of their duties as members of the Code Enforcement Board.

(H) No member of the Code Enforcement Board may hold any elected or non-elected office, paid or unpaid, or any position of employment, or be named to a standing commission or a committee with the ~~{e}~~ City of Prospect.

#### **§39.05 ORGANIZATION OF BOARD; MEETINGS; QUORUM; OPEN MEETINGS; VOTING; MINUTES.**

(A) The Code Enforcement Board shall annually elect appoint a chair and vice-chair from among its regular members. The chairperson shall be the presiding officer. ~~[and a]~~ Both the chair and vice-chair shall be full voting members of the Board. In ~~{his or her}~~ the absence of the chair, the vice-chair shall be the chairperson. If both are absent, the Board shall designate any member to be acting chairperson.

(B) Meetings of the Code Enforcement Board shall be special or emergency meetings held in accordance with the requirements of the Kentucky Open Meetings Act and may be called by either the chairperson or by the ~~{executive authority}~~ Mayor of the ~~{e}~~ City of Prospect.

(C) All meetings and hearings of the Code Enforcement Board shall be held in accordance with the requirements of KRS 65.8815(5) and all meetings and hearings of the Code Enforcement Board shall be open to the public. ~~{the Kentucky Open Meetings Act.}~~

(D) The presence of at least a majority (3) of the Board's regular membership shall constitute a quorum. The affirmative vote of ~~{a majority of}~~ a quorum (3) of the Code Enforcement Board shall be necessary for any official action to be taken.

(E) Minutes shall be kept for all proceedings of the Code Enforcement Board and the vote of each member on any issue decided by the Board shall be recorded in the minutes. The Code Enforcement Board shall designate a member who is present to record the minutes of each meeting. The minutes shall be written in a timely manner and given to the City Clerk upon completion. The minutes shall include the names of any absent member(s) and whether the alternate member was designated for replacement.

#### **§39.06 CONFLICT OF INTEREST.**

Any member of the Code Enforcement Board who has any direct or indirect financial or personal interest in any matter to be decided shall disclose the nature of the interest to the other members of the Code Enforcement Board who are present and shall disqualify himself/herself from voting on the matter in which (s)he has an interest and shall not be counted for purposes of establishing a quorum. The disclosed conflict of interest shall be recorded in the minutes of the meeting.

#### **§39.07 JURISDICTION.**

The Code Enforcement Board (~~shall have the authority to~~) may review the enforcement of ~~[e]City of Prospect~~ Ordinances and code provisions which specifically provide for code enforcement and make recommendations regarding potential changes in the Prospect Ordinances to the Prospect City Council.

#### **§39.08 POWERS OF THE CODE ENFORCEMENT BOARD.**

The City of Prospect Code Enforcement Board shall have the following powers and duties:

(A) To adopt rules and regulations to govern its operations and the conduct of its hearings consistent with the requirements of KRS 65.8801 to 65.8839 and City of Prospect Ordinances.

(B) To conduct hearings to determine if there has been a violation of an Ordinance over which it has jurisdiction.

(C) To subpoena alleged violators, witnesses, and evidence to its hearings. Subpoenas issued by the Code Enforcement Board may be served by any City of Prospect Code Enforcement Officer.

(D) To take testimony under oath. The chairperson or acting chairperson shall have the authority to administer oaths for the purpose of taking testimony.

(E) To make findings of fact and issue orders necessary to remedy any violation of a ~~[e]ity~~ Prospect ~~[e]Ordinance~~ or code provision which the Code Enforcement Board is authorized to enforce.

(F) To impose civil fines, as authorized, on any person found to have violated an ~~[e]Ordinance~~ over which the Code Enforcement Board has jurisdiction to enforce.

#### **§39.09 ENFORCEMENT PROCEEDINGS.**

The following requirements shall govern all enforcement proceedings before the Board:

(A) Enforcement proceedings before the Code Enforcement Board shall be initiated only by the issuance of a citation by a Code Enforcement Officer.

(B) Except as provided in division (C) below, if a Code Enforcement Officer believes, based on his or her personal observation or investigation, that a person has violated a ~~eity~~ Prospect Ordinance, the Code Enforcement Officer may, in lieu of immediately issuing a citation, give notice that a violation shall be remedied within a specific time period. If the person to whom the notice is given fails or refuses to remedy the violation within the time specified, the Code Enforcement Officer is authorized to issue a citation. The Code Enforcement Officer is

authorized to issue the citation by:

(1) Personal service on the alleged violator;

(2) Leaving a copy with any person eighteen years of age or older who is on the premises, if the alleged violator is not on the premises at the time the citation is issued;

(3) Mailing a copy of the citation by regular first-class mail to the last known recorded mailing address of the alleged violator; or

(4) If, in the exercise of reasonable diligence, the issuance of the citation using the methods above is not possible, then the citation is properly served by posting a copy of the citation in a conspicuous place on the premises.

(C) Nothing in this chapter shall prohibit the City of Prospect from taking immediate action to remedy a violation of its ordinances when there is reason to believe that the violation presents a serious threat to the public health, safety, and welfare, or if in the absence of immediate action, the effects of the violation will be irreparable or irreversible.

(D) The citation issued by the Code Enforcement Officer shall contain the following information:

(1) The date and time of issuance;

(2) The name and address of the person to whom the citation is issued;

(3) The date and time the offense was committed, if known;

(4) The facts constituting the offense;

(5) The section of the City of Prospect {e}Code or the number of the {e} Ordinance violated;

(6) The name, telephone number, and email address of the {e}Code {e}Enforcement {e}Officer;

(7) (a) The civil fine that will be imposed for the violation if all of the following conditions are met:

1. Payment is made within seven days of the date of the citation; and

2. The alleged violator does not contest the citation; and

3. The alleged violator takes the action(s) necessary

(b) The civil fine shall be the minimum fine stated in the Ordinance unless the offender has been cited and paid a fine for a similar offense. In that case, the minimum fine will double each time the person is cited for a similar offense.

(8) The maximum civil fine that may be imposed if the person elects to contest the citation;

(9) The procedure for the person to follow in order to pay the civil fine or to contest the citation; and

(10) A statement that if the person fails to pay the civil fine set forth in the citation or contest the citation, within the time allowed, and fails to appear at the hearing, the person shall be deemed to have waived their right to a hearing before the Code Enforcement Board to contest the citation and a determination by the Board that the violation was committed shall be final, and the alleged violator shall be deemed to have waived the right to appeal the final order to District court.

(E) After issuing a citation to an alleged violator, the Code Enforcement Officer shall forward the original and one copy to the Mayor or his designee who ~~{Police Department Administrative Assistant. The Administrative Assistant}~~ will notify the Code Enforcement Board members of any scheduled hearings and provide the public with appropriate "open meeting" notifications when an offender does not pay the fine within seven days or requests, in writing, a hearing to contest the citation.

(F) (1) If the alleged violator does not pay the civil fine within seven days of the citation, and does not contest the citation by appearing at the hearing before the Code Enforcement Board, the Board shall, upon determining that the violation was committed, enter a final order and impose a civil fine within the range of the uncontested and maximum fine on the citation. More than one fine may be assessed when:

- (a) The ordinance provides that each day the violation continues may be considered a separate offense; and
- (b) Notice of the same is provided on the citation form.

(2) Charges and fees incurred by Prospect in connection with the enforcement of the Ordinance may be assessed in addition to the civil fine(s). A copy of the final order shall be served on the person guilty of the violation by certified mail, return receipt requested; personal delivery; or by leaving the order at the person's usual residence with any individual residing therein who is eighteen (18) years of age or older and who is informed of the contents.

**§39.10 HEARING; NOTICE; FAILURE TO APPEAR; PROCEDURE; FINAL ORDER.**

(A) When a hearing has been requested, the Code Enforcement Board or the City of Prospect administrative staff shall schedule a hearing. Not less than seven (7) days before the date set for the hearing, the Code Enforcement Board shall notify the person who requested the hearing of the date, time, and place of the hearing. The notice may be given by certified mail, return receipt requested; by personal delivery; or by leaving the notice at the person's usual place of residence with any individual residing therein who is 18 years of age or older and who is informed of the contents of the notice.

~~((A)+B)~~ Any person who fails to appear at the time and place set for the hearing shall be deemed to have waived the right to a hearing to contest the citation, and a determination by the Code Enforcement Board that a violation was committed shall be final. The Code Enforcement Board shall enter a final order determining the violation was committed and shall impose the civil fine set forth in the citation. A copy of the final order shall be served upon the person guilty of the violation by either certified mail, return receipt requested; by personal delivery; or by leaving the notice at the person's usual place of residence with any individual residing therein who is 18 years of age or older and who is informed of the contents of the notice.

~~((B)+C)~~ All testimony shall be taken under oath and recorded. Testimony shall be taken from the Code Enforcement Officer, the alleged violator, and any witnesses to the violation offered by the Code Enforcement Officer or alleged violator. Formal rules of evidence shall not apply, but fundamental due process shall be observed and shall govern the proceedings.

~~((C)+D)~~ The Code Enforcement Board shall, based on the evidence, determine whether a

violation was committed. If it determines that no violation was committed, an order dismissing the citation shall be entered. If it determines that a violation was committed, an order shall be issued upholding the citation and either imposing a fine up to the maximum authorized by this or other Ordinance, or requiring the offender to remedy a continuing violation, or both.

~~(D)~~ Every final order of the Code Enforcement Board shall be reduced to writing, which shall include the date the order was issued. A copy shall be furnished to the person named in the citation. If the person named in the citation is not present when the final order is issued, the order shall be delivered in accordance with the procedures set forth in division (A) above.

### **§39.11 LEGAL COUNSEL.**

Each case before the Code Enforcement Board shall be presented by the Prospect Code Enforcement Officer, a member of the Prospect administrative staff, or an attorney selected by the Prospect Mayor ~~{or by a Code Enforcement Officer for the city}~~. The City Attorney may either be counsel to the Code Enforcement Board or may present Prospect's cases before the Code Enforcement Board, but in no case serve in both capacities.

### **§39.12 APPEALS; FINAL JUDGMENT.**

(A) An appeal from any final order of the Code Enforcement Board may be taken to Jefferson or Oldham County District Court within 30 days of the date the order is issued. The appeal shall be initiated by the filing of a complaint and a copy of the Code Enforcement Board's order in the same manner as any civil action under the Kentucky Rules of Civil Procedure.

(B) If no appeal from a final order of the Code Enforcement Board is filed within the time period set in division (A) above, the Code Enforcement Board's order shall be deemed final for all purposes.

### **§39.13 ORDINANCE FINES.**

(A) Violations of {o} Ordinances that are enforced by the Prospect Code Enforcement Board shall provide a fine in the penalty section of each such {o} Ordinance. The penalty sections of Ordinances under the purview of the Code Enforcement Board are below. This section is a guide and may not be viewed as complete.

#### **(1) §10.99 RULES OF CONSTRUCTION**

Not less than \$25 nor more than \$500 for each offense, in addition to any Prospect abatement costs.

#### **(2) §51.99 GARBAGE AND REFUSE; RECYCLABLE MATERIALS**

For removing, burning, overturning, or tampering with any rubbish, garbage, or the container, not less the \$10 nor more than \$50 for each offence. For unsanitary handling of animal waste, \$25.

#### **(3) §71.99 TRAFFIC RULES**

For not complying with a parade permit, not less than \$20 nor more than \$500.

#### **(4) §73.99 BICYCLES AND MOTORIZED VEHICLES**



For unauthorized use of bicycles or motorized vehicles in Prospect parks, not less than \$25 nor more than \$500 for each offense, in addition to any Prospect abatement costs.

**(5) §74.99 WEIGHT LIMITS**

For exceeding authorized weight limits, not less than \$50 nor more than \$100 or, for other violations, not less than \$20 nor more than \$100, depending on specific circumstances.

**(6) §90.99 ANIMALS**

For civil ordinance violations, not less than \$25 nor more than \$500.

**(7) §91.99 STREETS AND SIDEWALKS**

For cutting, taking up, destroying, or tunneling under any street, right-of-way, or other public area without a permit, or unpermitted drainage changes, or leaving mud and gravel on a paved public street, not less than \$25 nor more than \$500 for each offense, in addition to any Prospect abatement costs. For certain drainage obstructions, not less than \$50 nor more than \$500, plus any abatement costs.

**(8) §92.99 NUISANCES**

Not less than \$25 nor more than \$500 for the first offense with an escalating fine for subsequent offenses.

**(9) §93.99 FIREWORKS; FIRE PREVENTION**

For a civil offense in accordance with KRS 65.8808, not less than \$25 nor more than \$5000 for each offense.

**(10) §94.99 LITTERING**

Not less than \$100 nor more than \$500 for each offense.

**(11) §95.99 ABANDONED OR JUNKED VEHICLES**

\$50 per day per violation, plus abatement costs.

**(12) §96.99 SATELLITE DISHES**

Not less than \$100 nor more than \$500 for each offense.

**(13) §97.99 FORESTATION**

For damage to public tree, shrub, or plant, not less than \$50 nor more than \$750, plus replacement value.

**(14) § 98.99 TEMPORARY PORTABLE STORAGE AND TRASH CONTAINER**

For unpermitted use, not less than \$50 per day

**(15) §110.99 GENERAL LICENSING PROVISIONS**

For violations of business licensing provisions, not less than \$25 nor more than \$500.

**(16) §111.99 PEDDLERS, ITINERANT MERCHANTS, AND SOLICITORS**

For unlicensed peddling, not less than \$25 nor more than \$500 per day.

**(17) §150.57, 150.99 BUILDING REGULATIONS**

Various penalties depending on specific violation.

**(18) §152.99 FENCES**

Not less than \$50 nor more than \$500 for each offense per day, plus the cost to the city for removal of that fence.

**(19) §154.99 SWIMMING POOLS**

For construction and safety violations, not less than \$50 nor more than \$500 for each violation. For installing an above ground pool, not less than \$50 nor more than \$500 for each offense, plus Prospect abatement costs.

**(20) §156.99 STREET DESIGN & STANDARDS**

Not less than \$50 nor more than \$200 per day.

**(21) §157.99 SIGN REGULATIONS AND STANDARDS**

Not less than \$25, nor more than \$500 for each offense per day.

**(22) §159.99 OUTDOOR LIGHTING**

Not less than \$25, nor more than \$100 per violation per day.

**(23) §160.99 BINDING ELEMENTS**

Not less than \$500 nor more than \$4,000 and possible remedial orders.

(B) There are other Prospect Ordinances that carry penalties not directly related to the powers of the Code Enforcement Board.

**§39.14 LIEN; FINES; CHARGES; FEES.**

(A) The {e}City of Prospect shall possess a lien on property owned by the person found by a final, non-appealable order of the Code Enforcement Board, or by a final judgment of the Jefferson or Oldham County court, to have committed a violation of a {eity} Prospect Ordinance. The lien shall be for all civil fines assessed for the violation and for all charges and fees incurred by the {e}City of Prospect in connection with the enforcement of the {e} Ordinance, including abatement costs.

(B) The lien shall be recorded in the {e}Office of the Jefferson or Oldham County Clerk. The lien shall be notice to all persons from the time of its recording and shall bear prevailing legal interest until paid.

(C) The lien shall take precedence over all other subsequent liens, except state, county, school board, and city taxes, and may be enforced by judicial proceedings, including a foreclosure action.

(D) In addition to the remedy prescribed in division (A), the person found to have committed the violation shall be personally responsible for {the amount of} all fines assessed for the

violation and for all charges and fees incurred by ~~{the city}~~ Prospect in connection with the enforcement of the ~~{e}-~~Ordinance. The ~~{e}~~City of Prospect may bring a civil action against the person and shall have the same remedies as provided for the recovery of a debt.

**§39.15 ADDITIONAL FUNCTIONS OF THE CODE ENFORCEMENT BOARD**

When a waiver, variance, or exception to a Prospect Ordinance is requested, the Code Enforcement Board may serve as the forum for the first step in the determination process, using the same procedures, including quorums, enumerated above. The Board, after hearing the requesting party and the Code Enforcement Officer, reviewing any relevant documentary evidence, and the applicable Ordinance(s) will develop a written recommendation, including the applicable Ordinance(s), why the waiver or exception is requested, and the rationale for the recommendation. The written recommendation will be given to the Prospect City Council who will determine whether to grant the waiver, variance, or exception. The requesting party may present their plea to the Prospect City Council at the regular meeting where the waiver, variance, or exception is heard.

**Section 2.** This Ordinance shall take effect from and after its passage, signing and publication as required by law.

**First Reading this 21st day of September, 2020.**

**Second Reading this 19<sup>th</sup> day of October, 2020.**

“Aye” votes: 5

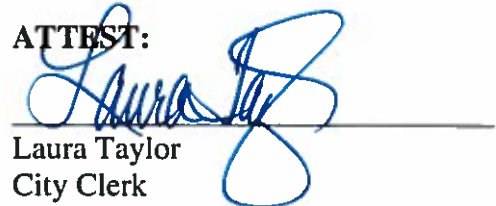
“Nay” votes: 0

**APPROVED**



John E. Evans  
Mayor, City of Prospect

**ATTEST:**



Laura Taylor  
City Clerk

