

**ORDINANCE NO. 2333, NEW SERIES**

**AN ORDINANCE OF THE CITY OF MORGAN HILL  
AMENDING SECTIONS, 13.04.330 (WASTING OF WATER  
AND DROUGHT EMERGENCIES) AND 13.04.390  
(ENFORCEMENT) AND 13.04.400 (VIOLATION-PENALTY)  
OF CHAPTER 13.04 (WATER SYSTEM) OF TITLE 13  
(PUBLIC SERVICES), AMENDING REGULATIONS  
PROHIBITING NONESSENTIAL USE OF POTABLE  
WATER**

**THE CITY COUNCIL OF THE CITY OF MORGAN HILL DOES HEREBY  
ORDAIN AS FOLLOWS:**

**Section 1. Findings.**

- A. A reliable minimum supply of potable water is essential to the public health, safety and welfare of the people and economy of City of Morgan Hill.
- B. The City of Morgan Hill is located in a semi-arid region and is dependent upon local groundwater, and imported water supplies. A growing population, climate change, environmental concerns, and other factors in other parts of the State and western United States, make the region highly susceptible to water supply reliability issues.
- C. There is a need for water conservation program and regulations because there is a limited supply of water available to serve the residents and businesses of Morgan Hill and demand for water has, at times, exceeded groundwater replenishment, threatening a water shortage.
- D. Careful water management that includes active water conservation measures not only in times of drought, but at all times, is essential to ensure a reliable minimum supply of water to meet current and future water supply needs.
- E. Article X, Section 2 of the California Constitution declares that the general welfare requires that water resources be put to beneficial use, waste or unreasonable use or unreasonable method of use of water be prevented, and conservation of water be fully exercised with a view to the reasonable and beneficial use thereof.
- F. Article XI, Section 7 of the California Constitution declares that a city or county may make and enforce within its limits all local, police, sanitary and other ordinances and regulations not in conflict with general laws.
- G. California Water Code Section 375 authorizes water suppliers to adopt and enforce a comprehensive water conservation program to reduce water consumption and conserve supplies.

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H. The City of Morgan Hill’s water conservation and supply shortage program has functioned adequately since its adoption in 2009. Changes to the program are necessary in order to expand and establish the permanent water conservation practices needed to best manage the City of Morgan Hill’s potable water supply in the short and long-term and to avoid or minimize the effects of drought, climate change, and the unreliability of imported water infrastructure that serves the City of Morgan Hill.

**Section 2. Declaration of Purpose and Intent.**

A. The purpose of this Ordinance is to amend the City of Morgan Hill’s water conservation and supply shortage program. The program’s purposes are to reduce water consumption within the City of Morgan Hill through conservation, enable effective water supply planning, assure reasonable and beneficial use of water, prevent waste of water, and maximize the efficient use of water within the City of Morgan Hill to avoid and minimize the effect and hardship of water shortage to the greatest extent possible.

B. This Ordinance amends permanent water conservation standards intended to alter behavior related to water use efficiency at all times and further establishes six levels of water supply shortage response actions to be implemented during times of declared water shortage or declared water shortage emergency, with increasing restrictions on water use in response to worsening drought or emergency conditions and decreasing supplies.

**Section 3. CEQA Exemption**

The city finds that this Ordinance and actions taken hereafter pursuant to this Ordinance are exempt from the California Environmental Quality Act per the California Environmental Quality Act Guidelines Section 15307 (protection and preservation of natural resources). The City Clerk is hereby authorized and directed to file a Notice of Exemption as soon as possible following adoption of this Ordinance.

**Section 4.** Section 13.04.330 (Wasting of Water) of Chapter 13.04 (Water System) of Title 13 (Public Services) is hereby amended in its entirety to read as follows:

**“13.04.330 Wasting of water and drought emergencies**

A. Applicability

1. The provisions of this chapter apply to any person in the use of any potable water in the city.
2. The provisions of this chapter do not apply to uses of water necessary to protect public health and safety or for essential government services, such as police, fire and other similar emergency services.
3. The provisions of this chapter do not apply to the use of recycled water, with the exception of subsection B (1) of this section.
4. The provisions of this chapter do not apply to the use of water by commercial nurseries and commercial growers to sustain plants, trees, shrubs, crops or other vegetation intended for commercial sale, to the use of water in a community garden providing

garden plots to the public, or to home fruit and vegetable gardens less than 200 square feet.

5. This chapter is intended solely to further the conservation of water. It is not intended to implement nor supersede any provision of federal, State, or local statutes, ordinances, or regulations relating to protection of water quality or control of drainage or runoff.

B. Prohibition Against Waste: The following water conservation requirements are effective at all times and are permanent. Violations of this section will be considered waste and an unreasonable use of water.

1. Limits on Watering Hours: Watering or irrigating of lawn, landscape or other vegetated area with potable water is prohibited between the hours of 9:00 a.m. and 7:00 p.m. Pacific Standard/Daylight Savings Time on any day, except by use of a hand-held bucket or similar container, a hand-held hose equipped with a positive self-closing water shut-off nozzle or device, or for very short periods of time for the express purpose of adjusting or repairing an irrigation system. Watering or irrigating within 48 hours after  $\frac{1}{4}$  inch or more of precipitation is received is prohibited.
2. Limit on Watering Duration: Watering or irrigating of lawn, landscape or other vegetated area with potable water using a landscape irrigation system or a watering device that is not continuously attended is limited to no more than fifteen (15) minutes watering per day per station/valve/zone. This subsection does not apply to landscape irrigation stations/valves/zones that exclusively use drip type irrigation systems, soaker hoses, bubblers, or high efficiency sprinkler nozzles that have a precipitation rate of less than two (2) gallons per hour; to systems controlled by weather-based irrigation controllers; and systems having stream rotor sprinklers with a 70% or greater efficiency standard.
3. Limit on Watering Days: During the months of March through October, watering or irrigating of lawn, landscape or other vegetated area with potable water is limited to three days per week on a schedule established and posted by the city. During the months of November through February, watering or irrigating of lawn, landscape or other vegetated area with potable water is limited to no more than one day per week on a schedule established and posted by the city. This provision does not apply to the following uses of water:
  - a. To landscape irrigation zones that exclusively use very low flow drip type irrigation systems when no emitter produces more than two (2) gallons of water per hour;
  - b. To watering or irrigating by use of a hand-held bucket or similar container, a hand-held hose equipped with a positive self-closing water shut-off nozzle or device, or for very short periods of time for the express purpose of adjusting or repairing an irrigation system;
  - c. To landscape irrigation zones that are controlled by an activated weather-based irrigation controller;
  - d. To watering or irrigating a newly installed or significantly rehabilitated landscape for the first sixty days after the first plant is placed in the ground. For the purposes of this section, a significantly rehabilitated landscape is a landscape in which 25% or more of a property's landscape is replaced.

4. **No Excessive Water Flow or Runoff:** Watering or irrigating of any lawn, landscape or other vegetated area in a manner that causes or allows excessive water flow or runoff onto an adjoining sidewalk, driveway, street, alley, gutter or ditch is prohibited.
5. **No Washing Down Hard or Paved Surfaces:** Washing down hard or paved surfaces, including but not limited to sidewalks, walkways, driveways, parking areas, tennis courts, patios or alleys, is prohibited except when necessary to alleviate safety or sanitary hazards, and then only by use of a hand-held bucket or similar container, a hand-held hose equipped with a positive self-closing water shut-off device, a low-volume, high-pressure cleaning machine equipped to recycle any water used, or a low-volume high-pressure water broom. Washing down structures, fences, and hard surfaces expressly for the purposes of preparing a surface for the application of a surface coating is not prohibited provided it does not occur more than one time in any twelve (12) month period.
6. **Obligation to Fix Leaks, Breaks or Malfunctions:** Excessive use, loss or escape of water through breaks, leaks or other malfunctions in the water user's plumbing or distribution system for any period of time after such escape of water should have reasonably been discovered and corrected and in no event more than ten (10) days of receiving written notice from the city, is prohibited.
7. **Recirculating Water Required for Water Fountains and Decorative Water Features:** Operating a water fountain or other decorative water feature that does not use recirculated water is prohibited.
8. **Limits on Washing Vehicles:** Using water to wash or clean a vehicle, including but not limited to any automobile, truck, van, bus, motorcycle, boat or trailer, whether motorized or not is prohibited, except by use of a hand-held bucket or similar container or a hand-held hose equipped with a positive self-closing water shut-off nozzle or device. This subsection does not apply to any commercial car washing facility that incorporates a recycled or recirculating water system in its operation.
9. **Drinking Water Served Upon Request Only:** Eating or drinking establishments, including but not limited to a restaurant, hotel, cafe, cafeteria, bar, or other public place where food or drinks are sold, served, or offered for sale, are prohibited from providing drinking water to any person unless expressly requested.
10. **Commercial Lodging Establishments Must Provide Guests Option to Decline Daily Linen Services:** Hotels, motels and other commercial lodging establishments must provide customers the option of not having towels and linen laundered daily. Commercial lodging establishments must prominently display notice of this option in each bathroom using clear and easily understood language.
11. **No Installation of Single Pass Cooling Systems:** Installation of single pass cooling systems is prohibited in buildings requesting new water service.
12. **No Installation of Nonrecirculating in Commercial Car Wash and Laundry Systems:** Installation of nonrecirculating water systems is prohibited in new commercial conveyor car wash and new commercial laundry systems.
13. **Restaurants Required to Use Water Conserving Dish Wash Spray Valves:** Food preparation establishments, such as restaurants or cafes, are prohibited from using non-water conserving dish wash spray valves.

14. Commercial Car Wash Systems: All commercial conveyor car wash systems must have installed operational recirculating water systems or must have a waiver of this requirement from the city.
  15. Construction Activities: Use of potable water for construction site dust control, compaction, and other site activities suitable for nonpotable water is prohibited if recycled water is available within five miles of the construction site.
  16. Plumbing System Testing: Use of potable water for plumbing system testing is prohibited unless required by law or alternative testing procedures are determined to be unsuitable by City inspection staff.
  17. Pool Covers: Constructing a pool without the inclusion of a pool cover is prohibited. All contracts for the construction of a new pool entered into after September 2, 2015 shall include the provision of a pool cover.
- C. Level 1 Water Supply Shortage (1% - 10% reduction): A Level 1 Water Supply Shortage (“Alert” stage) exists when the city council determines, in its sole discretion, that due to drought, other water supply conditions, or as mandated by the State of California, a water supply shortage or threatened shortage exists and a 1% - 10% consumer demand reduction is necessary to make more efficient use of water and appropriately respond to existing water conditions. Upon the declaration by the city of a Level 1 Water Supply Shortage condition, the City will implement an active communication campaign asking the community to conserve water in compliance with the City’s permanent water use restrictions.
- D. Level 2 Water Supply Shortage (11% - 20% reduction): A Level 2 Water Supply Shortage (“Severe” stage) exists when the city council determines, in its sole discretion, that due to drought, other water supply conditions, or as mandated by the State of California, a water supply shortage or threatened shortage exists and a 11% - 20% consumer demand reduction is necessary to make more efficient use of water and appropriately respond to existing water conditions. Upon the declaration by the city of a Level 2 Water Supply Shortage condition, the City will:
1. Evaluate the water use of individual water utility customers and distribute targeted communications to those water utility customers that are high users or appear to be violating the City’s water use rules; and
  2. Continue implementing all Level 1 response activities.
- E. Level 3 Water Supply Shortage (21% - 30% reduction): A Level 3 Water Supply Shortage (“Critical 1” stage) exists when the city council determines, in its sole discretion, that due to drought, other water supply conditions, or as mandated by the State of California, a water supply shortage or threatened shortage exists and a 21% - 30% consumer demand reduction is necessary to make more efficient use of water and appropriately respond to existing water conditions. Upon the declaration by the city of a Level 3 Water Supply Shortage condition, the City will:
1. Actively enforce the City’s current restrictions regarding the limits on watering days contained in Section 13.04.330 B (3);
  2. Suspend exemptions 13.04.330 B (3)(c) and 13.04.330 B (3)(d) to Section 13.04.330 B (3);

3. Prohibit the use of potable water to wash or clean a vehicle, including but not limited to, any automobile, truck, van, bus, boat or trailer, whether motorized or not, except at a commercial car washing facility that utilizes a recirculating water system to capture or reuse water. This provision does not apply to bicycles and motorcycles. The use of potable water to clean the windshield, windows, or mirrors of a vehicle by use of a hand-held bucket or similar container is not prohibited;
  4. Impose an alternative rate schedule designed for water supply shortage events if such a rate schedule has been adopted by the City Council; and
  5. Continue implementing all other Level 2 response activities.
- F. Level 4 Water Supply Shortage (31% - 40% reduction): A Level 4 Water Supply Shortage (“Critical 2” stage) exists when the city council determines, in its sole discretion, that due to drought, other water supply conditions, or as mandated by the State of California, a water supply shortage or threatened shortage exists and a 31% - 40% consumer demand reduction is necessary to make more efficient use of water and appropriately respond to existing water conditions. Upon the declaration by the city of a Level 4 Water Supply Shortage condition, the City will:
1. Actively enforce the following limited irrigation schedule: During the months of March through October, watering or irrigating of lawn, landscape or other vegetated area with potable water is limited to two days per week on a schedule established and posted by the city. During the months of November through February, watering or irrigating of lawn, landscape or other vegetated area with potable water is limited to no more than one day per week on a schedule established and posted by the city. This provision does not apply to landscape irrigation zones that exclusively use very low flow drip type irrigation systems when no emitter produces more than two (2) gallons of water per hour. This provision also does not apply to watering or irrigating by use of a hand-held bucket or similar container, a hand-held hose equipped with a positive self-closing water shut-off nozzle or device, or for very short periods of time for the express purpose of adjusting or repairing an irrigation system; and
  2. Continue implementing all other Level 3 response activities.
- G. Level 5 Water Supply Shortage (41% - 50% reduction): A Level 5 Water Supply Shortage (“Emergency 1” stage) exists when the city council determines, in its sole discretion, that due to drought, other water supply conditions, or as mandated by the State of California, a water supply shortage or threatened shortage exists and a 41% - 50% consumer demand reduction is necessary to make more efficient use of water and appropriately respond to existing water conditions. Upon the declaration by the city of a Level 5 Water Supply Shortage condition, the City will:
1. Actively enforce the following limited irrigation schedule:
    - a. The watering or irrigating of lawns and turf is prohibited except for turf utilized for active recreation at a school, park, or public facility. Turf used for active recreation at a school, park, or public facility may be irrigated in accordance with all other irrigation restrictions up to two

times per week from March – October and one time per week from November – February;

- b. Trees, shrubs, and dedicated landscapes that do not contain turf may be watered one time per week in accordance with all other irrigation restrictions; and
2. Consider limits on the issuance of building permits, new potable water services, temporary meters and/or statements of immediate ability to serve or provide potable water service (such as, will-serve letters, certificates, or letters of availability). The City may consider exemptions to the limitation that include, but are not limited to the following circumstances:
    - a. A valid, unexpired building permit has been issued for the project;
    - b. The project is necessary to protect the public health, safety, and welfare; or
    - c. The applicant provides substantial evidence of an enforceable commitment that water demands for the project will be offset prior to the provision of a new water meter(s) to the satisfaction of the city.This provision does not preclude the resetting or turn-on of meters to provide continuation of water service or the restoration of service that has been interrupted for a period of one year or less; and
  3. Continue implementing all other Level 4 response activities.

H. Level 6 Water Supply Shortage (greater than 50% reduction): A Level 6 Water Supply Shortage (“Emergency 2” stage) exists when the city council determines, in its sole discretion, that due to drought, other water supply conditions, or as mandated by the State of California, a water supply shortage or threatened shortage exists and a greater than 50% consumer demand reduction is necessary to make more efficient use of water and appropriately respond to existing water conditions. Upon the declaration by the city of a Level 6 Water Supply Shortage condition, the City will:

1. Prohibit all irrigation; and
2. Continue implementing all other Level 5 response activities.

I. Procedures for Determination/Notification of Water Supply Shortage

The existence of Water Supply Shortage conditions may be declared by resolution of the city council adopted at a regular or special public meeting held in accordance with state law. The mandatory conservation requirements relating to each level of Water Supply Shortage conditions will take effect on the tenth day after the date the shortage level is declared. Within five (5) days following the declaration of the shortage level, the city must publish a copy of the resolution in a newspaper used for publication of official notices.

J. Hardship Waiver. If, due to unique circumstances, a specific requirement of this chapter would result in undue hardship to a person using water or to property upon which water is used, that is disproportionate to the impacts to water users generally or to similar property or classes of water users, then the person may apply for a waiver to the requirement as provided in this Section.

1. **Application:** Application for a waiver must be on a form prescribed by the City Manager and accompanied by a nonrefundable processing fee in an amount set by city council resolution.
2. **Supporting Documentation:** The application must be accompanied by photographs, maps, drawings, and other information, including a written statement of the applicant.
3. **Required Findings for Waiver:** The waiver may be granted or conditionally granted only upon a written finding of the existence of facts demonstrating an undue hardship to a person using water or to property upon which water is used, that is disproportionate to the impacts to water users generally or to similar property or classes of water use due to specific and unique circumstances of the user or the user's property. An application for a waiver will be denied unless the City Manager finds, based on the information provided in the application, supporting documents, or such additional information as may be requested, and on water use information for the property as shown by the records of the city or its agent, all of the following:
  - a. That the waiver does not constitute a grant of special privilege inconsistent with the limitations upon other residents and businesses;
  - b. That because of special circumstances applicable to the property or its use, the strict application of this chapter would have a disproportionate impact on the property or use that exceeds the impacts to residents and businesses generally;
  - c. That the authorizing of such waiver will not be of substantial detriment to adjacent properties, and will not materially affect the ability of the city to effectuate the purpose of this chapter and will not be detrimental to the public interest; and
  - d. That the condition or situation of the subject property or the intended use of the property for which the waiver is sought is not common, recurrent or general in nature.
4. **Approval Authority:** The City Manager must act upon any completed application no later than ten (10) days after submittal and may approve, conditionally approve, or deny the waiver. The applicant requesting the waiver must be promptly notified in writing of any action taken. Unless specified otherwise at the time a waiver is approved, the waiver will apply to the subject property during the period of the mandatory water supply shortage condition. The decision of the City Manager shall be final."

**Section 5.** Section 13.04.390 (Enforcement) of Chapter 13.04 (Water System) of Title 13 (Public Services) is hereby amended in its entirety to read as follows:

"13.04.390 - Enforcement.

It shall be the duty of the employees of the police, fire, community development, community services, and engineering and utilities departments to give vigilant aid to the city manager in the enforcement of the provisions of this chapter, and to this end they shall report all violations thereof which shall come to their knowledge, to the office of the city manager and it shall be the duty of the chief of the fire department to report



immediately to the city manager in case of fire in premises, having metered service for fire protection purposes that fire has occurred there.”

**Section 6.** Section 13.04.400 (Violation-Penalty) of Chapter 13.04 (Water System) of Title 13 (Public Services) is hereby amended in its entirety to read as follows:

“13.04.400 - Violation—Penalty.

- A. Penalty. Any person violating or causing or permitting to be violated, any of the provisions of this chapter, is deemed guilty of a misdemeanor. Upon conviction thereof, such person shall be punished by a fine not exceeding one thousand dollars, or by imprisonment in the county jail for not more than 30 days. Every such person shall be deemed to be guilty of a separate offense for every day during any portion of which any violation of any provision of this chapter is committed, continued or permitted by such person, and shall be punishable therefor as provided in this section.
- B. Notwithstanding any other provision of this code, whenever a violation of any section contained in this chapter is punishable as a misdemeanor, the city attorney may specify that the offense is an infraction, and proceed with prosecution as an infraction, unless the defendant objects to the offense being made an infraction, in which event the court may elect to have the complaint amended to charge as a misdemeanor, and the case shall proceed on a misdemeanor charge.
- C. Violation of Section 13.04.330. In addition to all other available remedies, including penalties available pursuant to subsection A or B of this section, any person violating or causing or permitting to be violated any provision of Section 13.04.330 shall be subject to the following penalties and fines pursuant to the authorities and procedures set forth in Chapter 1.19:
  1. First Violation: The City of Morgan Hill will issue a written warning and deliver a copy of the ordinance codified in this section by mail.
  2. Second Violation: A second violation within any consecutive twelve-month period is punishable by a fine not to exceed one hundred dollars. The fine for a second violation shall be three hundred dollars if the violation occurred during a City Council declared Water Supply Shortage condition.
  3. Third Violation: A third violation within any consecutive twelve-month period is punishable by a fine not to exceed two hundred dollars. The fine for a third violation shall be six hundred dollars if the violation occurred during a City Council declared Water Supply Shortage condition.
  4. Subsequent Violations: Any subsequent violations within any consecutive twelve-month period are punishable by a fine not to exceed one thousand five hundred dollars and subject to installation of a water flow restrictor device of approximately one gallon per minute capacity for services up to one and one-half inch size and comparatively sized restrictors

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for larger services after written notice of intent to install a flow restrictor for a minimum of forty-eight hours.

a. In addition to any other fines or penalties, a person who violates provisions of [Section 13.04.330](#) is responsible for payment of the City of Morgan Hill's charges for installing and/or removing any flow restricting device and for disconnecting and/or reconnecting service per the city's schedule of charges then in effect. The charge for installing and/or removing any flow restricting device must be paid to the city before the device is removed. Nonpayment will be subject to the same remedies as nonpayment of basic water rates.

b. The first installation of a flow-restricting device shall remain in place for a minimum of three days and shall be removed by the city not more than ten days after installation. The second installation of a flow-restricting device, for continued violation of this chapter, shall remain in place for a minimum period of ten days before being removed by the city no later than thirty days thereafter. Normal water service shall not be restored until all installation and removal costs of flow-restricting devices have been paid.

5. Separate Offenses: Each day that a person violated provisions of [Section 13.04.330](#) shall constitute a separate violation or offense.

D. All remedies provided for herein shall be cumulative and not exclusive.”

**Section 7. Severability**

If any section, subsection, sentence, clause or phrase in this Ordinance is for any reason held invalid, the validity of the remainder of the Ordinance will not be affected. The city council hereby declares it would have passed this Ordinance and each section, subsection, sentence, clause or phrase thereof, irrespective of the fact that one or more sections, subsections, sentences, clauses, or phrases or is declared invalid.

**Section 8. Effective Date; Posting.**

Pursuant to California Water Code Section 376, this Ordinance shall constitute a water conservation program and shall be effective upon adoption. Within ten (10) days of its adoption, this ordinance shall be published in full once in a newspaper of general circulation which is printed, published, and circulated in the City of Morgan Hill.

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**THE FOREGOING ORDINANCE WAS INTRODUCED AT A MEETING OF THE CITY COUNCIL HELD ON THE 20<sup>TH</sup> DAY OF APRIL 2022, AND WAS FINALLY ADOPTED AT A MEETING OF THE CITY COUNCIL HELD ON THE 4<sup>TH</sup> DAY OF MAY 2022, AND SAID ORDINANCE WAS DULY PASSED AND ADOPTED IN ACCORDANCE WITH LAW BY THE FOLLOWING VOTE:**

<b>AYES:</b>	<b>COUNCIL MEMBERS:</b>	<b>Gino Borgioli, Rich Constantine, Yvonne Martinez Beltran, John McKay, Rene Spring</b>
<b>NOES:</b>	<b>COUNCIL MEMBERS:</b>	<b>None</b>
<b>ABSTAIN:</b>	<b>COUNCIL MEMBERS:</b>	<b>None</b>
<b>ABSENT:</b>	<b>COUNCIL MEMBERS:</b>	<b>None</b>

**APPROVED:**

DocuSigned by:  
  
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**RICH CONSTANTINE, Mayor**

**ATTEST:**

DocuSigned by:  
  
C0FCB7EABA7C4C8...  
**MICHELLE BIGELOW, City Clerk**

**∞ CERTIFICATE OF THE CITY CLERK ∞**

**I, MICHELLE BIGELOW, CITY CLERK OF THE CITY OF MORGAN HILL, CALIFORNIA, do hereby certify that the foregoing is a true and correct copy of Ordinance No. 2333, New Series, adopted by the City Council of the City of Morgan Hill, California at their regular meeting held on the 4<sup>th</sup> day of May 2022.**

**WITNESS MY HAND AND THE SEAL OF THE CITY OF MORGAN HILL.**

DATE: 5/12/2022

DocuSigned by:  
  
C0FCB7EABA7C4C8...  
**MICHELLE BIGELOW, City Clerk**