

ORDINANCE NO. 817

AN ORDINANCE OF THE CITY OF BROOKSVILLE, FLORIDA, PROVIDING AUTHORITY, LEGISLATIVE FINDINGS OF FACT AND ESTABLISHING INTENT AND PURPOSE FOR PERMITTING CERTAIN PAIN MANAGEMENT CLINICS; AMENDING THE CODE OF ORDINANCES OF THE CITY OF BROOKSVILLE, FLORIDA, CHAPTER 137, "LAND USE AND ZONING," ARTICLE I, SECTION 137-2, "DEFINITIONS" AND SECTION 137-9, "SPECIFIC USE REGULATIONS;" AMENDING ARTICLE II, SECTION 137-46, "ADMINISTRATIVE FEES AND COST OF PUBLIC NOTICE;" PROVIDING FOR CONFLICT AND SERVERABILITY; PROVIDING FOR CODIFICATION; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City of Brooksville, Florida is vested with home rule authority pursuant to Article VII, Section 2 of the Constitution of the State of Florida and Chapter 166, Florida Statutes, to enact ordinances; and,

WHEREAS, the State of Florida and its municipalities and counties have recognized that a pattern of illegal drug use and distribution has been linked to pain management clinics operating in the State; and

WHEREAS, the Centers for Disease Control and Prevention reported on June 18, 2009, that emergency department visits involving non-medical use of prescription drugs, opioid analgesics and benzodiazepines, more than doubled during 2004-2008 in the United States; and,

WHEREAS, records from the Florida Department of Law Enforcement show that in the first half of 2010, 24 residents of Hernando County, the county in which the City of Brooksville is located, died of prescription drug related deaths which is double the statewide average per capita; and,

WHEREAS, the Florida League of Cities estimates that the average number of prescription drug related deaths per capita is rising to seven (7) deaths per day in Florida in 2011; and

WHEREAS, about six percent (6%) of non-crime related deaths in the City of Brooksville in 2010 were due to drug toxicity; and,

WHEREAS, the threat of illegal narcotic activity operating through pain management clinics is significant and could undermine the economic health of the City's development and redevelopment efforts; and

WHEREAS, the published data suggests that existing public health and law enforcement measures to prevent the non-medical use of prescription drugs through pain management clinics are not effective and that additional measures are needed; and

WHEREAS, the Florida Legislature has identified concerns regarding the increased use and frequency of injury and deaths occurring through the use of pain management clinics by persons obtaining drugs for improper purposes and enacted the Prescription Drug Monitoring Act, which requires physicians and other persons dispensing prescription drugs through pain management clinics, facilities or offices, to register with the State Department of Health in order to conduct such business; and

WHEREAS, many counties and municipalities in Florida have established moratoriums on new pain management businesses to curb negative impacts created by these clinics, facilities or offices; and

WHEREAS, the City of Brooksville adopted Ordinance No. 811 on July 19, 2010 to implement a moratorium on the establishment of new pain management clinics within the corporate limits of the City; and,

WHEREAS, the City Council desires to incorporate additional standards into its Land Development Code relating to the establishment and location of pain management clinics within the City which would promote the public health, safety, morals and general welfare; and

WHEREAS, the Brooksville City Council has determined that regulation and registration of businesses operating as pain management clinics within the jurisdiction of the City of Brooksville will provide local oversight of these businesses and hinder illegal activities associated with these clinics; and

WHEREAS, it is not the intent of this Ordinance to interfere with legitimate medical clinics or the legal use of controlled substances; and

WHEREAS, the City Council of the City of Brooksville, Florida finds and declares that the illegal activities associated with certain pain management clinics creates the need for regulation of such clinics in the City of Brooksville.

NOW THEREFORE BE IT ORDAINED BY THE COUNCIL MEMBERS OF THE CITY OF BROOKSVILLE, AS FOLLOWS:

SECTION 1. AUTHORITY. This Ordinance is enacted pursuant to Article VII, Section 2 of the Constitution of the State of Florida and Chapter 166, Florida Statutes (2010), to enact ordinances and under the home rule powers of the City in the interest of the health, peace, safety and general welfare of the people of the City of Brooksville.

SECTION 2. LEGISLATIVE FINDINGS OF FACT. The foregoing Whereas clauses, are true and correct and incorporated herein as if set forth verbatim. The City finds and declares that there exists a need to enact an ordinance regulating the establishment, expansion, or operation of pain management clinics in the City of Brooksville.

SECTION 3. INTENT AND PURPOSE. It is the purpose and intent of this Ordinance to promote the health and general welfare of the residents of the City of Brooksville through the regulation of certain pain management clinics (as defined below), both existing and new.

SECTION 4. AMENDMENT TO CHAPTER 137 ARTICLE I, SECTION 137-2. The Code of the City of Brooksville, Florida, Chapter 137 “Land Use and Zoning”, Article I “In General,” Section 137-2 “Definitions” is hereby amended to add the following definitions as follows:

Article I. In General

Sec. 137-2. Definitions.

Chronic nonmalignant pain means pain unrelated to cancer, which persists beyond the usual course of the disease or the injury that is the cause of the pain, or for more than ninety days after surgery.

Pain management clinic means a privately owned clinic, facility or office, including mobile medical-care facilities (such as mobile MRI services or blood mobiles), which (1) advertises in any medium for any type of pain management services, or holds itself out as a clinic, facility, or office for treatment of pain, or (2) engages a physician who is primarily engaged in the treatment of pain by prescribing or dispensing controlled substance medications. A physician is primarily engaged in the treatment of pain by prescribing or dispensing controlled substance medications when the majority of the patients seen are prescribed or dispensed controlled substance medications for the treatment of chronic nonmalignant pain. Included in this definition are facilities designating themselves as a pain research centers or emergency medical clinics, or (3) is required to register with the Florida Department of Health pursuant to Sections 458.309 or 459.005, Fla. Stat. (2009), or any successor state law.

Physician includes any medical professional holding an MD, a PhD, or any other doctoral degree including but not limited to physicians, licensed psychologist, biomedical scientists, osteopathic doctors or dentists.

Specific use means a use which is essential or would promote the public health, safety or welfare in one or more districts, but which would require additional design standards to ensure compatibility with adjacent uses and the surrounding neighborhood. The additional standards supplement and are in addition to the standards and criteria otherwise required within this Code. Unless otherwise required herein, compliance with these supplemental standards shall be determined during development review and shall not require any additional procedural steps or review processes.

SECTION 5. AMENDMENT TO CHAPTER 137 ARTICLE I, SECTION 137-9. The Code of the City of Brooksville, Florida, Chapter 137 “Land Use and Zoning”, Article I “In General,” and Section 137-9 “Specific use regulations” is hereby amended to add subsection (c) as follows:

Sec. 137-9. Specific use regulations.

(c) *Pain management clinics.* The following conditions, limitations and regulations shall apply to pain management clinics located or operating in the City of Brooksville.

(1) Permit Required.

- a. No pain management clinic shall be located or operate in the City of Brooksville by any means without having been issued a Specific Use Permit by the Community Development Department. A separate application and Specific Use Permit is required for each pain management clinic location. The Specific Use Permit shall be prominently displayed in the common public area of the pain management clinic.
- c. A Specific Use Permit for a pain management clinic is non-transferrable and non-assignable. Whenever the ownership or management of a pain management clinic changes, a new application must be filed for a new Specific Use Permit at the location and all applicable fees must be paid. For the purposes of this Ordinance, the transfer of stock or member-interest by one owning more than 20% of the interest in a non-natural entity shall be deemed a change in ownership. For purposes of this Ordinance, the termination, addition, or replacement of the designated physician or the person who signed the application for permit shall be deemed a change of management.
- c. This subsection does not preclude the requirement for existing lawfully permitted pain management clinics to have a permit as required by this Section.
- d. The Community Development Department shall have the responsibility to monitor and issue specific use permits for pain management clinics pursuant to this Section.

(2) Location Separation Requirements.

- a. There shall be a one-half ($\frac{1}{2}$) mile separation between each pain management clinic regardless of the municipal boundaries of the City of Brooksville.
- b. There shall be a one-half ($\frac{1}{2}$) mile separation for a pain management clinic from a pharmacy regardless of the municipal boundaries of the City of Brooksville.
- c. The applicant shall furnish a certified survey from a land surveyor registered in the State of Florida, indicating the distance in linear feet between the pain management clinic and the above uses measured from the nearest point of one (1) establishment to the nearest point of the other establishment in a straight line.

(3) Application Required. Any pain management clinic operating in the City of Brooksville shall file a sworn application with the City. Applications for a specific use permit shall be submitted to the Community Development Department on a form created by the City which shall contain the following information:

- a. A copy of the applicant's State application form, including all attachments and information required for the Florida Department of Health registration;

- b. Provide an accurate legal description of the property on which the pain management clinic is located including street address and a certified survey from a land surveyor registered in the State of Florida, as provided for in (c)(2) above;
- c. Proof that the applicant has registered with the State Department of Health as of the effective date of this Ordinance as required by Sections 458.309 or 459.005, Fla. Stat. (2009), or any successor state law, or proof that the applicant is exempt from registration with the state;
- d. Designation of the physician who shall be responsible for complying with all requirements related to registration and operation of the clinic and the physician's DEA number. The designated physician must have a full, active, and unencumbered license under Florida Statutes Chapters 456 or 459 and shall practice at the clinic location for which the physician has assumed responsibility. Within ten (10) days after termination or absence of a designated physician, the clinic must notify the Community Development Department of the identity of another designated physician for the clinic or forfeit the clinic's permit;
- e. Provide an affidavit by the medical director, as defined by Fla. Stat. § 458.3265(1)(c), attesting to the fact that no employees, full-time, part-time, contract, independent or volunteers have been convicted of or who has pled guilty or *nolo contendere* at any time to an offense constituting a felony in this state or in any other state involving the prescribing, dispensing, supplying, selling or possession of any controlled substance prior to the adoption date of this section and that the business shall not employ any such persons thereafter.
- f. A list of all persons associated with the management or operation of the clinic, whether paid or unpaid, part-time or full time, including all contract labor and independent contractors. This list will include, but is not limited to, all owners, operators, employees and volunteers. For persons listed, the following additional information must be provided:
 - (i) The person's name and title,
 - (ii) A current home address, telephone number and date of birth,
 - (iii) A list of all criminal convictions whether misdemeanor or felony,
 - (iv) A copy of a current Florida driver's license or a government issued photo ID, and
 - (v) A set of fingerprints.

This list shall be required to be updated within ten (10) days of any new person becoming associated with the pain management clinic.

- g. The property owner's name, address, telephone number, and a copy of a Florida driver's license or a government issued photo ID, if the property owner is different than the manager or operator;
- h. Provide a disclosure of interest affidavit to identify the natural persons having the ultimate ownership interest in the business. The disclosure of interest affidavit shall provide in detail as applicable all principal stockholders and percent of stock owned by each, or a list of the trust beneficiaries and the percent of interest held by each, or a list of the principals including general and limited partners. Where principal officers, stockholders, beneficiaries or partners consist of other corporations, trusts, partnerships or other similar entities, further disclosure shall be made to identify the natural persons having the ultimate ownership interests.
- i. An indication of whether the pain management clinic dispenses controlled substances on the pain management clinic site.
- j. Any other information the City deems necessary.
- k. A sworn and notarized statement from the designated physician attesting to the veracity and accuracy of the information provided in the application.
- l. The application for a permit shall be notarized, typewritten, signed and sworn to by a person who seeks to operate a pain management clinic and the person who is the property owner for property on which the pain management clinic is located and shall include the post office address of the applicant(s) and the property owner. At least one (1) applicant shall be the medical director of the pain management clinic. The application shall not be signed by an authorized agent.

(4). Application Processing.

- a. *Application Fee.* Each application for a Specific Use Permit for a pain management clinic shall be accompanied by a nonrefundable application and permit fee of \$250.00, or such other fee as may be set by resolution of the City Council. Calculation of the appropriate fee shall be based on the cost to the City for implementing and enforcing the provisions of this Ordinance. Fees for applications received after May 31 but before September 30 of any year may be prorated.
- b. *Incomplete Applications.* The applicant(s) shall be fully responsible for compliance with this Section and each applicant shall be considered a permittee upon the grant of a permit pursuant to this Section. It is the applicant's sole responsibility to provide accurate contact information when submitting the application to the Community Development Department. If the application for a Specific Use Permit is not fully complete, in the sole discretion of the Community Development Department, the Community Development Department shall notify the contact person listed in the application. The applicant will have fifteen (15) business days after receipt of the deficiency notice from the Community Development Department to provide the information necessary to complete an application. Failure to provide the necessary

information within fifteen (15) business days after the mailing of the notification shall result in a denial of the application and a new application must then be submitted, accompanied by a full non-refundable application fee.

(5) Permit Issuance, Renewal, Denial or Revocation; Appeals.

- a. *Time period for granting or denying Permit.* The Community Development Department shall grant, renew, or deny a Specific Use Permit for a pain management clinic within twenty (20) business days from the date of filing of a fully completed application.
- b. *Granting of permit.* If there is no basis for denial of a Specific Use Permit pursuant to the criteria set forth herein, the Community Development Department shall grant the permit, notify the applicant and issue the permit to the applicant. Upon issuance of a permit, a permit holder is required to provide written notice to the Community Development Department within ten (10) business days of any change to the information submitted in the application, including but not limited to: change in physicians, change in officers of a corporation, revocation or suspension of a state permit, change in service person or address, etc.
- c. *Renewal of Permit.* Specific Use Permits for pain management clinics shall expire annually on the 30th day of September. At least thirty (30) days prior to expiration of a Permit, a renewal application, must be submitted, along with a non-refundable renewal application fee of \$150.00, or such other fee as may be set by resolution of the City Council. Provided the pain management clinic named in the renewal application and all information on the application are in compliance with this Ordinance, a renewal permit shall be issued by the Department, after payment of the Renewal Application Fee. Renewal permits shall only be issued to businesses that were previously permitted and who timely file a renewal application.
- d. *Denial or revocation of permit.* The Community Development Department shall deny or revoke a pain management clinic Permit on the basis of any one of the following grounds:
 - i. An application for a Specific Use Permit contains material false or missing information;
 - ii. An applicant is not registered pursuant to Sections 458.309 or 459.005, Fla. Stat. (2009), or any successor state law, or has not proven it is entitled to an exemption from state registration;
 - iii. An applicant has had a registration issued under either Sections 458.309 or 459.005, Fla. Stat. (2009), or any successor state law, suspended or revoked;
 - iv. A Permit holder has refused to allow entry and/or inspection of the premises by a law enforcement officer, code enforcement officer, or any other person authorized to enforce ordinance violations in the City at any time someone is present on the premises;

- v. A permit holder fails, within ten (10) business days, to provide written notice to the Department of any change to the information submitted in the application;
- vi. Failure to abide by any provision of this Ordinance;
- vii. Allowing any person to work or volunteer at the clinic, whether paid or unpaid, who has been convicted of or plead guilty or nolo contendere to, (even if sealed or expunged) an offense that constitutes a felony for receipt of illicit and diverted drugs, including any controlled substance listed in Schedule I, Schedule II, Schedule III, Schedule IV, or Schedule V of Florida Statutes Section 893 03, or any other state, or the United States;
- viii. The facility is owned by or has any contractual or employment relationship with a physician:
 1. Whose Drug Enforcement Administration number has ever been revoked, or
 2. Whose application for a license to prescribe, dispense, or administer controlled substance has been denied by any jurisdiction, or
 3. who has been convicted of or plead guilty or nolo contendere to, (even if sealed or expunged) an offense that constitutes a felony for receipt of illicit and/or diverted drugs, including any controlled substance listed in Schedule I, Schedule II, Schedule III, Schedule IV, or Schedule V of Florida Statutes Section 893 03, or any other state, of the United States.

The Community Development Department may grant an exception to sub-sections vii and viii above, in its sole discretion, if more than ten (10) years have elapsed since the adjudication date.

- ix. If the payment for the application fee, permit fee, or renewal fee is invalid or uncollectible for any reason.
- xiii. If the registration of a pain management clinic is revoked or suspended by the Florida Department of Health, the Specific Use Permit shall be revoked automatically.
- xiv. A Specific Use Permit may be revoked or denied if the facility restricts itself to a “cash-only” form of payment.
- xv. A Specific Use Permit may be revoked or denied if the facility dispenses controlled substances on the same premises as stated on the Permit.

(6) Appeals. Appeals of any denial or non-renewal of a Specific Use Permit for a pain management clinic may be pursued in accordance with Section 137-43 of this Code.

- (7) Exemptions. This section shall not apply to the following types of clinics, medical offices, or facilities:
- a. Clinics that are licensed as a facility pursuant to Fla. Stat. Ch. 395;
 - b. The majority of the physicians who provide services in the clinic primarily provide surgical services;
 - c. The clinic is owned by a publicly held corporation whose shares are traded on a national exchange or on the over-the-counter market and whose total assets at the end of the corporation's most recent fiscal quarter exceeded fifty million dollars (\$50,000,000.00);
 - d. The clinic is affiliated with an accredited medical school at which training is provided for medical students, residents, or fellows;
 - e. The clinic does not prescribe and dispense controlled substances for the treatment of pain; or
 - f. The clinic is owned by a corporate entity exempt from federal taxation under 26 U.S.C. s. 501(c)(3).

(8) Other Compliance Requirements.

- a. The pain management clinic shall be required to update the disclosure of interest affidavit information prior to October 1 of each year or at any time that there is a change of ownership or natural persons as defined in subsection (c)(3) in this Section.
- b. The pain management clinic must be registered with the Florida Department of Health pursuant to Fla. Stat. § 458.3265 as, amended from time to time.
- d. The pain management clinic shall be fully owned by a physician or a group of physicians each of whom are Florida licensed physicians in good standing; or must be a licensed clinic under Fla. Stat. Ch. 400, Pt. X as, amended.
- e. The pain management clinic shall not have employees, full-time, part-time, contract, independent or volunteers who have been convicted of or who has pled guilty or *nolo contendere* at any time to an offense constituting a felony in this state or in any other state involving the prescribing, dispensing, supplying, selling or possession of any controlled substance prior to the adoption date of this section and that the business shall not employ any such persons thereafter.
- f. The pain management clinic is prohibited from having any outdoor seating areas, queues or customer waiting areas. All activities of the pain management clinic, including sale, display, preparation and storage shall be conducted entirely within a completely enclosed building.

- g. The pain management clinic is prohibited from having an on-site prescription drug dispensary for controlled substances listed in Fla. Stat. § 893.03, Schd. II.
 - h. Within thirty (30) days of the removal of a pain management clinic from a building, site or parcel of land for any reason, the property owner shall be responsible for removing all signs, symbols and vehicles identifying the premises as a pain management clinic.
 - i. The pain management clinic shall be in compliance with all federal, state, county and municipal laws and ordinances, as amended.
 - j. All pain management clinics shall allow representatives of the City of Brooksville to enter and inspect their places of business during business hours or at any time the business is occupied for the purpose of verifying compliance with the permit requirements of this section and with the Code of Ordinances of the City of Brooksville. No person who operates a pain management clinic shall refuse to permit a lawful inspection of the premises by a representative of the City of Brooksville during business hours or at any time the business is occupied.
 - k. The designated physician shall secure all prescription pads so that only authorized persons may access them. Every prescription written on a prescription pad shall contain the facility's name and Specific Use Permit number.
- (9) Applicability of this Section to existing pain management clinics issued Certificates of Occupancy or Change of Use permits prior to the adoption of this Section.
- a. All pain management clinics shall comply with the regulations contained herein within sixty (60) days following the adoption of this Section unless otherwise provided for in this subsection.
 - b. All pain management clinics shall immediately comply with subsection (8) of this Section.
- (10) Violations and Penalty. A person who operates or causes to be operated a pain management clinic without a valid Specific Use Permit issued under this Section or otherwise commits any act in violation of this Section is subject to a suit for injunction as well as prosecution or other enforcement action for criminal or noncriminal violations, in a judicial, quasi-judicial or administrative forum, as applicable. Each day a person operates a pain management clinic without a permit or commits any act in violation of this Section shall constitute a separate offense or violation.
- a. The requirements of this Ordinance may be enforced as follows:
 - i. By citation for civil penalties pursuant to the authority granted by Section 166.0415, Fla. Stat., Chapter 162, Part I, Fla. Stat., and/or as otherwise provided for in the City of Brooksville Code.

- ii. By revocation or temporary suspension of necessary permits and/or certificates of occupancy and/or licenses;
- iii. By an action for injunctive relief, civil penalties, or both, through a court of competent jurisdiction.
- iv. By initiating an action to recover any and all damages that may result from a violation of or refusal to comply with any part of this Ordinance; and
- v. By any other action or enforcement method permitted at law or equity.

Nothing herein relating to remedies or penalties for violation of this Section shall preclude enforcement of each and every provision of this article by any other lawful means including but not limited to code enforcement, permit revocation proceedings, disconnection of utilities serving the premises, or fines.

b. Persons responsible for violations include:

- i. Any person who owns, operates, or manages a pain management clinic;
- ii. Any physician who prescribes or dispenses controlled substance medications for the treatment of chronic nonmalignant pain for patients of a pain management clinic;
- iii. The owner of the premises occupied by a pain management clinic;
- iv. Any person in physical control of the activities which may occur on the premises;
- v. If a responsible person is a non-natural entity, the officers, directors, members, managers or other principals of the entity are jointly and severally responsible for violations by the entity; and
- vi. Any other person causing or contributing to a violation.

SECTION 6. AMENDMENT TO CHAPTER 137 ARTICLE II, SECTION 137-46.

The Code of the City of Brooksville, Florida, Chapter 137 “Land Use and Zoning”, Article II “Administration and Enforcement,” and Section 137-46 “Administrative fees and costs of public notice” is hereby amended and restated as follows:

Sec. 137-46. Administrative fees and cost of public notice.

Regulations concerning collection of costs, charges, fees and expenses in connection with zoning permits, certificates of use, public notice and city review and administration of planned development projects, special exception uses, specific use permits, appeals and zoning amendment petitions shall be as set forth by resolution of city council. No permit, certificate, application or authorization shall be issued unless and until such costs, charges, fees or expenses have been paid in full, nor shall any action be taken on proceedings before the commission or city council, unless or until preliminary charges have been paid in full.

SECTION 7. CONFLICTS AND REPEALER. All ordinances, or parts thereof, and resolutions in conflict with this ordinance are hereby repealed to the extent of such conflict.

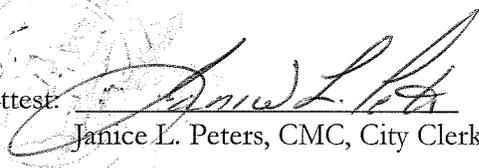
SECTION 8. AMENDMENT TO CODE. This Ordinance shall be and become a part of the Code of the City of Brooksville, Florida, to amend and supplement Chapter 137 "Land Use and Zoning" as directed herein.

SECTION 9. CODIFICATION. It is the intention of the City Council of the City of Brooksville that the provisions of this Ordinance shall become and be made part of the Code of Ordinances of the City of Brooksville, Florida and the word "ordinance," or similar words may be changed to "section," "article," or other appropriate word or phrase and the sections of the ordinance may be renumbered or re-lettered to accomplish such intention; provided, however, that Sections 1, 2, 3, 7, 8, 9 and 10 shall not be codified. The Code codifier is granted liberal authority to codify the provisions of this Ordinance.

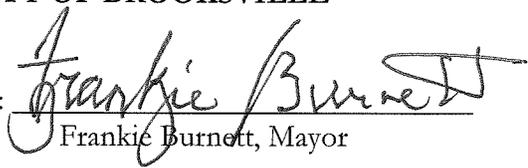
SECTION 10. EFFECTIVE DATE. This Ordinance shall take effect immediately upon its adoption by the Brooksville City Council.

CITY OF BROOKSVILLE

Attest:


Janice L. Peters, CMC, City Clerk

By:

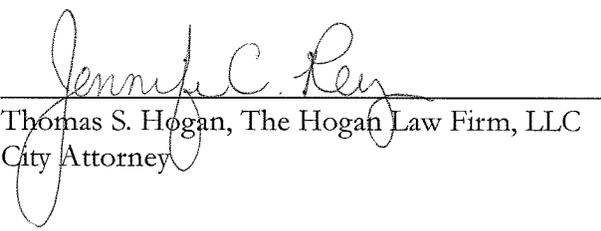

Frankie Burnett, Mayor

PASSED on First Reading April 18, 2011
NOTICE Published on April 22, 2011
PASSED on Second & Final Reading May 2, 2011

APPROVED AS TO FORM FOR THE RELIANCE
OF THE CITY OF BROOKSVILLE ONLY:

VOTE OF COUNCIL:

Bernardini	<u>AYE</u>
Bradburn	<u>ABSENT</u>
Burnett	<u>AYE</u>
Johnston	<u>AYE</u>
Pierce	<u>AYE</u>


Thomas S. Hogan, The Hogan Law Firm, LLC
City Attorney