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Record of Ordinances of Meetings in 2017

ORDINANCE NO. 25-17

ORDINANCE ESTABLISHING A CODE ENFORCEMENT BOARD

SUMMARY: AN ORDINANCE UTILIZING THE AUTHORITY GRANTED IN KRS 65.8801 TO 65.8839 BY CREATING A CITY OF HENDERSON CODE ENFORCEMENT BOARD EFFECTIVE JULY 1, 2017

WHEREAS, it is the intent of KRS 65.8801 to 65.8839 to protect, promote, and improve the health, safety, and welfare of the citizens residing within the City by authorizing the creation of an administrative board with the authority to issue remedial orders and impose fines in order to provide an equitable, expeditious, effective, and inexpensive method of ensuring compliance with the ordinances in force within the City; and

WHEREAS, at the Board of Commissioners Work Session held on April 25, 2017, it was discussed and agreed that per House Bill 422 a Code Enforcement Board should be created; and

WHEREAS, it is the desire of the Board of Commissioners of the City of Henderson, Kentucky to utilize the authority granted in KRS 65.8801 to 65.8839 by creating a City of Henderson Code Enforcement Board.

NOW THEREFORE be it ordained by the City of Henderson as follows:

SECTION 15-40. Definitions.

The following words, terms and phrases, when used in this ordinance, shall have the meanings ascribed to them in this Section, except where the context clearly indicates a different meaning:

- (a) **"Abatement Costs"** means a city's necessary and reasonable costs for and associated with clearing, preventing unauthorized entry to, or demolishing all or a portion of a structure or premises, or taking any other action with regard to a structure or premises necessary to remedy a violation and to maintain and preserve the public health, safety and welfare in accordance with any city ordinance.
- (b) **"Code Enforcement Board"** means an administrative body created and acting under the authority of the Local Government Code Enforcement Board Act, KRS 65.8801 to 65.8839.
- (c) **"Code Enforcement Officer"** means a city police officer, safety officer, code official, city engineer, city fire chief or designee, or other public law enforcement officer with the authority to issue a citation.
- (d) **"Final Order"** means any order:
 - 1. Issued by the code enforcement board following a hearing in accordance with Section 15-48(e) of this ordinance;
 - 2. Created because a violator neither paid nor contested the citation within seven (7) days as provided in Section 15-47(g) of this ordinance; or
 - 3. Created because a violator failed to appear at a hearing the violator requested to contest the citation as provided in Section 15-48(c) of this ordinance.

PUBLICATION DATE: 06/02/2017

FIRST READ: 05/23/2017
SECOND READ: 05/26/2017

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(e) **"Imminent Danger"** means a condition which is likely to cause serious or life-threatening injury or death at any time.

(f) **"Ordinance"** means an official action of the local government body, which is a regulation of a general and permanent nature and enforceable as a local law and shall include any provision of a code of ordinances adopted by the city legislative body which embodies all or part of an ordinance.

(g) **"Owner"** means a person, association, corporation, partnership or other legal entity having a legal or equitable title in real property.

(h) **"Premises"** means a lot, plot or parcel of land, including any structures upon it.

SECTION 15-41. Creation and membership.

There is hereby created within the city pursuant to KRS 65.8801 to KRS 65.8839, a code enforcement board which shall be composed of five (5) members, all of whom shall be residents of the city for a period of at least one (1) year prior to their appointment and shall reside there throughout the term in office.

SECTION 15-42. Enforcement powers.

- (a) The code enforcement board shall have the power to issue remedial orders and impose civil fines as a method of enforcing city 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 regulating conduct which would also, under any provision of the Kentucky Revised Statutes, constitute a criminal offense or a moving motor vehicle offense.

SECTION 15-43. Appointment of members; term of office; removal from office; oath; compensation.

- (a) Members of the code enforcement board shall be appointed by the executive authority of the city, subject to the approval of the legislative body.
- (b) The initial appointment to the code enforcement board shall be as follows:
 - 1. Two (2) members of the board shall be appointed for a term of one (1) year;
 - 2. Two (2) members of the board shall be appointed for a term of two (2) years; and
 - 3. One (1) member of the board shall be appointed for a term of three (3) years.
- (c) All subsequent appointments shall be for a term of three (3) years. A member may be reappointed, subject to the approval of the legislative body.
- (d) Any vacancy on the board shall be filled by the Mayor, subject to approval of the legislative body, within sixty (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. A vacancy shall be filled for the remainder of the unexpired term.

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- (e) A board member may be removed from office by the executive authority for misconduct, inefficiency, or willful neglect of duty. The executive authority shall submit a written statement to the member and the legislative body setting forth the reasons for removal. The member so removed shall have the right of appeal to the Henderson Circuit Court.
- (f) All members of the code enforcement board shall, 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 be reimbursed for actual expenses and compensated in the amount of \$50 per meeting.
- (h) No member of the code enforcement board shall hold any elected or nonelected office, paid or unpaid, or any position of employment with the city.

SECTION 15-44. Organization of board; meetings; quorum.

- (a) The code enforcement board shall annually elect a chair from among its members. The chair shall be the presiding officer and a full voting member of the board. In the absence of the chair, the remaining members of the board shall select a member to preside in place of and exercise the powers of the chair.
- (b) Regular meetings of the code enforcement board shall be held on the fourth Monday of every month. Meetings other than those regularly scheduled shall be special meetings or emergency meetings held in accordance with the requirements of the Kentucky Open Meetings Act.
- (c) All meetings and hearings of the code enforcement board shall be public meetings held in accordance with the requirements of KRS 65.8815(5) and the Kentucky Open Meetings Act.
- (d) The presence of at least a majority of the board's entire membership shall constitute a quorum. The affirmative vote of a majority of a quorum of the board shall be necessary for any official action to be taken.
- (e) Action minutes shall be kept for all proceedings of the code enforcement board and the vote of any member on any issue decided by the board shall be recorded in the minutes.

SECTION 15-45. 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, shall disqualify himself from voting on the matter in which he has an interest, and shall not be counted for purposes of establishing a quorum.

SECTION 15-46. Powers of the code enforcement board.

The City of Henderson 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 this ordinance.
- (b) To conduct hearings to determine if there has been a violation of an ordinance over which it has jurisdiction.

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- (c) To subpoena alleged violators, witnesses and evidence to its hearings. Subpoenas issued by the code enforcement board may be served by any code enforcement officer.
- (d) To take testimony under oath. The chairman 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 city ordinance or code provision which the board is authorized to enforce.
- (f) To impose civil fines, as authorized, on any person found to have violated an ordinance over which the board has jurisdiction.

SECTION 15-47. Enforcement proceedings.

The following requirements shall govern all enforcement proceedings before the code enforcement board:

- (a) Enforcement proceedings shall only be initiated by the issuance of a citation by a code enforcement officer.
- (b) Except when immediate action is necessary pursuant to Section 15-55 of this ordinance, when a code enforcement officer, based upon personal observation or investigation, has reasonable cause to believe that a person has committed a violation of a city ordinance, the code enforcement officer is authorized to issue a citation by one of the following methods:
 - 1. Personal service to the alleged violator;
 - 2. Leaving a copy of the citation with any person eighteen (18) 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 a citation using the methods set out in paragraphs (1) to (3) of this subsection is not possible, then the citation is properly served by posting a copy of the citation in a conspicuous place on the premises.
- (c) When authorized by ordinance, a code enforcement officer may, in lieu of immediately issuing a citation, give notice that a violation shall be remedied within a specified period of time. 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.
- (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;

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3. The physical address of the premises where the violation occurred;
 4. The date and time the offense was committed;
 5. The facts constituting the offense;
 6. The section(s) of the code or the number(s) of the ordinance violated;
 7. The name of the code enforcement officer;
 8. The civil fine that may be imposed for the violation, including, if applicable:
 - a. The civil fine that will be imposed if the person does not contest the citation; and
 - b. 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;
 10. A statement that the code enforcement officer has the authority to abate any and all deficiencies contained in the citation with all charges and fees incurred by the city in connection with the enforcement of the ordinance billed to the owner.
 11. 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: the person shall be deemed to have waived the right to a hearing before the code enforcement board to contest the citation; the determination that the violation was committed shall be final; the citation as issued shall be deemed a final order determining that the violation was committed and imposing the civil fine as set forth in the citation; and the person shall be deemed to have waived the right to appeal the final order to Henderson District Court.
- (e) After issuing a citation to an alleged violator, the code enforcement officer shall notify the code enforcement board by delivering the citation to the board via email.
- (f) Once a citation is issued, the code enforcement officer has the authority to abate any and all deficiencies contained in the citation with all charges and fees incurred by the city in connection with the enforcement of the ordinance billed to the owner.
- (g) 1. The person to whom the citation is issued shall respond to the citation within seven (7) days of the date of issuance by either paying the civil fine set forth in the citation or requesting, in writing, a hearing to contest the citation. If the person fails to respond to the citation within seven (7) days, the person shall be deemed to have waived the right to a hearing and the determination that a violation was committed shall be considered final. In this event, the citation, as issued, shall be deemed a final order determining that the violation was committed and imposing the civil fine as set forth in the citation, and the person shall be deemed to have waived the right to appeal the final order to Henderson District Court.
2. Notice of a final order shall be provided to the cited violator by:
 - a. Regular first-class mail;
 - b. Certified mail, return receipt requested;
 - c. Personal delivery; or
 - d. Leaving the notice at the person's usual place of residence with any individual residing therein who is eighteen (18) years of age or older and who is informed of the contents of the notice.

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SECTION 15-48. Hearing; notice; and final order.

- (a) When a hearing has been requested, the code enforcement board or its administrative staff shall schedule a hearing.
- (b) Not less than seven (7) days before the date of the hearing, the code enforcement board or its administrative staff shall notify the requester of the date, time, and place of the hearing. The notice may be given by regular first-class mail; personal delivery; or by leaving the notice at the person's usual place of residence with any individual residing therein who is eighteen (18) years of age or older and who is informed of the contents of the notice.
- (c) 1. Any person requesting a hearing 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 the determination that a violation was committed shall be final. In this event, the citation as issued shall be deemed a final order determining the violation was committed and imposing the civil fine set forth in the citation, and the alleged violator shall be deemed to have waived the right to appeal the final order to Henderson District Court.

2. Notice of a final order shall be provided to the cited violator by regular first-class mail; certified mail, return receipt requested; personal delivery; or by leaving the notice at the person's usual place of residence with any individual residing therein who is eighteen (18) years of age or older and who is informed of the contents of the notice.
- (d) All testimony at the hearing 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.
- (e) The code enforcement board shall, based on the evidence, determine whether a violation was committed. If it is determined that no violation was committed, an order dismissing the citation shall be entered. If it is determined that a violation was committed, an order may be issued upholding the citation. The board may impose a fine up to the maximum authorized by ordinance, or require the offender to remedy a continuing violation to avoid a fine, or both.
- (f) Every final order following a hearing shall be reduced to writing, which shall include the findings and conclusions reached and the date the order was issued. A copy shall be furnished to the person named in the citation by regular first-class mail; certified mail, return receipt requested; personal delivery; or by leaving the notice at the person's usual place of residence with any individual residing therein who is eighteen (18) years of age or older and who is informed of the contents of the notice.

SECTION 15-49. Presentation of cases.

Each case before the code enforcement board shall be presented by an attorney selected by the city, a code enforcement officer for the city, or by a member of the city's administrative staff. The city attorney may either be counsel to the code enforcement board or may present cases before the code enforcement board, but shall in no case serve in both capacities.

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SECTION 15-50. Appeals; final judgment.

- (a) An appeal from a final order of a code enforcement board following a hearing conducted pursuant to Section 15-48(e) of this ordinance may be made to the Henderson County District Court within thirty (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 final 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 subsection (a) of this Section, the code enforcement board's order shall be deemed final for all purposes.

SECTION 15-51. Ordinance fine schedule.

Violations of ordinances that are enforced by the city code enforcement board shall be subject to the following schedule of civil fines:

- (a) If a citation for a violation of an ordinance is not contested by the person charged with the violation, the penalties set forth in this subsection shall apply:

<u>Violation</u>	<u>1st Offense</u>	<u>2nd Offense</u>	<u>All Others</u>
Animals	\$25.00	\$50.00	\$100.00
Unsafe & Unfit Structure Code	\$100.00	\$125.00	\$150.00
Stop Work Order	\$100.00	\$125.00	\$150.00
Placard Removal	\$10.00	\$25.00	\$50.00
Garbage	\$10.00	\$25.00	\$50.00
Weeds	\$10.00	\$25.00	\$50.00
Any Other Nuisance Covered Under Code Of Ordinances	\$10.00	\$25.00	\$50.00

- (b) If the citation is contested and a hearing before the code enforcement board is required, the following maximum penalties may be imposed at the discretion of the code enforcement board:

<u>Violation</u>	<u>1st Offense</u>	<u>2nd Offense</u>	<u>All Others</u>
Animals	\$50.00	\$200.00	\$300.00
Unsafe & Unfit Structure Code	\$200.00	\$500.00	\$750.00
Stop Work Order	\$200.00	\$500.00	\$750.00
Placard Removal	\$25.00	\$150.00	\$250.00
Garbage	\$25.00	\$150.00	\$250.00
Weeds	\$25.00	\$150.00	\$250.00
Any Other Nuisance Covered Under Code Of Ordinances	\$25.00	\$150.00	\$250.00

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SECTION 15-52. Lien; fines, charges, and fees.

- (a) The city shall possess a lien on property owned by the person found by a nonappealable final order as defined by Section 15-40(d) of this ordinance, or by a final judgment of the court, to have committed a violation of a city ordinance. The lien shall be for all civil fines assessed for the violation and for all charges and fees incurred by the city in connection with the enforcement of the ordinance, including abatement costs. An affidavit of the code enforcement officer shall constitute prima facie evidence of the amount of the lien and regularity of the proceedings pursuant to KRS 65.8801 to 65.8839.
- (b) The lien shall be recorded in the office of the county clerk. The lien shall be notice to all persons from the time of its recording and shall bear interest until paid. The lien shall continue for ten (10) years following the date of the nonappealable final order or final court judgment.
- (c) Subject to Section 15-54 of this ordinance, the lien shall take precedence over all other 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 subsection (a) of this Section, the person found to have committed the violation shall be personally responsible for the amount of all civil fines assessed for the violation and for all charges, fees and abatement costs incurred by the city in connection with the enforcement of the ordinance. The city may bring a civil action against the person and shall have the same remedies as provided for the recovery of a debt.

SECTION 15-53. Lienholder notification system.

The City shall implement a system for notification to lien holders that meets the minimum requirements of subsection (a) of this section and shall comply with the procedures to permit remedial action by lien holders as provided in subsection (b) of this section in order to obtain and maintain the lien priority over previously filed liens granted in KRS 65.8835.

- (a) The City shall create a notification system that provides lien holders and others that elect to do so with electronic notification of all final orders entered pursuant to KRS 65.8801 to 65.8839. The system shall meet the following minimum requirements:
 - 1. An individual or entity may register with the local government to receive information on each final order by providing a name, mailing address, phone number, and an electronic mailing address to the City. The City shall accept this information in any form submitted by a registrant. It shall be the responsibility of the registrant to maintain and update its contact information with the City, except that the City shall inform a registrant of any evidence the City receives that the electronic mailing address is invalid or not functional in order to provide the registrant an opportunity to submit an updated electronic mailing address;
 - 2. At least once a month, the City shall send electronic mail notification of all final orders issued pursuant to the provisions of KRS 65.8801 to 65.8839 since the last date of notification to each party registered pursuant to paragraph (1) of this subsection. The notification shall, at a minimum, include or provide an electronic link to a document or database meeting the requirements of this paragraph that includes>

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- a. The name of the person charged with a violation;
 - b. The physical address of the premises where the violation occurred;
 - c. The last known mailing address for the owner of the premises where the violation occurred, if, in the exercise of reasonable diligence, it is ascertainable;
 - d. A specific description of the citation leading to the final order, including the citation detail set forth in KRS 65.8825(4)(a) to (h), which may be satisfied by including a copy of the full citation;
 - e. The findings of the final order, including the penalty or penalties imposed by the final order, which may be satisfied by providing a copy of the full final order; and
 - f. The status of the final order in regards to its ability to be appealed pursuant to KRS 65.8831, except that the City shall provide an update to registrants if an appeal is filed or a final order pursuant to KRS 65.8831.
3. At the same time the electronic notification required under paragraph (2) of this subsection is sent, the City shall post this notification or provide a summary of the information regarding each final order required by paragraph (2) of this subsection in a conspicuous place on its public Web site, which shall be affiliated with the City and contain other information about the City. If the City posts using summary form:
- a. The summary shall be calculated to reasonably allow identification of the specific properties which may be impacted by the lien; and
 - b. Upon request, the City shall provide the complete record of a final order created under paragraph (2) of this subsection without charge.
4. The City shall maintain the records created under this subsection for a period of ten (10) years following their issuance.
- (b) 1. A lien holder of record may, within forty-five (45) days from the date of issuance of notification under subsection (a) of this section, correct the violation if it has not already been abated, or elect to pay all civil fines assessed for the violation and all charges and fees incurred by the City in connection with the enforcement of the ordinance, including abatement costs. This subsection shall not prohibit the City from taking immediate action if necessitated under KRS 65.8838.
2. The lien provided by KRS 65.8835 shall not take precedence over previously recorded liens if:
- a. The City failed to comply with the requirements of subsection (a) of this section for notification of the final order; or
 - b. A prior lien holder corrected the violation or paid all civil fines assessed for the violation and all charges and fees incurred by the City in connection with the enforcement of the ordinance, including abatement costs within forty-five (45) days as provided in paragraph (1) of this subsection.
3. A lien that does not take precedence over previously recorded liens under the circumstances outlined in paragraph (2) of this subsection, shall, if the final order remains partially unsatisfied, take precedence over all other subsequent liens except liens for state, county, school board and city taxes.
4. Nothing contained in this subsection shall prohibit the City from recording a lien before the forty-five (45) day period established in paragraph (1) of this subsection expires. If the lien is fully satisfied prior to the expiration of the forty-five (45) day period established in paragraph (1) of this subsection, the City shall release the lien in

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the county clerk's office where the lien is recorded within fifteen (15) days of satisfaction.

- (c) The City may delegate responsibility for compliance with this section to Code Enforcement administrative staff as specified in this ordinance.
- (d) The failure of the City to comply with this section or the failure of a lien to take precedence over previously filed liens as provided in subsection (b)(2) of this section, shall not limit or restrict any other remedies that the City has against the property or the violator.
- (e) The requirements of this section shall not apply to a local government when it enforces KRS 65.8840.

SECTION 15-54. Liens.

- (a) A lienholder of record who has registered pursuant to Section 15-53(b) of this ordinance may, within forty-five (45) days from the date of issuance of notification under Section 15-53(d) of this ordinance:
 - 1. Correct the violation, if it has not already been abated; or
 - 2. Pay all civil fines assessed for the violation, and all charges and fees incurred by the city in connection with enforcement of the ordinance, including abatement costs.
- (b) Nothing in this Section shall prohibit the city from taking immediate action if necessary under Section 15-55 of this ordinance.
- (c) The lien provided by Section 15-52 of this ordinance shall not take precedence over previously recorded liens if:
 - 1. The city failed to comply with the requirements of Section 15-53 of this ordinance for notification of the final order; or
 - 2. A prior lienholder complied with subsection (a) of this Section.
- (d) A lien that does not take precedence over previously recorded liens under subsection (c) of this Section shall, if the final order remains partially unsatisfied, continue to take precedence over all other subsequent liens except liens for state, county, school board and city taxes.
- (e) The city may record a lien before the forty-five (45) day period established in subsection (a) of this Section expires. If the lien is fully satisfied prior to the expiration of the forty-five (45) day period, the city shall release the lien in the county clerk's office where the lien is recorded within fifteen (15) days of satisfaction.
- (f) The city attorney is given authority to sign any release of liens under this section on behalf of the City of Henderson.

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- (g) Failure of the city to comply with Sections 15-53 and 15-54 of this ordinance, or failure of a lien to take precedence over previously filed liens as provided in subsection (c) of this Section, shall not limit or restrict any other remedies the city has against the property of the violator.

SECTION 15-55. Immediate action.

Nothing in this ordinance shall prohibit the city 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.

SECTION 15-56. Transfer of ownership

It shall be unlawful for the owner of any dwelling unit or structure who has received a notice of violation, or upon whom a citation or final order has been served to sell, transfer, mortgage, lease or otherwise dispose of such dwelling unit or structure to another until the provisions of the notice of violation, citation or final order have been complied with, or until such owner or the owner's authorized agent shall first furnish the grantee, transferee, mortgagee or lessee a true copy of any notice of violation, citation or final order issued by the code enforcement officer and shall furnish to the code enforcement officer a signed and notarized statement from the grantee, transferee, mortgagee or lessee, acknowledging the receipt of such notice of violation, citation or final order and fully accepting the responsibility without condition for making the corrections or repairs required by such notice of violation, citation or final order.

All ordinances or parts of ordinances in conflict herewith are hereby repealed and superseded to the extent of such conflict.

The ordinance shall become effective on July 1, 2017 at 12:00 a.m. Central Standard Time.

On first reading of the foregoing ordinance, it was moved by Commissioner Pruitt, seconded by Commissioner Bugg, that the Ordinance be adopted on its first reading. On roll call the vote stood:

Commissioner Pruitt:	<u>AYE</u>	Commissioner Staton:	<u>AYE</u>
Commissioner Bugg:	<u>AYE</u>	Mayor Austin:	<u>AYE</u>
Commissioner Vowels:	<u>AYE</u>		

WHEREUPON, Mayor Austin declared the ordinance adopted on first reading and ordered that it be presented for a second reading at a meeting of the Board of Commissioners.

On second reading of the ordinance, it was moved by Commissioner Bugg, seconded by Commissioner Staton, that the Ordinance be adopted.

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WHEREUPON, the vote was called, on roll call the vote stood:

Commissioner Pruitt:	<u>AYE</u>	Commissioner Staton:	<u>AYE</u>
Commissioner Bugg:	<u>AYE</u>	Mayor Austin:	<u>AYE</u>
Commissioner Vowels:	<u>AYE</u>		

WHEREUPON, Mayor Austin declared the ordinance adopted, affixed his signature and the date and ordered that it be recorded.



Steve Austin, Mayor

Date: May 26, 2017

ATTEST:


Marce Collins, City Clerk

**APPROVED AS TO FORM AND
LEGALITY THIS 17th DAY OF
MAY, 2017.**

By:


Dawn S. Kelsey
City Attorney