



PORT ORANGE CITY COUNCIL

SPECIAL MEETING

Council Chambers

Tuesday, December 8, 2020 @ 6:30 PM

SPECIAL MEETING AGENDA

Pursuant to Section 3.06 of the Charter of the City of Port Orange, the Mayor has called a **Special Meeting** of the City Council to be held for the following purposes:

OPENING

1. Silent Invocation
2. Pledge of Allegiance
3. Roll Call

DISCUSSION / ACTION

4. Panhandling Ordinance Discussion and Testimony

ADJOURNMENT

NOTICES – PURSUANT TO SECTION 286.0105 OF THE FLORIDA STATUTES, IF ANY PERSON DECIDES TO APPEAL ANY DECISION MADE BY THE CITY COUNCIL WITH RESPECT TO ANY MATTER CONSIDERED AT THIS PUBLIC MEETING OR HEARING, SUCH PERSON WILL NEED A RECORD OF THE PROCEEDINGS, AND THAT, FOR SUCH PURPOSE, SUCH PERSON MAY NEED TO ENSURE THAT A VERBATIM RECORD OF THE PROCEEDINGS IS MADE, WHICH RECORD INCLUDES THE TESTIMONY AND EVIDENCE UPON WHICH THE APPEAL IS TO BE BASED. THE CITY DOES NOT PREPARE OR PROVIDE SUCH A RECORD.



FOR SPECIAL ACCOMMODATIONS, PLEASE NOTIFY THE CITY CLERK'S OFFICE (PHONE: 386-506-5563) AS FAR IN ADVANCE AS POSSIBLE, BUT PREFERABLY WITHIN 2 WORKING DAYS OF YOUR RECEIPT OF THIS NOTICE OR 5 DAYS PRIOR TO THE MEETING OR HEARING DATE.



HELP FOR THE HEARING IMPAIRED IS AVAILABLE THROUGH THE ASSISTIVE LISTENING SYSTEM RECEIVERS CAN BE OBTAINED FROM THE CITY CLERKS' OFFICE.

IN ACCORDANCE WITH THE AMERICANS WITH DISABILITIES ACT (ADA), IF YOU ARE A PERSON WITH A DISABILITY WHO NEEDS AN ACCOMMODATION IN ORDER TO PARTICIPATE IN THIS PROCEEDING, YOU ARE ENTITLED, AT NO COST TO YOU, THE PROVISION OF CERTAIN ASSISTANCE. PLEASE CONTACT THE CITY CLERK FOR THE CITY OF PORT ORANGE, 1000 CITY CENTER CIRCLE, PORT ORANGE, FLORIDA 32129, TELEPHONE NUMBER 386-506-5563, CITYCLERK@PORT-ORANGE.ORG, AS FAR IN ADVANCE AS POSSIBLE, BUT PREFERABLY WITHIN 2 WORKING DAYS OF YOUR RECEIPT OF THIS NOTICE OR 5 DAYS PRIOR TO THE MEETING OR HEARING DATE. IF YOU ARE HEARING OR VOICE IMPAIRED, CONTACT THE RELAY OPERATOR AT 7-1-1 or 1-800-955-8771.

UPON REQUEST BY A QUALIFIED INDIVIDUAL WITH A DISABILITY, THIS DOCUMENT WILL BE MADE AVAILABLE IN AN ALTERNATE FORMAT. IF YOU NEED TO REQUEST THIS DOCUMENT IN AN ALTERNATE FORMAT, PLEASE CONTACT THE CITY CLERK WHOSE CONTACT INFORMATION IS PROVIDED ABOVE.

ANY INVOCATION THAT IS OFFERED BEFORE THE OFFICIAL START OF THE CITY COUNCIL MEETING SHALL BE THE VOLUNTARY OFFERING OF A PRIVATE PERSON, TO AND FOR THE BENEFIT OF THE CITY COUNCIL. THE VIEWS OR BELIEFS EXPRESSED BY THE INVOCATION SPEAKER HAVE NOT BEEN PREVIOUSLY REVIEWED OR APPROVED BY THE CITY COUNCIL OR THE CITY STAFF, AND THE CITY IS NOT ALLOWED BY LAW

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TO ENDORSE THE RELIGIOUS BELIEFS OR VIEWS OF THIS, OR ANY OTHER SPEAKER. PERSONS IN ATTENDANCE AT THE CITY COUNCIL MEETING ARE INVITED TO STAND DURING THE OPENING INVOCATION AND PLEDGE OF ALLEGIANCE. HOWEVER, SUCH INVITATION SHALL NOT BE CONSTRUED AS A DEMAND, ORDER, OR ANY OTHER TYPE OF COMMAND. NO PERSON IN ATTENDANCE AT THE MEETING SHALL BE REQUIRED TO PARTICIPATE IN ANY OPENING INVOCATION THAT IS OFFERED. A PERSON MAY EXIT THE CITY COUNCIL CHAMBERS AND RETURN UPON COMPLETION OF THE OPENING INVOCATION IF A PERSON DOES NOT WISH TO PARTICIPATE IN OR WITNESS THE OPENING INVOCATION.



CITY COUNCIL AGENDA ITEM

REQUESTED COUNCIL MEETING DATE 12/8/2020

Consent item: No

SUBJECT: (4) Panhandling Ordinance Discussion and Testimony

DEPARTMENT: City Attorney

GOAL: 3 - Quality of Life

RECOMMENDED MOTION:

SUMMARY: Special Legal Counsel Michael Kahn will discuss the support that's been gathered for the panhandling ordinance and city staff will provide sworn testimony regarding the negative impacts related to panhandling within the City of Port Orange.

This is the first of three special meetings that will be scheduled related to the panhandling ordinance. At the next meeting you will hear testimony from GIS, business owners/managers, and a medical professional. The second meeting will conclude with the first reading of the ordinance. The third and final meeting will be reserved for the second reading and adoption of the panhandling ordinance.

Project No.: Funding Account No.:

Presenter: Matthew Jones

ATTACHMENTS:

1.	Panhandling Ordinance - 12.1.20 MJ, 12.03.20 MK (Clean)	Panhandling Ordinance - 12.1.20 MJ, 12.03.20 MK (Clean).pdf
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Matthew Jones
Matthew Jones
Alan Rosen
Robin Fenwick

Created/Initiated - 12/3/2020
Approved - 12/3/2020
Approved - 12/3/2020
Final Approval - 12/3/2020

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF PORT ORANGE, VOLUSIA COUNTY, FLORIDA; AMENDING CHAPTER 46 OF THE CODE OF ORDINANCES TO CREATE ARTICLE V; PROVIDING FOR FINDINGS AND INTENT; PROVIDING FOR DEFINITIONS; PROVIDING FOR PROHIBITED CONDUCT, PROXIMITY AND LOCATION RESTRICTIONS FOR PANHANDLING, SOLICITATION, OR BEGGING; PROVIDING FOR PENALTIES; PROVIDING FOR CODIFICATION; PROVIDING FOR REPEAL OF CONFLICTING ORDINANCES; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, § 166.041, Florida Statutes, provides for procedures for the adoption of ordinances and resolutions by municipalities; and

WHEREAS, the City of Port Orange recognizes that panhandling, including but not limited to solicitation and begging are activities that are protected by the First Amendment to the United States Constitution; and

WHEREAS, the City Council finds that panhandlers and beggars sometimes use profane language when requesting money from people; that panhandlers and beggars sometimes physically touch or threaten to touch the people they solicit for money; and that panhandlers and beggars sometimes block the path of people they solicit for money, or follow the people they solicit for money in an apparent effort to intimidate people into making a donation or as retribution for refusing to make a donation; and

WHEREAS, the City Council finds that the foregoing activities constitute "aggressive panhandling or begging," and that the increase in aggressive panhandling or begging throughout the City of Port Orange has become extremely disturbing and disruptive to residents, visitors, and businesses, and has contributed to an enhanced

sense of fear, intimidation, and disorder resulting in the loss of access to and enjoyment of public places throughout the City; and

WHEREAS, the City of Port Orange has experienced a significant number of complaints made to the Port Orange Police Department and other city authorities regarding panhandling and problematic panhandling behaviors; and,

WHEREAS, the City of Port Orange has a compelling governmental interest in preserving and protecting the lives of its citizens which can be imperiled by numerous panhandlers which results in, *inter alia*, traffic and pedestrian congestion which among other things can delay deployment of life saving fire and police vehicles and personnel and otherwise endanger the lives of drivers of automobiles and other pedestrians; and

WHEREAS, the City of Port Orange has a compelling governmental interest in protecting the health, safety, and welfare of its citizens and visitors from health hazards spread by habits of panhandlers including but not limited to open urination and open defecation; and

WHEREAS, the City of Port Orange has a compelling governmental interest in protecting the health, safety, and welfare of its citizens and visitors from the contracting and spread of COVID-19 and any other pandemic which is spread through unhealthy hygienic habits attributed by testimony to panhandlers including but not limited to open urination and open defecation; and

WHEREAS, the City of Port Orange has, unrelated to suppression of the freedoms guaranteed by the First Amendment, a compelling governmental interest in protecting the health, safety, and welfare of its citizens and visitors from contracting and spread of COVID-19 and any other pandemic which is spread by unhealthy hygienic habits such as

open urination, open defecation, lack of social distancing, and touching the people solicited for money when handed it. *Tabbaa v. Chertoff*, 509 F.3d 89 (2d Cir. 2007); *Roberts v. United States Jaycees*, 468 U.S. 609 (1984)

WHEREAS, the City of Port Orange can adopt regulations of speech which satisfy strict scrutiny if the regulation employs the least restrictive means of advancing such government interest. *United States v. Playboy Entm't Group, Inc.*, 529 U.S. 803, 813 (2000);

WHEREAS, in the alternative, the City of Port Orange can adopt and enforce regulations of behavior that implicate First Amendment activity when the regulations affect the time, place, and manner of expression, are content neutral, are narrowly tailored to serve a significant governmental interest, and leave open ample alternative channels of communication; and

WHEREAS, the City Council finds that, in the alternative, regulation of panhandling and begging, based on the time, place, or manner of the solicitation including but not limited to panhandling or begging, arguably is a content neutral and narrowly tailored way to promote public safety, and protect residents and visitors in areas where they may be or reasonably perceive themselves to be vulnerable and/or unable to leave; and

WHEREAS, the City Council finds that regulation of panhandling and begging in public places where people feel particularly vulnerable and/or unable to leave provides ample alternative avenues of communication and is narrowly drawn to address the City's substantial interests; and

WHEREAS, the City of Port Orange has a significant interest in providing a safe and pleasant environment and in eliminating nuisance activity. *Smith v. City of Fort*

Lauderdale, Florida, 177 F. 3d 954, 956 (11th Cir. 1999); and

WHEREAS, the City of Port Orange has a significant interest in preserving the safety of traffic flow and preventing traffic congestion wherever possible in the City of Port Orange. *Ayres v. City of Chicago*, 125 F.3d 1010 (7th Cir. 1997); and

WHEREAS, the City of Port Orange has a significant interest in the safety of pedestrians and individuals traveling in vehicles throughout the City of Port Orange. *Heffron v. International Soc'y for Krishna Consciousness*, 452 U.S. 640, 650, 101 S. Ct. 2559, 69 L.Ed. 2d 298 (1981); and

WHEREAS, the City of Port Orange has a significant interest in promoting tourism, and aesthetics of downtown Port Orange. *Young v. American Mini Theaters*, 427 U.S. 50, 96 S. Ct. 440, 49 L.Ed. 2d 310 (1976); *Smith v. City of Fort Lauderdale, Florida*, 177 F. 3d 954, 956 (11th Cir. 1999); and

WHEREAS, the City of Port Orange has a significant interest in promoting the safety and convenience of its citizens on public streets. *Madsen v. Women's Health Center*, 512 U.S. 753, 768, 114 S. Ct. 2516, 129 L.Ed. 2d 593 (1994); and

WHEREAS, the City of Port Orange has a significant interest in ensuring the public safety and order and in promoting the free flow of traffic on public streets and sidewalks. *Ayres v. City of Chicago*, 125 F.3d 1010 (7th Cir. 1997); and

WHEREAS, the City of Port Orange has a significant interest in the safety and convenience of citizens using public fora such as streets and sidewalks. *Heffron v. International Soc'y for Krishna Consciousness*, 452 U.S. 640, 650, 101 S. Ct. 2559, 69 L.Ed. 2d 298 (1981); *Cox v. New Hampshire*, 312 U.S. 569, 61 S.Ct. 762, 85 L.Ed. 1049 (1941); and

WHEREAS, the City of Port Orange has a significant interest in recognizing the safety and convenience on public roads. *Cox v. New Hampshire*, 312 U.S. 569, 574, 61 S. Ct. 762, 85 L.Ed. 1049 (1941); and

WHEREAS, the City of Port Orange has a significant interest in controlling traffic and pedestrian congestion. *Ayres v. City of Chicago*, 125 F. 3d 1010, 1015 (7th Cir. 1997); and

WHEREAS, the City of Port Orange has a significant interest in preventing crime, protecting the City's retail trade, maintaining property values, and generally protecting and preserving the quality of the City's neighborhoods, commercial districts and the quality of urban life. *Young v. American Mini Theaters*, 427 U.S. 50, 96 S.Ct. 2440, 49 L.Ed.2d 310 (1976); and

WHEREAS, the City of Port Orange has a significant interest in appearance of the City and aesthetics. *Metromedia Inc. v. City of San Diego*, 453 U.S. 490, 101 S.Ct. 2882 (1981); and

WHEREAS, the City of Port Orange has a significant interest in maintaining safe ingress and egress into and out of commercial establishments in order to, *inter alia*, control pedestrian congestion, facilitate pedestrian safety and order, and provide for access for emergency vehicles and personnel both fire and police to promote public health, safety, and welfare; and

WHEREAS, the City Council of the City of Port Orange has determined that the following regulations promote and protect the general health, safety, and welfare of the residents of the City of Port Orange; and

WHEREAS, after application of the distance parameters set forth in this Ordinance

regarding the time, place, and manner of panhandlers' ability to panhandle within the city limits of Port Orange, an overwhelming and much more than ample alternative avenues of communication exist for panhandlers to panhandle within the city limits of Port Orange; and

WHEREAS, the City Council for the City of Port Orange finds that it is in the best interest of public health, safety, and general welfare that the following amendments be adopted consistent with the requirements of Section 166.021(4), Florida Statutes;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF PORT ORANGE, VOLUSIA COUNTY, FLORIDA:

Section 1. Chapter 46 of the Code of the Code of Ordinances, City of Port Orange, Florida, is hereby amended to create and establish a new Article V to read as follows:

ARTICLE V. - PANDHANDLING, BEGGING AND SOLICITATION

Sec. 46-67. - Intent.

The purpose and intent of this article is to recognize the constitutional right of persons to panhandle, including but not limited to solicit and beg, in a peaceful and non-threatening manner; however, an increase in aggressive panhandling and begging throughout the City has become extremely disturbing and disruptive to residents and businesses, and has contributed not only to the loss of access to and enjoyment of public places but also to an enhanced sense of fear, intimidation, and disorder as well as actual danger to the health, safety and welfare of citizens and tourists alike. Aggressive panhandling and begging usually includes approaching or following pedestrians, repetitive requests for donations of money despite refusals, the use of abusive or profane language, unwanted physical contact, and the intentional, or as incident to the aggressive panhandling and begging, blocking of pedestrian and vehicular traffic. Additionally, the presence of panhandlers and beggars, who request money from persons in specific public areas such as outdoor cafes, automated teller machines, entrances and exits from commercially zoned properties, and while standing in line to enter an event or a building, is especially harmful because persons cannot readily escape from the undesired conduct, which often carries with it an implicit threat to both persons and property imperiling the health, safety and welfare of the citizens of and visitors to Port Orange. . Also, unless mitigated by regulation, some of the habits attributable to panhandlers, including but not limited to

open urination and open defecation, pose a threat to the health, safety, and welfare of citizens and tourists who visit the City of Port Orange as well as the possibility of catching or spreading of COVID-19 or any other pandemic that is spread by unhealthy hygienic habits such as the foregoing.

This article is not intended to limit any persons from exercising their constitutional right to panhandle, including but not limited to beg, or solicit funds, or engage in any other constitutionally protected activity, when conducted in a legal manner. The goal of this article is instead to ensure the foregoing constitutional rights while through regulation acting to protect citizens from the fear and intimidation accompanying certain kinds of panhandling and begging that have become an unwelcome and overwhelming presence in the City by prohibiting aggressive panhandling and begging throughout the City and by regulating through time, place, and manner ordinance provisions regulating panhandling and begging in certain public places, based upon the foregoing compelling, significant, important and substantial governmental interests set forth in the predicate clauses and an overriding compelling governmental interest to protect the health, safety, and welfare of the citizens of Port Orange and visitors from the adverse secondary effects, including but not limited to open urination and open defecation, of panhandling which definition includes all solicitation and begging, in public areas. The restrictions contained in this article are neither overbroad nor vague and are narrowly tailored to serve compelling and substantial governmental interests, and preserve ample alternative areas for the valid exercise of constitutional rights of panhandling which they do as set forth more particularly herein.

If such regulations were to be deemed to trigger strict scrutiny, regulating certain behaviors attributed to panhandlers including but not limited to open urination and open defecation implicates the compelling governmental interest of Port Orange in protecting the health, safety, and welfare of its citizenry and visitors, preventing the contracting or spread of COVID-19 or any other pandemic which can be contracted or spread by such unhealthy habits linked by testimony to panhandlers and in preserving police and fire department access to such rights of way in order to save lives.

Sec. 46-68. - Definitions.

For purposes of this article, the following words and phrases shall have the meanings ascribed to them as follows:

After Dark means from one half hour after sunset until one-half hour before sunrise. The times of sunset and sunrise will be established by the times listed in any local publication of general distribution.

Aggressive Panhandling means:

- (1) To approach or speak to a person and solicit, demand, request or beg for money or a donation of valuable property in such a manner as would cause a reasonable person to believe that the person is being threatened with

- imminent bodily injury or the commission of a criminal act upon the person approached or another person in the solicited person's company, or upon property in the person's immediate possession (for example, placing oneself within 2 feet of a solicited person and/or using abusive or profane language in a loud voice while demanding or requesting money); or
- (2) To maintain contact with a solicited person and continue demanding, requesting or begging for money or a donation of valuable property after the solicited person has made a negative response to an initial demand or request for money or a donation (for example, walking in front of, next to, or behind a solicited person while continuing to demand, request or beg for money from that person after that person has refused to donate or give money); or
 - (3) To obstruct, block or impede, either individually or as part of a group of persons, the passage or free movement of a solicited person or a person in the company of a solicited person, including persons on foot, on bicycles, in wheelchairs or operating motor vehicles or persons attempting to enter or exit motor vehicles (for example, walking, standing, sitting, lying, or placing an object in such a manner as to block passage of another person or vehicle, or to require another person or driver of a vehicle to take evasive action to avoid physical contact); or
 - (4) To touch or cause physical contact or to threaten to touch or cause physical contact to a solicited person or a person in the company of a solicited person, or to touch any vehicle occupied by a solicited person or by a person in the company of the solicited person, without the person's express consent; or
 - (5) To engage in conduct that would reasonably be construed as intended to intimidate, compel or force a solicited person to accede to demands.

Panhandle means to beg or make any demand or request made in person for an immediate donation of money or some other article of value from another person for the use of one's self or others, including but not limited for a charitable or sponsor purpose or that will benefit a charitable organization or sponsor. As used in this article, the word "solicit" and "beg" and its forms are included in this definition. Panhandling is considered as having taken place regardless of whether the person making the solicitation received any contribution. Panhandling is considered as having taken place without a word being spoken but with an individual having next to him an open can or container of any sort with any indication on the can or container or by the solicitor that money or some other article of value is being requested. Any purchase of an item for an amount far exceeding its value, under circumstances where a reasonable person would understand that the purchase is in substance a donation, constitutes a donation as contemplated in this definition. Begging is included in this definition of Panhandling. Soliciting is including in this definition of Panhandling.

Prohibited areas for panhandling including but not limited to soliciting and begging means the following locations throughout the City in which it is unlawful to engage in panhandling, including but not limited to solicitation or begging, when either

the panhandler or beggar or the person being panhandled is located in, on or at the following locations:

- (1) Within twenty (20) feet, in any direction, from any entrance or exit of commercial establishment, including restaurant drive-ins;
- (2) Within twenty (20) feet in any direction from a vehicular exit from commercially zoned property onto a public roadway;
- (3) Within twenty (20) feet, in any direction, of any bus or trolley stop or any public transportation facility;
- (4) Within twenty (20) feet, in any direction, of an automated teller machine or any electronic information processing device which accepts or dispenses cash in connection with a credit, deposit or convenience account with a financial institution;
- (5) Within twenty (20) feet, in any direction, of any parking lot, parking garage, parking meter or parking pay station owned or operated by the governmental entity;
- (6) Within twenty (20) feet, in any direction, of any public restroom owned and operated by a governmental agency;
- (7) Within one hundred (100) feet, in any direction, of any daycare or school, including pre-kindergarten through grade 12;
- (8) Sidewalk approach within one hundred and fifty (150) feet of any signalized intersection of: 1) arterial roads; 2) collector roads; and 3) arterial and collector roads, as such roads are defined by the Florida Department of Transportation;

Sec. 46-69. - Prohibited conduct, proximity and location restrictions.

- (a) It shall be unlawful for any person to engage in Aggressive Panhandling within the City of Port Orange.
- (b) It shall be unlawful for any person to engage in Panhandling when either the person engaged in Panhandling or the panhandler or the person being panhandled, is located in, on or at the following locations:
 - (1) Within twenty (20) feet, in any direction, from any entrance or exit of commercial establishment, including restaurant drive ins;
 - (2) Within twenty (20) feet, in any direction from a vehicular exit from commercially zoned property onto a public roadway;
 - (3) Within twenty (20) feet, in any direction, of any bus or trolley stop or any public transportation facility;
 - (4) Within twenty (20) feet, in any direction, of an automated teller machine or any electronic information processing device which accepts or dispenses cash in connection with a credit, deposit or convenience account with a financial institution;

- (5) Within twenty (20) feet, in any direction, of any parking lot, parking garage, parking meter or parking pay station owned or operated by the City;
- (6) Within twenty (20) feet, in any direction, of any public restroom owned and operated by a governmental agency;
- (7) Within one hundred (100) feet, in any direction, of any daycare or school, including pre-kindergarten through grade 12;
- (8) Sidewalk approach within one hundred and fifty (150) feet of any signalized intersection of: 1) arterial roads; 2) collector roads; and 3) arterial and collector roads, as such roads are defined by the Florida Department of Transportation;

(c) It shall be unlawful for any person to engage in the following prohibited conduct:

- (1) Panhandle or solicit or beg at any lawfully permitted outdoor dining area, amphitheater, amphitheater seating area, playground or lawfully permitted outdoor merchandise area, provided such areas are in active use at the time;
- (2) Panhandle, solicit or beg at any transit stop or taxi stand or in a public transit vehicle;
- (3) Panhandle, solicit or beg while the person or persons being solicited is standing in line waiting to be admitted to a commercial establishment;
- (4) Panhandle, solicit or beg while under the influence of alcohol or after having illegally used any controlled substance, as defined in the Chapter 893 of the Florida Criminal Statutes; or
- (5) Panhandle, solicit or beg After Dark.

(b) *Penalty.* Any person found guilty of violating the provisions of this article shall be punished in the manner prescribed in Section 1-8 of this Code.

Section 2. The provisions of this Ordinance shall become and be made a part of the Code of Ordinances of the City of Port Orange and the sections of this Ordinance may be renumbered or re-lettered to accomplish such intention. The Code codifier is granted liberal authority to codify the provisions of this Ordinance.

Section 3. All ordinances or parts of ordinances in conflict with the provisions of this Ordinance are hereby repealed to the extent of such conflict.

Section 4. If any provision of this Ordinance or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of this Ordinance which can be given effect without the invalid provision or application, and to this end the provision of this ordinance are declared severable.

Section 5. This Ordinance shall become effective immediately.

MAYOR DONALD O. BURNETTE

ATTEST:

Robin L. Fenwick, MMC, City Clerk

Passed on first reading this _____ day of _____, 2020.

Passed and adopted on second reading and final reading on the ____ day of _____, 2020.

Reviewed and approved: _____
Matthew J. Jones, City Attorney