

DRAFT DOCUMENT: F:\1 COUNTY ATTORNEY'S OFFICE\JAJ\Ordinances\Medicaid-Hospital MSBU\2021-8-6 Proposed Ordinance - Draft9.wpd, August 10, 2021 (11:01am) NOTE: ~~additions/deletions~~ = language proposed for addition/deletion to existing Code provisions.

1 **(b)** Pursuant to Article VIII, Section 1(F) of the Constitution of the State
2 of Florida and Chapter 125 of the Florida Statutes, the Board is hereby authorized to
3 impose a special assessment against private for-profit and not-for-profit hospitals
4 located within the County to fund the non-federal share of Medicaid payments
5 associated with Local Services.

6 **Sec. 15-17. - Findings.**

7 In enacting this Ordinance, the Hernando County Board of County
8 Commissioners makes the following findings:

9 (a) The hospitals in Hernando County's jurisdiction (the "Hospitals")
10 annually provide millions of dollars of uncompensated care to uninsured persons and
11 those who qualify for Medicaid because Medicaid, on average, covers only 60% of
12 the costs of the health care services actually provided by Hospitals to
13 Medicaid-eligible persons, leaving hospitals with significant uncompensated costs;
14 and,

15 (b) The State of Florida (the "State") received federal authority to
16 establish the Statewide Medicaid Managed Care hospital directed payment program
17 (the "DPP") to offset hospitals' uncompensated Medicaid costs and improve quality
18 of care provided to Florida's Medicaid population; and,

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1 (c) Impacted Hospitals have asked Hernando County (the “County”) to
2 impose an assessment upon certain real property owned by the Hospitals to help
3 finance the non-federal share of the State's Medicaid program; and,

4 (d) The only properties to be assessed are the real property sites of such
5 Hospitals; and,

6 (e) The County recognizes that one or more Hospitals within the County's
7 boundaries may be located upon real property leased from governmental entities and
8 that such Hospitals may be assessed, because courts do not make distinctions on the
9 application of special assessments based on “property interests” but rather on the
10 distinction of the classifications of real property being assessed; and,

11 (f) The funding raised by the County assessment will, through
12 intergovernmental transfers (“IGTs”) provided consistent with federal guidelines,
13 support additional funding for Medicaid payments to Hospitals; and,

14 (g) The County acknowledges that the assessed Hospital properties will
15 benefit directly and especially from the assessment as a result of the above-described
16 additional funding provided to said Hospitals; and,

17 (h) The County has determined that a logical relationship exists between
18 the services provided by the Hospitals, which will be supported by the assessment,
19 and the special and particular benefit to the real property of the Hospitals; and,

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1 (i) The County has an interest in promoting access to health care for its
2 low-income and uninsured residents; and,

3 (j) Leveraging additional federal support through the above-described
4 IGTs to fund Medicaid payments to the Hospitals for health care services persons
5 directly and specifically benefits the Hospitals' properties and supports their
6 continued ability to provide those services; and,

7 (k) Imposing an assessment limited to Hospital properties to help fund the
8 provision of these services and the achievement of certain quality standards by the
9 Hospitals to residents of the County is a valid public purpose that benefits the health,
10 safety, and welfare of the citizens of the County; and,

11 (l) The assessment ensures the financial stability and viability of the
12 Hospitals providing such services; and,

13 (m) The Hospitals are important contributors to the overall County's
14 economy and the financial benefit to these Hospitals directly and specifically
15 supports their mission, as well as their ability to grow, expand, and maintain their
16 facilities in concert with the population growth in the jurisdiction of the County; and,

17 (n) The County finds the assessment will enhance the Hospitals' ability
18 to grow, expand, maintain, improve, and increase the value of their facilities under
19 all present circumstances and those of the foreseeable future; and,

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1 (o) The County is proposing a properly apportioned assessment by which
 2 all Hospitals will be assessed a uniform amount that is compliant with 42 C.F.R. §
 3 433.68(d); and,

4 (p) This Ordinance enables the County to levy uniform non-ad valorem
 5 special assessments, which are fairly and reasonably apportioned among the
 6 Hospitals' properties within the County's jurisdictional limits, to establish and
 7 maintain a system of funding for IGTs to support the non-federal share of Medicaid
 8 payments, thus directly, and specially benefitting, Hospital properties.

9 **Sec. 15-18. - Purpose.**

10 The non-ad valorem special assessment authorized by this article shall be
 11 imposed, levied, collected, and enforced against Assessed Properties located within
 12 the County. Proceeds from the Assessment shall be used to benefit Assessed
 13 Properties through enhanced Medicaid payments for Local Services. When imposed,
 14 the Assessment shall constitute a lien upon the Assessed Properties equal in rank and
 15 dignity with the liens of all state, county, district, or municipal taxes and other non-ad
 16 valorem assessments. Failure to pay may cause foreclosure proceedings to
 17 commence, which could result in loss of title. The Assessment shall be computed and
 18 assessed only in the manner provided in this Ordinance.

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1 **Sec. 15-19. - Alternative Method.**

2 This Ordinance shall be deemed to provide an additional and alternative
 3 method, as specified in § 197.3631, Fla. Stat., for the assessment and collection of
 4 the non-ad valorem special assessment described herein. The Ordinance shall be
 5 regarded as supplemental and additional to powers conferred by other laws and shall
 6 not be regarded as in derogation of any powers now existing, or which may exist in
 7 the future. This Ordinance, being necessary for the health, safety, and welfare of the
 8 inhabitants of the County, shall be liberally construed to effect the purposes hereof.

9 **Sec. 15-20. - Definitions.**

10 When used in this Ordinance, the following terms shall have the following
 11 meanings, unless the context clearly requires otherwise:

12 *Assessed Property* means the real property in the County to which an
 13 Institutional Health Care Provider holds a right of possession and right of use through
 14 an ownership or leasehold interest, thus making the property subject to the
 15 Assessment.

16 *Assessment* means a non-ad valorem special assessment imposed by the
 17 County on Institutional Health Care Providers located in the County limits to fund
 18 the non-federal share of Medicaid and Medicaid managed care payments that will
 19 benefit Hospitals providing Local Services.

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1 Assessment Coordinator means the County Administrator, or the County
2 Administrator's designee, who shall administer the Assessment imposed pursuant to
3 this Ordinance.

4 Assessment Resolution means the resolution described in Section 15-24
5 hereof, which shall be the final proceeding for the imposition of an assessment,
6 establishing the rate for the non-ad valorem assessment for a specific fiscal year.

7 Board means the Board of County Commissioners of Hernando County,
8 Florida.

9 Comptroller means the Hernando County Clerk of the Circuit Court and
10 Comptroller, ex officio Clerk to the Board, or other such person as may be duly
11 authorized to act on such person's behalf.

12 County means Hernando County, Florida.

13 Fiscal Year means the period commencing on October 1 of each year and
14 continuing through the next succeeding September 30, or such other period as may
15 be prescribed by law as the fiscal year for the County.

16 Institutional Health Care Provider means a private for-profit or not-for-profit
17 hospital that provides inpatient hospital services.

18 Local Services means the provision of healthcare services to Medicaid,
19 indigent, and uninsured members of the Hernando County community.

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1 Medicaid Hospital Directed Payment Program means the program authorized
2 by the Centers for Medicare & Medicaid Services (CMS) allowing Florida to direct
3 specific payments made by managed care plans to all hospital providers for Medicaid
4 services.

5 Non-Ad Valorem Assessment Roll means the special assessment roll prepared
6 by the County.

7 Ordinance means the Hernando County Local Provider Participation Fund
8 Ordinance.

9 Property Appraiser means the Hernando County Property Appraiser.

10 Property Owner means the legal title holder(s) of an Assessed Property.

11 Tax Collector means the Hernando County Tax Collector.

12 **Sec. 15-21. - Interpretation.**

13 Unless the context indicates otherwise, the terms “hereof,” “hereby,”
14 “herein,” “hereto,” “hereunder” and similar terms refer to this Article. The term
15 “hereafter” means after, and the term “heretofore” means before the effective date of
16 the Ordinance.

17 **Sec. 15-22. - Scope of Assessment.**

18 (a) Pursuant to § 125.01, Fla. Stat., the Board is hereby authorized to
19 create a non-ad valorem special assessment that shall be imposed, levied, collected,
20 and enforced against Assessed Property to fund the non-federal share of Medicaid

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1 payments benefitting Assessed Properties providing Local Services in the County.
2 Funds generated as a result of the Assessment shall be held in a separate account
3 called the local provider participation fund and shall be available to be used only to
4 (1) provide to the Florida Agency for Health Care Administration the non-federal
5 share for Medicaid payments to be made directly or indirectly in support of hospitals
6 serving Medicaid and low income patients and (2) reimburse the County for
7 administrative costs associated with the implementation of the Assessment
8 authorized by this Ordinance, as further specified in the Assessment Resolution.

9 (b) The Assessment must be broad based, and the amount of the
10 Assessment must be uniformly imposed on each Assessed Property. The Assessment
11 may not hold harmless any Institutional Health Care Provider, as required under 42
12 U.S.C. § 1396b(w). The Assessment shall constitute a lien upon the Assessed
13 Properties equal in rank and dignity with the liens of all state, county, district, or
14 municipal taxes and other non-ad valorem assessments.

15 (c) The creation and implementation of the Assessment will not result in
16 any additional pecuniary obligation on the County, Board, or County residents; the
17 Assessment shall be imposed, levied, collected, and enforced against only Assessed
18 Properties, and the Assessment Resolution shall provide that the County's
19 administrative costs shall be reimbursed from the collected amounts. The County's
20 administrative costs shall not exceed \$150,000. Any reasonable expenses the County

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incurs to collect delinquent assessments, including any attorney's fees incurred by the County in seeking and enforcing the collection of delinquent assessments, are not subject to the limitation on administrative costs.

Sec. 15-23. - Computation of Assessment.

(a) The annual Assessment shall be specified for each Assessed Property. The Board shall set the Assessment in amounts that in the aggregate will generate sufficient revenue to fund the non-federal share of Medicaid payments associated with Local Services to be funded by the Assessment.

(b) The Assessment required of each Assessed Property may not exceed an amount that, when added to the amount of other hospital assessments levied by the state or local government, exceed the maximum percent of the aggregate net patient revenue of all Assessed Hospitals in the County permitted by 42 C.F.R. § 433.68(f)(3)(i)(A). Assessments for each Assessed Property will be derived from data contained in hospital cost reports and/or the Florida Hospital Uniform Reporting System, as available from the Florida Agency for Health Care Administration.

Sec. 15-24. - Petition and Assessment Resolution.

(a) The Board, subject to the provisions of this section and upon a petition requesting the imposition of the Assessment, signed by at least 51 percent of the Property Owners and Institutional Health Care Providers within the County, may levy Assessments pursuant to this Ordinance.

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1 (1) For each fiscal year the Petition shall set forth: (1) the
2 boundaries or other description sufficient to identify the Properties; (2) a brief
3 description of the service requested to be provided; (3) a legal opinion, that is
4 acceptable to the County Attorney's Office, from a duly licensed Florida attorney
5 stating that the imposition of the Mandatory Payment is lawful; and (4) an executed
6 release, in a form acceptable to the County Attorney's Office, wherein the Property
7 Owners and Institutional Health Care Providers state, among other things, that it
8 forever releases the County and its officers, employees, and agents from any and all
9 liability relating to the imposition of the Mandatory Payment. There shall be attached
10 to the petition and made a part thereof a brief description of the Property sufficient
11 to identify the property involved. There shall also be filed with the petition an
12 affidavit of corporate authority that establishes that those signing the petition are duly
13 authorized to sign the petition and to subject the Property to the levy and imposition
14 of the Mandatory Payment as provided in this article.

15 (2) Upon the County's receipt of a petition, the Assessment
16 Coordinator shall transmit one copy to the County Attorney's Office. If the County
17 Attorney's Office determines that the petition has been properly signed and complies
18 with the requirements of this section, the Assessment Coordinator shall prepare an
19 Assessment Resolution.

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(3) The Assessment Resolution shall describe (a) the Medicaid payments proposed for funding from proceeds of the Assessment; (b) the benefits to the Assessment Properties associated with the Assessment; (c) the methodology for computing the assessed amounts; and (d) the method of collection, including how and when the Assessment is to be paid.

Sec. 15-25. - Non-Ad Valorem Assessment Roll.

The Assessment Coordinator shall prepare, or direct the preparation of, the Non-Ad Valorem Assessment Roll, which shall contain the following: the names of the Assessed Properties, the Assessment rate, and the amount of the Assessment to be imposed against each Assessed Property based on the Assessment Resolution. The Non-Ad Valorem Assessment Roll shall be retained by the Assessment Coordinator and shall be open to public inspection.

Sec. 15-26. - Notice by Publication.

Upon completion of the Non-Ad Valorem Assessment Roll, the Assessment Coordinator shall publish once in a newspaper of general circulation within the County, a notice stating that the Board, at a regular, adjourned, or special meeting, on a certain day and hour, not earlier than 20 calendar days from such publication, will hear objections of all interested persons to approve the aforementioned Non-Ad Valorem Assessment Roll. Such notice shall include:

(a) The Assessment rate;

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1 **(b)** The procedure for objecting to the Assessment rate;

2 **(c)** The method by which the Assessment will be collected; and

3 **(d)** A statement that the Non-Ad Valorem Special Assessment Roll is
 4 available for inspection at the Office of the Assessment Coordinator.

5 **Sec. 15-27. - Notice by Mail.**

6 **(a)** In addition to the published notice required by Section 15-26, but only
 7 for the first fiscal year in which an Assessment is imposed by the Board against
 8 Assessed Properties, the Assessment Coordinator shall provide notice of the
 9 proposed Assessment by first class mail to the Assessed Properties. Such notice shall
 10 include:

11 **(1)** The purpose of the Assessment; and,

12 **(2)** The Assessment rate to be levied against each Assessed
 13 Property; and,

14 **(3)** The unit of measurement applied to determine the Assessment;
 15 and,

16 **(4)** The total revenue to be collected by the County from the
 17 Assessment; and,

18 **(5)** A statement that failure to pay the Assessment will cause a tax
 19 certificate to be issued against the property or foreclosure proceedings, either of
 20 which may result in a loss of title to the property; and,

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1 (6) A statement that all affected and/or interested parties have a
2 right to appear at the hearing and to file written objections with the Board within 20
3 days of the notice; and,

4 (7) The date, time, and place of the hearing.

5 (b) Notice shall be mailed at least 20 calendar days prior to the hearing
6 to each Assessed Property at such address as is shown on the Assessment Roll.
7 Notice shall be deemed mailed upon delivery thereof to the possession of the United
8 States Postal Service. The Assessment Coordinator may provide proof of such notice
9 by affidavit. Failure of the Assessed Property to receive such notice, because of
10 mistake or inadvertence, shall not affect the validity of the Assessment Roll or
11 release or discharge any obligation for payment of the Assessment imposed by the
12 Board pursuant to this Article.

13 **Sec. 15-28. - Adoption of Assessment Resolution and Non-Ad Valorem**
14 **Assessment Roll.**

15 At the time named in the notice, the Board shall receive and consider any
16 written objections of interested persons. All objections to the Assessment Resolution
17 and Non-Ad Valorem Assessment Roll shall be made in writing and filed with the
18 Assessment Coordinator at or before the time or adjourned time of such hearing. At
19 the date and time named in the notice, the Board may adopt the Assessment
20 Resolution and Non-Ad Valorem Assessment Roll which shall:

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1 (a) Set the rate of the Assessment to be imposed; and,

2 (b) Approve the Non-Ad Valorem Assessment Roll, with such
3 amendments as it deems just and right; and,

4 (c) Affirm the method of collection.

5 **Sec. 15-29. - Revisions to the Assessment Roll.**

6 The Board may revise the Non-Ad Valorem Assessment Roll during the
7 Fiscal Year to modify the Assessment rate through the adoption of an additional
8 Assessment Resolution, following the procedures described in Sections 15-24
9 through 15-28, inclusive.

10 **Sec. 15-30. - Effect of the Assessment Resolution.**

11 (a) The adoption of an Assessment Resolution shall be the final
12 adjudication of the issues presented (including, but not limited to, the method of
13 apportionment and Assessment, the Assessment rate, the initial rate of Assessment,
14 the Non-Ad Valorem Assessment Roll, and the levy and lien of the Assessments),
15 unless proper steps shall be initiated in a court of competent jurisdiction to secure
16 relief within 20 days from the date of Board action on the Assessment Resolution.

17 The Non-Ad Valorem Assessment Roll shall be delivered to the Tax Collector or
18 such other official as the Board by resolution shall designate.

19 (b) For each year in which the majority of the Board does not vote to use
20 the uniform method to collect the Assessments:

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1 (1) The resolutions and assessment rolls shall be recorded in the
2 Official Records of Hernando County, Florida, and shall constitute notice to the
3 owners of any affected property, and their successors in title, of the pendency of a
4 special assessment lien upon the affected property.

5 (2) The Assessments shall be payable at the time and in the
6 manner stated in the Assessment Resolution. The Assessments shall remain liens,
7 coequal with the lien of all state, county, district and municipal taxes, superior in
8 dignity to all other liens, title and claims, until paid. Any Assessment not paid when
9 due and payable shall have added thereto a penalty at the rate of one percent per
10 month until paid.

11 (3) Upon the failure of any assessment, or installment thereof, to
12 be paid within one year of the date due and payable, the Board shall cause the
13 necessary legal proceedings to be brought by the County Attorney's Office to
14 foreclose the entire balance of the special assessment lien including penalties, court
15 costs and reasonable attorney's fees assessed as part of the foreclosure proceeding.
16 The foreclosure proceeding shall be prosecuted to a sale and conveyance of the
17 property involved in such proceeding as now provided by law in suits to foreclose
18 mortgages.

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1 **Sec. 15-31. - Method of Collection.**

2 The amount of the Assessment is to be collected pursuant to the method that
3 is specified in the Assessment Resolution.

4 **Sec. 15-32. - Refunds.**

5 If, at the end of the Fiscal Year, additional amounts remain in the local
6 provider participation fund, the Board is hereby authorized to make refund to
7 Assessed Properties in proportion to amounts paid in during the Fiscal Year for all
8 or a portion of the unutilized local provider participation fund.

9 **Sec. 15-33. - Responsibility for Enforcement.**

10 The County and its agent, if any, shall maintain the duty to enforce the prompt
11 collection of the Assessment by the means provided herein. The duties related to
12 collection of assessments may be enforced at the suit of any holder of obligations in
13 a court of competent jurisdiction by mandamus or other appropriate proceedings or
14 actions.

15 **Sec. 15-34. - Correction of Errors and Omissions.**

16 No act of error or omission on the part of the Comptroller, Property
17 Appraiser, Tax Collector, Assessment Coordinator, Board, or their deputies or
18 employees shall operate to release or discharge any obligation for payment of the
19 Assessment imposed by the Board under the provision of this Chapter.

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1 **Sec. 15-35. - Limitations on Surcharges.**

2 Payments made by Assessed Properties under this article may not be passed
3 along to patients of the Assessed Property as a surcharge or as any other form of
4 additional patient charge.

5 **Sec. 15-36. - Limitations on Assessments.**

6 This Assessment is authorized only based on the approval by CMS, and
7 related authorization by Florida Legislature, of the directed payment program that
8 will benefit the Assessed Properties. If at any time, due to action at the federal, state
9 or local level, there is no longer an enhanced Medicaid payment benefitting the
10 Assessed Properties, the Board's authority to collect Assessments under this article
11 shall cease. If, at any time, the Assessments are no longer broad-based, the Board's
12 authority to collect Assessments under this article shall be ineffective. If at any time
13 one or more of the Property Owners and Institutional Health Care Providers objects
14 to the Assessment, the Board's authority to collect the Assessments under this article
15 shall cease.

16 **Sec. 15-37 - Hold Harmless and Indemnification.**

17 The Property Owners and Institutional Health Care Providers that are the
18 subject of this Ordinance have requested adoption of this Ordinance and have given
19 assurances to the County that the objectives and procedures addressed in this
20 Ordinance are proper and lawful. Accordingly, the Property Owners and Institutional

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1 Health Care Providers that are the subject of this Ordinance shall hold the County and
 2 its officers, employees, and agents harmless from any claim arising from the adoption
 3 and implementation of this article, and shall indemnify the County and its officers,
 4 employees and agents from any and all claims, suits, damages, disallowances, or other
 5 proceedings, including but not limited to original proceedings, appeals, or any
 6 proceeding before any administrative body or tribunal, and the costs and attorney or
 7 expert fees associated with the defense thereof, that may arise in the event that the
 8 objectives and procedures of this article are challenged by any person, entity, or
 9 government agency. A release of liability agreement shall be submitted, on a form
 10 approved by the Office of the County Attorney as to legal sufficiency, with the
 11 Petition pursuant to section 15-24(a).

12 **Section 2. Applicability.** It is hereby intended that this Ordinance shall constitute a uniform
 13 law applicable in all unincorporated areas of Hernando County, Florida, and to all incorporated areas
 14 of Hernando County where there is no existing conflict of law or municipal ordinance.

15 **Section 3. Severability.** It is declared to be the intent of the Board of County Commissioners
 16 that if any section, subsection, clause, sentence, phrase, or provision of this Ordinance is for any
 17 reason held unconstitutional or invalid, the invalidity thereof shall not affect the validity of the
 18 remaining portions of this Ordinance.

19 **Section 4. Resolution of Conflict of Laws.** In all instances where Florida law, as evidenced
 20 by the Florida Administrative Code, Florida Statutes, applicable case law or otherwise, mandates

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standards or requirements that are stricter than the provisions of this Ordinance, or where a matter is addressed by Florida law that is not addressed by this Ordinance, then said law shall govern. In situations where this Ordinance addresses a matter in a manner that is stricter than that of Florida law, the provisions of this Ordinance shall control.

Section 5. Inclusion in the Code. It is the intention of the Board of County Commissioners of Hernando County, Florida, and it is hereby provided, that the provisions of this Ordinance shall become and be made a part of the Code of Ordinances of Hernando County, Florida. To this end, the sections of this Ordinance may be renumbered or relettered to accomplish such intention, and that the word "ordinance" may be changed to "section," "article," or any other appropriate designation.

Section 6. Conflicting Provisions Repealed. All ordinances or parts of ordinances in conflict with the provisions of this Ordinance are hereby repealed.

Section 7. Effective Date. This Ordinance shall take effect immediately upon receipt of official acknowledgment from the office of the Secretary of State of Florida that this Ordinance has been filed with said office.

BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF HERNANDO COUNTY in Regular Session this _____ day of _____ 2021.

Attest:

**BOARD OF COUNTY COMMISSIONERS
HERNANDO COUNTY, FLORIDA**

DOUGLAS CHORVAT, JR.
Clerk and Comptroller

JOHN ALLOCCO
Chairman

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1 Approved for Form and
2 Legal Sufficiency

3
4 
5
6 Acting County Attorney

Attachment: Proposed Ordinance (18711 : Hernando County Local Provider Participation Fund Ordinance)