

MARGATE, FLORIDA

RESOLUTION NO. 18-024

A RESOLUTION OF THE CITY OF MARGATE, FLORIDA, CALLING ON THE STATE OF FLORIDA, GOVERNOR RICK SCOTT, PRESIDENT DONALD TRUMP, AND THE FEDERAL GOVERNMENT TO REDUCE GUN VIOLENCE IN AMERICA AND HELP PREVENT FUTURE SHOOTINGS BY REQUIRING A BACKGROUND CHECK FOR EVERY FIREARM SALE; SUPPORTING THE PASSAGE OF A RED FLAG LAW; SUPPORTING RAISING THE AGE FOR LEGAL PURCHASE OF FIREARMS, MAGAZINES AND AMMUNITION TO 21; SUPPORTING THE PASSAGE OF LEGISLATION THAT WOULD KEEP MILITARY-STYLE WEAPONS AND HIGH-CAPACITY MAGAZINES AWAY FROM OUR SCHOOLS; AUTHORIZING THE CITY CLERK TO TRANSMIT THIS RESOLUTION; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City of Margate City Commission has repeatedly passed Resolutions urging State and Federal elected bodies to strengthen gun laws meant to protect our community; and

WHEREAS, National and State leaders continue to fail to act to implement sensible gun law reforms that are supported by a majority of the nation; and

WHEREAS, an increase in the amount of hate groups, international and lone wolf domestic terrorism, underfunded community mental health programs, and easy access to military grade, high capacity magazine assault weapons have created circumstances which have led to an unprecedented number of mass shootings in American communities in recent years; and

WHEREAS, in recent years, mass shootings involving military grade-high capacity magazine assault weapons have occurred in 2007 at a college in Virginia, and in 2012 at a Century 16 Movie Theater in Aurora, Colorado; and

WHEREAS, further mass shootings occurred in the 2015 attack at the Inland Regional Center in San Bernardino, California; the 2016 attack on the Pulse nightclub in Orlando, Florida; and the 2017 attack at the Route 91 Harvest Festival in Las Vegas, Nevada; and

WHEREAS, on November 5, 2017, a mass shooting occurred at the First Baptist Church in Sutherland Springs, Texas in which 26 were killed and injured 20 others. As has been noted, “the attack was the deadliest mass shooting by one person in Texas and the fifth-deadliest mass shooting in the United States. It was the deadliest shooting in an American place of worship in modern history, surpassing the Charleston church shooting of 2015[3] and the Waddell Buddhist temple shooting of 1991.”; and

WHEREAS, on February 14, 2018, a mass shooting occurred at Marjory Stoneman Douglas High School in Parkland, Florida killing 17 students, teachers and coaches and wounding 14 others, 5 with life-threatening injuries; and

WHEREAS, an AR-15-style rifle was used in the mass shootings in Newton, Connecticut; Aurora, Colorado; San Bernardino, California; Las Vegas, Nevada; Sutherland Springs, Texas; and Parkland, Florida; and

BACKGROUND CHECKS FOR ALL SALES AND TRANSFERS

WHEREAS, according to Everytown For Gun Safety, which is an independent, non-partisan 501(c)(3) organization dedicated to understanding and reducing gun violence in America:

- Background checks are a central component of America's efforts to keep guns from criminals: since their inception, they have blocked over 3 million gun sales to prohibited purchasers.
- According to a study by the Department of Justice, between 1994 and 2014, federal, state, and local agencies conducted background checks on more than 180 million firearm applications and denied 2.82 million gun sales to prohibited purchasers.

WHEREAS, despite this success, the system is undermined by legal loopholes and missing records that enable too many dangerous individuals to obtain weapons they later use in crimes; and

WHEREAS, it is estimated that state and federal agencies have failed to report more than one million records of persons with dangerous mental illness into the National Instant Criminal Background Check System (“NICS”) which initiates background checks into three databases: the National Crime Information Center (NCIC), the Interstate Identification Index, and the NICS Index; and

WHEREAS, on April 16, 2007, Seung-Hui Cho shot and killed 32 people at Virginia Tech with guns that were legally purchased because records of his mental health status were missing from the NICS; and

WHEREAS, on January 8, 2011, Jared Loughner, someone with a reported history of drug abuse and serious mental illness who should have been in the NICS database but was not, killed six Tucsonans – Christina-Taylor Green, Dorothy Morris, Judge John Roll, Dorwan Stoddard, Phyllis Schneck, and Gabe Zimmerman – and shot 13 others, including U.S. Congresswoman Gabrielle Giffords; and

WHEREAS, on July 20, 2012, James Holmes, using a semi-automatic rifle and other guns, allegedly shot and killed 12 people and injured at least 58 others in a movie theater in Aurora, Colorado, using some of the thousands of rounds of ammunition that the shooter had recently purchased online without any background check; and

WHEREAS, on August 5, 2012, Wade Michael Page, using a semi-automatic handgun, allegedly shot and killed 6 people and injured 3 others at a Sikh temple in Oak Creek, Wisconsin; and

WHEREAS, on October 21, 2012, Radcliffe Haughton, using a semi-automatic handgun, shot and killed his estranged wife and two others; and though a restraining order had been issued against Haughton – making him a prohibited person under federal law – Haughton was able to avoid a background check by purchasing the gun from a private seller through armslist.com; and

WHEREAS, on December 14, 2012, Adam Lanza, using two semi-automatic handguns, shot and killed 27 people, including 20 children at Sandy Hook elementary school; and

WHEREAS, the shooter in the Sutherland Springs, Texas massacre should have been prevented from purchasing any firearm because of a domestic violence conviction and court-martial while in the United States Air Force. However, according to news reports, the Air Force did not provide the conviction to the FBI National Crime Information Center database; and

WHEREAS, in the wake of the Virginia Tech shootings, Virginia and other states have submitted hundreds of thousands of new mental health records into the NICS database, yet 19 states have each submitted fewer than 100 mental health records since that massacre; and

WHEREAS, under federal law, licensed gun dealers are mandated to conduct NICS checks before proceeding with a sale, but this requirement does not apply to so-called private sellers who are present in large numbers at gun shows and sell guns over the internet; and

WHEREAS, it is estimated that 6.6 million guns were sold privately in the U.S. between November 2011 and November 2012, and undercover investigations have shown that many private sellers at gun shows and online will proceed with sales even when they are made aware that prospective purchasers cannot pass a background check; and

WHEREAS, more than 12,000 Americans are murdered with guns every year, and too many of these crimes are committed by individuals who are barred from purchasing or possessing guns under federal law; and

WHEREAS, other tragedies including the 1999 Columbine High School shooting in Colorado, the 2010 attack on law enforcement at the Pentagon, and the 2012 mass shooting at a Pittsburgh psychiatric clinic were perpetrated by individuals who obtained guns through unregulated private sales, with no paperwork required and no questions asked; and

WHEREAS, the Fix Gun Checks Act was introduced in the U.S. Congress, and this legislation would have addressed the two major flaws in the nation's gun background check system by improving compliance with federal record reporting requirements, and by requiring background checks for all U.S. gun sales; and

WHEREAS, 90 percent of Americans and 90 percent of gun owners support fixing gaps in the gun background check database, and 86 percent of Americans, 82 percent of gun owners nationwide, and 74 percent of National Rifle Association ("NRA") members support mandatory criminal background checks for all gun sales; and

WHEREAS, more than 50 national organizations support closing gaps in the gun background check database and requiring a background check for all gun sales, including the U.S. Conference of Mayors, National Urban League, National Association for the Advancement of Colored People, and the National Coalition Against Domestic Violence, the International Association of Chiefs of Police, the Major Cities Chiefs Association and the Police Executive Research Forum; and

RED FLAG LAWS

WHEREAS, implementation of RED FLAG LAWS, allows the community to protect itself and according to Everytown For Gun Safety:

- Like many mass shooters, the 19-year-old suspected of shooting and killing at least 17 people and injuring at least 14 others at a high school in Parkland, Florida displayed warning signs prior to the shooting. Unfortunately, Florida does not have a Red Flag Law—a law increasingly being adopted by states that empowers family members and law enforcement to seek an Extreme Risk Protection Order, a court order temporarily restricting a person’s access to guns when they pose a danger to self or others. Five states have Red Flag Laws in place—and bills are currently pending in another 18 states;
- Red Flag Laws can save lives by creating a way for family members and law enforcement to act before warning signs escalate into tragedies;
- When a person is in crisis, loved ones and law enforcement are often the first to see signs that they pose a threat. Red Flag Laws allow them to seek help from a court to remove guns from dangerous situations;
- Red Flag Laws empower law enforcement and immediate family members to petition a court for an Extreme Risk Protection Order, sometimes called a Gun Violence Restraining Order.
- If a court finds that a person poses a significant danger of injuring themselves or others with a firearm, that person is temporarily prohibited from purchasing and possessing guns and is required to turn over their guns while the order is in effect.
- Five states have Red Flag Laws—and bills are currently pending in another 18 states, including Florida;
- A nationwide study of mass shootings from 2009 to 2016 revealed that in least 42 percent of those incidents, there is documentation that the attacker exhibited dangerous warning signs before the shooting.
- The alleged mass shooter who shot and killed 17 people and injured 14 others at a high school in Parkland, Florida on February 14, 2018 also displayed warning signs prior to the shooting. He was expelled from school, and students and teachers reported that he displayed threatening behavior. His mother contacted law enforcement on multiple occasions regarding his behavior, and he was known to possess firearms.
- Final orders—which generally last for up to one year—can only be issued after notice and an opportunity to be heard. At the hearing, the

person would have the chance to respond to evidence that they are too dangerous to have a gun.

- A temporary order—which typically lasts 14 to 21 days—can be issued before a full hearing is held, but only if there is clear evidence that an order is necessary to prevent immediate danger.

MINORS UNDER FLORIDA LAW ARE PERMITTED TO PURCHASE GUNS

WHEREAS, according the Giffords Law Center to Prevent Gun Violence:

- Laws imposing minimum age requirements for the possession and purchase of firearms are intended to decrease access to firearms by young people and, correspondingly, to decrease the number of suicides, homicides, and unintentional shootings among that population;
- In 2014, 21,101 people under the age of 21 were shot by guns. 3,265 died from those gunshot wounds. Of these deaths, 1,925 were classified as homicides, 1,145 as suicides, and 122 as the result of unintentional shootings;
- Firearms were used in 41% of suicide deaths among individuals under age 21 in 2014.

WHEREAS, according the Giffords Law Center to Prevent Gun Violence:

- Federal law in this area distinguishes between long guns (assault style rifles, rifles and shotguns) and handguns, and between gun possession and gun sales. Federal law also provides stronger age restrictions for sales by licensed gun sellers.
- Licensed firearms dealers may not sell or deliver a handgun or ammunition for a handgun to any person the dealer has reasonable cause to believe is under age 21.
- Dealers may not sell or deliver a long gun, or ammunition for a long gun, to any person the dealer knows or has reasonable cause to believe is under age 18.
- Unlicensed persons may not sell, deliver or otherwise transfer a handgun or handgun ammunition to any person the transferor knows or has reasonable cause to believe is under age 18, with certain exceptions.

- Unlicensed persons may sell, deliver, or otherwise transfer a long gun or long gun ammunition to a person of any age.

WHEREAS, in summary, with some exceptions, federal law prohibits the possession of a handgun or handgun ammunition by any person under the age of 18 but does not set a minimum age for the possession of long guns or long gun ammunition; and

WHEREAS, under Florida law, the purchase of a long gun is allowed for a person under 21 years of age; and

WHEREAS, in order to restrict such purchase and/or possession of a long gun, high capacity magazines and ammunition, the Florida legislature would need to amend Fla. Stat. §§ 790.17(2), 790.18; Fla. Stat. § 790.22(3), (5); and

ASSAULT WEAPON AND HIGH CAPACITY MAGAZINE RESTRICTIONS HAVE BEEN HELD CONSTITUTIONAL

WHEREAS, Maryland, Connecticut and New York, in response to mass shootings resulting in the massacre of students, teachers and others, passed similar prohibitions on sales of assault weapons and large capacity magazines; and

WHEREAS, after lengthy litigation, those laws were upheld by U.S. Federal Courts as constitutional, concluding that the Second Amendment does not reach to protect the purchase and sale of weapons of war. Kolbe v. Hogan, 849 F.3d 114 (Fourth Cir. 2017); New York State Rifle and Pistol Ass'n, Inc. v. Cuomo, 804 F.3d 242 (Second Cir. 2015); and

WHEREAS, in response to the Sandy Hook massacre, Maryland enacted the State's Firearm Safety Act of 2013 (the "FSA"), which bans the AR-15 and other military-style rifles and shotguns (referred to as "assault weapons") and detachable large-capacity magazines, providing "that a person may neither "transport an assault weapon into the State" nor "possess, sell, offer to sell, transfer, purchase, or receive an assault weapon." See Md. Code Ann., Crim. Law § 4-303(a). The banned assault weapons include "assault long gun[s]" and "copycat weapon[s]." Id. § 4-301(d)."; and

WHEREAS, the Maryland FSA defines an assault long gun as a rifle or shotgun "listed under § 5-101(r)(2) of the Public Safety Article," including the "Colt AR-15," "Bushmaster semi-auto rifle," and "AK-47 in all forms." See Md. Code Ann., Crim. Law § 4-301(b); Md. Code Ann., Pub. Safety § 5-101(r)(2). The list of prohibited rifles and

shotguns consists of “specific assault weapons or their copies, regardless of which company produced and manufactured that assault weapon.” See Md. Code Ann., Pub. Safety § 5-101(r)(2)”; and

WHEREAS, the Maryland “FSA provides a separate definition for a copycat weapon that is premised on a weapon’s characteristics, rather than being identified by a list of specific firearms. In relevant part, a copycat weapon means: (i) a semiautomatic centerfire rifle that can accept a detachable magazine and has any two of the following: 1. a folding stock; 2. a grenade launcher or flare launcher; or 3. a flash suppressor; (ii) a semiautomatic centerfire rifle that has a fixed magazine with the capacity to accept more than 10 rounds; (iii) a semiautomatic centerfire rifle that has an overall length of less than 29 inches; * * * (v) a semiautomatic shotgun that has a folding stock; or (vi) a shotgun with a revolving cylinder. See Md. Code Ann., Crim. Law § 4-301(e)(1).”; and

WHEREAS, “[i]n banning large-capacity magazines along with assault weapons, the FSA provides that “[a] person may not manufacture, sell, offer for sale, purchase, receive, or transfer a detachable magazine that has a capacity of more than 10 rounds of ammunition for a firearm.” See Md. Code Ann., Crim. Law § 4-305(b). A detachable magazine is defined as “an ammunition *123 feeding device that can be removed readily from a firearm without requiring disassembly of the firearm action or without the use of a tool, including a bullet or cartridge.” Id. § 4-301(f).”; and

WHEREAS “[u]nder the FSA’s exceptions, “[a] licensed firearms dealer may continue to possess, sell, offer for sale, or transfer an assault long gun or a copycat weapon that the licensed firearms dealer lawfully possessed on or before October 1, 2013,” and “[a] person who lawfully possessed, has a purchase order for, or completed an application to purchase an assault long gun or a copycat weapon before October 1, 2013, may ... possess and transport the assault long gun or copycat weapon.” See Md. Code Ann., Crim. Law § 4-303(b)(2), (3)(i). The FSA does not ban the possession of a large-capacity magazine. Further, the FSA explicitly allows the receipt and possession of an assault weapon or large-capacity magazine by a retired Maryland law enforcement officer if the assault weapon or large-capacity magazine “is sold or transferred to the person by the law enforcement agency on retirement” or “was purchased or obtained by the person for official use with the law enforcement agency before retirement.” Id. § 4-302(7).”, and

WHEREAS the Kolbe Court stated “[s]imply put, AR-15-type rifles are “like” M16 rifles under any standard definition of that term. See, e.g., Webster’s New International Dictionary 1431 (2d ed. 1948) (defining “like” as “[h]aving the same, or nearly the same, appearance, qualities, or characteristics; similar”); The New Oxford American Dictionary

982 (2d ed. 2005) (defining “like” as “having the same characteristics or qualities as; similar to”). Although an M16 rifle is capable of fully automatic fire and the AR-15 is limited to semiautomatic fire, their rates of fire (two seconds and as little as five seconds, respectively, to empty a thirty-round magazine) are nearly identical. Moreover, in many situations, the semiautomatic fire of an AR-15 is more accurate and lethal than the automatic fire of an M16. Otherwise, the AR-15 shares the military features—the very qualities and characteristics—that make the M16 a devastating and lethal weapon of war.”; and

WHEREAS, the Kolbe Court held “[w]hatever their other potential uses—including self-defense—the AR-15, other assault weapons, and large-capacity magazines prohibited by the FSA are unquestionably most useful in military service. That is, the banned assault weapons are designed to “kill[] or disabl[e] the enemy” on the battlefield. See J.A. 735. The very features that qualify a firearm as a banned assault weapon—such as flash suppressors, barrel shrouds, folding and telescoping stocks, pistol grips, grenade launchers, night sights, and the ability to accept bayonets and large-capacity magazines—“serve specific, combat-functional ends.” See *id.* at 1120. And, “[t]he net effect of these military combat features is a capability for lethality—more wounds, more serious, in more victims—far beyond that of other firearms in general, including other semiautomatic guns.” *Id.* at 1121-22.”; and

WHEREAS, the Kolbe Court found, “[l]ikewise, the banned large-capacity magazines “are particularly designed and most suitable for military and law enforcement applications.” See J.A. 891 (noting that large-capacity magazines are meant to “provid[e]] soldiers with a large ammunition supply and the ability to reload rapidly”). Large-capacity magazines enable a shooter to hit “multiple human targets very rapidly”; “contribute to the unique function of any assault weapon to deliver extraordinary firepower”; and are a “uniquely military feature[]” of both the banned assault weapons and other firearms to which they may be attached. See *id.* at 1151.”; and

WHEREAS, the Kolbe Court concluded, “[b]ecause the banned assault weapons and large-capacity magazines are clearly most useful in military service, we are compelled by *Heller* to recognize that those weapons and magazines are not constitutionally protected.”; and

WHEREAS, the en banc panel of the Fourth Circuit in Kolbe held that “[1] banned weapons and magazines were not protected by Second Amendment; [2] the Maryland FSA did not violate Equal Protection Clause; and [3] the Maryland FSA was not void for vagueness under Due Process Clause;” and

WHEREAS, the Kolbe holding that such reasonable restrictions did not violate the Second Amendment was consistent with the earlier holding of the Second Circuit in New York State Rifle and Pistol Ass'n, Inc. v. Cuomo, 804 F.3d 242 (Second Cir. 2015) which held: “[1] laws prohibiting possession of certain semiautomatic weapons, large-capacity magazines, and on number of bullets in a magazine would be reviewed under intermediate scrutiny; [2] prohibitions on possessing certain semiautomatic assault rifles with one or more military-style features did not violate the Second Amendment’s right to bear arms; [3] prohibitions on possessing large-capacity magazines not violate the Second Amendment’s right to bear arms; [4] New York law prohibiting possession of a magazine for a firearm loaded with more than seven rounds violated the Second Amendment right to bear arms; [5] laws criminalizing possession of magazines that could be “readily restored or converted to accept” more than ten rounds were not unconstitutionally vague; [6] Connecticut law prohibiting possession of certain specified firearms and any “copies or duplicates thereof with the capability of” the listed models was not unconstitutionally vague; [7] New York law prohibiting possession of semiautomatic pistols that were semiautomatic versions of an automatic rifle, shotgun or firearm” was not unconstitutionally vague; and [8] provision of New York law prohibiting semiautomatic assault rifles with a “muzzle break” was not unconstitutionally vague;” and

WHEREAS, presently pending in Florida is similar legislation, Senate Bill 196/House Bill219 which would prohibit “the sale or transfer of an assault weapon or large-capacity magazine; specifying circumstances in which the manufacture or transportation of assault weapons or large-capacity magazines is not prohibited; providing enhanced criminal penalties for certain offenses when committed with an assault weapon or large-capacity magazine, etc.,” and

WHEREAS, following the lead of other states, and having had Federal Courts consistently hold that such restrictions are constitutional, it is time to implement such restrictions; and

FLORIDA LAW INAPPROPRIATELY PUNISHES ELECTED OFFICIALS FOR TRYING TO PROTECT THEIR RESIDENTS

WHEREAS, in 1987, the Florida Legislature passed Chapter 87-23, Laws of Florida, which created Florida Statutes section 790.33 and declared the preemption of the whole field of regulation of firearms and ammunition, reserving the exclusive right to regulate and/or enforce any laws involving firearms and ammunition to the Florida Legislature and the State of Florida; and

WHEREAS, in 2011, the Florida Legislature passed and Governor Scott signed Chapter 2011-109, Laws of Florida to allow the Governor to remove from office, without due process of law, any person acting in an official capacity for a local authority, including an elected official, who passes an ordinance or causes to be enforced a local ordinance, administrative rule or regulation impinging on the exclusive authority of Florida legislature to regulate firearms and ammunition in all respects; and

WHEREAS, the 2011 Amendment to Florida Statutes section 790.33 provides for personal liability of any person who enacts or causes to be enforced any local ordinance impinging upon the Legislature's occupation of the whole field of regulation of firearms and ammunition; and

WHEREAS, the 2011 Amendment to Florida Statutes section 790.33 also provides that if a Court finds a willful or knowing violation of the prohibition on the ability of local government to regulate or enforce firearms or ammunition in any regard, the Court may impose a personal fine of up to \$5,000 on the elected or appointed local government official(s) or administrative agency head and cause the county, agency, municipality, district or other entity to reimburse the legal cost of those who sue to overturn the ordinance, rule, regulation and/or enforcement effort and to pay their actual damages; and

WHEREAS, pursuant to Florida Statutes section 790.33, local communities appear powerless to enumerate elements of the standard of care which should be met to protect the community; and

WHEREAS, the City Commission of the City of Margate urgently requests the Governor and Legislature of the State of Florida to address this deficit in law by enacting legislation that would allow municipalities the ability to address these public health, safety and welfare items by enacting local legislation without fear of removal from office, in accordance with the unique local characteristics of a community and with due respect to the risk to public; and

WHEREAS, local governments have a duty to protect their residents, visitors, tourists and businesses and that such duty should not be infringed upon by State government.

NOW THEREFORE, BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF MARGATE, FLORIDA:

Section 1. The foregoing Whereas clauses are hereby ratified and incorporated as the legislative intent of this Resolution.

Section 2. The City supports federal legislation that would require a background check for every firearm sale whether the legislation is enacted by passage of the Fix Gun Checks Act in the United States Congress or some other legislation.

Section 3. The City urges the Florida legislature to immediately pass a “Red Flag Law,” to protect our community from those who are identifiable as a threat to safety and security.

Section 4. The City urges immediate amendment to Florida law to raise the age for legal purchase of guns, including long guns, high capacity magazines, and ammunition to 21 years of age.

Section 5. The City urges immediate passage of legislation that would get military-style weapons and high-capacity magazines away from our community and especially our schools and that would increase the minimum age to purchase and possess a weapon from age 18 to age 21.

Section 6. The City urges the Florida legislature to repeal the draconian punitive punishments of elected officials set forth in Florida Statutes section 790.33.

Section 7. The City urges Florida Governor Rick Scott to take action to pass gun reform, even if it means extending the 2018 legislative session, to:

- a. Raise the minimum age to allow the purchase of guns and ammunition to 21;
- b. Eliminate the loopholes in the private transfer of weapons and require full background checks for all sales and transfers of firearms;
- c. Repeal the prohibitions and penalties in Section 790.33(3), Florida Statutes;
- d. Enact legislation regarding Red Flag Law to allow Extreme Risk Protection Orders such as those proposed in House Bill 231 and Senate Bill 530;
- e. Enact the Gun Safety legislation set forth in Senate Bill 196 and House Bill 219 to place constitutional restrictions on the sale and transfer of assault-style weapons and high-capacity magazines.

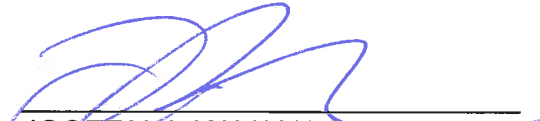
Section 8. The City Clerk is hereby directed to distribute this Resolution to President Donald Trump, Governor Rick Scott, the United States Congressional

Delegations from Florida, the Broward County Legislative Delegation, and the Broward League of Cities.

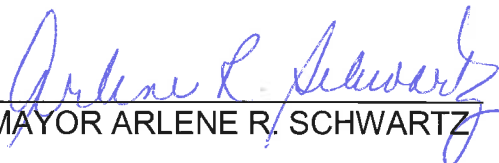
Section 9. Effective Date. This Resolution shall be effective immediately upon its passage.

PASSED, ADOPTED AND APPROVED THIS 7TH day of MARCH, 2018.

ATTEST:



JOSEPH J. KAVANAGH
CITY CLERK



MAYOR ARLENE R. SCHWARTZ

RECORD OF VOTE

Peerman	<u>YES</u>
Simone	<u>YES</u>
Ruzzano	<u>YES</u>
Caggiano	<u>YES</u>
Schwartz	<u>YES</u>