Code of Ordinances

CITY OFFICIALS

_____

Jayme Stayton

Mayor

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Alan Souders

Jimmy Monk

Alicia Jo Reese

Katheryne Horace

Kevin Turley

City Council

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Angelia Filmore

City Clerk

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Henry B. Steagall III

City Attorney

PREFACE

This Code constitutes a recodification of the general and permanent ordinances of the City of Daleville, Alabama.

Source materials used in the preparation of the Code were the 1979 Code and ordinances subsequently adopted by the city council. The source of each section is included in the history note appearing in parentheses at the end thereof. The absence of such a note indicates that the section is new and was adopted for the first time with the adoption of the Code. By use of the comparative tables appearing in the back of this Code, the reader can locate any section of the 1979 Code and any subsequent ordinance included herein.

The chapters of the Code have been conveniently arranged in alphabetical order, and the various sections within each chapter have been provided catchlines to facilitate usage. Notes which tie related sections of the Code together and which refer to relevant state law have been included. A table listing the state law citations and setting forth their location within the Code is included at the back of this Code.

Chapter and Section Numbering System

The chapter and section numbering system used in this Code is the same system used in many state and local government codes. Each section number consists of two parts separated by a dash. The figure before the dash refers to the chapter number, and the figure after the dash refers to the position of the section within the chapter. Thus, the second section of chapter 1 is numbered 1-2, and the first section of chapter 6 is 6-1. Under this system, each section is identified with its chapter, and at the same time new sections can be inserted in their proper place by using the decimal system for amendments. For example, if new material consisting of one section that would logically come between sections 6-1 and 6-2 is desired to be added, such new section would be numbered 6-1.5. New articles and new divisions may be included in the same way or, in the case of articles, may be placed at the end of the chapter embracing the subject, and, in the case of divisions, may be placed at the end of the article embracing the subject. The next successive number shall be assigned to the new article or division. New chapters may be included by using one of the reserved chapter numbers. Care should be taken that the alphabetical arrangement of chapters is maintained when including new chapters.

Page Numbering System

The page numbering system used in this Code is a prefix system. The letters to the left of the colon are an abbreviation which represents a certain portion of the volume. The number to the right of the colon represents the number of the page in that portion. In the case of a chapter of the Code, the number to the left of the colon indicates the number of the chapter. In the case of an appendix to the Code, the letter immediately to the left of the colon indicates the letter of the appendix. The following are typical parts of Codes of Ordinances, which may or may not appear in this Code at this time, and their corresponding prefixes:

CHARTER	CHT:1
RELATED LAWS	RL:1
SPECIAL ACTS	SA:1
CHARTER COMPARATIVE TABLE	CHTCT:1
RELATED LAWS COMPARATIVE TABLE	RLCT:1
SPECIAL ACTS COMPARATIVE TABLE	SACT:1
CODE	CD1:1
CODE APPENDIX	CDA:1
CODE COMPARATIVE TABLES	CCT:1
STATE LAW REFERENCE TABLE	SLT:1
CHARTER INDEX	CHTi:1
RELATED LAWS INDEX	RLi:1
SPECIAL ACTS INDEX	SAi:1
CODE INDEX	CDi:1

Index

The index has been prepared with the greatest of care. Each particular item has been placed under several headings, some of which are couched in lay phraseology, others in legal terminology, and still others in language generally used by local government officials and employees. There are numerous cross references within the index itself which stand as guideposts to direct the user to the particular item in which the user is interested.

Looseleaf Supplements

A special feature of this publication is the looseleaf system of binding and supplemental servicing of the publication. With this system, the publication will be kept up to date. Subsequent amendatory legislation will be properly edited, and the affected page or pages will be reprinted. These new pages will be distributed to holders of copies of the publication, with instructions for the manner of inserting the new pages and deleting the obsolete pages.

Keeping this publication up to date at all times will depend largely upon the holder of the publication. As revised pages are received, it will then become the responsibility of the holder to have the amendments inserted according to the attached instructions. It is strongly recommended by the publisher that all such amendments be inserted immediately upon receipt to avoid misplacing them and, in addition, that all deleted pages be saved and filed for historical reference purposes.

Acknowledgments

This publication was under the direct supervision of Daniel F. Walker, Code Attorney, and Ramona Connors, Editor, of the Municipal Code Corporation, Tallahassee, Florida. Credit is gratefully given to the other members of the publisher's staff for their sincere interest and able assistance throughout the project.

The publisher is most grateful to Wayne Stripling, Code Enforcement Officer, for his cooperation and assistance during the progress of the work on this publication. It is hoped that his efforts and those of the publisher have resulted in a Code of Ordinances which will make the active law of the city readily accessible to all citizens and which will be a valuable tool in the day-to-day administration of the city's affairs.

Copyright

INDEX

Sec. 2-42. - Calling special meetings.

Sec. 2-43. - Quorum.

Sec. 2-44. - Meetings open.

Sec. 2-45. - Attendance by officers.

Sec. 2-46. - Rules or order of procedure govern meetings.

Sec. 2-47. - Order of business.

Sec. 2-48. - Committee reports.

Sec. 2-49. - Speaking on same subject limited.

Sec. 2-50. - Permission for non-member to address council.

Sec. 2-51. - Fine for failure of officer to report.

Sec. 2-52. - Reducing of motions, resolutions and ordinances to writing.

Sec. 2-53. - Motions to reconsider restricted.

Sec. 2-54. - Recording of vote; division on the question.

Sec. 2-55. - Deciding questions of order.

Sec. 2-56. - Substitution of presiding officer for certain purposes.

Sec. 2-57. - Order of motions and questions.

Sec. 2-58. - Lying over of permanent measures.

Sec. 2-59. - Motion to adjourn.

Sec. 2-60. - Amendment or suspension of rules.

Sec. 6-2. - Interstate commerce and federal government business excluded.

Sec. 6-3. - Business outside city and police jurisdiction excluded.

Sec. 6-4. - Chapter cumulative.

Sec. 6-5. - Adoption of certain state control board regulations.

Sec. 6-6. - License—Required.

Sec. 6-7. - Same—Eligibility; application; approval; revocation authorized; definitions.

Sec. 6-8. - Same—Fees.

Sec. 6-9. - Tax—Levied.

Sec. 6-10. - Same—Reports and payment; delinquency penalty.

Sec. 6-11. - Same—Collection from purchasers.

Sec. 6-12. - Same—Records to be kept.

Sec. 6-13. - Reporting delinquencies.

Sec. 6-14. - Proximity of beer establishment to church, school, park or playground.

Sec. 6-15. - Hours of closing.

Sec. 6-16. - Broken seals.

Sec. 6-17. - Drinking outside of establishment.

Sec. 6-18. - Purchase by, sale to, etc., minors; misrepresentations as to age.

ARTICLE I. - IN GENERAL

Sec. 18-1. - Fire code—Adopted; authentication.

Sec. 18-2. - Same—Amendments; conflicts; violations.

Sec. 18-3. - Firefighting apparatus and equipment—Adequacy.

Sec. 18-4. - Same—Purchase.

Sec. 18-5. - Same—Housing therefor.

Sec. 18-6. - Same—For turning in alarm.

Sec. 18-7. - Same—Improper use.

Sec. 18-8. - Same—Permission to use.

Sec. 18-9. - Same—Driving over hose.

Sec. 18-10. - Duties of director of public safety in event of fire.

Sec. 18-11. - Right-of-way of vehicles.

Sec. 18-12. - Obstructing station, hydrant, etc.

Sec. 18-13. - Compliance with fire hazard abatement order.

Sec. 18-14. - Service charge outside city—Schedule.

Sec. 18-15. - Same—Applicable on each occasion.

Sec. 18-16. - Same—Billing.

Sec. 18-17. - Same—Suit to recover.

Secs. 18-18—18-37. - Reserved.

ARTICLE II. - FIREWORKS

Sec. 24-25. - Definitions.

Sec. 24-26. - Accessibility of sewers.

Sec. 24-27. - Enforcement—By county board of health; compliance by all persons.

Sec. 24-28. - Same—Prohibiting use or occupancy; requiring vacating of premises.

Sec. 24-29. - Same—Inspection of premises.

Sec. 24-30. - Applicability of regulations.

Sec. 24-31. - Responsibility for sanitary facilities—Generally.

Sec. 24-32. - Same—Of landlords.

Sec. 24-33. - Same—For cost of installation.

Sec. 24-34. - Responsibility for sanitary sewage disposal.

Sec. 24-35. - Declaration of nuisance; abatement.

Sec. 24-36. - Unprotected water supplies.

Sec. 24-37. - Water flush closets—Requirements where sanitary sewer unavailable.

Sec. 24-38. - Same—Installation and connection when sanitary sewer available; discontinuance of septic tank use.

Sec. 24-39. - Same—Requirements where sanitary sewer available.

Sec. 24-40. - Same—Adequate construction, light and ventilation of enclosures.

Sec. 44-21. - Severability.

Sec. 44-22. - Definitions.

Sec. 44-23. - Overall policy and desired goals for special use permits for wireless telecommunications facilities.

Sec. 44-24. - Special use permit application and other requirements.

Sec. 44-25. - Location of wireless telecommunications facilities.

Sec. 44-26. - Shared use of wireless telecommunications facilities and other structures.

Sec. 44-27. - Height of telecommunications towers.

Sec. 44-28. - Visibility of wireless telecommunications facilities.

Sec. 44-29. - Security of wireless telecommunications facilities.

Sec. 44-30. - Signage.

Sec. 44-31. - Lot size and setbacks.

Sec. 44-32. - Retention of expert assistance and reimbursement by applicant.

Sec. 44-33. - Exceptions from a special use permit for wireless telecommunications facilities.

Sec. 44-34. - Public hearing required.

Sec. 44-35. - Action on an application for a special use permit for wireless telecommunications facilities.

Sec. 44-36. - Recertification of a special use permit for wireless telecommunications facilities.

ARTICLE II. - TREES

Chapter 1 - GENERAL PROVISIONS

Sec. 1-1. - How Code designated and cited.

The ordinances embraced in the following chapters and sections shall constitute and be designated "The Code of Ordinances, City of Daleville, Alabama," and may be so cited.

(Code 1979, § 1-1)

State Law reference— Authority to adopt code of ordinances, Code of Ala. 1975, § 11-45-7.

Sec. 1-2. - Rules of construction and definitions.

In the construction of this Code, and of all ordinances, the following rules shall be observed; provided, these rules of construction shall not be applied to any section of this Code or any ordinance which contains any express provisions excluding such construction or where the subject matter or content of such section may be repugnant thereto:

Bond. The term "bond" means an obligation in writing, binding the signatory to pay a sum certain upon the happening or failure of an event.

Building. The term "building" means any structure intended to have walls and a roof.

Business. The term "business" means any profession, trade, occupation and any other commercial enterprise conducted for monetary reward.

Chapter, article, division, subdivision, section, subsection. Unless otherwise indicated in the context, reference in this Code to chapters, articles, divisions, subdivisions, sections or subsections shall mean chapters, articles, divisions, subdivisions, sections or subsections of this Code.

State Law reference— Similar provision regarding state statutes, Code of Ala. 1975, § 1-1-15.

City, this city, in the city. The term "the city," "this city" or "in the city" means the City of Daleville, Alabama; and shall include any duly authorized officer or employee if the context so admits. Every section contained in this Code, whether expressed to apply "in the city" or not so expressed, shall apply, and have full force and effect within the corporate limits of the city and within the police jurisdiction thereof and within the territorial limits of any property or right-of-way owned by the city, wherever situated; provided that any such section shall not apply within the police jurisdiction if expressed to apply within the corporate limits of the city, or if the same cannot legally be made to apply in the police jurisdiction, or if the same cannot physically apply in the police jurisdiction, or if the same,

otherwise than by use of such term as "in the city" or "within the city," contains clear inherent evidence of intent that it shall not apply in the police jurisdiction.

City officials, boards, commissions, departments, officers and employees. Whenever reference is made to officials, boards, commissions, departments, officers or employees by title only, this shall be construed as though followed by the words "of the City of Daleville" and shall be taken to mean the official, board, commission, department, officer or employee of this city having the title mentioned or performing the duties indicated; and powers and authority granted to them shall be deemed to be grants of such powers and authority to their respective duly designated subordinates.

Code of Alabama. Whenever reference is made to the "Code of Alabama" or the "Alabama Code" it means the Code of Alabama, 1975, as amended, or any subsequent code of this state.

Computation of time. The time in which an act is to be done must be computed by excluding the first and including the last day; and if the last day is a Sunday or legal holiday, that shall be excluded.

Council, city council, governing body. The term "council," "city council" or "governing body" means the city council of the City of Daleville, Alabama.

County, this county. The term "county" or "this county" means Dale County, Alabama.

Definitions. The definitions given within a chapter or article shall apply only to words or phrases used in such chapter or article, unless otherwise provided.

Gender. A word importing one gender only shall also extend and be applied to the opposite gender, and to firms, partnerships and corporations.

Joint authority. All words giving joint authority to three or more persons or officers give such authority to a majority of such persons or officers, unless it is otherwise declared.

Jurisdiction. All provisions of this Code and other laws and ordinances of the city prescribing police or sanitary regulations and prescribing penalties for violations thereof shall have force and effect in the corporate limits of the city and in the police jurisdiction thereof and on any property or rights-of-way belonging to the city, except those provisions, laws and ordinances which specifically limit their force and effect to the corporate limits, or which, for any reason mentioned under the definition of "city" in this section, cannot legally apply in any such area outside of the corporate limits.

State Law reference— City planning commission jurisdiction over the subdivision of land extends five miles from the city, with exceptions, Code of Ala. 1975, § 11-52-30.

Licensee. The term "licensee" means any person to whom a city license is issued.

May. The term "may" is permissive and discretionary.

Month. The term "month" means a calendar month, unless otherwise expressed.

Must. The term "must" is to be construed as being mandatory.

Number. Words used in the singular include the plural, and the plural includes the singular number.

Oath. The term "oath" includes affirmation.

Occupant. The term "occupant" means tenant or person in actual possession.

Operate. The term "operate" means to carry on, keep, conduct, maintain, manage, direct or superintend.

Or, and. The term "or" may be read as "and" and the term "and" as "or," where the sense requires it.

Owner. The term "owner" includes not only the owner of the whole, but any part owner, joint owner, tenant in common or joint tenant of the whole or a part of property.

Person. The term "person" extends and is applied to firms, partnerships, corporations, associations, organizations, trustees, agents and bodies politic, or any combination thereof, as well as to natural persons.

Personal property. The term "personal property" includes every species of property except real property, as defined herein.

Police chief, chief of police and *director of public safety.* The terms "police chief," "chief of police" and "director of public safety," as used in this Code, all have the same meaning and may be used interchangeably.

Police jurisdiction. The term "police jurisdiction" means the territory outside the corporate limits of the city within 1.5 miles thereof, or as otherwise permitted by statute, but not including territory within the corporate limits of any other incorporated municipality. The police jurisdiction shall not overlap the police jurisdiction of a neighboring municipality, but shall extend to the median line of such police jurisdiction lines, or as otherwise provided by the laws of the state and the decisions of its courts.

State Law reference— Police jurisdiction determined by population, Code of Ala. 1975, § 11-40-10.

Preceding, following. The terms "preceding" and "following" mean next before and next after, respectively.

Property. The term "property" includes real and personal property.

Real property. The term "real property" includes land, tenements, and hereditaments.

Shall. The term "shall" is mandatory.

Sidewalk. The term "sidewalk" means any portion of a street between the curblines or the lateral lines of a roadway and the adjacent property lines intended for the use of pedestrians.

Signature or *subscription.* The term "signature" or "subscription" includes a mark when a person cannot write.

State Law reference— As to proof of mark in conveyancing, Code of Ala. 1975, § 35-4-20.

State. The term "the state" or "this state" means the State of Alabama.

Street. The term "street" shall be construed to embrace streets, avenues, boulevards, roads, alleys, lanes, viaducts and all other public ways in the city, and shall embrace all parts thereof within the designated right-of-way. In those instances where the context requires, the term "street" shall embrace only the area between the opposite curbs or curblines designated for vehicular traffic.

Tense. Words used in the present, future or past tense shall include each of the other tenses.

Wholesale, wholesale dealer. In all cases where the term "wholesaler" or "wholesale dealer" is used in this Code or any ordinance, unless otherwise specifically defined, it shall be understood to relate to the sale of goods, merchandise, articles or things in quantity to persons who purchase for the purpose of resale, as distinguished from a retail dealer who sells directly to the consumer.

Written or *in writing.* The term "written" or "in writing" may be construed to include any representation of words, letters or figures, whether by printing or otherwise.

Year. The term "year" means a calendar year.

(Code 1979, § 1-2; Ord. of 10-28-1966, § 1)

Sec. 1-3. - Catchlines of sections.

The catchlines of the several sections of this Code printed in boldface type are intended as mere catchwords to indicate the contents of the section, and shall not be deemed or taken to be titles of such sections, nor as any part of the section, nor, unless expressly so provided, shall they be so deemed when any of such sections, including the catchlines, are amended or reenacted.

(Code 1979, § 1-3)

Sec. 1-4. - Effect of repeal of an ordinance.

(a) No new ordinance shall be construed or held to repeal a former ordinance, whether such former ordinance is expressly repealed or not, as to any offense committed against such former ordinance or as to any act done, any penalty, forfeiture or punishment so incurred, or any right accrued or claim arising under the former ordinance, or in any way whatever to affect any such offense or act so committed or so done, or any penalty, forfeiture or punishment so incurred or any right accrued or claim arising before the new ordinance takes effect, save only that the proceedings thereafter shall conform to the ordinance in force at the time of such proceeding, so

far as practicable. If any penalty, forfeiture or punishment is mitigated by any provision of a new ordinance, such provision may be, by the consent of the party affected, applied to any judgment announced after the new ordinance takes effect.

(b) The repeal of an ordinance shall not revive any ordinances in force before or at the time the ordinance repealed took effect.

(c) This section shall extend to all repeals, either by express words or implication, whether the repeal is in the ordinance making any new provisions upon the same subject or in any other ordinance.

(d) Nothing contained in this Code shall be construed as abating any action now pending under or by virtue of any general ordinance of the city herein repealed; or as discontinuing, abating, modifying or altering any penalty accrued or to accrue, or as affecting the liability of any person, firm or corporation, or as waiving any right of the city under any ordinance or provision thereof in force at the time of adoption of this Code.

(Code 1979, § 1-4; Ord. of 11-28-1966, § 2)

Sec. 1-5. - Severability.

It is hereby declared to be the intention of the council that the sections, paragraphs, sentences, clauses and phrases of this Code and all ordinances are severable, and if any phrase, clause, sentence, paragraph or section of this Code or any ordinance shall be declared invalid by the valid judgment or decree of any court of competent jurisdiction, such judgment or decree shall not affect the validity or enforceability of any of the remaining phrases, clauses, sentences, paragraphs and sections of this Code or an ordinance.

(Code 1979, § 1-5)

Sec. 1-6. - Supplementation of Code.

(a) By contract or by city personnel, supplements to this Code shall be prepared and printed whenever authorized or directed by the city council. A supplement to the Code shall include all substantive permanent and general parts of ordinances passed by the city council or adopted by initiative and referendum during the period covered by the supplement and all changes made thereby in the Code. The pages of a supplement shall be so numbered that they will fit properly into the Code and will, where necessary, replace pages which have become obsolete or partially obsolete, and the new pages shall be so prepared that, when they have been inserted, the Code will be current through the date of the adoption of the latest ordinance included in the supplement.

(b) In preparing a supplement to this Code, all portions of the Code which have been repealed shall be excluded from the Code by the omission thereof from reprinted pages.

(c) When preparing a supplement to this Code, the codifier (meaning the person, agency or organization authorized to prepare the supplement) may make formal, nonsubstantive changes in ordinances and parts of ordinances included in the supplement, insofar as it is necessary to do so to embody them into a unified Code. For example, the codifier may:

(1) Organize the ordinance material into appropriate subdivisions;

(2) Provide appropriate catchlines, headings and titles for sections and other subdivisions of the Code printed in the supplement, and make changes in such catchlines, headings and titles;

(3) Assign appropriate numbers to sections and other subdivisions to be inserted in the Code and, where necessary to accommodate new material, change existing sections or other subdivision numbers;

(4) Change the words "this ordinance" or words of the same meaning to "this chapter," "this article," "this division," etc., as the case may be, or to "sections _____ to _____" (inserting section numbers to indicate the sections of the Code which embody the substantive sections of the ordinance incorporated into the Code); and

(5) Make other nonsubstantive changes necessary to preserve the original meaning of ordinance sections inserted into the Code; but in no case shall the codifier make any change in the meaning or effect of ordinance material included in the supplement or already embodied in the Code.

(Code 1979, § 1-6)

Sec. 1-7. - Altering Code.

It shall be unlawful to change or amend, by addition or deletion, any part of this Code or to insert or delete pages or portions thereof, or to alter or tamper with this Code in any manner whatsoever which will cause the law of the city to be misrepresented thereby.

(Code 1979, § 1-7)

Sec. 1-8. - General penalty; violations of Code, ordinance, or state law.

(a) Any person committing an offense within the corporate limits of the city, or within the police jurisdiction thereof, which is in violation of this Code or any ordinance of the city, now existing or hereafter enacted, shall, upon conviction, be punished by a fine of not less than $1.00 nor more than $500.00. In addition thereto, any person so convicted may be imprisoned or sentenced to hard labor for the city for a period not

exceeding six months, at the discretion of the court trying the case. Provided, however, no penalty shall consist of a fine or sentence of imprisonment exceeding the maximum fine or sentence of imprisonment established under state law for the commission of substantially similar offenses.

(b) Any person committing an offense within the corporate limits of the city, or within the police jurisdiction thereof, which is declared by laws of the state, now existing or hereafter enacted, to be a misdemeanor or a violation, shall, upon conviction, be punished by a fine of not less than $1.00 nor more than $500.00. In addition thereto, any person so convicted may be imprisoned or sentenced to hard labor for the city for a period not exceeding six months for a Class A or Class B misdemeanor, and not exceeding three months for a Class C misdemeanor, at the discretion of the court trying the case. Provided, however, no penalty shall consist of a fine or sentence of imprisonment exceeding the maximum fine and sentence established under state law for the commission of substantially similar offenses.

(c) In all cases where the same offense is made punishable or is created by different clauses or sections of this Code or of an ordinance, the prosecuting officer may elect under which to proceed; but not more than one recovery shall be had against the same person for the same offense; provided that the revocation of a license or permit, or the abatement of a nuisance and the assessment of the cost thereof, shall not be considered a recovery or penalty so as to bar the enforcement of any other penalty.

(d) Whenever a minimum but not maximum fine or penalty is imposed, the court may in its discretion fine the offender any sum exceeding the minimum fine or penalty so imposed but not exceeding $500.00.

(e) No provision of this Code or any ordinance designating the duties of any officer or employee shall be so construed as to make such officer or employee liable for any fine or penalty for a failure to perform such duty, unless the intention of the council to impose such fine or penalty on such officer or employee is specifically and clearly expressed in the section creating the duty.

(Code 1979, § 1-8; Ord. of 11-28-1966, §§ 1, 2; Ord. No. 10-17-66D, § 2, 1-17-1972; Ord. No. 10-26-77A, § 1, 11-1-1977; Ord. No. 10-26-77B, § 1, 11-1-1977)

State Law reference— Authority of city to enforce obedience to ordinances by fine not exceeding $500.00 and by imprisonment or hard labor not exceeding six months, or both, Code of Ala. 1975, §§ 11-45-1, 11-45-9; punishment restricted under Ala. Crim. Code (Acts 1977, No. 607), § 112; authority to abate nuisances, Code of Ala. 1975, §§ 11-47-117, 11-47-118; as to municipal courts, Code of Ala. 1975, § 12-14-1 et seq.

Sec. 1-9. - Violation of orders, rules and regulations adopted.

Any person who shall violate, or fail, neglect or refuse to comply with, any lawful order of any lawful officer of the city made in pursuance of and under his authority as such officer, or who shall violate, or shall fail, neglect or refuse to comply with, any of the rules and regulations or laws adopted by this Code, shall be guilty of an offense; provided, however, the provisions of this section shall not apply to violations of official duty imposed by this Code upon officers or employees of the city as such, unless the provision imposing the duty also expressly makes the violation thereof unlawful or punishable.

(Code 1979, § 1-9)

Sec. 1-10. - Presumption of liability.

The occupant of any premises, and the owner of unoccupied premises, upon which a violation of any provision of this Code or any ordinance is apparent, the owner of any object or material placed or remaining anywhere in violation thereof, and the occupant and owner of any premises served by any excavation, connection, or structure illegally made or erected, shall be deemed prima facie responsible for the violation so evidenced and subject to the penalty provided therefor.

(Code 1979, § 1-10; Ord. of 11-28-1966, § 2)

Sec. 1-11. - Ordinances, resolutions and activities not affected by Code.

The adoption of this Code shall not repeal or otherwise affect any of the following acts and ordinances in effect at the time of adoption of this Code:

(1) Any offense or act committed or done or any penalty of forfeiture incurred or any contract or right established or accruing before the effective date of this Code.

(2) Any ordinance promising or guaranteeing the payment of money for the city or authorizing the issuance of any bonds of the city or any evidence of the city's indebtedness.

(3) Any resolution not mentioned in the Code and not inconsistent with it.

(4) Any contract or obligation assumed by the city.

(5) Any ordinance prescribing zoning or subdivision regulations, or zoning particular property.

(6) Any right or franchise granted by the city.

(7) Any ordinance dedicating, naming, establishing, locating, opening, widening, paving, etc., any street or public way in the city.

(8) Any appropriation ordinance.

(9) Any administrative or personnel ordinance not mentioned in the Code and not inconsistent with it, including, but not limited to, those concerning personnel manuals and policies.

(10) Any ordinance dedicating or accepting any subdivision plat.

(11) Any ordinance or resolution not in conflict with such Code regulating traffic on specific streets or portions thereof or in specific areas of the city.

(12) Any ordinance levying any tax.

(13) Any ordinance establishing any board, agency, commission or authority not mentioned in the Code and not inconsistent with it.

(14) Any ordinance establishing voting districts.

(15) Any ordinance annexing property or otherwise affecting the limits of the municipality.

(16) Any ordinance not of a general and permanent nature (e.g., and including, but not limited to, ordinances with expiration dates, ordinances concerning specific properties or locations, ordinances concerning named individuals and appointments, etc.).

Chapter 2 - ADMINISTRATION

ARTICLE I. - IN GENERAL

Sec. 2-1. - Governing body—Composition; election day; term.

Pursuant to the provisions of Code of Ala. 1975, § 11-42-2, as amended, the city council shall consist of a mayor and five council members who shall be elected from the city at large by the qualified electors of the city at general municipal elections to be held quadrennially. Such officers elected at said general municipal elections shall commence their terms of office on the first Monday in October following their election and serve for four-year terms, or until their successors are lawfully chosen and installed in office.

(Code 1979, § 2-1; Ord. of 4-4-1976, § 1)

Sec. 2-2. - Same—Place designations.

The offices of council members for the city are hereby designated by place, as follows: Councilman, Place Number One; Councilman, Place Number Two; Councilman, Place Number Three; Councilman, Place Number Four; and Councilman, Place Number Five. Persons qualifying as candidates for the office of councilman at the general municipal election are hereby required to specify the place on the council for which they are a candidate, and no person shall be allowed to qualify as a candidate for more than one office on the council.

(Code 1979, § 2-2; Ord. of 4-4-1976, § 2)

Sec. 2-3. - Same—Notice of elections.

Notice of general municipal elections hereafter held in the city shall be given pursuant to Code of Ala. 1975, § 11-46-22, as amended.

(Code 1979, § 2-3; Ord. of 4-4-1976, § 3)

Sec. 2-4. - Same—Voting place.

The designated place of voting shall be as established from time to time, pursuant to law.

(Code 1979, § 2-4; Ord. of 4-4-1976, § 2)

Sec. 2-5. - Salary of mayor.

The salary of mayor shall be as established from time to time. In addition, the mayor shall be eligible for the city health insurance plan and participate therein under the same terms and conditions as city employees.

(Code 1979, § 2-5; Ord. of 2-7-1972; Ord. No. 2-16-88 A, § 1, 2-16-1988)

State Law reference— Authority to prescribe, Code of Ala. 1975, § 11-43-80.

Sec. 2-6. - Salary of council members.

The salary for council members shall be as established from time to time, pursuant to law. In addition, the council members shall be eligible for the city health insurance plan and participate therein under the same terms and conditions as city employees.

(Code 1979, § 2-6; Ord. of 2-7-1972; Ord. No. 2-16-88B, § 1, 2-16-1988)

State Law reference— Authority to prescribe, Code of Ala. 1975, § 11-43-2.

Secs. 2-7—2-16. - Reserved.

ARTICLE II. - EMERGENCY PROCLAMATION

Sec. 2-17. - Emergencies resulting from civil disobedience; proclamation of regulations authorized; contents—Generally.

Whenever, in the judgment of the mayor or, in the event of his inability to act, the president of the council, it is determined that an emergency exists as a result of mob action or other civil disobedience causing danger of injury to or damages to persons or property, he shall have power to impose by proclamation any or all of the following regulations necessary to preserve the peace and order of the city:

(1) To impose a curfew upon all or any portion of the city, thereby requiring all persons in such designated curfew areas to forthwith remove themselves from the public streets, alleys, parks or other public places; provided, however, that physicians, nurses and ambulance operators performing medical services, utility personnel maintaining essential public services, firefighters and city authorized

or requested law enforcement officers and personnel may be exempted from such curfew.

(2) To order the closing of any business establishments anywhere within the city for the period of the emergency, such businesses to include, but not be limited to, those selling intoxicating liquors, cereal malt beverages, gasoline or firearms.

(3) To designate any public street, thoroughfare or vehicle parking area closed to motor vehicles and pedestrian traffic.

(4) To call upon regular and auxiliary law enforcement agencies and organizations within or without the city to assist in preserving and keeping the peace within the city.

(Code 1979, § 2-7; Ord. of 8-3-1970, § 1)

State Law reference— Authority to close firearms shops and places of amusement, Code of Ala. 1975, §§ 11-43-82, 11-51-102.

Sec. 2-18. - Same—Notice of proclamation.

The proclamation of emergency provided herein shall become effective upon its issuance and dissemination to the public by appropriate news media.

(Code 1979, § 2-8; Ord. of 8-3-1970, § 2)

Sec. 2-19. - Same—Termination of proclamation.

Any emergency proclaimed in accordance with the above provisions shall terminate after 48 hours from the issuance thereof, or upon the issuance of a proclamation determining an emergency no longer exists, whichever occurs first; provided, however, that such emergency may be extended for such additional periods of time as determined necessary by resolution of the governing body.

(Code 1979, § 2-9; Ord. of 8-3-1970, § 3)

Sec. 2-20. - Same—Violations of proclamation.

Any person who shall willfully fail or refuse to comply with the orders of duly authorized law enforcement officers or personnel charged with the responsibility of enforcing the proclamation of emergency authorized herein shall be deemed guilty of a misdemeanor and, upon conviction therefor, shall be punished as provided in section 1-8.

(Code 1979, § 2-10; Ord. of 8-3-1970, § 4)

Sec. 2-21. - Emergency resulting from water shortage; proclamation of regulations.

(a) *Authority of mayor.* The mayor of the city is hereby authorized to issue by proclamation certain regulations concerning the use and conservation of water supplies in the city.

(b) *Effect of proclamation.* Such proclamation shall have the full force and effect of any ordinance of the city and shall be carried out by the department of public safety for the city at the direction of the mayor.

(c) *Violation; penalties.* Any violation of the regulations proclaimed by the mayor shall subject such violator to fine or imprisonment, or both, as with a violator of any ordinance of the city, as set forth in section 1-8, or at the option of the city acting through its water board, the city may, upon reasonable notice, cease all water supply to the property owned or used by the violator until so directed by the mayor.

(Code 1979, § 2-11; Ord. No. 7-15-86, §§ 1-3, 8-6-1986)

Secs. 2-22—2-40. - Reserved.

ARTICLE III. - COUNCIL MEETINGS

Sec. 2-41. - Regular meeting dates, time and place.

Regular meetings of the council shall be as set at the organizational session and otherwise from time to time thereafter.

(Code 1979, § 2-20; Ord. No. 11-5-12, §§ 2, 5, 11-5-2012)

State Law reference— Required number of meetings, Code of Ala. 1975, § 11-43-50.

Sec. 2-42. - Calling special meetings.

Special meetings may be held at the call of the presiding officer by serving notice on each member of the council not less than 24 hours before the time set for such special meetings; or special meetings may be held as provided by Code of Ala. 1975, § 11-43-50, whenever two council members (or the mayor) making the request in writing shall have the right to call such meeting. Notice of all special meetings shall be posted on a bulletin board accessible to the public at least 24 hours prior to such meeting.

(Ord. No. 11-5-12, § 3, 11-5-2012)

Sec. 2-43. - Quorum.

A quorum shall be determined as provided by Code of Ala. 1975, § 11-43-48. The number of members required to make a quorum does not change when a council has vacancies. Council members who are present at a council meeting that have a conflict of interest on a particular issue can be counted for purpose of making a quorum even though they cannot vote on a particular issue.

(Ord. No. 11-5-12, § 4, 11-5-2012)

Sec. 2-44. - Meetings open.

All meetings of the council shall be open to the public, except when the council meets in executive session as authorized by state law.

(Ord. No. 11-5-12, § 16, 11-5-2012)

Sec. 2-45. - Attendance by officers.

The clerk, engineer, attorney, director of the department of public safety and such other officers or employees of the city shall, when requested, attend all meetings of the council and shall remain in the council room for such length of time as the council may direct.

(Ord. No. 11-5-12, § 23, 11-5-2012)

Sec. 2-46. - Rules or order of procedure govern meetings.

Robert's Rules of Order is hereby adopted as the rules of procedure for this council in those situations which cannot be resolved by the rules set out in this article.

(Ord. No. 11-5-12, § 25, 11-5-2012)

State Law reference— Authority to determine, Code of Ala. 1975, § 11-43-52.

Sec. 2-47. - Order of business.

The order of business shall be as established by the organizational session at the beginning of each term.

(Ord. No. 11-5-12, § 6, 11-5-2012)

Sec. 2-48. - Committee reports.

The chairperson of each respective committee, or the council member acting for him, shall submit or make all reports to the council when so requested by the presiding officer or any member of the council.

(Ord. No. 11-5-12, § 21, 11-5-2012)

Sec. 2-49. - Speaking on same subject limited.

No member shall speak more than twice on the same subject without permission of the presiding officer.

(Ord. No. 11-5-12, § 7, 11-5-2012)

Sec. 2-50. - Permission for non-member to address council.

No person not a member of the council shall be allowed to address the same while in session without permission of the presiding officer.

(Ord. No. 11-5-12, § 8, 11-5-2012)

Sec. 2-51. - Fine for failure of officer to report.

Every officer whose duty it is to report at the regular meetings of the council, who shall be in default thereof, may be fined at the discretion of the council.

(Ord. No. 11-5-12, § 9, 11-5-2012)

Sec. 2-52. - Reducing of motions, resolutions and ordinances to writing.

Motions shall be reduced to writing when required by the presiding officer of the council or any member of the council. All resolutions and ordinances and any amendments thereto shall be in writing at the time of introduction.

(Ord. No. 11-5-12, § 10, 11-5-2012)

Sec. 2-53. - Motions to reconsider restricted.

Motions to reconsider must be by a member who voted with a prevailing side and at the same or next succeeding meeting of the council.

(Ord. No. 11-5-12, § 11, 11-5-2012)

Sec. 2-54. - Recording of vote; division on the question.

Whenever it shall be required by one or more members, the "yeas" and "nays" shall be recorded; and any member may call for a division on any question.

(Ord. No. 11-5-12, § 12, 11-5-2012)

Sec. 2-55. - Deciding questions of order.

All questions of order shall be decided by the presiding officer of the council with the right of appeal to the council by any member.

(Ord. No. 11-5-12, § 13, 11-5-2012)

Sec. 2-56. - Substitution of presiding officer for certain purposes.

The presiding officer of the council may, at his discretion, call any member to take the chair, to allow him to address the council, make a motion, or discuss any other matter at issue.

(Ord. No. 11-5-12, § 14, 11-5-2012)

Sec. 2-57. - Order of motions and questions.

Motions to lay any matter on the table shall be first in order; and on all questions, the last amendment, the most distant day, and the largest sum shall be first put.

(Ord. No. 11-5-12, § 15, 11-5-2012)

Sec. 2-58. - Lying over of permanent measures.

No ordinance or resolution of a permanent nature shall be adopted at the meeting at which it is introduced unless unanimous consent of those council members present is obtained for the immediate consideration of such ordinance or resolution; such consent shall be by roll call and the vote thereon spread on the minutes.

(Ord. No. 11-5-12, § 24, 11-5-2012)

Sec. 2-59. - Motion to adjourn.

A motion and second for adjournment shall always be in order.

(Ord. No. 11-5-12, § 18, 11-5-2012)

Sec. 2-60. - Amendment or suspension of rules.

The rules of the council may be amended in the same manner as any other ordinance of general and permanent operation. The rules of the council may be temporarily suspended by a vote of two-thirds of the members present.

(Ord. No. 11-5-12, §§ 19, 20, 11-5-2012)

Sec. 2-61. - Executive session.

The council may meet in executive session only for those purposes authorized by state law. When a council member makes a motion to go into executive session for an enumerated purpose, the presiding officer shall put the motion to a vote. If the majority of the council shall vote in favor of the motion to go into executive session, the body shall then move in executive session to discuss the matter for which the executive session was called. No action may be taken in an executive session. When the discussion has been completed, the council shall resume its deliberations in public.

(Ord. No. 11-5-12, § 17, 11-5-2012)

Secs. 2-62—2-80. - Reserved.

ARTICLE IV. - DEPARTMENT OF PUBLIC SAFETY

Sec. 2-81. - Created.

There is hereby created and established the department of public safety for the city.

(Code 1979, § 2-51; Ord. No. 6-5-79, § 1, 6-19-1979; Ord. No. 8-2-88, 8-16-1988)

Sec. 2-82. - Duties and responsibilities; police and fire services.

The department of public safety shall be composed of the police department and the volunteer fire-rescue department. The department of public safety shall perform all the duties and responsibilities of the police and fire services of the city and shall have all of

the powers, duties and responsibilities conferred upon the police and fire service by virtue of the Charter of the city, ordinances of the city and laws of the state, and shall have such other additional powers, duties, responsibilities, and rights as may be lawfully imposed upon it by any administrative directive, resolution, rule, ordinance, charter provision, or law.

(Code 1979, § 2-52; Ord. No. 6-5-79, § 2, 6-19-1979; Ord. No. 8-2-88, 8-16-1988)

Sec. 2-83. - Director—Office created; appointment; duties and responsibilities.

(a) There is hereby created the office of the director of public safety who shall be the administrator and head of the department of public safety as created in section 2-81.

(b) The director shall be appointed in the same manner as a chief of police as authorized by law.

(c) The director of public safety shall combine the office of chief of police and the chief of the volunteer fire-rescue department, and the said director shall have all the powers, responsibilities and functions conferred upon the chief of police and/or chief of the volunteer fire-rescue department.

(d) He shall, in addition thereto, have such powers, duties and responsibilities as shall be lawfully conferred upon him by the mayor of the city, the city council and by the laws of the state.

(e) Wherever any statute, ordinance, resolution or directive shall require a duty or responsibility of the chief of police and/or the chief of the volunteer fire-rescue department, such duties and/or responsibilities shall be assumed and performed by the director of public safety.

(Code 1979, § 2-53; Ord. No. 6-5-79, § 3, 6-19-1979; Ord. No. 8-2-88, 8-16-1988)

Sec. 2-84. - Same—In charge of use of buildings, equipment, etc.

The director of public safety shall have charge of the use of all buildings, equipment and other property of the department of public safety.

(Code 1979, § 2-54; Ord. No. 6-5-79, § 9, 6-19-1979; Ord. No. 8-2-88, 8-16-1988)

Sec. 2-85. - Same—Powers; establishment of divisions, bureaus, sections; appointment of officers, subordinates, reserves.

(a) The director of public safety is hereby empowered and authorized to establish and abolish such divisions, bureaus, sections and personnel classification and ranks and to appoint such officers, subordinates and reserves as he shall deem necessary for the proper and efficient operation of the department of public safety, subject to the pertinent provisions of the city.

(b) The director of public safety is hereby empowered to appoint the heads of divisions, sections or bureaus as may be created within the department of public safety, and which officers shall be assigned to the said divisions, sections, or bureaus.

(Code 1979, § 2-55; Ord. No. 6-5-79, §§ 4, 5, 6-19-1979; Ord. No. 8-2-88, 8-16-1988)

Sec. 2-86. - Public safety officers; reserve officers—Duties and responsibilities; oath; residency requirements.

The public safety officer and reserve public safety officer shall assume such designations and perform such duties as shall be conferred upon them by the director of public safety of the city and provided that, in addition thereto, the public safety officers shall take oath of office prescribed for police officers, and shall have and perform such duties as are imposed upon police officers by the Charter of the city, the ordinances of the city and the laws of the state.

(Code 1979, § 2-56; Ord. of 6-5-1979, § 6, 6-19-1979; Ord. No. 8-2-88, 8-16-1988; Ord. No. 11-21-89A, 12-5-1989)

Sec. 2-87. - Same—Rights, privileges, benefits.

Public safety officers and reserve public safety officers of the city shall be entitled to all of the rights, privileges and benefits granted and established by the city, the state, and the United States.

(Code 1979, § 2-57; Ord. No. 6-5-79, § 7, 6-19-1979; Ord. No. 8-2-88, 8-16-1988)

Sec. 2-88. - Enforcement; posting of regulations.

The director of public safety is hereby empowered to issue and enforce rules and regulations as he may deem necessary and proper for the efficient operation of the said

department, provided that such rules and regulations shall become effective 24 hours after the same shall be posted in the department of public safety.

(Code 1979, § 2-58; Ord. No. 6-5-79, § 8, 6-19-1979; Ord. No. 8-2-88, 8-16-1988)

Secs. 2-89—2-119. - Reserved.

ARTICLE V. - ELECTIONS

Sec. 2-120. - Qualification fee of candidates.

(a) A qualification fee in the amount of $50.00 is hereby fixed and imposed upon all candidates seeking election as mayor of the city, except as hereinafter provided for.

(b) A qualification fee in the amount of $25.00 is hereby fixed and imposed upon all candidates seeking election as a council member of the city, except as hereinafter provided for.

(c) Such qualification fee shall be paid to the city clerk and deposited to the general fund of the city at or prior to the time of taking out qualification papers by any such candidates.

(d) Any person desiring to qualify who is not financially able to pay the required fee may qualify, provided such prospective candidate furnishes the clerk with an affidavit stating that he is financially unable to pay the required fee fixed by this section.

(Ord. No. 06-03-92, §§ 1—4, 6-3-1992)

Chapter 4 - ADVERTISING AND SIGNS

ARTICLE I. - IN GENERAL

Secs. 4-1—4-18. - Reserved.

ARTICLE II. - SIGNS

Sec. 4-19. - Purpose.

The purpose of this article shall be to coordinate the type, placement, and physical dimensions of signs within the city; to recognize the commercial communication requirements of all sectors of the business community; to encourage the innovative use of design; to promote both renovation and proper maintenance; to allow for special circumstances; and to guarantee equal treatment under the law through accurate record keeping and consistent enforcement. These shall be accomplished by regulation of the display, erection, use and maintenance of signs. The placement and physical dimensions of signs are regulated primarily by type and length of street frontage. No sign shall be permitted as a main or accessory use except in accordance with the provisions of this article. The city council finds and declares that it is a valid public purpose to enact this article to promote the governmental interests of aesthetics and public safety for the city.

(Code 1979, § 2.5-21; Ord. No. 5-1-90, § 1(1.01), 5-15-1990)

Sec. 4-20. - Scope.

This article shall not relate to building design, nor shall this article regulate official traffic or government signs; the copy and message of signs; window displays; product dispensers and point of purchase displays; scoreboards on athletic fields; flags of any nation, government, or noncommercial organization; gravestones; barber poles; religious symbols; commemorative plaques; the display of street numbers; or any display or construction not defined herein as a sign.

(Code 1979, § 2.5-22; Ord. No. 5-1-90, § 1(1.02), 5-15-1990)

Sec. 4-21. - Definitions.

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

Abandoned sign means a sign which no longer identifies or advertises a bona fide business, lessor, service, owner, product or activity, and/or for which no legal owner can be found.

Administrator. See section 4-43.

Animated sign means any sign which uses movement or change of lighting to depict action or to create a special effect or scene (compare to "flashing sign").

Area. See *Sign, area of.*

Awning means a shelter projecting from and supported by the exterior wall of a building constructed of nonrigid materials on a supporting framework (compare to "marquee").

Awning sign means a sign painted on, printed on, or attached flat against the surface of an awning.

Banner sign means a sign made of fabric or any nonrigid material with no enclosing framework.

Billboard. See *Off-premises sign.*

Changeable copy sign (automatic) means a sign on which the copy changes automatically on a lampbank or through mechanical means, e.g., electrical or electronic time and temperature units.

Changeable copy sign (manual) means a sign on which copy is changed manually in the field, e.g., readerboards with changeable letters.

Clearance (of a sign) means the smallest vertical distance between the grade of the adjacent street and the lowest point of any sign, including framework, embellishments, poles and supports, extending over that grade.

Construction sign means a temporary sign identifying an architect, contractor, subcontractor and/or material supplier participating in construction on the property on which the sign is located.

Copy means the wording on a sign surface which is either permanent or in removable letter form.

Directional/information sign means an on-premises sign giving directions, instructions, or facility information and which may not contain the name or logo of an establishment or any advertising copy (e.g., parking or exit and entrance signs).

Double-faced sign means a sign with two faces.

Electrical sign means a sign or sign structure in which electrical wiring, connections, or fixtures are used.

Electronic message center. See *Changeable copy sign (automatic).*

Facade means the entire building front, including the parapet.

Face of sign means the area of the sign in which the copy is placed.

Festoons means a string of ribbons, tinsel, small flags, or pinwheels.

Flashing portable or on-premises sign means a sign which contains an intermittent, sequential, or rotating light source or which, through reflection or other means, creates

an illusion of flashing, intermittent, or rotating light. A flashing portable or on-premises sign does not include changeable copy signs.

Freestanding sign means a sign supported upon the ground by poles or braces and not attached to any building.

Frontage means the length of the property line of any one premises along a public right-of-way on which it borders.

Frontage, building, means the length of an outside building wall on a public right-of-way.

Government sign means any temporary or permanent sign erected and maintained by the city, council, state or federal government for traffic direction or for designation of or direction to any school, hospital, historical site, or public service, property, or facility.

Height (of a sign) means the vertical distance measured from the highest point of the sign, including embellishments, to the grade of the adjacent street or the surface grade beneath the sign, whichever is less (compare to "clearance (of a sign)").

Identification sign means a sign whose copy is limited to the name and address of a building, institution, or person and/or to the activity or occupation being identified.

Illegal sign means a sign which does not meet the requirements of this article and which has not received legal nonconforming status.

Illuminated sign means a sign with an artificial light source incorporated internally or externally for the purpose of illuminating the sign.

Incidental sign means a small sign, emblem, or decal located on the window or wall of a building, informing the public of goods, facilities, or services available on the premises, e.g., a credit card sign or sign indicating hours of business.

Lot means a parcel of land legally defined on a subdivision map recorded with the assessment department or land registry office, or a parcel of land defined by a legal record or survey map.

Maintenance means the cleaning, painting, repair or replacement of defective parts of a sign in a manner that does not alter the basic copy, design, or structure of the sign.

Mansard means a sloped roof or roof-like facade architecturally comparable to a building wall.

Marquee means a permanent roof-like structure or canopy of rigid materials supported by and extending from the facade of a building (compare to "awning").

Marquee sign means any sign attached to or supported by a marquee structure.

Nameplate means a non-electric on-premises identification sign giving only the name, address, and/or occupation of an occupant or group of occupants.

Nonconforming sign means a sign which was erected legally but which does not comply with subsequently enacted sign restrictions and regulations, or a sign which does not conform to the sign code requirements but for which a special permit has been issued. See sections 4-36 through 4-38.

Occupancy means the portion of a building or premises owned, leased, rented or otherwise occupied for a given use.

Off-premises sign means a sign structure advertising an establishment, merchandise, service or entertainment, which is not sold, produced, manufactured or furnished at the property on which said sign is located (e.g., billboards or outdoor advertising). Billboards, bench signs, and outdoor advertising are among the signs encompassed with this term. See section 4-35 for prohibition.

On-premises sign means a sign which pertains to the use of the premises on which it is located.

Owner means a person recorded as such on official records. For the purposes of this article, the owner of property on which a sign is located is presumed to be the owner of the sign unless facts to the contrary are officially recorded or otherwise brought to the attention of the administrator (e.g., a sign leased from a sign company).

Painted wall sign means any sign which is applied with paint or similar substance on the face of a wall.

Parapet means the extension of a false front or wall above a roofline.

Person means any individual, corporation, association, firm, partnership or similarly defined interest.

Point of purchase display means advertising of a retail item accompanying its display, e.g., an advertisement on a product dispenser.

Pole cover means covers enclosing or decorating poles or other structural supports of a sign.

Political sign means a temporary sign used in connection with a local, state, or national election or referendum.

Portable sign means any sign designed to be moved easily and not permanently affixed to the ground or to a structure or building.

Premises means a parcel of land with its appurtenances and buildings which, because of its unity of use, may be regarded as the smallest conveyable unit of real estate.

Projecting sign means a sign, other than a flat wall sign, which is attached to and projects from a building wall or other structure not specifically designed to support the sign.

Real estate sign means a temporary sign advertising the real estate upon which the sign is located as being for rent, lease, or sale.

Roof sign means any sign erected over or on the roof of a building (compare to "mansard," "wall signs").

Roofline means the top edge of a roof or building parapet, whichever is higher, excluding any cupolas, pylons, chimneys or minor projections.

Rotating sign means a sign in which the sign itself or any portion of the sign moves in a revolving or similar manner. Such motion does not refer to methods of changing copy.

Sign means any device, structure, fixture or placard using graphics, symbols, and/or written copy designed specifically for the purpose of advertising or identifying any establishment, product, goods or services (see section 4-20).

Sign, area of. Various methods of calculating the area of different types of signs are as follows:

(1) *Projecting and freestanding.* The area of a freestanding or projecting sign shall have only one face (the largest one) of any double-faced or multifaced sign counted in calculating its area. If the sign is composed of one or more individual cabinets, the area around and enclosing the perimeter of each cabinet or module shall be summed and then totaled to determine total area. The perimeter of measurable area shall not include embellishments such as pole covers, framing, decorative roofing, etc., provided that there is not written advertising copy on such embellishments.

(2) *Wall signs.* The area shall be within a single, continuous perimeter composed of any straight line geometric figure which encloses the extreme limits of the advertising message. The combined areas of the individual figures shall be considered the total sign area.

Snipe sign means a temporary sign or poster affixed to a tree, fence, etc.

Subdivision identification sign means a freestanding or wall sign identifying a recognized subdivision, condominium complex, or residential development.

Temporary sign means a sign not constructed or intended for long-term use.

Undercanopy sign means a sign suspended beneath a canopy, ceiling, roof or marquee.

Use means the purpose for which a building, lot, sign or structure is intended, designed, occupied or maintained.

Wall sign means a sign attached parallel to and extending not more than 12 inches from the wall of a building. This definition includes painted, individual letter, and cabinet signs, and signs on a mansard.

Window sign means a sign installed inside a window and intended to be viewed from the outside.

(Code 1979, § 2.5-23; Ord. No. 5-1-90, § 2, 5-15-1990)

Sec. 4-22. - Compliance.

It shall hereafter be unlawful for any person to erect, place, or maintain a sign in the city except in accordance with the provisions of this article.

(Code 1979, § 2.5-24; Ord. No. 5-1-90, § 3, 5-15-1990)

Sec. 4-23. - Signs prohibited.

The following types of signs are prohibited in all districts:

(1) Abandoned signs.

(2) Banners, pennants, festoons, searchlights, oversized balloons, and blimps or other airborne objects which might interfere with air traffic (except as allowed in sections 4-31 and 4-33).

(3) Signs imitating or resembling official traffic or government signs or signals.

(4) Snipe signs or signs attached to trees, telephone poles, public benches, streetlights or placed on any public property or public right-of-way.

(5) Signs placed on vehicles or trailers which are parked or located for the primary purpose of displaying said sign. This does not apply to allowed portable signs or to signs or lettering on businesses, taxis, or vehicles operating during the normal course of businesses.

(6) See section 4-35 concerning off-premises signs.

(Code 1979, § 2.5-25; Ord. No. 5-1-90, § 3(3.01), 5-15-1990)

Sec. 4-24. - Permits required.

Unless otherwise provided by this article, all signs shall require permits and payment of fees as described in sections 4-43 through 4-53. No permit is required for the maintenance of a sign or for a change of copy on painted, printed, or changeable copy signs.

(Code 1979, § 2.5-26; Ord. No. 5-1-90, § 3(3.02), 5-15-1990)

Sec. 4-25. - Signs not requiring permits.

The following types of signs are exempted from permit requirements but must be in conformance with all other requirements of this article:

(1) Construction signs of 32 square feet or less.

(2) On-premises directional/information signs of four square feet or less located behind the applicable setbacks.

(3) Holiday or special events decorations.

(4) Nameplates of two square feet or less.

(5) Political signs.

(6) Public signs or notices, or any sign relating to an emergency.

(7) Real estate signs/open house signs.

(8) Window signs.

(9) Incidental signs.

(10) Yard/garage sale signs.

(Code 1979, § 2.5-27; Ord. No. 5-1-90, § 3(3.03), 5-15-1990)

Sec. 4-26. - Maintenance.

All signs shall be properly maintained. Exposed surfaces shall be clean and painted if paint is required. Defective parts shall be replaced. The administrator shall have the authority under section 4-51 to order the repair or removal of any sign which is defective, damaged, or substantially deteriorated.

(Code 1979, § 2.5-28; Ord. No. 5-1-90, § 3(3.04), 5-15-1990)

Sec. 4-27. - Changeable copy.

Unless otherwise specified by this article, any sign herein allowed may use manual or automatic changeable copy.

(Code 1979, § 2.5-29; Ord. No. 5-1-90, § 3(3.05), 5-15-1990)

Sec. 4-28. - Lighting.

Unless otherwise specified by this article, all signs may be illuminated. However, no sign regulated by this article may utilize:

(1) An exposed incandescent lamp; or

(2) Any revolving beacon or flashing light as defined in section 4-21.

(Code 1979, § 2.5-30; Ord. No. 5-1-90, § 3(3.06), 5-15-1990)

Sec. 4-29. - Sign, contractor's privilege license.

No person may engage in the business of erecting, altering, relocating, constructing or maintaining signs without a valid privilege license and all required state and federal licenses.

(Code 1979, § 2.5-31; Ord. No. 5-1-90, § 3(3.07), 5-15-1990)

Sec. 4-30. - Indemnification and insurance.

(a) All persons involved in the maintenance, installation, alteration or relocation of signs near or upon any public right-of-way or property shall agree to hold harmless and indemnify the city, its officers, agents, and employees, against any and all claims of negligence resulting from such work insofar as this article has not specifically directed the placement of a sign.

(b) All persons involved in the maintenance, installation, alteration or relocation of signs shall maintain all required insurance and shall file with the city a satisfactory certificate of insurance to indemnify the city against any form of liability to a minimum of $500,000.00.

(Code 1979, § 2.5-32; Ord. No. 5-1-90, § 3(3.08), 5-15-1990)

Sec. 4-31. - Signs permitted in all districts.

The following signs are allowed in all districts:

(1) All signs not requiring permits (see section 4-25).

(2) One construction sign for each street frontage of a construction project, not to exceed 32 square feet in sign area in all other zones. Such signs may be erected 120 days prior to beginning of construction and shall be removed 30 days following completion of construction.

(3) One non-illuminated real estate sign per lot or premises, not to exceed four square feet in sign area. Such signs must be removed ten days following sale, rental, or lease.

(4) One attached nameplate per occupancy, not to exceed four square feet in sign area.

(5) Political signs, not to exceed six square feet in residential districts and 32 square feet in nonresidential districts.

(6) One temporary special events sign and decoration per premises as allowed by the administrator for special events, grand openings, or holidays. Such signs and decorations may be erected 30 days prior to a special event or holiday and shall be removed ten days following the event or holiday. For grand openings, such signs may be used for no more than 14 days.

(7) Yard/garage sale signs and open house signs, in all districts, will be freestanding and no larger than 24 inches by 24 inches. The top of sign will not be more than two feet from the ground. Signs will be placed three feet or more from edge of street or roadway and signs will not be placed within 25 feet of any major intersection. One sign may be placed every five miles or at each minor intersection and in front of the sale area. Signs will not be attached to trees, telephone poles, public benches, street lights or fences. Each sign will have an address of the sale on it. For one-day sales, signs may be posted at 6:00 a.m.

and removed no later than 7:00 p.m. the day of the sale. For two-day sales, signs may be posted from 6:00 a.m. on the first day and removed by 7:00 p.m. on the second day.

(Code 1979, § 2.5-33; Ord. No. 5-1-90, § 4(4.01), 5-15-1990; Ord. No. 11-17-98, 11-17-1998)

Sec. 4-32. - Signs permitted in residential zones.

(a) *Generally.* Signs are allowed as follows in residential zones:

(1) All signs permitted in section 4-31.

(2) Two subdivision identification signs per neighborhood, subdivision, or development, not to exceed 48 square feet in sign area.

(3) Two identification signs per apartment or condominium complex, not to exceed 32 square feet in sign area, and one wall sign not to exceed 48 square feet in sign area.

(4) For permitted nonresidential uses, including churches and synagogues, one freestanding sign not to exceed 48 square feet in sign area, and one wall sign not to exceed 48 square feet in sign area.

(b) *Special regulations for residential zones.* All allowed freestanding signs in residential districts shall have a height limit of eight feet and shall have a setback of ten feet from any public right-of-way; provided, however, that the setback requirement shall not apply to subdivision identification signs so long as they do not create a sight obstruction.

(Code 1979, § 2.5-34; Ord. No. 5-1-90, § 4(4.02), 5-15-1990)

Sec. 4-33. - Signs permitted in commercial, office, and industrial zones.

Signs are allowed as follows in commercial, office and industrial zones:

(1) All signs are permitted in sections 4-31 and 4-32.

(2) Only one freestanding sign per premises and street front is allowed. This sign may not exceed two square feet in sign area for each linear foot of main street frontage. If the property is a shopping center, only one freestanding sign is allowed per street front. Where the premises is located on a corner or has more than one main street frontage, one additional freestanding sign will be allowed on the additional frontage, not to exceed the size of the other allowed freestanding signs. If linear footage exceeds 300 feet, a second pylon is allowed as long as total square footage of all signage does not exceed two square feet per linear foot.

(3) All freestanding signs shall be located at least ten feet behind the public right-of-way line, unless the grade clearance of the sign is a minimum of ten feet. In this case, the leading edge of the sign may be at the right-of-way line, but, in no case, may it be located on or over public property.

(4) No part of any sign shall be located within a 25-foot radius of the intersection of the improved surface of any two streets or the improved surface of any street and railroad, unless any part of the sign extending over or into this radius has at least ten feet of clearance.

(5) No part of any sign shall be located within a 15-foot radius of the intersection of any driveway and the improved surface of any street, unless any part of the sign extending over or into this radius has at least ten feet of clearance.

(6) Wall signs shall not exceed an aggregate area of two square feet in sign area for each linear foot of that occupancy's building frontage.

(7) Awning signs are measured by copy area only.

(8) One undercanopy sign per occupancy, not to exceed eight square feet in sign area.

(9) Incidental signs not to exceed 40 square feet in aggregate sign area per occupancy.

(10) The maximum permitted height for any on-premises sign in a nonresidential district shall be 50 feet above the grade of the adjacent street or the maximum height permitted in the district within which the sign is located.

(11) No more than three (at one time) professionally printed banners which are attached to the building or permanent sign that are temporary in nature.

(Code 1979, § 2.5-35; Ord. No. 5-1-90, § 4(4.03), 5-15-1990; Ord. No. 05-03-94, 5-17-1994)

Sec. 4-34. - Special regulations regarding portable signs.

In addition to any regulation applying to signs in general, including the requirement for a permit, the following regulations shall apply:

(1) Portable signs shall comply with the same setback and sight distance requirements as all other signs.

(2) No portable sign shall be illuminated by or contain flashing, intermittent, rotating or moving lights. No portable sign shall be animated.

(3) Portable signs shall be used only for on-premises advertising and shall not be used as billboards.

(4) Portable signs shall be limited to one per business. Such signs may be displayed for a period of three months by permitting. Permits are nonrenewable.

(5) Subject to the provisions of this article, portable signs shall be permitted to be used in B-2, B-3, M-1 and M-3 districts and shall be permitted to be used upon appeal in B-1, B-4 and M-2 districts.

(Code 1979, § 2.5-36; Ord. No. 5-1-90, § 4(4.04), 5-15-1990)

Sec. 4-35. - Off-premises signs.

In addition to any regulations applying to signs in general, the following regulations shall apply to off-premises signs:

(1) Off-premises signs and billboards are hereinafter prohibited within the city, except for subsection (2) of this section.

(2) Off-premises directional signs of 32 square feet or less may be permitted if the board of adjustment determines that a hardship exists.

(Code 1979, § 2.5-37; Ord. No. 5-1-90, § 5(5.01), 5-15-1990)

Sec. 4-36. - Determination of legal nonconformity.

Existing signs which do not conform to the specific provisions of this article may be eligible for the designation "legal nonconforming," provided that:

(1) The administrator determines that such signs are properly maintained and do not in any way endanger the public.

(2) The sign was covered by a valid permit or variance or complied with all applicable laws on the date of adoption of the ordinance from which this article is derived.

(3) Portable signs are not legal nonconforming signs.

(Code 1979, § 2.5-38; Ord. No. 5-1-90, § 6(6.01), 5-15-1990)

Sec. 4-37. - Loss of legal nonconforming status.

A legal nonconforming sign may lose this designation if:

(1) The sign is relocated or replaced.

(2) The structure or size of the sign is altered in any way, except towards compliance with this article. This does not refer to normal maintenance.

(3) The ownership of the sign and/or property changes on-premises.

(4) The sign becomes abandoned for a period of six consecutive months.

(Code 1979, § 2.5-39; Ord. No. 5-1-90, § 6(6.02), 5-15-1990)

Sec. 4-38. - Maintenance and repair of nonconforming signs.

The legal nonconforming sign is subject to all requirements of this article regarding safety, maintenance, and repair. However, if the sign suffers more than 50 percent appraised damage or deterioration, it must be removed.

(Code 1979, § 2.5-40; Ord. No. 5-1-90, § 6(6.03), 5-15-1990)

Sec. 4-39. - Compliance with building and electrical codes.

All signs shall be constructed in accordance with the requirements of the International Building Code and the National Electrical Code.

(Code 1979, § 2.5-41; Ord. No. 5-1-90, § 7(7.01), 5-15-1990)

Sec. 4-40. - Anchoring.

(a) No sign shall be suspended by nonrigid attachments that will allow the sign to swing in a wind.

(b) All freestanding signs shall have self-supporting structures erected on or permanently attached to concrete foundations or similarly secured foundations as approved by the administrator.

(c) All portable signs on display shall be braced or secured to prevent motion.

(Code 1979, § 2.5-42; Ord. No. 5-1-90, § 7(7.02), 5-15-1990)

Sec. 4-41. - Wind loads.

All signs shall be designed and constructed to meet the wind loading requirements as set forth in the International Building Code, as adopted by action of the council. In addition, on all signs 30 feet or greater in overall height, the drawings and structural specifications submitted for permitting shall bear the seal of a registered engineer.

(Code 1979, § 2.5-43; Ord. No. 5-1-90, § 7(7.03), 5-15-1990)

Sec. 4-42. - Additional construction specifications.

(a) No signs shall be erected, constructed, or maintained so as to obstruct any fire escape, required exit, window or door opening used as a means of egress.

(b) No sign shall be attached in any form, shape, or manner which will interfere with any opening required for ventilation.

(c) Signs shall be located in such a way as to maintain horizontal and vertical clearance of all overhead electrical conductors in accordance with National Electrical Code specifications, depending on voltages concerned.

(d) All illuminated signs and/or signs containing electrical components shall be constructed according to Underwriters Laboratories specifications and shall have an Underwriters Laboratories label permanently affixed. This label shall be clearly visible from the ground.

(Code 1979, § 2.5-44; Ord. No. 5-1-90, § 7(7.04), 5-15-90)

Sec. 4-43. - Administrator.

(a) The administrator shall be appointed by the city council and is authorized to process applications for permits and variances, schedule public hearings, as required, and enforce and carry out all provisions of this article, both in letter and in spirit. The administrator is authorized to promulgate regulations and procedures consistent with this function.

(b) The administrator is empowered, upon presentation of proper credentials, to enter or inspect any building, structure, or premises in the city for the purpose of inspection of a sign and its structural and electrical connections to ensure compliance with all applicable codes and ordinances. Such inspections shall be carried out during business hours, unless an emergency exists.

(Code 1979, § 2.5-45; Ord. No. 5-1-90, § 8(8.01), 5-15-90)

Sec. 4-44. - Application for permits.

Applications for a permit for the erection, alteration, or relocation of a sign shall be made to the administrator upon a form provided by the administrator and shall include the following information:

(1) Name and address of the owner of the sign.

(2) Street and address or location of the property on which the sign is to be located, along with the name and address of the property owner.

(3) The type of sign structure, as defined in this article.

(4) A site plan showing the proposed location of the sign along with the locations and square footage areas of all existing signs on the same premises.

(5) Specifications and scale drawings showing the materials, design, dimensions, structural supports and electrical components of the proposed sign.

(Code 1979, § 2.5-46; Ord. No. 5-1-90, § 8(8.02), 5-15-1990)

Sec. 4-45. - Permit fees.

All applications for permits filed with the administrator shall be accompanied by a payment of the initial fee for each sign which will be one-eighth of one percent of the construction cost or purchase price or fair market value of the sign, whichever applies; or $10.00, whichever is greater.

(Code 1979, § 2.5-47; Ord. No. 5-1-90, § 8(8.03), 5-15-1990)

Sec. 4-46. - Issuance and denial.

(a) *Issuance.* The administrator shall issue a permit and permit sticker within five working days of receipt of a valid application, provided that the sign complies with all applicable laws and regulations of the city. In all applications where a matter of interpretation arises, the more specific definition or higher standard shall prevail.

(b) *Denial.* When a permit is denied by the administrator, he shall give a written notice to the applicant along with a brief statement of the reasons for denial. The administrator may suspend or revoke an issued permit for any false statement or misrepresentation of fact in the application.

(Code 1979, § 2.5-48; Ord. No. 5-1-90, § 8(8.04), 5-15-1990)

Sec. 4-47. - Permit conditions, refunds, and penalties.

(a) If a permit is denied, the permit fee will be refunded to the applicant.

(b) A permit issued by the administrator becomes null and void if work is not commenced within 90 days of issuance. If work authorized by the permit is suspended or abandoned for 90 days, the permit must be renewed with an additional payment of one-half of the original fee.

(c) If any sign is installed or placed on any property prior to receipt of a permit, the specified permit fee shall be doubled. However, payment of the doubled fee shall not relieve any person of any other requirements or penalties prescribed in this article.

(Code 1979, § 2.5-49; Ord. No. 5-1-90, § 8(8.05), 5-15-1990)

Sec. 4-48. - Inspection upon completion.

(a) Any person installing, altering, or relocating a sign for which a permit has been issued shall notify the administrator upon completion of the work. The administrator may require a final inspection, including an electrical inspection and inspection of footings on freestanding signs.

(b) The administrator may require in writing upon issuance of a permit that he be notified for inspection prior to the installation of certain signs.

(Code 1979, § 2.5-50; Ord. No. 5-1-90, § 8(8.06), 5-15-1990)

Sec. 4-49. - Variances.

(a) An applicant may apply to the board of adjustment for a variance from the requirements of this article. In reviewing any such variance request, the board of adjustment shall be guided by the same regulations and standards which apply to requests for a variance from the terms of the zoning ordinance, which shall include the following:

(1) A literal application of this article would not allow the property to be used as its highest and best use as zoned.

(2) The granting of the requested variance would not be materially detrimental to the property owners in the vicinity.

(3) Hardship caused the sign user under a literal interpretation of this Code is due to conditions unique to that property and does not apply generally to the city.

(b) In granting a variance, the board of adjustment may attach requirements or conditions necessary to carry out the spirit and intent of this article.

(Code 1979, § 2.5-51; Ord. No. 5-1-90, § 8(8.07), 5-15-1990)

Sec. 4-50. - Violations.

(a) When, in the opinion of the administrator, a violation of this article exists, the administrator shall issue a written order to the alleged violator. The order shall specify those sections of this article of which the individual may be in violation and shall state that the individual has 30 days from the date of the order in which to correct the alleged violation or to appeal to the board of adjustment.

(b) If, upon inspection, the administrator finds that a sign is abandoned or structurally, materially or electrically defective, or in any way endangers the public, the administrator shall issue a written order to the owner of the sign and occupant to the premises stating the nature of the violation and requiring them to repair or remove the sign within 30 days of the date of the order.

(c) In cases of emergency, the administrator may cause the immediate removal of a dangerous or defective sign without notice. Signs removed in this manner must present a hazard to the public safety.

(Code 1979, § 2.5-52; Ord. No. 5-1-90, § 8(8.08), 5-15-1990)

Sec. 4-51. - Removal of signs by the administrator.

(a) The administrator may cause the removal of an illegal sign in cases of emergency, or for failure to comply with the written orders of removal or repair, or upon determination that the sign has been abandoned for a period of six consecutive months. After the removal or demolition of the sign, a notice shall be mailed to the sign owner stating the nature of the work and the date on which it was performed and demanding payment of the costs as certified by the administrator, together with an additional 15 percent for inspection and incidental costs.

(b) If the amount specified in the notice is not paid within 30 days of the notice, it shall become an assessment upon a lien against the property of the sign owner, and will be certified as an assessment against the property, together with a 15 percent penalty for cost of collection and attorneys' fees.

(c) The owner of the property upon which the sign is located shall be presumed to be the owner of all signs thereon unless facts to the contrary are brought to the attention of the administrator, as in the case of a leased sign.

(d) For purposes of removal, the definition of the term "sign" shall include all sign embellishments and structures designed specifically to support the sign.

(Code 1979, § 2.5-53; Ord. No. 5-1-90, § 8(8.09), 5-15-1990)

Sec. 4-52. - Penalties.

Violation of this article shall be a misdemeanor and shall be punishable as provided for in section 1-8.

(Code 1979, § 2.5-54; Ord. No. 5-1-90, § 8(8.10), 5-15-1990)

Sec. 4-53. - Appeals.

(a) Any failure by the administrator to respond within five working days to an application for a sign permit or any decision rendered by the administrator in denying a permit may be appealed to the board of adjustment.

(b) The action being appealed shall be held in abeyance pending the decision of the board of adjustment unless the administrator certifies that the violation poses an immediate threat to the public health or safety.

(Code 1979, § 2.5-55; Ord. No. 5-1-90, § 8(8.11), 5-15-1990)

Sec. 4-54. - Conflict.

If any portion of this article is found to be in conflict with any other provision of any zoning, building, fire, safety or health ordinance of this Code, the provision which establishes the higher standard shall prevail.

(Code 1979, § 2.5-56; Ord. No. 5-1-90, § 9(9.01), 5-15-1990)

Chapter 6 - ALCOHOLIC BEVERAGES[1]

Footnotes:

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State Law reference— Authority of city generally, Code of Ala. 1975, § 11-47-112; local license taxes, Code of Ala. 1975, § 28-3A-21; approval of retail license applications by council, Code of Ala. 1975, § 28-3A-23.

ARTICLE I. - IN GENERAL

Sec. 6-1. - Purpose of chapter; liberal construction.

This chapter shall be deemed, in addition to revenue purposes within the corporate limits, the exercise of the police power of the city for the protection of the public welfare, health, peace and morals of the people of the city, and all the provisions of this chapter shall be liberally construed for the accomplishment of this purpose.

(Code 1979, § 3-1; Ord. No. 1-18-77A, § 12, 2-1-1977)

Sec. 6-2. - Interstate commerce and federal government business excluded.

This chapter shall not be construed to tax interstate commerce or any business of the United States government or any branch or agency thereof.

(Code 1979, § 3-2; Ord. No. 1-18-77A, § 10-1, 2-1-1977)

Sec. 6-3. - Business outside city and police jurisdiction excluded.

This chapter shall not be construed to apply to any such beverages stored for the purpose of resale or reshipment outside the city and its police jurisdiction and which are actually so resold or reshipped.

(Code 1979, § 3-3; Ord. No. 1-18-77A, § 10-2, 2-1-1977)

Sec. 6-4. - Chapter cumulative.

This chapter shall not be construed to repeal any of the provisions of any other ordinance or of the general license code of the city, but shall be held to be cumulative.

(Code 1979, § 3-4; Ord. No. 1-18-77A, § 10-3, 2-1-1977)

Sec. 6-5. - Adoption of certain state control board regulations.

The rules and regulations adopted and promulgated by the Alabama Alcoholic Beverage Control Board, and as may be adopted or amended thereafter, by said beverage control board, the violation of which constitutes a misdemeanor, are hereby adopted as laws of the city.

(Code 1979, § 3-5; Ord. of 2-1-1977, § 1)

Sec. 6-6. - License—Required.

No person shall engage in business as wholesaler, distributor, jobber or retailer of malt or brewed beverages or alcoholic beverages in the corporate limits of the city without first having obtained from the city a license to do such business. Such license shall be issued by the city clerk, and shall first be approved by the city council at a regular meeting thereof, before the same shall be valid. Such license shall be renewed on October 1 of each year thereafter. No reduction or proration of the fee for the license shall be allowed on account of not commencing its business on October 1, nor shall any rebate be allowed upon revocation, suspension, or surrender of such license before the expiration thereof.

(Code 1979, § 3-6; Ord. No. 1-18-77A, § 3-1, 2-1-1977)

Sec. 6-7. - Same—Eligibility; application; approval; revocation authorized; definitions.

(a) No liquor license shall be issued under these provisions, except to bona fide clubs, restaurants or public lounges as hereinafter defined, but not necessarily limited to definitions contained in regulations of the Alabama Alcoholic Beverage Control Board, with seating capacity of at least 50 persons.

(b) All initial applications for a license shall be presented in writing at a regular meeting of the city council, which shall not be finally approved or denied until the next regular meeting of the city council; however, any application may be held under advisement for a longer period. No initial license shall be issued except on approval of the city council in a regular meeting, and the city council may in such regular meeting direct that any renewal license, specifying the particular license, be withheld.

(c) The term "club" shall mean a corporation or organization organized or formed in good faith by authority of law, and which must have at least 150 paid-up members. It must be the owner, lessee or occupant of an establishment operated solely for the objects of a national, social, patriotic, political, or athletic nature, or the like, but not for pecuniary gain, and the property as well as the advantages of which belong to all members and which maintains an establishment provided with special space and

accommodations where, in consideration of payment, food with or without lodging is habitually served as at a restaurant. The club shall have regular meetings, continue its business through officers regularly elected, and admit members by written application, investigation and ballot, and charge and collect dues from elected members.

(d) The term "restaurant" shall mean a reputable place operated by a responsible person of good reputation, and habitually and principally used for the purpose of providing food for the public; such place to have an area equipped with tables and chairs sufficient to accommodate at least 50 persons at one time, and a kitchen apart from such area, but adjoining same, regularly used for the preparation of food for the public, and in which kitchen the food or meals served in such place are prepared. The proprietor or operator of a restaurant, as herein defined, shall be required to keep an accurate account of all purchases of feed supplies and alcoholic beverages of all kinds; and the cost of alcoholic beverages purchased by the owner, operator or proprietor of such restaurant shall not exceed 50 percent of the amount expended for food supplies. No license shall be issued to tourist camps, road houses, nightclubs, taverns or juke joints.

(e) The term "public lounge" shall mean a reputable place serving liquor, wine or beer to the public. A public lounge shall not be required to serve or prepare food for its customers and may permit dancing or other lawful entertainment on the licensed premises. No person under 19 years of age shall be admitted as a patron or employee.

(f) Failure to continuously meet the requirements of a license herein specified shall be sufficient reason for revoking the license.

(Code 1979, § 3-7; Ord. No. 1-18-77A, § 3-3, 2-1-1977; Ord. No. 9-16-80, 9-16-1980)

Sec. 6-8. - Same—Fees.

(a) There is hereby levied an issuing fee of $0.50 for each of the above-mentioned licenses.

(b) The annual license fees shall be as provided in section 12-19.

(Code 1979, § 3-8; Ord. No. 1-18-77A, § 3-4, 2-1-1977)

Sec. 6-9. - Tax—Levied.

There is hereby levied, in addition to all other taxes of every kind now imposed by law, and shall be collected as herein provided, a privilege or license tax against the person on account of the business activities as follows:

(1) *Whiskey, wine, liquor at retail.* Upon every person, firm or corporation engaged in the business of selling whiskey, wine containing more than 14 percent alcohol

by volume, or liquor at retail, there is hereby levied an eight percent gross receipts tax on all such alcoholic beverages sold in establishments, duly licensed under provisions of this chapter. Wine containing 14 percent or less alcohol by volume is exempted and excluded from the gross receipts tax herein levied, but the same shall bear tax at eight percent of the wholesale cost thereof and shall be collected by the wholesaler or the Alabama Alcoholic Beverage Control Board in accordance with the laws of the state applicable thereto.

(2) *Beer.* The statutory methods of levy, collection, and disposition of the proceeds from an excise tax on beer and which provides that the statute is the exclusive and sole taxing authority on such products is hereby adopted and incorporated by reference as the excise tax on beer ordinance of the city.

(Code 1979, § 3-9; Ord. No. 1-18-77A, § 4, 2-1-1977; Ord. No. 9-20-77, 9-20-1977; Ord. No. 7-9-79, § 1, 7-17-1979; Ord. No. 9-16-80, 9-16-1980; Ord. No. 9-7-82, 9-7-1982)

Sec. 6-10. - Same—Reports and payment; delinquency penalty.

(a) The tax levied under provisions of this article shall be due and payable in monthly installments on or before the 15th day of the month next succeeding the month in which sales are made. On or before the 15th day of each month after the tax herein provided shall take effect, every person, firm or corporation upon whom the tax is hereby levied shall render to the city, on a form prescribed by the city, a true and correct statement showing the gross receipts of whiskey or wine containing more than 14 percent alcohol by volume, or liquors, etc., purchased during the next preceding month, which report shall accompany payments of the tax herein levied. Tax due to the city on wine containing 14 percent or less alcohol by volume shall be due from the Alabama Alcoholic Beverage Control Board or from the wholesaler according to the applicable laws of the state. Wine wholesalers shall be required to use forms for reporting said tax as have been approved by the city.

(b) The city shall receive a purchasing statement from the state ABC store the first of each month. Each licensee shall have until the 15th of the month to pay these taxes.

(c) The tax imposed by section 6-9(2) on beer, malt or brewed beverages shall be paid by each retail beer dealer to the wholesale dealer from whom the retail dealer purchases or otherwise acquires his retail stock, at the rates fixed on or before the 15th day of the month next succeeding the date of purchase by the retailer.

(d) Any person who fails to pay the tax herein levied within the time prescribed shall pay, in addition to the tax, a penalty of ten percent of the amount of tax, together with the interest thereon at the rate of one-half of one percent per month or fraction thereof, from the date on which the tax herein levied became payable, such penalty and interest to be assessed and collected as part of the tax.

(Code 1979, § 3-10; Ord. No. 1-18-77A, § 5, 9-1, 2-1-1977; Ord. No. 7-9-79, § 1, 7-17-1979; Ord. No. 9-16-80, 9-16-1980)

Editor's note— Insofar as subsection (c) conflicts with Code of Ala. 1975, § 28-3-190, as adopted in section 6-9(2), presumably the statutes will prevail.

Sec. 6-11. - Same—Collection from purchasers.

All persons subject to the provisions of this tax may add the same to the sales price of the whiskey, wine or liquor sold, and collect from the purchasers, but this is not mandatory; the seller may pay the tax without collecting same from the purchaser.

(Code 1979, § 3-11; Ord. No. 1-18-77, § 6, 2-1-1977)

Sec. 6-12. - Same—Records to be kept.

All persons subject to provisions of this tax shall keep and preserve for a period of three years all invoices, sales slips or evidences received from or issued by the Alabama Alcoholic Beverage Control Store or agency from whom purchases are made, which will be subject to examination at all reasonable times by authorized representatives of the city.

(Code 1979, § 3-12; Ord. No. 1-18-77A, § 7, 2-1-1977)

Sec. 6-13. - Reporting delinquencies.

It shall be the duty and responsibility of the city clerk's office to inform the chief of police of the delinquent privilege taxes and licenses that are imposed by this chapter.

(Code 1979, § 3-13; Ord. No. 1-18-77A, § 9-4, 2-1-1977)

Sec. 6-14. - Proximity of beer establishment to church, school, park or playground.

No privilege license shall be issued for the retail sale of malt or brewed beverages for consumption on the premises of the licensee where the place or establishment for which such license applied for is less than 500 feet from any church building or church grounds or 500 feet from any school building or public park or public playground; but this provision shall not apply to renewals of such lawful licenses heretofore issued or to such lawful licenses in existence on February 1, 1977.

(Code 1979, § 3-14; Ord. No. 1-18-77A, § 3-2, 2-1-1977)

Sec. 6-15. - Hours of closing.

(a) *Public lounges, clubs, restaurants, etc.* All public lounges, clubs, restaurants or places serving alcoholic beverages will abate the sale of all whiskey, wine, beer or liquor at 4:00 a.m. Tuesday through Saturday, and 2:00 a.m. on Sunday. These businesses may commence the sale of such beverages at 8:00 a.m. Monday through Saturday mornings, inclusive.

(b) *Private clubs.* All private clubs serving alcoholic beverages will abate the sale of all whiskey, wine, beer or liquor at 4:00 a.m. Sunday and may resume the sale of such beverages at 8:00 a.m. Monday morning.

(Code 1979, § 3-15; Ord. No. 1-8-77A, § 13, 2-1-1977; Ord. No. 9-16-80, 9-16-1980; Ord. No. 10-18-88, 11-1-1988)

Sec. 6-16. - Broken seals.

It shall be unlawful for any person other than the licensee to have on the premises of a licensee any bottle, can or container of alcoholic liquor or alcoholic beverage if the seal is broken.

(Code 1979, § 3-17; Ord. No. 1-18-77A, § 14-2, 2-1-1977)

Sec. 6-17. - Drinking outside of establishment.

It shall be unlawful for any person to drink or consume said alcoholic liquor or alcoholic beverage outside the licensee's establishment.

(Code 1979, § 3-18; Ord. No. 1-18-77A, § 14-3, 2-1-1977)

Sec. 6-18. - Purchase by, sale to, etc., minors; misrepresentations as to age.

(a) It shall be unlawful:

(1) For any minor person, directly or indirectly, to purchase any malt or brewed beverages, any wine, or liquor, or any alcoholic or intoxicating beverage, or to attempt to purchase any of such beverages.

(2) For any minor person to possess or to consume any alcoholic or intoxicating beverages in any public place, or in any business establishment or club.

(3) For any person to sell, furnish, give to, or purchase for any minor person any malt or brewed beverages, any wine or liquor, or any alcoholic or intoxicating beverage, or to attempt to sell, furnish, give to, or purchase for any minor person any of such beverages.

(4) For any person, directly or indirectly, to falsely represent or attempt to falsely represent that a minor person is not a minor or is not under 21 years of age, and, by means of such false representation, to aid or abet, or attempt to aid or abet, such minor person to buy, receive or otherwise obtain, or otherwise to aid or abet such minor person to buy, receive, or otherwise obtain, any malt or brewed beverage, any wine or liquor, or any alcoholic or intoxicating beverages.

(b) For the purposes of this section, the definitions of the term "malt or brewed beverages," "wine or liquor," or "alcoholic or intoxicating beverages," shall be the same as they are defined in Code of Ala. 1975, title 28, as amended.

(c) It shall be considered a false representation that a person is not a minor or is not under 21 years of age, that the purchaser fails to disclose that the person making the purchase, obtaining, or securing such malt or brewed beverages, or such wines or liquors, or such alcoholic or intoxicating beverages, is a minor person or has not reached the age of 21 years.

(Code 1979, § 3-21; Ord. No. 1-18-77A, § 2, 2-1-1977)

State Law reference— Purchase, etc., by minor, Code of Ala. 1975, §§ 28-3-260(2), 28-3-266; employment of minors in establishments, Code of Ala. 1975, §§ 25-8-11, 25-8-12, 28-3-162.

Sec. 6-19. - Violations—Failure to pay license or tax.

It shall be unlawful for any person who is required to pay the license or privilege tax herein provided for to fail to pay the same at the time herein specified, and such offense shall be a continuing offense against the city and each day during which said person shall sell or store such beverages in the city or in its police jurisdiction during such default shall constitute a separate offense.

(Code 1979, § 3-22; Ord. No. 1-18-77A, § 9-3, 2-1-1977)

Sec. 6-20. - Same—Sale of unstamped beer.

It shall be unlawful for any retail beer dealer to have, hold, possess, sell or offer for sale within the corporate limits or jurisdiction of the city subsequent to June 4, 1972, at 6:00 a.m. (CST), any beer, the container of which does not have securely affixed thereto decal stamps of the nature and in the amount as provided and required by law.

(Code 1979, § 3-23; Ord. No. 1-18-77A, § 9-6, 2-1-1977)

Sec. 6-21. - Same—Punishment.

Any person violating any of the provisions of this chapter shall, upon conviction, be punished as provided in section 1-8.

(Code 1979, § 3-24; Ord. No. 1-18-77A, § 9-1, 2-1-1977)

Sec. 6-22. - Same—Delivery of unstamped beer.

It shall be unlawful for any wholesale beer dealer to ship or deliver, directly or otherwise, any beer to or within the corporate limits or police jurisdiction of the city subsequent to June 5, 1972, at 6:00 a.m. (CST), which does not have securely affixed to each container thereof, as provided and required by law, the decal stamps issued therefor.

(Code 1979, § 3-25; Ord. No. 1-18-77A, § 9-5, 2-1-1977)

Sec. 6-23. - Possessing open containers or consuming in public place.

It shall be unlawful for any person to possess open containers of alcoholic or intoxicating beverages or consume alcoholic or intoxicating beverage in any public place.

(Code 1979, § 3-26)

Secs. 6-24—6-43. - Reserved.

ARTICLE II. - SEXUAL CONDUCT

Sec. 6-44. - Sexual conduct and nudity in establishments dealing in alcoholic beverages—Purpose.

The purpose of this article is to prohibit sexual conduct and nudity in establishments dealing in alcoholic beverages and prohibit persons owning, maintaining or operating such establishments from permitting any such prohibited activity.

(Code 1979, § 3-27; Ord. No. 4-07-87, 5-5-1987)

Sec. 6-45. - Same—Definitions.

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

Establishment dealing in alcoholic beverages means any business establishment operating within the corporate limits of the city which sells, dispenses or allows the consumption of alcoholic beverages on the premises.

Person means any individual, firm, association, joint venture, partnership, estate, trust, business trust, syndicate, fiduciary, corporation or any combination thereof, or other entity.

(Code 1979, § 3-28; Ord. No. 4-07-87, 5-5-1987)

Sec. 6-46. - Same—Prohibited acts.

(a) No person shall expose to public view his genitals, pubic area, vulva, anus, anal cleft or cleavage or any simulation thereof in an establishment dealing in alcoholic beverages.

(b) No person shall expose to public view any portion of their breasts below the top of the areola or any simulation thereof in an establishment dealing in alcoholic beverages.

(c) No person maintaining, owning or operating an establishment dealing in alcoholic beverages shall suffer or permit any person to expose to public view his genitals, pubic area, vulva, anus, anal cleft or cleavage or any simulation thereof within an establishment dealing in alcoholic beverages.

(d) No person maintaining, owning or operating an establishment dealing in alcoholic beverages shall suffer or permit any person to expose to public view any portion of their breasts below the top of the areola or any simulation thereof within an establishment dealing in alcoholic beverages.

(e) No person shall engage in and no person maintaining, owning or operating an establishment dealing in alcoholic beverages shall suffer or permit any sexual intercourse, masturbation, sodomy, bestiality, oral copulation, flagellation or any sexual act which is prohibited by law, touching, caressing or fondling of the breasts, buttocks, anus or genitals or the simulation thereof within an establishment dealing in alcoholic beverages.

(f) No person maintaining, owning, or operating an establishment dealing in alcoholic beverages shall allow any sexual demonstration, entertainment, exposition or contest to include wet shirt or any other vulgar, distasteful or immoral act on the premises. Vulgar, distasteful or immoral acts shall be defined as any act performed for the purpose of arousing the sexual desires or attitudes of patrons, employees, owners or operators.

(g) No licensee shall permit the showing of films, still pictures, electronic reproductions or other visual reproductions depicting any of the acts prohibited by this section, or any such acts which are prohibited by law.

(Code 1979, § 3-29; Ord. No. 4-07-87, 5-5-1987)

Sec. 6-47. - Same—Violation; punishment.

Any person violating any of the provisions of this article shall, upon conviction, be punished by a fine of $100.00, not to exceed $500.00, or up to six months in jail for each violation.

(Code 1979, § 3-30; Ord. No. 4-07-87, 5-5-1987)

Chapter 8 - ANIMALS AND FOWL[1]

Footnotes:

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State Law reference— Authority to regulate, Code of Ala. 1975, §§ 3-5-14, 3-7-13, 11-47-110; cruelty, Code of Ala. 1975, § 13A-11-14; impounding and disposal of rabies-suspect or rabid animals, Code of Ala. 1975, § 3-7A-9.

ARTICLE I. - IN GENERAL

Secs. 8-1—8-18. - Reserved.

ARTICLE II. - DOGS

Sec. 8-19. - Definitions.

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

At large means unrestrained and not under the control of the owner or other person acting for the owner, such control to be exercised either:

(1) By confinement within a fence, wall or other enclosure in such a manner as to effectively prevent the escape of the dog.

(2) By the restraint of the dog by a leash, cord or chain not less than ten feet in length and secured to a collar, with swivel connections, in such a manner as to effectively prevent the escape of the dog; provided, however, that the length of the leash, cord or chain shall be reduced to such length as to prevent the dog, when so secured, from entering premises other than that of the owner.

(3) When the dog is in a public place and off the premises of the owner, by the restraint of the dog by a leash, cord or chain not more than six feet in length and secured to a collar, with swivel connections, in such a manner as to effectively prevent the escape of the dog.

It is provided further that no dog shall be restrained in an inhumane manner.

Dog means all members of the canine family three months or more of age, including pet foxes, wolves and other such members of the canine family.

Owner means any person owning, keeping, possessing, harboring or maintaining a dog within the city.

(Code 1979, § 4-21; Ord. No. 9-1-81, § 1, 9-15-1981)

Sec. 8-20. - Animal control officer.

The director of public safety and members of the police department shall have the right, for the protection of the public health, welfare and safety, to enter upon any property within the city for the purpose of capturing and impounding any dog found running at large. The director of public safety and members of the police department, upon verified written complaint that a dog has bitten a human being, shall have the further right, for the protection of the public health, welfare and safety, to enter upon any property within the city or its police jurisdiction for the purpose of capturing and confining the dog, under the direct care, custody, control and supervision of a licensed veterinarian, for a period of ten days, in accordance with the provisions of Code of Ala. 1975, § 3-7A-9, as amended. It shall be unlawful and punishable as a misdemeanor for any person who is the owner or custodian of a dog which has bitten a human being to fail to promptly turn over or deliver such dog to the chief animal control officer, his deputies or assistants, or members of the police department, upon demand of one of such persons. Any expense incurred in the handling of any dog under the provisions of this section shall be borne by the owner or custodian of such dog.

(Code 1979, § 4-22; Ord. No. 9-1-81, § 2, 9-15-1981)

Sec. 8-21. - Rabies inoculation required.

It shall be unlawful for any person to own, possess, keep, maintain or harbor a dog within the city without having such dog inoculated annually, for rabies, as required by Code of Ala. 1975, § 3-7A-2, as amended.

(Code 1979, § 4-23; Ord. No. 9-1-81, § 3, 9-15-1981)

Sec. 8-22. - Owner's responsibility regarding running at large, frequent barking, etc.

(a) *Confinement of dogs on private premises.* It shall be unlawful and punishable as a misdemeanor for any person owning, keeping, possessing, harboring or maintaining a dog to cause, permit or allow such dog to be at large on or about any place, lot or premises of same within the city. All dogs within the city shall be kept:

(1) Confined within a fence, wall or other enclosure in such a manner as to effectively prevent the escape of such dog; or

(2) Restrained by a leash, cord or chain of not less than ten feet in length and secured to a collar, with swivel connections, in such a manner as to effectively prevent the escape of the dog; provided, however, that the length of the leash, cord or chain shall be reduced to such length as to prevent the dog, when so secured, from entering premises other than that of the owner.

(b) *Restraint of dogs in public places and off premises.* It shall be unlawful and punishable as a misdemeanor for any person owning, keeping, possessing, harboring or maintaining a dog to cause, allow or permit such dog to run or be at large upon any street, alley, thoroughfare, sidewalk or public place in the city or in the police jurisdiction of the city unless such dog is attached to a leash, cord or chain of not more than six feet in length and secured to a collar, with swivel connections, in such manner as to effectively prevent the escape of the dog, and with the leash, cord or chain being in the hands of the owner or other person in charge of such dog.

(c) *Keeping barking, howling, etc., dogs.* It shall be unlawful for the owner of any dog to suffer or permit on his lot or premises the loud and frequent or continued barking, howling or yelping of said dog, so as to annoy or disturb the neighbors.

(Code 1979, § 4-24; Ord. No. 9-1-81, § 4, 9-15-1981)

Sec. 8-23. - Impoundment of dogs found at large; redemption procedure; disposition of unredeemed dogs.

(a) Any dog which is found at large on any street, sidewalk, alley, thoroughfare or other place in the city shall be caught and taken by the director of public safety and members of the police department and impounded in the city pound. Any such dog so impounded may be retaken/redeemed from the pound by the owner or his duly authorized representative within seven days from impoundment thereof, or anytime thereafter before sale, adoption or destruction thereof, by paying the city clerk or representative a fee of $20.00 on first offense, $50.00 on second offense, and $100.00 on third offense, which shall be remitted to the city, plus the cost of keeping such dog in the pound at the rate of $2.00 per day, beginning at the time of impoundment. Every such dog which has remained in the pound for seven days and which has not been redeemed or retaken by the owner, or his duly authorized representative, shall be placed for adoption or sold by the poundmaster; any monies shall be remitted to the city. Any dog adopted or sold by the poundmaster shall have a current rabies vaccination, as prescribed by law, and a certificate and tag, as likewise prescribed, shall have been issued therefor. Dogs not redeemed/purchased or adopted, as herein provided, shall be destroyed by the poundmaster in a humane manner without delay.

(b) Any animal or fowl which is impounded as a public nuisance shall likewise be fined and redeemed/purchased, adopted, or destroyed as prescribed in subsection (a) of this section.

(Code 1979, § 4-25; Ord. No. 9-1-81, § 5, 9-15-1981; Ord. No. 11-20-84, 12-3-1984; Ord. No. 2-5-85A, 2-19-1985)

Sec. 8-24. - Impounding of dogs upon premises of other than owner.

Any dog, whether wearing an inoculation tag or not, which is found upon the premises of a person other than the owner or keeper thereof, shall be impounded by the chief animal control officer, his deputies and assistants, or the humane officer, as provided in this article. Such dog may be redeemed upon the payment of the fee set out in section 8-23. If such dog is not redeemed, the same shall be subject to disposition as provided for in section 8-23.

(Code 1979, § 4-26; Ord. No. 9-1-81, § 6, 9-15-1981)

Sec. 8-25. - Penalties; fines.

A violation of any of the provisions of this article by any person shall constitute a misdemeanor. Any person who shall violate any of the provisions of this article shall be fined $20.00 on first offense, $50.00 on second offense, and $100.00 on third offense, and may be imprisoned or sentenced to jail or hard labor for a period not exceeding six months, or both, at the discretion of the municipal judge.

(Code 1979, § 4-27; Ord. No. 9-1-81, § 7, 9-15-1981; Ord. No. 2-5-85A, 2-19-1985)

Secs. 8-26—8-53. - Reserved.

ARTICLE III. - DANGEROUS AND VICIOUS DOGS

Sec. 8-54. - Definitions.

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

Owner means any person, firm, corporation, organization, or department possessing, harboring or having care or custody, whether temporary or permanently, of a vicious or potentially dangerous dog.

Potentially dangerous dog means any of the following:

(1) Any dog which, when unprovoked, on two separate occasions within a 36-month period, engages in any behavior that requires a defensive action by any person to prevent bodily injury when the person and the dog are off the property of the owner or keeper of the dog.

(2) Any dog which, when unprovoked, bites a person causing a less severe injury than as defined in the definition of the term "severe injury."

(3) Any dog which, when unprovoked, on two separate occasions within a 36-month period, has seriously bitten, inflicted injury, or otherwise caused injury attacking a domestic animal off the property of the owner or keeper of the dog.

Severe injury means any physical injury to a human being that results in muscle tears, disfiguring lacerations, requires multiple sutures, corrective surgery, or cosmetic surgery.

Vicious dog means any of the following:

(1) Any dog which, when unprovoked, in an aggressive manner, inflicts severe injury on or kills a human being.

(2) Any dog previously determined to be and currently listed as a potentially dangerous dog which, after its owner or keeper has been notified of this determination, continues the behavior described in the definition of the term "potentially dangerous dog."

(3) Any dog, when unprovoked, that kills a domestic animal off the property of the owner or keeper.

(Ord. No. 01-05-10, § 1, 1-19-2010)

Sec. 8-55. - Enforcement.

(a) *Circumstances.*

(1) No dog may be declared potentially dangerous or vicious if any injury or damage is sustained by a person who, at the time the injury or damage was sustained, was committing a willful trespass upon premises occupied by the owner or keeper of the dog, or was teasing, tormenting, abusing, or assaulting the dog, or was committing or attempting to commit a crime. No dog may be declared potentially dangerous or vicious if the dog was protecting or defending a person within the immediate vicinity of the dog from an unjustified attack or assault.

(2) No dog may be declared potentially dangerous or vicious if any injury or damage was sustained to another domestic animal which at the time the injury or damage was sustained the dog was on its own property or protecting owner from unjustified attack by another domestic animal.

(b) *Enforcement.*

(1) If a law enforcement officer has investigated and determined, pursuant to the definitions of "potentially dangerous dog" and "vicious dog," as found in section 8-54, that there exists probable cause to believe that a dog is potentially dangerous or vicious, he shall petition the municipal court for a hearing for the purpose of determining whether or not the dog in question should be declared potentially dangerous or vicious.

(2) If the court rules the dog to be potentially dangerous or vicious, the court may establish a time schedule to ensure compliance with section 8-56(a) and (b), but in no case more than ten days.

(Ord. No. 01-05-10, § 2, 1-19-2010)

Sec. 8-56. - Disposition compliance procedure.

(a) *Disposition of potentially dangerous dog.*

(1) All potentially dangerous dogs shall be properly registered and vaccinated. The registering authority shall include two color photos of the potentially dangerous designation in the record of the dog, either after the owner or keeper of the dog has agreed to the designation or the court has determined the designation applies to the dog.

(2) The owner of a potentially dangerous dog, while on the owner's property, shall at all times display in a prominent place on their premises a sign that is easily readable by the public using the words "Beware of Dog."

(3) A potentially dangerous dog, while on the owner's property, shall at all times be kept indoors, or in a securely fenced yard from which the dog cannot escape, and into which children cannot trespass. If the dog is off the owner's premises, the dog shall be restrained by a leash of four to six feet in length and under the control of a responsible adult.

(4) If the dog in question dies, is sold, transferred, or permanently removed from the city where the owner resides, the owner shall notify the police department of the changed condition and new location within two working days.

(5) If there are no additional instances of the behavior defining a potentially dangerous dog in section 8-54 within a 36-month period from the date of designation as a potentially dangerous dog, the dog shall be removed from the record as a potentially dangerous dog.

(b) *Disposition of vicious dog.*

(1) A dog determined to be a vicious dog may be destroyed by the order of the court when it is found, after court proceedings, that the release of the dog would create a significant threat to the public health, safety, and welfare.

(2) If it is determined that a dog found to be vicious shall not be destroyed, the court shall impose conditions upon the ownership of the dog that protects the public health, safety, and welfare, including, but not limited to, the dog being removed from the city, and/or the owner of the dog being prohibited by the court from owning, possessing, controlling, or having custody of any dog for a period of up to three years.

(c) *Penalties.*

(1) Any person in violation of this article involving a potentially dangerous dog shall on conviction be fined a sum not to exceed $500.00.

(2) Any person in violation of this article involving a vicious dog shall, on conviction, be fined a sum not to exceed $1,000.00.

(3) In addition to the fine imposed, the court may sentence the defendant to imprisonment in the city jail for a period not to exceed 30 days.

(4) Should the defendant be ordered to remove the dog from the city and the defendant refuses to remove the dog from the city, the court shall find the defendant in contempt of the court and order the impoundment of the dog. Any person in violation of this article shall pay all expenses for shelter, food, handling, and veterinary care of the dog necessitated by the enforcement of this section.

(Ord. No. 01-05-10, § 3, 1-19-2010)

Chapter 10 - BUILDINGS AND CONSTRUCTION[1]

Footnotes:

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State Law reference— Authority to adopt technical codes, Code of Ala. 1975, § 11-45-8; authority to regulate construction, Code of Ala. 1975, §§ 11-43-59, 11-52-1 et seq.; refusal to permit inspection, Code of Ala. 1975, § 13A-10-3; state minimum building standards code, Code of Ala. 1975, § 41-9-160 et seq.; state energy conservation building code, Code of Ala. 1975, § 41-9-170 et seq.; adoption of Alabama Residential Building and Energy Codes, Ala. Admin. Code 305-2-4-.09; adoption of commercial energy code, Ala. Admin. Code 305-2-4-.08.

ARTICLE I. - IN GENERAL

Sec. 10-1. - Technical codes adopted by reference; enforcement.

(a) The following codes are hereby adopted by reference as though they were copied herein fully:

(1) International Building Code, 2009 edition.

(2) International Mechanical Code, 2009 edition.

(3) International Plumbing Code, 2009 edition.

(4) International Swimming Pool & Spa Code, 2009 edition.

(5) International Fire Code, 2009 edition.

(6) International Fuel Gas Code, 2009 edition.

(b) Within said codes, when reference is made to the duties of a certain official named therein, that designated official of the city who has duties corresponding to those of the named official in said code shall be deemed to be the responsible official insofar as enforcing the provisions of said code are concerned.

(c) Appendix K of the building code is deleted, and the following substituted therefor:

(1) Fees for building permits shall be as follows:

a. Where the valuation does not exceed $100.00, no fee shall be required.

b. For a valuation over $100.00, the fee shall be one-eighth of one percent of such valuation; provided, however, there shall be a minimum fee of $10.00 for any such permit issued.

(2) No permit shall be issued until the fees prescribed herein have been paid, nor shall an amendment to a permit be approved until the additional fee, if any, due to an increase in the estimated cost of the building or structure has been paid.

(3) If the valuation of such building, alteration or repair appears to be underestimated on the application, the permit shall be denied unless the applicant can show detailed estimated cost of such work.

(Ord. No. 5-11-59, §§ 3, 4, 5; Ord. No. 11-04-98a, 2-2-1999)

Sec. 10-2. - Dangerous buildings—Definition.

The term "dangerous buildings," as used in this chapter, is defined to mean and include:

(1) Any building, shed, fence, or other manmade structure which is dangerous to the public health because of its condition, and which may cause or aid in the spread of disease or injury to the health of the occupants of it or neighboring structures.

(2) Any building, shed, fence or other manmade structure which, because of faulty construction, age, lack of proper repair or any other cause, is especially liable to fire and constitutes or creates a fire hazard.

(3) Any building, shed, fence or other manmade structure which, by reason of faulty construction or any other cause, is liable to cause injury or damage by collapsing or by a collapse or fall of any part of such structure.

(4) Any building, shed, fence or other manmade structure which, because of its condition or because of lack of doors or windows, is available to and frequented by malefactors or disorderly persons who are not lawful occupants of such structure.

(5) Any building, shed, fence or other manmade structure which in relation to existing use constitutes a hazard to safety or health by reason of inadequate maintenance, dilapidation, obsolescence, abandonment or accumulation of rubbish and debris.

(Code 1979, § 5-5; Ord. No. 3-20-84E, 6-5-1984)

Sec. 10-3. - Same—Declaration of nuisance.

Any dangerous building, as defined in section 10-2, is declared to be a nuisance.

(Code 1979, § 5-6; Ord. No. 3-20-84E, 6-5-1984)

Sec. 10-4. - Same—Keeping or occupying prohibited.

It shall be unlawful to maintain or permit the existence of any dangerous building in the city, or its police jurisdiction; and it shall be unlawful for the owner, occupant or person in custody of any dangerous building to permit the same to remain in a dangerous

condition, or to occupy such building or permit it to be occupied while it is or remains in a dangerous condition.

(Code 1979, § 5-7; Ord. No. 3-20-84E, 6-5-1984)

Sec. 10-5. - Same—Abatement; determination of necessity; serving notice; form of notice.

Whenever the administrative official, the fire chief, police chief or the health officer shall be of the opinion that any building or structure in the city is a dangerous building, as defined in section 10-2, he shall file a written statement to that effect with the city clerk. The city clerk shall thereupon cause written notice to be served upon the owner thereof and upon the occupants thereof, if any, by registered mail, or certified mail, return receipt requested, or by personal service. Such notice shall state that the building has been declared to be in a dangerous condition and that such dangerous condition must be removed or remedied by repairing, altering or demolishing; and that the condition must be remedied within 60 days. Such notice may be in the following form:

To _____ of the premises known and described as _____.
You are hereby notified that _____ (describe building) on the premises above mentioned has been declared to be a nuisance and a dangerous building after inspected by _____ (officer).
The causes for this decision are _____/_____/_____ _____ _____ (insert the facts as to the dangerous condition).
You must remedy this condition or demolish the building within sixty (60) days from the date of this notice, or the City of Daleville, a municipal corporation, will proceed to do so and the cost thereof will be assessed against the real estate upon which said building is situated and will constitute a lien thereon.

(Code 1979, § 5-8; Ord. No. 3-20-84E, 6-5-1984)

Sec. 10-6. - Same—Appeal from determination.

The determination that a building or structure is a dangerous building, as defined in section 10-2, may be appealed by the owner thereof within ten days from the date the notice is served upon said person by registered mail, certified mail, return receipt requested, or by personal service. The appeal of that determination shall be to the housing board of adjustment of the city and the city clerk shall give notice to the appealing party of the time and place of such appeal hearing. The appealing parties should appear at the meeting where they will have the opportunity to be heard and present testimony from witnesses which they may desire to have present. If the determination is upheld by the board, the owner must repair, remedy or demolish said building within 60 days after the finding of the board and such repair or remedy must comply with the requirements of the building code of the city; it shall be unlawful to occupy or permit the occupancy of such building after such determination until after it has been repaired or remodeled.

(Code 1979, § 5-9; Ord. No. 3-20-84E, 6-5-1984)

Secs. 10-7—10-30. - Reserved.

ARTICLE II. - BUILDING ADDRESSES AND NUMBERING

Sec. 10-31. - Standards.

The following address standards are adopted:

(1) All buildings, residences, mobile homes, or other fixed structures within the city limits shall have numerical addresses assigned by the Daleville/Clayhatchee E-911 Board and this assigned address shall be permanently affixed in accordance with criteria contained herein. For the purpose of this article, the term "address" is defined as the numerals and/or characters assigned, in compliance with this article, to a specific location.

(2) The Daleville/Clayhatchee E-911 Board shall assign addresses on existing and future structures on both public and private roads and shall keep records on file of these address assignments.

(3) All numerals and/or characters used to exhibit the assigned E-911 address shall be as follows:

   a. A minimum of three inches in height;

   b. Durable and weather-resistant;

   c. It is recommended that all numerals and characters shall be affixed to an 18-inch by six-inch mounting pad covered with green retro reflective material;

d. All numerals and characters shall be maintained in a legible condition and shall be clearly visible from the traveled portion of the address street.

(4) All structures with roadside mailboxes must have the address numeral and/or characters placed on the mailbox or the mailbox support structure to ensure visibility from any direction of travel on the addressed street.

(5) All structures, regardless of whether visible from the addressed street, that do not have numbers affixed to the mailbox that can be easily read from both directions of approach on the roadway, must have address numerals and/or characters placed either above or to the side of the usual direction of approach to the structure. If no entrance faces the street, then the numerals and/or characters shall be placed at a point near the far left of the structure, when facing the structure from the addressed street. The numerals and/or characters shall be no more than 12 feet nor less than six feet from the ground.

(6) All structures more than 100 feet from the traveled portion of the addressed street, that do not have a roadside mailbox located immediately adjacent to the structure access or driveway, must have a freestanding sign or marker, depicting the address of the structure. The numerals and/or characters affixed to this sign or marker must be placed in a manner as to be clearly visible from the traveled portion of the addressed street from any direction. The sign or marker must be located behind the right-of-way or less than ten feet behind the curb, whichever is the greatest distance, but must be behind any sidewalk. This sign or marker shall be no more than three feet in height from the ground nor less than 18 inches, and shall be maintained to ensure it is unobstructed and clearly visible. It shall not interfere with normal pedestrian traffic or the vision of motorist traveling in either direction.

(7) Businesses or other entities may use signs located immediately in front of the addressed structure and adjacent to an access point, provided the sign is clearly visible from the addressed street. This sign may not be located more than 20 feet from the addressed street right-of-way.

(8) In structures which have two separate dwellings, the address numerals and/or characters will be placed over usual entry points to each dwelling or on each end of the structure on which the usual entry is located, ensuring clear, unobstructed visibility from the addressed street.

(9) Single structures that contain multiple dwellings, offices, suites, etc., but are addressed individually, will have the address numerals and/or characters affixed on the exterior of the structure with the range of the addresses. Structures within a multi-structure complex, or located in close proximity to each other, may have alphanumeric designators assigned as part of the address, which would be displayed as part of the assigned address of such structure. Numerals and/or characters must be visible from the usual or any other reasonable approach to the structure, such that the structures bordered by parking lots, driveways, streets or other similar approaches must have the address clearly displayed on each side of the structure. These numerals and/or characters may be no less than six feet or more than eight feet from ground level. All entry doors shall have the

corresponding numerals and/or characters affixed immediately above or adjacent to the entranceway of the individual addresses accessible through that passageway. The Daleville/Clayhatchee E-911 Board must approve all abbreviations used in addresses.

(10) Trailer park communities and/or other like communities shall display the trailer park street address within 20 feet of the entrance to the park from the addressed street. The numerals and/or characters shall be clearly visible from all usual directions of approach until the approved address has been assigned and affixed or erected to conform to this article. As soon as initial construction of a structure is begun, a clearly visible freestanding sign or marker, as specified in subsection (6) of this section, is required until the permanent address numerals and/or characters are attached.

(11) No building or structure shall have permanent utilities attached or connected until the approved address has been assigned and affixed or erected to conform to this article. As soon as initial construction of a structure is begun, a clearly visible freestanding sign or marker, as specified in subsection (6) of this section, is required until the permanent address numerals and/or characters are attached.

(Ord. No. 01-21-03, §§ 1—11, 2-4-2003)

Sec. 10-32. - Responsibility for compliance.

The resident or current occupant of any dwelling shall be responsible for compliance with this article. The manager or occupant of any business structure is responsible for the compliance of this article. The owner of any vacant addressable structure is responsible for compliance with this article.

(Ord. No. 01-21-03, § 12, 2-4-2003)

Sec. 10-33. - Unlawful display of address.

Displaying, broadcasting, utilizing or disseminating any address in any manner other than that prescribed herein shall be a violation of this article. This section shall not apply to official control devices erected by the state or county.

(Ord. No. 01-21-03, § 13, 2-4-2003)

Sec. 10-34. - Penalty.

Failure to comply with this article shall constitute a misdemeanor for which the alleged violator may be arrested or issued a summons in person or by certified mail to appear in person before the municipal court. The minimum fine for violation of this article is $25.00, plus court cost. The maximum penalty for violation of this article is 30 days in jail and/or

a fine of $500.00. Each day the violation continues shall be deemed to constitute a separate and distinct offence under this article.

(Ord. No. 01-21-03, § 14, 2-4-2003)

Chapter 12 - BUSINESS LICENSES AND TAXES[1]

Footnotes:

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State Law reference— Municipal Business License Reform Act of 2006, Code of Ala. 1975, § 11-51-90 et seq.; Alabama Taxpayers' Bill of Rights and Uniform Revenue Procedures Act, Code of Ala. 1975, § 40-2A-1 et seq.; exemptions from taxation and licenses, Code of Ala. 1975, § 40-9-1 et seq.; sales and use taxes generally, Code of Ala. 1975, § 40-23-1 et seq.; transient occupancy tax, Code of Ala. 1975, § 40-26-1 et seq.; management and control of finances and property of municipalities, Code of Ala. 1975, § 11-43-56; municipal property taxation, Code of Ala. 1975, § 11-51-1 et seq.; municipal license taxes, Code of Ala. 1975, § 11-51-90 et seq.; municipal sales and use taxes, Code of Ala. 1975, § 11-51-200 et seq.; authority of municipality to impose ad valorem taxes, Code of Ala. 1975, § 11-51-1; municipal authority to levy sales tax, Code of Ala., 1975, §§ 11-51-200, 11-51-206.

ARTICLE I. - IN GENERAL

Sec. 12-1. - Sweepstakes regulations.

(a) Bona fide sweepstakes meeting state and federal regulations are permitted on licensed premises within the city for the purpose of promoting a particular product or business for a limited period, subject to the following conditions:

(1) Video readers or electronic readers to reveal, display or determine sweepstakes results are prohibited on licensed premises.

(2) Sweepstakes chances are limited to five chances per customer, per visit, unless the sweepstakes chances are prepackaged by the manufacturer with the product for sale.

(3) The offering of no purchase necessary sweepstakes chances must comply with state and/or federal law.

(4) There shall be no on-premises distribution of cash, gift card, store credit or gift certificate prizes to sweepstakes winners. Cash, gift card, store credit or gift certificate prizes shall be awarded after a minimum seven-day waiting period from a separate licensed premises or through the mail.

(5) The loading of sweepstakes chances on credit card data strips or other data storage device is prohibited.

(6) Any product sold in order to receive a sweepstakes chance must be capable of being used or consumed off site and non-perishable items such as Internet time or long distance minutes must not expire within one year.

(7) Sweepstakes odds must be conspicuously posted on the premises or printed on sweepstake chance forms.

(8) Any product sold in order to receive sweepstakes chances must be sold at fair market value for the city market area.

(9) The exchange of a purchased product for additional sweepstakes chances is prohibited.

(b) It shall be unlawful to possess video or electronic sweepstakes readers.

(c) Violations of this section shall subject a business licensee to the revocation of a business license issued by the city for flagrant violations or repeated violations.

(d) A violation of this section shall be a misdemeanor and, upon conviction, is punishable pursuant to section 1-8.

(Ord. No. 11-07-06, § 1, 11-21-2006)

Secs. 12-2—12-20. - Reserved.

ARTICLE II. - BUSINESS LICENSES

Sec. 12-21. - Levy of tax.

Pursuant to the Code of Alabama, this article is hereby declared to be and is adopted as the business license code and schedule of licenses for the municipality for each year hereafter. There is hereby levied and assessed a business license fee for the privilege of doing any kind of business, trade, profession or other activity in the municipality, or the police jurisdiction, by whatever name called.

(Ord. No. 12-04-07, § 1, 12-18-2007)

Sec. 12-22. - Definitions.

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

Business means any commercial or industrial activity or any enterprise, trade, profession, occupation, or livelihood, including the lease or rental of residential or nonresidential real estate, whether or not carried on for gain or profit, and whether or not engaged in as a principal or as an independent contractor, which is engaged in, or caused to be engaged in, within a municipality.

Business license means an annual license issued by the municipality for the privilege of doing any kind of business, trade, profession, or any other activity in the municipality, by whatever name called, which document is required to be conspicuously posted or displayed except to the extent the taxpayer's business license tax or other financial information is listed thereon.

Business license remittance form means any business license return, renewal reminder notice, or other writing on which the taxpayer calculates the business license tax liability for all or part of the license year and remits the amount so calculated with the form.

Department or *department of revenue* means the Alabama Department of Revenue, as created under Code of Ala. 1975, § 40-2-1 et seq.

Designee means an agent or employee of the municipality authorized to administer or collect, or both, the municipality's business license taxes, which may include another taxing jurisdiction, the department of revenue, or a private auditing or collecting firm as defined in Code of Ala. 1975, § 40-2A-3.

Gross receipts means the measure of any and all receipts of a business from whatever source derived, to the maximum extent permitted by applicable laws and constitutional provisions, to be used in calculating the amount due for a business license. Provided, however, that:

(1) Gross receipts shall not include any of the following taxes collected by the business on behalf of any taxing jurisdiction or the federal government: all taxes which are imposed on the ultimate consumer, collected by the taxpayer and remitted by or on behalf of the taxpayer to the taxing authority, whether state, local or federal, including utility gross receipts levied pursuant to Code of Ala. 1975, §§ 40-21-80—40-21-88; license taxes levied pursuant to Code of Ala. 1975, §§ 40-21-50—40-21-64; or reimbursements to professional employer organizations of federal, state or local payroll taxes or unemployment insurance contributions; but no other deductions or exclusions from gross receipts shall be allowed except as provided in this article.

(2) A different basis for calculating the business license may be used by the municipality with respect to certain categories of taxpayers as prescribed in Code of Ala. 1975, § 11-51-90B.

(3) For a utility or other entity described in Code of Ala. 1975, § 11-51-129, gross receipts shall be limited to the gross receipts derived from the retail furnishing of utility services within the municipality during the preceding year that are taxed under Code of Ala. 1975, §§ 40-21-80—40-21-88; except that nothing in this section shall affect any existing contract or agreement between a municipality and a utility or other entity. The gross receipts derived from the furnishing of utility services shall not be subject to further business license taxation by the municipality.

(4) Gross receipts shall not include dividends or other distributions received by a corporation, or proceeds from borrowing, the sale of a capital asset, the repayment of the principal portion of a loan, the issuance of stock or other equity investments, or capital contributions, or the undistributed earnings of subsidiary entities.

License form means any business license application form, renewal reminder notice, business license remittance form, or business license return by whatever name called.

License officer or *municipal license officer* means the municipal employee charged by the municipality with the primary responsibility of administering the municipality's business license tax ordinance and related matters thereto.

License year means the calendar year.

Municipality means any town or city in this state that levies a business license tax from time to time. The term shall also include the town's or city's police jurisdiction, where the business license tax is levied in the police jurisdiction.

Person means any individual, association, estate, trust, partnership, limited liability company, corporation, or other entity of any kind, except for any nonprofit corporation formed under the laws of the state which is operated to enable municipalities that become members of such nonprofit corporation to finance or refinance capital projects and related undertakings, on a cooperative basis, and whose board of directors or other governing body consists primarily of elected officials of the municipality.

Taxing jurisdiction means any municipality that levies a business license tax, whether or not a business license tax is levied within its police jurisdiction, or the department of revenue acting as agent on behalf of a municipality pursuant to Code of Ala. 1975, § 11-51-180 et seq., as the context requires.

Taxpayer means any person subject to or liable under this article for any business license tax; any person required to file a return with respect to, or pay or remit the business license tax levied under this article or to report any information or value to the taxing jurisdiction; or any person required to obtain, or who holds any interest in, any business license issued by the taxing jurisdiction; or any person that may be affected by any act or refusal to act by the taxing jurisdiction under this article, or to keep any information or records required by this article.

USC means the applicable title and section of the United States Code, as amended from time to time.

(b) Other terms. Other capitalized or specialized terms used in this article, and not defined in subsection (a) of this section, shall have the same meanings ascribed to them in Code of Ala. 1975, § 40-2A-3, unless the context therein otherwise specifies.

(Ord. No. 12-04-07, § 2, 12-18-2007)

Sec. 12-23. - License term; minimums.

The license term and the minimum amount for a business license are as follows:

(1) *Full year.* Every person who commences business before July 1 shall be subject to and shall pay the annual license for such business in full. Unless otherwise specified in the stated schedules, the minimum annual license shall be $100.00.

(2) *Half year.* Every person who commences business on or after July 1, shall be subject to and shall pay one-half of the annual license for such business for that calendar year.

(3) *Issue fee.* For each license issued there shall be an issue fee collected of $10.00 and said issue fee shall be collected in the same manner as the license tax.

(4) *Annual renewal.* Except as provided in subsection (4)a or (4)b of this section, the business license shall be renewed annually on or before January 31 each year.

a. If the due date for payment of any business license falls on a weekend or a holiday recognized by the municipality from time to time, the due date shall automatically be extended until the next business day.

b. Insurance company annual license renewals shall be renewed in accordance with Code of Ala. 1975, § 11-51-122, which states that each year, each insurance company shall furnish the municipality a statement in writing duly certified showing the full and true amount of gross premiums received during the preceding year and shall accompany such statement with the amount of license tax due according to the licensing schedule. Failure to furnish such statement or to pay such sum shall subject the company and its agents to those penalties as prescribed for doing business without a license as provided for in this Code.

c. On or before December 31 of each year, a renewal reminder shall be mailed to each licensee that purchased a business license during the current year. Said renewal notice shall be mailed via regular U.S. mail to the licensee's last known address of record with the municipality. Licensees are required to furnish the municipality any address changes for their business prior to December 1 in order for them to receive their notice.

d. Business license renewal payments received by the municipality shall be applied to the current renewal only when any and other debts the licensee owes to the municipality are first paid in full. No business license shall be issued if the current renewal payment does not meet said prior obligations and the current renewal. Failure to pay such sums shall subject the licensee and its agents to those penalties as prescribed for doing business without a license provided for in this Code.

(Ord. No. 12-04-07, § 3, 12-18-2007)

Sec. 12-24. - License shall be location specific.

(a) For each place at which any business is carried on, a separate license shall be paid, and any person desiring to engage in any business for which a license is required shall designate the place at which business is carried on, and the license to be issued shall designate such place, and such license shall authorize the carrying on of such business only at the place designated.

(b) Every person dealing in two or more of the articles, or engaging in two or more of the businesses, vocations, occupations or professions scheduled in this article, shall take out and pay for a license for each line of business.

(c) A taxpayer subject to the license authorized by this article that is engaged in business in other municipalities, may account for its gross receipts so that the part of its gross receipts attributable to its branch offices will not be subject to the business license imposed by this article. To establish a bona fide branch office, the taxpayer must demonstrate proof of all following criteria:

(1) The taxpayer must demonstrate the continuing existence of an actual facility located outside the police jurisdiction in which its principal business office is located, such as a retail store, outlet, business office, showroom, or warehouse, to which employees and/or independent contractors are assigned or located during regular normal working hours.

(2) The taxpayer must maintain books and records, which reasonably indicate a segregation or allocation of the taxpayer's gross receipts to the particular facility or facilities.

(3) The taxpayer must provide proof that separate telephone listings, signs, and other indications of its separate activity are in existence.

(4) Billing and/or collection activities relating to the business conducted at the branch office or offices are performed by an employee or other representative, of the taxpayer who has such responsibility for the branch office.

(5) All business claimed by a branch office or offices must be conducted by and through said office or offices.

(6) The taxpayer must supply proof that all applicable business licenses with respect to the branch office or offices have been issued.

(d) Nothing herein shall be construed as exempting businesses from payment of a license on the basis of a lack of physical location.

(Ord. No. 12-04-07, § 4, 12-18-2007)

Sec. 12-25. - Restriction on transfer of license.

No license shall be transferred except with the consent of the council or other governing body of the municipality or of the director of finance or other chief revenue officer or his designee, and no license shall be transferred to reflect a physical change of address of the taxpayer within the municipality more than once during a license year and never from one taxpayer to another. A mere change in the name or ownership of a taxpayer that is a corporation, partnership, limited liability company or other form of legal entity now or hereafter recognized by the laws of the state shall not constitute a transfer for purposes of this article, unless (i) the change requires the taxpayer to obtain a new federal employer identification number or department of revenue taxpayer identification number or (ii) in the discretion of the municipality, the subject license is one for the sale of alcoholic beverages. Nothing in this section shall prohibit a municipality from requiring a new business license application and approval for an alcoholic beverage license.

(Ord. No. 12-04-07, § 5, 12-18-2007)

Sec. 12-26. - Unlawful to do business without a license.

It shall be unlawful for any person, taxpayer, or agent of a person or taxpayer to engage in businesses or vocations in the municipality for which a license is required without first having procured a license. A violation of this division of the ordinance passed hereunder fixing a license shall be punishable by a fine not to exceed the sum of $500.00 for each offense, and if a willful violation, by imprisonment, not to exceed six months, or both, at the discretion of the court trying the same. Each day shall constitute a separate offense.

(Ord. No. 12-04-07, § 6, 12-18-2007)

Sec. 12-27. - License must be posted.

Every license shall be posted in a conspicuous place, where said business, trade or occupation is carried on, and the holder of the license shall immediately show same to the designee of the municipality upon being requested so to do.

(Ord. No. 12-04-07, § 7, 12-18-2007)

Sec. 12-28. - Duty to file report.

(a) It shall be the duty of every person subject to such license tax to render to the municipality on such forms as may be required, a sworn statement showing the total business done, amount of sales, gross receipts and gross sales, stock, value of furniture and other equipment, capital invested, number of helpers or employees, amount of space occupied, or other factor described in the schedule, one or several, as the case may require, for the ascertainment of the classification of such person for license taxation purposes and the correct amount of license tax to which he is subject.

(b) If the municipality determines that the amount of business license tax reported on or remitted with any business license remittance form is incorrect, if no business license remittance form is filed within the time prescribed, or if the information provided on the form is insufficient to allow the taxing jurisdiction to determine the proper amount of business license tax due, the municipality shall calculate the correct amount of the tax based on the most accurate and complete information reasonably obtainable and enter a preliminary assessment for the correct amount of business license tax, including any applicable penalty and interest.

(c) The municipality shall promptly mail a copy of any preliminary assessment to the taxpayer's last known address by either first class U.S. mail or certified U.S. mail with return receipt requested, or, in the sole discretion of the municipality, deliver the preliminary assessment to the taxpayer by personal delivery.

(d) If the amount of business license tax remitted by the taxpayer is undisputed by the municipality, or if the taxpayer consents to the amount of any deficiency or preliminary assessment in writing, the municipality shall enter a final assessment for the amount of the tax due, plus any applicable penalty and interest.

(e) (1) If a taxpayer disagrees with a preliminary assessment as entered by the taxing jurisdiction, the taxpayer shall file a petition for review with the municipal license officer within 30 days from the date of entry of the preliminary assessment setting out the specific objections to the preliminary assessment. If a petition for review is timely filed, the license officer of the municipality shall schedule a conference with the taxpayer for the purpose of allowing the taxpayer or its representatives and the representatives of the municipality to present their respective positions, discuss any omissions or errors, and to attempt to agree upon any changes or modifications to their respective positions.

(2) If a petition for review is not timely filed, or is timely filed, and upon further review the license officer determines that the preliminary assessment is due to be upheld in whole or in part, the municipality may make the assessment final in the amount of business license tax due as computed by the license officer, with applicable interest and penalty computed to the date of entry of the final assessment. The license officer shall, whenever practicable, complete his review of the taxpayer's petition for review and applicable law within 90 days following the later of the date of filing of the petition or the conference, if any.

(3) A copy of the final assessment shall promptly be mailed to the taxpayer's last known address (i) by either first class U.S. mail or certified U.S. mail with return receipt requested in the case of assessments of business license tax of $500.00 or less, or (ii) by certified U.S. mail with return receipt requested in the case of assessments of business license tax of more than $500.00. In either case, at the option of the taxing jurisdiction, a copy of the final assessment may be delivered to the taxpayer by personal delivery. The final assessment shall include a statement informing the taxpayer of his right to appeal the final assessment to circuit court within 30 days from the date of the entry of the final assessment.

(Ord. No. 12-04-07, § 8, 12-18-2007)

Sec. 12-29. - Duty to permit inspection and produce records.

Upon demand by the designee of the municipality, it shall be the duty of all licensees to:

(1) Permit the designee of the municipality to enter the business and to inspect all portions of his place or places of business for the purposes of enabling said municipal designee to gain such information as may be necessary or convenient for determining the proper license classification, and determining the correct amount of license tax;

(2) Furnish information during reasonable business hours, at the licensee's place of business, in the municipality or the police jurisdiction, all books of account,

invoices, papers, reports and memoranda containing entries showing amount of purchases, sales receipts, inventory and other information from which the correct license tax classification of such person may be ascertained and the correct amount of license tax to which he is subject may be determined, including exhibition of bank deposit books, bank statements, copies of sales tax returns to the state, copies of state income tax returns and federal income tax returns.

(Ord. No. 12-04-07, § 9, 12-18-2007)

Sec. 12-30. - Unlawful to obstruct.

It shall be unlawful for any person, or for any agent, servant or employee of such person, to fail or refuse to perform any duty imposed by this article; nor shall any person, agent, servant or employee of such person obstruct or interfere with the designee of the municipality in carrying out the purposes of this article.

(Ord. No. 12-04-07, § 10, 12-18-2007)

Sec. 12-31. - Privacy.

(a) It shall be unlawful for any person connected with the administration of this article to divulge any information obtained by him in the course of inspection and examination of the books, papers, reports and memoranda of the taxpayer made pursuant to the provisions of this article, except to the mayor, the municipal attorney or others authorized by law to receive such information described herein.

(b) It shall be unlawful for any person to print, publish, or divulge, without the written permission or approval of the taxpayer, the license form of any taxpayer or any part of the license form, or any information secured in arriving at the amount of tax or value reported, for any purpose other than the proper administration of any matter administered by the taxing jurisdiction, or upon order of any court, or as otherwise allowed in this article.

(c) Nothing herein shall prohibit the disclosure of the fact that a taxpayer has or has not purchased a business license. Statistical information pertaining to taxes may be disclosed to the municipality council upon their written request through the mayor's office. It shall be unlawful for any person to violate the provisions of this section.

(Ord. No. 12-04-07, § 11, 12-18-2007)

Sec. 12-32. - Failure to file assessment.

(a) In any case where a person subject to paying a license tax as provided in this article fails to do so, the municipal designee shall be authorized to assess and determine

the amount of license taxes due using the best information available either by return filed or by other means.

(b) The taxpayer shall be notified by registered or certified mail, or by personal service, of the amount of any such assessment, and of his right to appear before the municipal governing body on a day named not less than 20 days from the date of notice and to show cause why such assessment shall not be made final. Such appearance may be made by agent or attorney.

(c) If no showing is made on or before the date fixed in such notice, or if such showing is not sufficient in the judgment of the municipality, such assessment shall be made final in the amount originally fixed, or in such other amount as is determined by the municipality to be correct. If upon such hearing the municipal designee finds a different amount due than that originally assessed, he shall make the assessment final in the correct amount, and in all cases shall notify the taxpayer of the assessment as finally fixed.

(d) A notice by the United States mail, addressed to the taxpayer's last known place of business, shall be sufficient. Any assessment made by the designee of the municipality shall be prima facie correct upon any appeal.

(Ord. No. 12-04-07, § 12, 12-18-2007)

Sec. 12-33. - Lien for nonpayment of license tax.

On all property, both real and personal, used in the business, the municipality shall have a lien for such license, which lien shall attach as of the date when the license is due, as allowed by Code of Ala. 1975, § 11-51-44.

(Ord. No. 12-04-07, § 13, 12-18-2007)

Sec. 12-34. - Criminal penalties.

Any person found guilty of violating any of the provisions of this article shall be fined in an amount not less than $50.00 and not more than $500.00, and may also be sentenced to imprisonment for a period of not exceeding six months, in the discretion of the court trying the case, and violations on separate days shall each constitute a separate offense.

(Ord. No. 12-04-07, § 14, 12-18-2007)

Sec. 12-35. - Civil penalties.

In addition to the remedies provided by Code of Ala. 1975, § 11-51-150 et seq., the continued or recurrent performance of any act or acts within the corporate limits or within its police jurisdiction for which a license may be revoked or suspended under this article

is hereby declared to be detrimental to the health, safety, comfort and convenience of the public and is a nuisance. The municipality, as an additional or alternative remedy, may institute injunctive proceedings in a court of competent jurisdiction to abate the same.

(Ord. No. 12-04-07, § 15, 12-18-2007)

Sec. 12-36. - Penalties and interest.

(a) All licenses not paid within 30 days from the date they fall due shall be increased by 15 percent for the first 30 days they shall be delinquent and shall be measured by an additional 15 percent for a delinquency of 60 or more days, but this provision shall not be deemed to authorize the delay of 30 days in the payment of the license due, which may be enforced at once.

(b) In the case of persons who began business on or after the first day of the calendar year, the license for such "new business" shall be increased by 15 percent for the first 15 days they shall be delinquent, and shall be measured by an additional 15 percent for a delinquency of 45 days or more.

(c) All delinquent accounts (both license taxes and penalties) shall also be charged simple interest at the rate of one percent per month.

(Ord. No. 12-04-07, § 16, 12-18-2007)

Sec. 12-37. - Prosecutions unaffected.

The adoption of the ordinance from which this article is derived shall not in any manner affect any prosecution of any act illegally done contrary to the provisions of any ordinance now or heretofore in existence, and every such prosecution, whether begun before or after the enactment of this article shall be governed by the law under which the offense was committed; nor shall a prosecution, or the right to prosecute, for the recovery of any penalty or the enforcement of any forfeiture be in any manner affected by the adoption of the ordinance from which this article is derived; nor shall any civil action or cause of action existing prior to or at the time of the adoption of the ordinance from which this article is derived be affected in any manner by its adoption.

(Ord. No. 12-04-07, § 17, 12-18-2007)

Sec. 12-38. - Procedure for denial of new applications.

(a) The municipal designee shall have the authority to investigate all applications and may refer any application to the municipal governing body for a determination of whether such license should or should not be issued.

(b) If the municipal governing body denies the issuance of any license referred to it, the municipal clerk shall promptly notify the applicant of the municipal governing body's decision.

(c) If said applicant desires to appear before the municipal governing body to show cause why said license should be issued, he shall file a written notice with the municipal clerk, said notice to be filed within two weeks from the date of mailing by the municipal clerk of the notice of the denial of such license by the municipal governing body.

(d) Upon receipt of said notice the municipal clerk shall promptly schedule a hearing, to be held within 15 days from the date of receipt of such notice, before the municipal governing body and shall give the notice of the date, time and place of said hearing to the applicant.

(e) The applicant shall be given the opportunity to appear personally, or through his counsel, or both, and the municipal governing body shall proceed to hear any evidence which may be presented both for and against the issuance of said license.

(f) If the municipal governing body determines from the evidence presented that in order to either provide for the safety, preserve the health, promote the prosperity, or improve the morals, order, comfort and convenience of the inhabitants of the municipality said license should not be granted, it shall enter an order to that effect; otherwise, said license shall be ordered issued upon payment of any required license fees.

(Ord. No. 12-04-07, § 18, 12-18-2007)

Sec. 12-39. - Procedure for revocation or suspension of license.

(a) Any lawful license issued to any person to conduct any business shall be subject to revocation by the municipal governing body for the violation by the licensee, his agent, servant, or employee of any provision of this article or of any ordinance of the municipality, or any statute of the state relating to the business for which such license is issued; and shall also be subject to revocation by the municipal governing body if the licensee, his agent, servant, or employee under color of such license violates or aids or abets in violating or knowingly permits or suffers to be violated any penal ordinance of the municipality or any criminal law of the state; and shall also be subject to revocation by the municipal governing body if, in connection with the issuance or renewal of any license, the licensee or his agent filed or caused to be filed any application, affidavit, statement, certificate, book, or any other data containing any false, deceptive or other misleading information or omission of material fact.

(b) The conditions set forth in subsection (a) of this section as grounds for the revocation of a license shall also constitute grounds for refusing to renew a license.

(c) The municipal governing body shall set a time for hearing on the matter of revoking or refusing to renew a license; and a notice of such hearing shall be given to the licensee, or the applicant for renewal, as the case may be, at least ten days before the day set for said hearing. At the hearing the municipal governing body shall hear

all evidence offered by any party and all evidence that may be presented bearing upon the question of revocation or the refusal of renewal, as the case may be.

(Ord. No. 12-04-07, § 19, 12-18-2007)

Sec. 12-40. - Refunds on overpayments.

(a) Any taxpayer may file a petition for refund with the municipality for any overpayment of business license tax erroneously paid to the municipality. If a final assessment for the tax has been entered by the municipality, a petition for refund of all or a portion of the tax may be filed only if the final assessment has been paid in full prior to or simultaneously with the filing of the petition for refund.

(b) A petition for refund shall be filed with the municipality within two years from the date of payment of the business license tax which is the subject of the petition.

(c) The municipality shall either grant or deny a petition for refund within six months from the date the petition is filed, unless the period is extended by written agreement of the taxpayer and the municipality. The taxpayer shall be notified of the municipality's decision concerning the petition for refund by first class U.S. mail or by certified U.S. mail, return receipt requested, sent to the taxpayer's last known address. If the municipality fails to grant a full refund within the time provided in this section, the refund petition shall be deemed to be denied.

(d) If the petition is granted or the municipality or a court otherwise determines that a refund is due, the overpayment shall be promptly refunded to the taxpayer by the municipality, together with interest to the extent provided for in Code of Ala. 1975, § 11-51-92. If the municipality determines that a refund is due, the amount of overpayment plus any interest due thereon may first be credited by the municipality against any outstanding tax liabilities due and owing by the taxpayer to the municipality, and the balance of any overpayment shall be promptly refunded to the taxpayer. If any refund or part thereof is credited to any other tax by the municipality, the taxpayer shall be provided with a written detailed statement showing the amount of overpayment, the amount credited for payment to other taxes, and the resulting amount of the refund.

(e) A taxpayer may appeal from the denial in whole or in part of a petition for refund by filing a notice of appeal with the clerk of the circuit court of the county in which the municipality denying the petition for refund is located. Said notice of appeal must be filed within two years from the date the petition was denied. The circuit court shall hear the appeal according to its own rules and procedures and shall determine the correct amount of refund due, if any. If an appeal is not filed with the appropriate circuit court within two years of the date the petition was denied, then the appeal shall be dismissed for lack of jurisdiction.

(Ord. No. 12-04-07, § 20, 12-18-2007)

Sec. 12-41. - Delivery license.

(a) In lieu of any other type of license, a taxpayer may at its option purchase for $100.00 plus the issuance fee, a delivery license for the privilege of delivering its merchandise in the municipality if the taxpayer meets all of the following criteria:

(1) Other than deliveries, the taxpayer has no other physical presence within the municipality or its police jurisdiction;

(2) The taxpayer conducts no other business in the municipality other than delivering merchandise and performing the requisite set-up and installation of said merchandise;

(3) Such delivery and set-up and installation is performed by the taxpayer's employees or agents, concerns the taxpayer's own merchandise in that municipality, and is done by means of delivery vehicles owned, leased, or contracted by the taxpayer;

(4) The gross receipts derived from the sale and any requisite set-up or installation of all merchandise so delivered shall not exceed $75,000.00 during the license year;

(5) Any set-up or installation shall relate only to (i) that required by the contract between the taxpayer and the customer or as may be required by state or local law, and (ii) the merchandise so delivered;

(6) If at any time during the current license year the taxpayer fails to meet any of the above stated criteria, then within ten days after any of said criteria have been violated or exceeded, the taxpayer shall purchase all appropriate business licenses from the municipality for the entire license year and without regard to this section.

(b) Mere delivery of the taxpayer's merchandise by common carrier shall not allow the municipality to assess a business license tax against the taxpayer, but the gross receipts derived from any sale and delivery accomplished by means of a common carrier shall be counted against the $75,000.00 limitation described in subsection (a) of this section if the taxpayer also during the same license year sells and delivers into the taxing jurisdiction using a delivery vehicle other than a common carrier.

(c) A common carrier, contract carrier, or similar delivery service making deliveries on behalf of others shall not be entitled to purchase a delivery license.

(d) The delivery license shall be calculated in arrears, based on the related gross receipts during the preceding license year.

(e) The purchase of a delivery license shall not, in and of itself, establish nexus between the taxpayer and the municipality for purposes of the taxes levied by or under the authority of Code of Ala. 1975, title 40, or other provisions of law, nor does the purchase of a delivery license conclusively determine that nexus does not exist between the taxpayer and the municipality.

(Ord. No. 12-04-07, § 21, 12-18-2007)

Sec. 12-42. - Exchange of information.

(a) The license officer may exchange tax returns, information, records, and other documents secured by the municipality, with other municipalities adopting similar ordinances for the exchange of taxpayer information, or with county or state authorities. The license officer may charge a reasonable fee for providing such information or documents. Any tax returns, information, records, or other documents so exchanged shall remain subject to the confidentiality provisions, restrictions, and criminal penalties for unauthorized disclosure as provided under state or municipal law.

(b) Any such exchange shall be for one or more of the following purposes:

(1) Collecting taxes due.

(2) Ascertaining the amount of taxes due from any person.

(3) Determining whether a person is liable for, or whether there is probable cause for believing a person might be liable for, the payment of any tax to a state, county, or municipal agency.

(c) Nothing herein shall prohibit the use of tax returns or tax information by the municipality in the proper administration of any matter administered by the license officer. The license officer may also divulge to a purchaser, prospective purchaser as defined pursuant to the regulations of the state department of revenue, or successor of a business or stock of goods the outstanding sales, use, or rental tax liability of the seller for which the purchaser, prospective purchaser as defined pursuant to the regulations of the state department of revenue, or successor may be liable pursuant to the Code of Ala. 1975, § 40-23-25, 40-23-82 or 40-12-224.

(Ord. No. 12-04-07, § 24, 12-18-2007)

Sec. 12-43. - License fees in police jurisdiction.

Any person, firm, association, or corporation engaged in any business outside the municipality but within the police jurisdiction thereof shall pay one-half of the amount of the license imposed for like business within the municipality.

(Ord. No. 12-04-07, § 25, 12-18-2007)

Secs. 12-44—12-63. - Reserved.

ARTICLE III. - SALES AND USE TAX AND EXCISE TAX[2]

Footnotes:

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State Law reference— Authority to levy, Code of Ala. 1975, § 11-51-200.

DIVISION 1. - GENERALLY

Sec. 12-64. - Levy—In city.

There is hereby levied, in addition to all other taxes of every kind now imposed by law, and shall be collected as herein provided, a privilege or license tax against the person on account of the business activities and in the amount to be determined by the application of rates against gross sales, or gross receipts, as the case may be, as follows:

(1) Upon every person, firm, or corporation (including the state, the University of Alabama, Auburn University and all other institutions of higher learning in the state, whether such institutions be denominational, state, county or municipal institutions, and any association or other agency or instrumentality of such institutions) engaged or continuing within the city in the business of selling at retail any tangible personal property whatsoever, including merchandise and commodities of every kind and character (not including, however, bonds or other evidences of debts or stocks, nor sale of material and supplies to any person for use in fulfilling a contract for the painting, repair, or reconditioning of vessels, barges, ships and other watercraft and commercial fishing vessels of over five tons load displacement as registered with the U.S. Coast Guard and licensed by the state department of conservation and natural resources), an amount equal to four percent of the gross proceeds of sales of the business, except where a different amount is expressly provided herein. Provided, however, that any person engaging or continuing in business as a retailer and wholesaler or jobber shall pay the tax required on the gross proceeds of retail sales of such business at the rates specified, when his books are kept so as to show separately the gross proceeds of sales of each business, and when his books are not so kept, he shall pay the tax as retailer on the gross sales of the business.

(2) Upon every person, firm or corporation engaged or continuing within the city in the business of conducting or operating places of amusement or entertainment, billiard and pool rooms, bowling alleys, amusement devices, musical devices, theaters, opera houses, moving picture shows, vaudevilles, amusement parks, athletic contests, including wrestling matches, prize fights, boxing and wrestling exhibitions, football and baseball games (including athletic contests, conducted by or under the auspices of any educational institution within the city, or any athletic association thereof, or other association, whether such institution or association is a denominational, a state, or county, or a municipal institution or association or a state, county, or city school, or other institution, association or

school), skating rinks, race tracks, golf courses, or any other place at which any exhibition, display, amusement or entertainment is offered to the public or place where an admission fee is charged, including public bathing places, public dance halls of every kind and description within the city, an amount equal to four percent of the gross receipts of any such business. Provided, however, not withstanding any language to the contrary in the prior portion of this subsection, the tax provisions so specified shall not apply to any athletic event conducted by a public or private primary or secondary school. The tax amount, which would have been collected pursuant to this subsection, shall continue to be collected by said public or private primary or secondary school but shall be retained by the school which collected it and shall be used by said school for school purposes.

(3) Upon every person, firm or corporation engaged or continuing within the city in the business of selling at retail machines used in mining, quarrying, compounding, processing, and manufacturing of tangible personal property, an amount equal to one-half percent of the gross proceeds of the sale of such machines, provided that the term "machines," as herein used, shall include machinery which is used for mining, quarrying, compounding, processing, or manufacturing tangible personal property, and the parts of such machines, attachments and replacements therefor which are made or manufactured for use on or in the operation of such machines and which are necessary to the operation of such machines and are customarily so used.

(4) Upon every person, firm or corporation engaged or continuing within the city in the business of selling at retail any automotive vehicle or truck trailer, semi-trailer, house trailer or mobile home set-up materials and supplies, including, but not limited to, steps, blocks, anchoring, cable pipes and any other materials pertaining thereto, an amount equal to one-half percent of the gross proceeds of sale of said automotive vehicle, truck trailer, semi-trailer, house trailer or mobile home set-up materials and supplies. Provided, however, where a person subject to the tax provided for in this subsection withdraws from his stock in trade any automotive vehicle or truck trailer, semi-trailer or house trailer for use by him or by his employee or agent in the operation of such business, there shall be paid, in lieu of the tax levied herein, a fee of $5.00 per year, or part thereof, during which such automotive vehicle, truck trailer, semi-trailer or house trailer shall remain the property of such person. Each such year, or part thereof, shall begin with the day or anniversary date, as the case maybe, of such withdrawal and shall run for the 12 succeeding months, or part thereof, during which such automotive vehicle, truck trailer, or house trailer shall remain the property of such person. Where any used automotive vehicle or truck trailer, semi-trailer or house trailer is taken in trade or in a series of trades, as a credit or part payment on the sale of a new or used vehicle, the tax levied herein shall be paid on the net difference; that is, the price of the new or used vehicle sold less the credit for the used vehicle taken in trade.

(5) Upon every person, firm or corporation engaged or continuing within the city in the business of selling at retail any machine, machinery or equipment which is used in planting, cultivating and harvesting farm products, or used in connection

with the production of agricultural produce or products, livestock or poultry on farms, and the parts of such machines, machinery or equipment, attachments and replacements therefor which are made or manufactured for use on or in the operation of such machine, machinery or equipment, and which are necessary to and customarily used in the operation of such machine, machinery or equipment, an amount equal to one-half percent of the gross proceeds of the sale thereof. Provided, however, the one-half percent rate herein prescribed with respect to parts, attachments, and replacements shall not apply to any automotive vehicle or trailer designed primarily for public highway use, except farm trailers used primarily in the production and harvesting of agricultural commodities. Where any used machine, machinery or equipment which is used in planting, cultivating, and harvesting farm products, or used in connection with the production of agricultural produce or products, livestock and poultry on farms, is taken in trade or in a series of trades as a credit or part payment on a sale of a new or used machine, machinery or equipment, the tax levied herein shall be paid on the net difference; that is, the price of the new or used machine, machinery or equipment sold, less the credit for the used machine, machinery or equipment taken in trade.

(6) Upon every person, firm or corporation engaged or continuing within the city in the business of selling through coin-operated dispensing machines, food and food products for human consumption, not including beverages other than coffee, milk, milk products and substitutes therefor, there is hereby levied a tax equal to four percent of the retail selling price of such food, food products and beverages sold through such machines.

(Code 1979, § 6-30; Ord. No. 10-16-07, § 1, 5-27-2008)

State Law reference— Similar provisions, Code of Ala. 1975, §§ 40-23-2, 40-23-37.

Sec. 12-65. - Same—In police jurisdiction.

Upon every person, firm or corporation engaged in the doing of an act, or who shall do an act, or continuing in the doing of an act, or engaged in the operation of any business, or who shall engage in the operation of any business, within the police jurisdiction of the city but beyond the corporate limits of said city for which or upon which a privilege or license tax is in this article levied or required within the corporate limits of the city, there is hereby levied, in addition to all other taxes of every kind now imposed by law or by municipal ordinance, to be collected as herein provided for the privilege or license taxes herein levied within the corporate limits of the city a privilege or license tax equal to one-half of that provided, levied or required in this article for the doing of such act, or the engaging or continuing therein, or the engaging or continuing in the operation of such business within the corporate limits of the city. Provided, further, that, except for the amount of the privilege or license tax herein levied within the police jurisdiction of said city but without the corporate limits thereof, all the provisions of this article extend and apply to all the area within the police jurisdiction of the city.

(Code 1979, § 6-31; Ord. No. 11-10-65, § 9, 10-18-1965; Ord. No. 1-21-74, § 2, 2-4-1974; Ord. No. 10-16-07, § 2, 5-27-2008)

Sec. 12-66. - Provisions of state sales tax statutes applicable.

This article and the taxes levied herein shall be subject to all definitions, exceptions, exemptions, proceedings, requirements, provisions, rules and regulations promulgated under the Alabama Administrative Procedure Act, direct pay permit and drive-out certificate procedures, statute of limitation, discounts, penalties, fines, punishments, and deductions that are applicable to the taxes levied by the state sales tax statutes, except where inapplicable or where herein otherwise provided, including all provisions of the state sales tax statutes for enforcement and collection of taxes.

(Code 1979, § 6-32; Ord. No. 10-17-07, § 3, 5-27-2008)

State Law reference— Similar provisions, Code of Ala. 1975, § 11-51-201; exemptions, Code of Ala. 1975, § 40-23-4.

Sec. 12-67. - Collection and payment of taxes herein levied.

The taxes levied under the provisions of this article shall be due and payable in monthly installments on or before the 20th day of the month next succeeding the month in which the tax accrues. On or before the 20th day of each month, every person on whom the taxes levied by this article are imposed shall render a true and correct statement showing the gross sales, the gross proceeds of sales, or gross receipts of his business, as the case may be, for the next preceding month, the amount of gross proceeds or gross receipts which are not subject to said taxes, or are not to be used as a measurement of the taxes due by such person, and the nature thereof, together with such other information as may be required, as herein provided, and at the time of making said monthly report such person shall compute the amount of the taxes due and shall pay the amount of taxes shown to be due. The taxes herein levied shall be collected by the state department of revenue at the same time and along with the collection of said department of the taxes collected for the state under the provisions of the state sales tax statutes; the taxes herein levied shall be paid by each taxpayer to the state department of revenue, and the monthly reports or statements herein provided for shall be made to the state department of revenue, all pursuant to and in accordance with the applicable procedures of the state department of revenue and any statues that may at the time be applicable to the collection by the state department of revenue of the taxes herein levied; provided, however, if at any time the state department of revenue shall cease to make collections of the taxes herein levied, then said taxes shall be paid to the city treasurer and the monthly statements or reports herein provided for shall be filed with the city treasurer and shall be in such form as the city council may prescribe. If any person subject to this article shall willfully make a false return or false statement of facts in any statement or report required

hereunder, he shall be guilty of a misdemeanor and, upon conviction, shall be punished as provided in section 12-73.

(Code 1979, § 6-33; Ord. No. 10-07-97, 10-7-1997)

Sec. 12-68. - Adding amount of tax to price.

Any person on whom the taxes levied by this article are imposed shall add the tax herein levied to the sales price of the goods sold or to the admission price to a place of amusement and shall collect the amount so added from the purchaser, or person paying the admission price.

(Code 1979, § 6-34; Ord. No. 11-10-65, § 5, 10-18-1965)

Sec. 12-69. - Reporting of credit sales.

Any person taxable under this article having cash and credit sales may, if he desires, report such cash sales only, and he shall thereafter include in each monthly report all credit collections made during the month preceding and shall pay the taxes due thereon at the time of filing such report.

(Code 1979, § 6-35; Ord. No. 11-10-65, § 6, 10-18-1965)

Sec. 12-70. - Records.

It shall be the duty of every person engaging or continuing in any business for which a privilege tax is imposed by this article, to keep and preserve suitable records of the gross sales, gross proceeds of sales and gross receipts of sales of such business and such other books or accounts as may be necessary to determine the amount of tax for which he is liable, under the provisions of this article, and it shall be the duty of every person to keep and preserve for a period of three years, all invoices of goods, wares and merchandise purchased for resale or otherwise, and all such books, invoices, and other records shall be open for examination at any time by the city or its agent. Any person selling both at wholesale and retail shall keep his books so as to show separately the gross proceeds of wholesale sales and the gross proceeds of retail sales. The books, records, and accounts provided for in this section shall at all times be open to examination by the state department of revenue, by the city clerk, and by any other person designated by the city council.

(Code 1979, § 6-36; Ord. No. 11-10-65, § 7, 10-18-1965)

Sec. 12-71. - Discount for prompt payment; interest on late payment.

A discount equal to five percent of the first $100.00 of each monthly installment of the taxes herein levied and two percent of that portion of each monthly installment of said taxes in excess of $100.00 shall be allowed to each taxpayer on the filing of the monthly report with respect to such installment in the form and at the time herein provided, upon payment of the amount of such monthly installment (minus said discount) at the time when such installment is required herein to be paid. If the report is not filed and payment is not made within the time herein provided with respect to any monthly installment of the tax herein levied, the taxpayer shall not be entitled to said discount with respect to that monthly installment but shall pay the full amount of the tax then due, together with interest at the rate of six percent per annum from the date on which payment became due.

(Code 1979, § 6-37; Ord. No. 11-10-65, § 10, 10-18-1965)

State Law reference— Discounts, Code of Ala. 1975, § 40-23-36.

Sec. 12-72. - Use of proceeds from taxes herein levied.

The proceeds from the tax herein levied remaining after payment of the cost of collecting of said tax, including all charges of the state department of revenue for such collection, and paid over to and received by the city treasurer shall be applied as follows:

(1) The tax proceeds within the city limits shall be used for such purposes as the council may from time to time direct and provide for.

(2) The tax proceeds in the police jurisdiction shall be applied for payment of costs of police and fire protection in the territory within the police jurisdiction of the city and outside its corporate limits.

(Code 1979, § 6-38; Ord. No. 11-10-65, § 11, 10-18-1965; Ord. No. 4-1-86A, § 1, 4-15-1986)

Sec. 12-73. - Penalty for violation.

Any person who shall fail to keep the records provided for herein, or who shall refuse to permit such examination therefor, or who violates any other provision hereof, shall be guilty of a misdemeanor and, upon conviction, shall be fined not less than $25.00 nor more than $100.00 for each offense. Each month of such failure shall constitute a separate offense. Any person failing to render any report required by this article shall be guilty of a misdemeanor and, upon conviction, shall be fined not less than $25.00 nor more than $100.00, and each failure shall constitute a separate offense. Such offenders shall also be subject to imprisonment, not to exceed six months for each offense.

(Code 1979, § 6-39; Ord. No. 11-10-65, § 8, 10-18-1965)

Sec. 12-74. - Article cumulative.

This article shall not be construed to repeal any of the provisions of the general license code or ordinance of the city or of any other ordinance of the city, but shall be held to be cumulative, and the amounts of the taxes herein levied shall be in addition to the amounts of all other license taxes imposed by the city.

(Code 1979, § 6-40; Ord. No. 11-10-65, § 12, 10-18-1965)

Sec. 12-75. - Exclusion of specific sales and use tax from city limits.

(a) The sales and use tax levied by Act 94-765 of the Alabama Legislature shall be excluded, in whole, from levy in the corporate limits of the city.

(b) The exclusion of this tax levy shall be retroactive to the date, which Legislative Act may have first authorized it. Furthermore, the city does reserve the right to rescind this exclusion at any date in the future.

(Ord. No. 07-10-07, §§ 1, 2, 7-24-2007)

Sec. 12-76. - Sales tax holiday.

(a) In conformity with the provisions of Act 2006-574 enacted by the Alabama Legislature during the 2006 Regular Session, providing for a state sales tax holiday, the city exempts "covered items" from municipal sales and use tax during the same period, beginning at 12:01 a.m. on the first Friday in August 2012 (August 3, 2012) and ending at 12:00 midnight the following Sunday, and each year thereafter until rescinded.

(b) This section shall be subject to all terms, conditions, definitions, time periods, and rules as provided by Act 2006-574.

(Ord. No. 06-19-12, §§ 1, 2, 6-19-2012)

Secs. 12-77—12-95. - Reserved.

DIVISION 2. - EXCISE TAX

Sec. 12-96. - Imposed.

(a) An excise tax is hereby imposed on the storage, use or other consumption in the city of tangible personal property (not including materials and supplies bought for use in fulfilling a contract for the painting, repairing, or reconditioning of vessels, barges, ships and other watercraft and commercial fishing vessels of over five tons load

displacement as registered with the U.S. Coast Guard and licensed by the state department of conservation and natural resources) purchased at retail on or after the effective date of the ordinance from which this division is derived for storage, use or other consumption in the city, except as provided in subsections (b), (c), and (d) of this section, at the rate of four percent of the sales price of such property within the corporate limits of said city.

(b) An excise tax is hereby imposed on the storage, use or other consumption in the city of any machines used in mining, quarrying, compounding, processing, and manufacturing of tangible personal property purchased at retail on or after the effective date of the ordinance from which this division is derived at the rate of one-half percent of the sales price of any such machine; provided that the term "machine" as herein used, shall include machinery which is used for mining, quarrying, compounding, processing, or manufacturing tangible personal property, and the parts of such machines, attachments and replacements therefore which are made or manufactured for use on or in the operation of such machines and which are necessary to the operation of such machines and are customarily so used.

(c) An excise tax is hereby imposed on the storage, use or other consumption in the city on any automotive vehicle or truck trailer, semi-trailer, house trailer or mobile home set-up materials and supplies, including, but not limited to, steps, blocks, anchoring, cable pipes and any other materials pertaining thereto, purchased at retail on or after the effective date of the ordinance from which this division is derived for storage, use or other consumption in the city at the rate of one-half percent of the sales price of such automotive vehicle, truck trailer, semi-trailer, house trailer or mobile home set-up materials and supplies within the corporate limits of said city. Where any used automotive vehicle or truck trailer, semi-trailer or house trailer is taken in trade or in a series of trades, as a credit or part payment on the sale of a new or used vehicle, the tax levied herein shall be paid on the net difference; that is, the price of the new or used vehicle sold less the credit for the used vehicle taken in trade.

(d) An excise tax is hereby levied and imposed on the storage, use or other consumption in the city of any machine, machinery or equipment which is used in planting, cultivating and harvesting farm products, or used in connection with the production of agricultural produce or products, livestock or poultry on farms, and the parts of such machines, machinery or equipment, attachments and replacements therefor which are made or manufactured for use on or in the operation of such machine, machinery or equipment, and which are necessary to and customarily used in the operation of such machine, machinery or equipment, which is purchased at retail after the effective date of the ordinance from which this division is derived, for the storage, use or other consumption in the city at the rate of one-half percent of the sales price of such property within the corporate limits of said city, regardless of whether the retailer is or is not engaged in the business in this city. Provided, however, the one-half percent rate herein prescribed with respect to parts, attachments, and replacements shall not apply to any automotive vehicle or trailer designed primarily for public highway use, except farm trailers used primarily in the production and harvesting of agricultural commodities. Where any used machine, machinery or equipment which is used in planting, cultivating, and harvesting farm products, or used in connection with the

production of agricultural produce or products, livestock and poultry on farms, is taken in trade or in a series of trades as a credit or part payment on a sale of a new or used machine, machinery or equipment, the tax levied herein shall be paid on the net difference; that is, the price of the new or used machine, machinery or equipment sold, less the credit for the used machine, machinery or equipment taken in trade.

(e) An excise tax is hereby imposed on tangible personal property at one-half the rates specified in subsections (a), (b), (c), and (d) of this section on the storage, use or other consumption of such tangible personal property outside the corporate limits of the city, but within the police jurisdiction.

(Ord. No. 10-16-07, § 4, 5-27-2008)

Sec. 12-97. - Provisions of state use tax statutes applicable to this division and taxes herein levied.

This division and the taxes levied herein shall be subject to all definitions, exceptions, exemptions, proceedings, requirements, provisions, rules and regulations promulgated under the Alabama Administrative Procedure Act, direct pay permit and drive-out certificate procedures, statute of limitation, discounts, penalties, fines, punishments, and deductions that are applicable to the taxes levied by the state use tax statutes, except where inapplicable or where herein otherwise provided, including all provisions of the state use tax statutes for enforcement and collection of taxes.

(Ord. No. 10-16-07, § 5, 5-27-2008)

Sec. 12-98. - Use of proceeds.

The proceeds from the tax herein levied remaining after payment of the costs of colleting said tax, including all charges of the administration for such collection and paid over to and received by the city, shall be distributed to the general fund of the city of which five-sixths of one percent shall then be paid to the Daleville City Board of Education.

(Ord. No. 10-16-07, § 6, 5-27-2008)

Secs. 12-99—12-124. - Reserved.

ARTICLE IV. - CIGARETTES, ETC.[3]

Footnotes:

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State Law reference— State tobacco taxes, Code of Ala. 1975, title. 40, ch. 25.

Sec. 12-125. - Definitions.

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

Dealer means any wholesale or retail dealer as herein defined.

Package means the individual box or other container from which, or in which, retail sales of cigarettes or smoking tobacco are normally made or intended to be made.

Retail dealer means every person other than a wholesale dealer who sells or delivers within the city or its police jurisdiction any cigarettes, cigars or smoking tobacco as hereinafter defined, and all persons operating under a retailer dealer's license.

Retail price means the usual retail price of the article before adding either the amount of the tax assessed herein, or the similar tax assessed by the state.

Sale means any transfer of title or possession, or both, exchange or barter, conditional or otherwise, in any manner or by any means, whatsoever, for a consideration or any agreement therefor, including rewards, prices or premiums on cigarettes, given as a result of operation on punchboards, shooting galleries and/or other activities.

Storer means any person who ships or causes to be shipped or receives cigarettes, cigars or smoking tobacco into the city or its police jurisdiction and stores same for any purpose other than for resale or reshipment outside the city and its police jurisdiction.

Wholesale dealer or *jobber* means a person who sells or delivers within the city or its police jurisdiction, at wholesale only, any cigarettes, cigars or smoking tobacco, as herein defined, to licensed retail dealers for the purpose of resale only.

(b) Any word or phrase used in this article and not herein defined which is defined in the General Revenue Acts of the state shall have the meaning ascribed to them by said Acts.

(Code 1979, § 6-50; Ord. No. 32, § 1, 3-15-1965)

Sec. 12-126. - Levy—In city.

In addition to all other taxes now imposed by law, every person who sells, stores or delivers any tobacco products shall pay a license tax to the city, and a license tax is hereby fixed and levied, which license shall be in the following amounts for the sale, storage and/or delivery of the aforesaid tobacco products:

(1) *Cigarettes.* All cigarettes made of tobacco or any substitute therefor, $0.04 for each 20 cigarettes, or fraction of said number, contained in the package so sold, stored or delivered.

(2) *Cigars.* An amount equal to $0.01 for each cigar sold within the corporate limits.

(3) *Smoking tobacco.* An amount equal to $0.02 for each ounce, or fraction thereof, contained in each individual package or can of smoking tobacco which is sold within the corporate limits.

(4) *Smokeless tobacco.* An amount equal to $0.02 for each ounce, or fraction thereof, contained in each individual package or container which is sold, stored or delivered.

(5) *Snuff.* An amount equal to $0.02 for each ounce, or fraction thereof; an amount equal to $0.04 for each four ounces, or fraction thereof, contained in each individual package or container of snuff which is sold, stored or delivered; $0.06 for five ounces or above.

(6) *Chewing tobacco.* An amount equal to $0.02 for each single plug or package; also an amount equal to $0.02 for each package or packet or scrap tobacco containing three ounces, or fraction thereof, which is sold, stored or delivered.

(Code 1979, § 6-51; Ord. No. 32, § 2, 3-15-1965; Ord. No. 7-5-83A, 7-5-1983; Ord. No. 4-1-86, 4-15-1986)

Sec. 12-127. - Same—In police jurisdiction.

Every person selling, delivering or storing any of the cigarettes, cigars, smoking tobacco, smokeless tobacco, snuff and chewing tobacco aforesaid in the police jurisdiction shall pay to the city one-half of the tax levied in this article on each package or container or item.

(Code 1979, § 6-52; Ord. No. 32, § 3, 3-15-1965; Ord. No. 4-1-86, 4-15-1986)

Sec. 12-128. - Records.

Every wholesale dealer shall, at the time of selling and/or delivering cigarettes and tobacco products subject hereto into the city or its police jurisdiction, make a true duplicate

invoice of the same which shall show full and complete details of the sale and/or delivery of such cigarettes and other tobacco products and shall retain the same subject to the use and inspection of the city clerk or his duly authorized deputy for the period of three years. Wholesale and retail dealers shall also keep a record of the purchase, sale, exchange and/or receipt for the period mentioned herein, subject to the inspection of the city clerk or his duly authorized deputy, who shall have the power and authority to enter upon premises of any dealer and to examine such books, records, and memoranda at all reasonable times. It shall be unlawful for any person to interfere with or obstruct the city clerk or such deputy in the exercise of the power and authority conferred by this article.

(Code 1979, § 6-53; Ord. No. 32, § 4, 3-15-1965)

Sec. 12-129. - Reports and returns.

Every wholesale dealer who sells, stores or delivers such cigarettes or other tobacco products as aforesaid shall furnish monthly reports to the city clerk of such sales, storage or deliveries, on forms to be furnished by the city, and the total of such tax for such monthly period shall accompany such reports, less five percent of said total tax to be retained as cost of collection; that is to say, 95 percent of the total tax collected by such wholesalers shall be returned to the city. Return with remittance covering tax collected in any calendar month, or due for any calendar month, must be in the hands of the city clerk on or before the 20th day of the succeeding month. Any retailer within the city or its police jurisdiction who shall have purchased or received or stored cigarettes or other tobacco products from wholesalers, distributors or other persons, on which the tax herein levied has not been paid, shall furnish monthly reports to the city clerk of such sales, storage or deliveries, on forms to be furnished by the city as prescribed for wholesale dealers in this section, and shall pay to the city on such cigarettes and other tobacco products the tax levied by this article on or before the 20th day of the month next following such sale, storage or deliveries, and such returns with such remittances covering tax collected in any calendar month or due for any calendar month must be in the hands of the city clerk on or before the 20th day of month next following.

(Code 1979, § 6-54; Ord. No. 32, § 5, 3-15-1965)

Sec. 12-130. - Application of article.

(a) This article shall not be applied so as to impose any unlawful tax or unlawful burden on interstate commerce or any business of the United States government, or any branch or agency thereof.

(b) This article shall not apply to cigarettes or other tobacco products stored by a wholesale dealer for the purpose of resale or reshipment outside the city and its police jurisdiction and which are actually so resold or shipped.

(c) This article shall not repeal any of the provisions of the license code of the city, but shall be held to be cumulative.

(Code 1979, § 6-55; Ord. No. 32, § 7, 3-15-1965)

Sec. 12-131. - Illegal acts.

Among others, the following acts and omissions shall be unlawful:

(1) To sell, offer for sale, or deliver within the city or its police jurisdiction any cigarettes or other tobacco products on which the tax levied and prescribed by this article has not been paid.

(2) For any dealer to have in his possession or under his control any cigarettes or other tobacco products on which the tax herein prescribed has not been paid by such dealer, provided that this subsection shall not apply to cigarettes and other tobacco products in the possession of wholesale dealers or jobbers kept for purpose of resale or reshipment outside of the city and its police jurisdiction and which products are actually so resold or reshipped, and the possession of each article or commodity of such products shall be deemed a separate offense.

(Code 1979, § 6-56; Ord. No. 32, § 6, 3-15-1965)

Sec. 12-132. - Penalty.

Every person who has sold, stored or delivered such tobacco products as aforesaid during any calendar month and who has not made the return as herein directed before the 21st day of the next succeeding calendar month shall remit to the city the entire amount of all taxes collected, plus ten percent of the total for said month as a penalty. Any person violating any of the provisions of this article shall, upon conviction, be punished as provided in section 1-8; provided, upon conviction for a first offense there shall be imposed a minimum fine of $10.00 and, upon conviction for a second or subsequent offense, the minimum fine imposed shall be $25.00.

(Code 1979, § 6-57; Ord. No. 32, § 9, 3-15-1965)

Secs. 12-133—12-162. - Reserved.

ARTICLE V. - TRANSIENT OCCUPANCY TAX[4]

Footnotes:

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State Law reference— State transient occupancy tax, Code of Ala. 1975, title 40, ch. 26.

Sec. 12-163. - Definition.

As used in this article, the term "transient" shall mean a person to whom rooms or lodgings are rented for a period of less than 30 continuous days.

(Code 1979, § 6-60; Ord. No. 25, § 1, 9-16-1963)

Sec. 12-164. - Levy—In city.

(a) There is hereby levied and imposed, in addition to all other taxes of every kind now imposed by law, a privilege or license tax upon every person engaging in the city limits in:

(1) The business of renting or furnishing any rooms or lodgings to transients in any hotel, motel, inn, tourist camp, tourist cabin, or any other place in which rooms or lodgings are regularly furnished to transients for a consideration, said tax to be in an amount equal to four percent of the charge for such rooms or lodgings, including the charge for use or rental of personal property and services furnished in such rooms; provided that charges for property sold or services furnished which are required to be included in the computation of the tax levied in Code of Ala. 1975, title 40, ch. 26, art. 10, said article being commonly referred to as the "state sales tax statutes," shall not be included in computing the tax herein levied; or

(2) The business of renting or furnishing space for accommodation of trailers for a consideration, said tax to be in an amount equal to four percent of the charge for such trailer space; provided, however, that charges made by persons in the business of renting trailer space for use of washing machines, electric power, garbage collection, water supply and other such charges shall not be included in the measure of said tax, but only the charge for trailer space proper shall be so included.

(b) The amount of taxes specified in this section shall be in addition to the applicable amounts of taxes provided for in the ordinances of the city levying license taxes. The tax referred to in subsection (a)(1) of this section shall apply only to, and be measured only by the charges for, the rental of rooms or lodgings supplied to transients, and shall not apply to, or be measured by the charges for, the rental of rooms or lodgings supplied for a period of 30 continuous days or longer. The tax levied in subsection (a)(2) of this section shall apply to, and be measured by the charges for, the rental of trailer space regardless of the time for which trailer space may be rented.

(c) The responsibility for the collection of the tax in this article shall be vested in the state department of revenue.

(Code 1979, § 6-61; Ord. No. 07-06-93, 7-20-1993; Ord. No. 11-04-97, 11-4-1997)

Sec. 12-165. - Same—In the police jurisdiction.

There is hereby levied and imposed, in addition to all other taxes of every kind now imposed by law, a privilege or license tax in the police jurisdiction of the city and outside of the corporate limits thereof, in the amount of one-half of that levied and imposed within the corporate limits of the city.

(Code 1979, § 6-62; Ord. No. 25, § 3, 9-16-1963)

Sec. 12-166. - Due date of taxes; monthly reports; payment of tax.

The taxes levied under the provisions of this article, except as otherwise provided, shall be due and payable in monthly installments on or before the 20th day of the month next succeeding the month in which the tax accrues. On or before the 20th day of each month, every person on whom the taxes herein levied are imposed shall render to the city clerk, on a form prescribed by the city clerk (which may be the same from as that used for reporting the state transient occupancy tax), a true and correct statement showing the gross proceeds of the business subject to said tax for the then next preceding month, together with such other information as the clerk may demand and require, and at the time of making such monthly report the taxpayer shall compute the taxes due and shall pay to the clerk the amount of taxes shown to be due.

(Code 1979, § 6-63; Ord. No. 25, § 4, 9-16-1963)

Sec. 12-167. - Credit collections.

Any person subject to the taxes herein levied who conducts business on a credit basis may defer reporting credit rentals and charges until after their collection, and in the event he so defers reporting them, he shall thereafter include in each monthly report all credit collections made during the then preceding month and shall pay the amount of taxes measured thereby at the time of filing such report.

(Code 1979, § 6-64; Ord. No. 25, § 5, 9-16-1963)

Sec. 12-168. - Annual returns.

On or before 30 days after the end of each fiscal year, each person subject to the taxes as herein levied shall file with the clerk a return, verified by oath, showing the gross proceeds of business done during such fiscal year, shall compute the amount of tax chargeable against such person in accordance with the provisions of this article, shall deduct the amount of monthly payments made as hereinbefore provided, if any have been

made, and pay to the clerk with said report the residue of the taxes herein levied that are chargeable against such person.

(Code 1979, § 6-65; Ord. No. 25, § 6, 9-16-1963)

Sec. 12-169. - Maintenance of records.

It shall be the duty of every person engaging or continuing in any business subject to the taxes herein levied to keep and preserve suitable records of the gross proceeds of such business and such other books or accounts as may be necessary to determine the amount of tax for which he is liable under the provisions of this article. Such records shall be kept and preserved for a period of two years and shall be open for examination at any time by the clerk or other duly authorized representative of the city.

(Code 1979, § 6-66; Ord. No. 25, § 7, 9-16-1963)

Sec. 12-170. - Oath; when required.

The monthly reports herein required to be made are not required to be made on oath, but the annual returns provided for herein shall be sworn to by the taxpayer or his agent before some officer authorized to administer oaths; and any false statement of a material fact made with intent to defraud shall constitute perjury, and, upon conviction thereof, the person so convicted shall be punishable as provided by law.

(Code 1979, § 6-67; Ord. No. 25, § 8, 9-16-1963)

Sec. 12-171. - Discount.

Every person subject to the taxes levied herein may take a discount in an amount equal to three percent of all taxes due under the provisions of this article, provided all reports and returns are made and the taxes paid before the same become delinquent hereunder. In any case where reports and returns are not filed within the time herein provided and the tax is not paid as herein provided for, the person required to file such report and return shall not be entitled to any discount but shall pay to the city the full amount of the tax, together with the interest and penalty provided for in this article.

(Code 1979, § 6-68; Ord. No. 25, § 11, 9-16-1963)

Sec. 12-172. - Interest and penalty.

Any person who fails to pay the tax herein levied within the time required herein shall pay, in addition to the tax, a penalty of ten percent of the amount of tax due, together with interest thereon at the rate of one-half of one percent per month, or fraction thereof, from the date on which the tax herein levied became due and payable, such penalty and

interest to be assessed and collected as part of the tax; provided that the governing body may, if a good and sufficient reason is shown, waive or remit the penalty or any portion thereof.

(Code 1979, § 6-69; Ord. No. 25, § 10, 9-16-1963)

Sec. 12-173. - Use of proceeds.

The proceeds derived from the taxes herein levied shall be placed in the general fund, subject to appropriation by the governing body for any lawful purpose of the city.

(Code 1979, § 6-70; Ord. No. 25, § 12, 9-16-1963)

Sec. 12-174. - Punishment.

(a) Any person subject to the provisions of this article who fails, for any reason, to make the reports or any of them as herein required, or who fails to keep the records as herein required, shall be guilty of a misdemeanor and, upon conviction, shall be fined not less than $25.00, nor more than $100.00, for each offense. Each month of such failure shall constitute a separate offense.

(b) Any person subject to the provisions of this article who willfully refuses to make the reports herein required, or who refuses to permit the examination of his records by the city clerk, or other duly authorized agent of the city, shall be guilty of a misdemeanor and, upon conviction, shall be fined not less than $50.00, nor more than $100.00, for each offense, and in addition may be imprisoned in the county jail for a period not to exceed six months. Each month of failure to make such report shall constitute a separate offense, and each refusal of a written demand of the clerk to examine, inspect or audit such records shall constitute a separate offense.

(Code 1979, § 6-71; Ord. No. 25, § 9, 9-16-1963)

Secs. 12-175—12-201. - Reserved.

ARTICLE VI. - GASOLINE AND MOTOR FUEL TAX[5]

Footnotes:

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State Law reference— Tax on gasoline and other motor fuels, Code of Ala. 1975, §§ 40-17-320—40-17-363.

Sec. 12-202. - Definitions.

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

City means the municipality, and the police jurisdiction thereof.

Distributor or *seller* includes every person, real or legal, who shall engage in selling or delivering gasoline or motor fuel, or both, within the corporate limits of the city or its police jurisdiction.

Gasoline includes gasoline, naphtha, and all other liquid fuels commonly used in internal combustion engines, but shall not include those products known commercially as "kerosene oil," "fuel oil," or "crude oil," commonly used for heating, lighting, and industrial purposes.

Motor fuel includes diesel fuel, tractor fuel, gas, oil, distillate, or liquefied gas when sold and delivered for use in the operation of any motor vehicle upon public highways within this state.

(Code 1979, § 6-80; Ord. No. 8-18-66, § 1, 9-19-1966)

Sec. 12-203. - Tax imposed.

Every distributor or seller shall pay a license tax to the city and a license tax is hereby imposed and levied, which license tax shall be an amount equal to $0.02 for each gallon of gasoline or motor fuel sold or delivered within the corporate limits of the city by such distributor or seller and an amount equal to $0.01 for each gallon of gasoline or motor fuel sold or delivered by such distributor or seller outside the corporate limits of the city but within its police jurisdiction.

(Code 1979, § 6-81; Ord. No. 8-18-66, § 2, 9-19-1966; Ord. No. 7-5-83B, 7-5-1983)

Sec. 12-204. - Exemptions of those previously paying tax.

Any person engaged as such seller or distributor in selling or distributing gasoline or motor fuel purchased from other sellers or distributors, who have paid the license tax herein imposed with respect to the sale or delivery of such gasoline or motor fuel, shall not be required to pay any license tax with respect to the sale or delivery of such gasoline or motor fuel so purchased; provided, however, in order to obtain the exemption in this section, such seller or distributor must, on or before the 15th day of each month, file with the city clerk a sworn written statement showing each purchase by him of gasoline and motor fuel during the calendar month next preceding, as well as the name of the person from whom, the amount, and the date on which, purchased.

(Code 1979, § 6-82; Ord. No. 8-18-66, § 3, 9-19-1966)

Sec. 12-205. - Attaching on delivery; interstate commerce exempt.

The license tax herein imposed is imposed on the local incident of delivery and change of position and no license is due hereunder until there has been a physical change of possession from the distributor or seller to the buyer and this license shall not apply to any sales or deliveries which constitute interstate commerce.

(Code 1979, § 6-83; Ord. No. 8-18-66, § 5, 9-19-1966)

Sec. 12-206. - Statement of sales—Required; contents.

Each distributor or seller, except such as are exempt from license tax under the provisions of section 12-204, shall, on or before the 15th day of each month, file with the city clerk a sworn, written statement, which shall be a full, true, accurate and correct statement of the following:

(1) The amount and quantity of all gasoline and of all motor fuel sold or delivered by such distributor or seller within the corporate limits of the city;

(2) The amount and quantity of all gasoline and of all motor fuel sold or delivered by such distributor or seller outside the corporate limits but within the police jurisdiction of the city; and

(3) The amount and quantity of all gasoline and of all motor fuel sold and delivered to any other distributor within the corporate limits of the city or within the police jurisdiction thereof, as the case may be.

(Code 1979, § 6-84; Ord. No. 8-18-66, § 4, 9-19-1966)

Sec. 12-207. - Same—Failure to file; false statements.

It shall be unlawful for any seller or distributor to fail or omit to make or file any statement herein required within the time specified, or for any person to make any false statement; and such offense shall be a continuing offense against the city each day during which said business or occupation is engaged in during such default shall constitute a separate offense.

(Code 1979, § 6-85; Ord. No. 8-18-66, § 6, 9-19-1966)

Sec. 12-208. - Furnishing information.

Upon demand of the city clerk, or an authorized deputy or representative, all such information as may be required for determination of the correct amount of license tax to

which a person is subject shall be furnished to the city and, to that end, it shall be the duty of such person, upon such demand to submit to the city clerk, or an authorized deputy, auditor, or representative, for inspection and examination of all books of account, invoices, papers, reports and memoranda containing entries showing the amount of purchases, sales, receipts, inventory and other information from which the correct amount of license tax to which he is subject may be determined, including exhibition of bank deposit books and bank statements; and it shall be unlawful for any person to fail or refuse to submit such records for such examination and inspection upon such demand.

(Code 1979, § 6-86; Ord. No. 8-18-66, § 8, 9-19-1966)

Sec. 12-209. - Pumps metered.

It shall be the duty of every person selling or distributing gasoline or motor fuel within the corporate limits of the city and within the police jurisdiction thereof to have a meter in good working order on each pump from which gasoline or motor fuel is dispensed and to keep an accurate record of the reading of said meter.

(Code 1979, § 6-87; Ord. No. 8-18-66, § 9, 9-19-1966)

Sec. 12-210. - Payments and penalties.

The license tax herein fixed shall be due by each person against whom the same is levied on the first day of each calendar month; the license tax herein fixed shall be paid by each person against whom the same is herein levied on or before the 15th day of each month, being the same time fixed for filing the statement based on the sales and deliveries made during the preceding month; and any person failing or omitting to pay said license within said time shall be guilty of an offense against the city and each day during which said business or occupation is engaged in during such default shall constitute a separate offense and, in addition, such license tax shall be increased by the addition thereto of a penalty of 20 percent thereon.

(Code 1979, § 6-88; Ord. No. 8-18-66, § 7, 9-19-1966)

Secs. 12-211—12-228. - Reserved.

ARTICLE VII. - BUYERS OF GOLD AND SILVER

Sec. 12-229. - License required; tax levied.

(a) It shall be unlawful for anyone to conduct, pursue or carry on the business of purchasing secondhand gold or silver, whether in the form of jewelry, household articles or furnishings, personal effects, bric-a-brac, settings for gems, watches, flatware, service sets, or other articles of like kind, in the city without first paying to

the city license and revenue officer of said city the license tax hereinafter prescribed, and procuring a license from said officer.

(b) The license tax hereby levied against buyers as described in subsection (a) of this section shall be $500.00 per calendar year.

(Code 1979, § 6-100; Ord. No. 4-15-80, §§ 1, 2, 5-6-1980)

Sec. 12-230. - Definition.

The term "applicant," when used herein, shall include the plural, where applicable, and all agents, officers, servants or employees of the applicant in the city, if the applicant is other than a sole proprietor.

(Code 1979, § 6-101; Ord. No. 4-15-80, § 13, 5-6-1980)

Sec. 12-231. - Application for license.

Applicants for license under this article shall file with the city license and revenue officer a sworn application in writing, in duplicate, on a form to be furnished by the city license and revenue officer, which shall give the following information:

(1) Name and description of the applicant.

(2) Date of birth and driver's license number of the applicant.

(3) Full local address of the applicant, and the length of time the applicant has resided within the city.

(4) If employed, the name and address of the employer, together with credentials establishing the relationship.

(5) A brief description of the nature of the gold or silver buying to be done.

(6) The length of time for which the right to do gold or silver buying is desired and the location where such buying is to be done.

(7) A photograph of the applicant, taken within 60 days immediately prior to the date of filing the application, which picture shall be two inches by two inches, showing the head and shoulders of the applicant in a clear and distinguishing manner.

(8) The fingerprints of the applicant, and the names of at least two reliable property owners of the county who will certify as to the applicant's good character and business respectability, or, in lieu of the names of such references, such other available evidence as to the good character and business responsibility of the applicant, as will enable an investigator to properly evaluate such character and business responsibility.

(9) A statement as to whether or not the applicant has been convicted of any crime, misdemeanor or violation of any municipal criminal ordinance, in any state, the nature of the offense and the punishment or penalty assessed therefor.

(Code 1979, § 6-102; Ord. No. 4-15-80, § 3, 5-6-1980)

Sec. 12-232. - Investigation fee.

At the time of filing the application for the permit required by section 12-229, a fee of $10.00 shall be paid to the city license and revenue officer to cover the cost of an investigation of the facts stated therein.

(Code 1979, § 6-103; Ord. No. 4-15-80, § 4, 5-6-1980)

Sec. 12-233. - Investigation generally; refusal or issuance.

Upon receipt of an application for the license required by section 12-229, the original shall be referred to the chief of police of the city, who shall cause such investigation of the applicant's business and moral character to be made as he deems necessary for the protection of the public good. If, as a result of such an investigation, the applicant's character or business responsibility is found to be unsatisfactory or if he does not otherwise qualify under the provisions of this article, the chief of police shall endorse on such application his disapproval and the reason for the same and return the application to the city license and revenue officer, who shall notify the applicant that his application is disapproved and that no permit will be issued. If, as a result of such investigation, the character and business responsibility of the applicant are found to be satisfactory, and he otherwise qualifies under this article, the chief of police shall endorse on the application his approval, and return the application to the city license and revenue officer, who shall deliver to the applicant his license, in the same manner as to other licenses of the city. In the event the license is disapproved, the applicant may appeal to the council of the city within 14 days.

(Code 1979, § 6-104; Ord. No. 4-15-80, § 5, 5-6-1980)

Sec. 12-234. - Signing and contents of license.

The license required by section 12-229 shall contain the signature of the city license and revenue officer and shall show the name, address and photographs of the licensee, the date of issuance and length of time the same shall be operative, as well as the license number. Such license must be displayed at all times whenever the applicant conducts business.

(Code 1979, § 6-105; Ord. No. 4-15-80, § 6, 5-6-1980)

Sec. 12-235. - Record of licenses required.

The city license and revenue officer shall keep a permanent record of all licenses issued under this article.

(Code 1979, § 6-106; Ord. No. 4-15-80, § 7, 5-6-1980)

Sec. 12-236. - Record of purchases to be kept by buyers; transcript to be furnished to chief of police.

Each applicant who secures a license under this article for purchasing gold or silver in any form, set out in section 12-229, shall keep a book in which shall be entered, promptly at the time of purchase, a brief description of the articles or property purchased, the date and hour of the purchase and a brief description of the person from whom the purchase is made, together with the address, driver's license number, sex, race, and date of birth of such person. Each entry of such transaction shall be serially numbered on the book at the time of making the entry. Such buyer shall, on every day before the hour of 10:00 a.m., deliver to the chief of police, upon a form provided by him, a legible transcript of the business done during the business day immediately preceding the filing of the transcript.

(Code 1979, § 6-107; Ord. No. 4-15-80, § 8, 5-6-1980)

Sec. 12-237. - Registration of licensees.

Each licensee under this article shall promptly, after the beginning of business, register with the chief of police, in a book kept for that purpose, his name, address and every place where he carries on business or stores property.

(Code 1979, § 6-108; Ord. No. 4-15-80, § 9, 5-6-1980)

Sec. 12-238. - Inspection of records of licensees.

The books and records kept by each licensee of the articles described in section 12-229 shall be open for inspection by the chief of police or by any officer of the police department of the city at all times and the licensee and his agents and employees shall at all times exhibit the book to such officers on request.

(Code 1979, § 6-109; Ord. No. 4-15-80, § 10, 5-6-1980)

Sec. 12-239. - Identification of articles purchased.

Each licensee under this article purchasing gold or silver in any form set out in section 12-229 shall attach to or place on each such article purchased a tag or other identifying mark or label numbered to correspond with the serial number of the book required by section 12-236 to be kept; except, where small articles are bought in bulk and are too numerous to conveniently tag or mark, an identifying number shall be placed on the container or wrapper in which the articles are kept or placed.

(Code 1979, § 6-110; Ord. No. 4-15-80, § 11, 5-6-1980)

Sec. 12-240. - Time articles to be held after purchased.

The property of the kind described in section 12-229 shall be held in the same form, shape or condition in which they were purchased, without mutilation, melting, reduction to block or lump form, or destruction of the form thereof, for a period of 72 hours after the hour when the licensee reports the purchase to the chief of police, during which time said articles shall be open to inspection or examination by the chief of police, or such officers of the police department as may be delegated to make such examination or inspection, unless permission for change in form or sale is obtained in writing from the chief of police after the fling of the report required by section 12-236.

(Code 1979, § 6-111; Ord. No. 4-15-80, § 12, 5-6-1980)

Sec. 12-241. - Application of article; violations.

The provisions of this article shall be binding upon every employee or agent of the buyer of the articles described in section 12-229, and it shall be unlawful and an offense against the city for any such licensee or his agent, servants, officers or employees to fail or refuse to carry out the provisions of this article. Any person who shall violate any provisions of this article or do business within the city, as defined in this article, without first obtaining a permit or license as provided herein shall be subject to a fine in an amount not to exceed $500.00 or imprisonment not to exceed six months, or to both such fine and imprisonment, in the discretion of the court trying the case.

(Code 1979, § 6-112; Ord. No. 4-15-80, § 14, 5-6-1980)

Secs. 12-242—12-262. - Reserved.

ARTICLE VIII. - GOING-OUT-OF-BUSINESS SALES

Sec. 12-263. - Definitions.

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

Fire and other altered goods sale means a sale held out in such a manner as to reasonably cause the public to believe that the sale will offer goods damaged or altered by fire, smoke, water or other means.

Going-out-of-business sale means a sale held out in such a manner as to reasonably cause the public to believe that, upon the disposal of the stock of goods on hand, the business will cease and be discontinued, including, but not limited to, the following sales:

Adjuster's, adjustment, alteration, assignee's, bankrupt, benefit of administrator's, benefit of creditor's, benefit of trustee's, building coming down, closing, creditor's committee, creditor's end, executor's, final days, forced out of business, insolvents, last days, lease expires, liquidation, loss of lease, mortgage sale, receiver's, trustee's, quitting business, forced out, and other terminology of similar intent to any of the above.

Goods includes any goods, wares, merchandise or other property capable of being the object of a sale regulated hereunder.

Person means any person, firm, partnership, association, corporation, company or organization of any kind.

Removal of business sale means a sale held out in such a manner as to reasonably cause the public to believe that the person conducting the sale will cease and discontinue business at the place of sale upon disposal of the stock of goods on hand and will then move to and resume business at a new location in the city, or will then continue business from other existing locations in the city.

(Code 1979, § 6-121; Ord. No. 1-15-91, 2-5-1991)

Sec. 12-264. - License required.

A license issued by the city clerk shall be obtained by any person before selling or offering for sale any goods at a sale to be advertised or held out by any means to be one of the following kind:

(1) Going-out-of-business sale.

(2) Removal of business sale.

(3) Fire and other altered stock sale.

(Code 1979, § 6-122; Ord. No. 1-15-91, 2-5-1991)

Sec. 12-265. - Application of regulations.

(a) *Provisions supplemental to the general licensing ordinance.* The provisions of this article are intended to augment and be in addition to the provisions of the general licensing ordinance of the city. Where this article imposes a greater restriction upon persons, premises, businesses, or practices than is imposed by the general licensing ordinance of the city, this article shall control.

(b) *Established business prerequisite to granting license; exception.*

(1) Any person who has not been the owner of a business advertised or described in the application for a license hereunder for a period of at least 12 months prior to the date of the proposed sale shall not be granted a license.

(2) Exception for survivors of businessmen. Upon the death of a person doing business in the city, his heirs, devisees or legatees shall have the right to apply at any time for a license hereunder.

(c) *Interval between sales.* Any person who has held a sale, as regulated hereunder, at the location stated in the application, within one year last past from the date of such application, shall not be granted a license.

(d) *Restricted location.* Where a person applying for a license hereunder operates more than one place of business, the license issued shall apply to the one store or branch specified in the application, and no other store or branch shall advertise or represent that it is cooperating with it, or in any way participating in the licensed sale, nor shall the store or branch conducting the licensed sale advertise or represent that any other store or branch is cooperating with it, or participating in any way in the licensed sale unless a separate license is obtained for each location.

(e) *Persons exempted.* The provisions of this article shall not apply to nor affect the following persons:

(1) Persons acting pursuant to an order or process of a court of competent jurisdiction.

(2) Persons acting in accordance with their powers and duties as public officials.

(3) Persons conducting a sale of the type regulated herein on the effective date of the ordinance from which this article is derived, unless such sale is continued for a period of more than 30 days from and after such effective date, in which event, such person, at the lapse of the said 30-day period, shall comply with the provisions of this article.

(Code 1979, § 6-123; Ord. No. 1-15-91, 2-5-1991)

Sec. 12-266. - Application for license; fee.

(a) *Written information required.* A person desiring to conduct a sale regulated by this article shall make a written application to the city clerk setting forth and containing the following information:

(1) The true name and address of the owner of the goods to be the object of the sale.

(2) A sworn statement by the legal owners of the business stating that no additional inventory will be added to the existing inventory during the sale.

(3) A description of the place where such sale is to be held.

(4) The nature of the occupancy, whether by lease or sublease, and the effective date of termination of such occupancy.

(5) The dates of the period of time in which the sale is to be conducted.

(6) A full and complete statement of the facts in regard to the sale, including the reason for the urgent and expeditious disposal of goods thereby and the manner in which the sale will be conducted.

(7) The means to be employed in advertising such sale, together with the proposed content of any advertisement.

(b) *License fee.* Any applicant for a license hereunder shall submit to the city clerk with his application a license fee of $100.00.

(Code 1979, § 6-124; Ord. No. 1-15-91, 2-5-1991)

Sec. 12-267. - Conditions of license.

A license shall be issued hereunder on the following terms:

(1) *Licensing period.* The license shall authorize the sale described in the application for a period of not more than 30 consecutive calendar days following the issuance thereof.

(2) *Nature of sale.* The license shall authorize only the one type of sale described in the application at the location named therein.

(3) *Saleable goods.* The license shall authorize only the sale of goods in inventory at the beginning of the sale.

(4) *Surrender of general license.* Upon being issued a license hereunder for a going-out-of-business sale, the licensee shall surrender to the city clerk all other business licenses they may hold at that time applicable to the location and goods covered by the application for a license under this article.

(5) *Nontransferability.* Any license herein provided for shall not be assigned or transferable.

(6) *Advertisement.* A licensee shall not advertise a sale pursuant to a license under this article earlier than seven days prior to the date on which the sale is licensed to begin. Advertising of such sales shall state the number of the license issued pursuant to this article and the date when the sale is to begin and, during the last 15 days of such sale, shall clearly and prominently state the date upon which the sale shall end.

(Code 1979, § 6-125; Ord. No. 1-15-90, 2-5-1991)

Sec. 12-268. - Duties of licensee.

It shall be the duty of the licensee to:

(1) *Adhere to inventory.* Make no additions whatsoever, during the period of the licensed sale, to the stock of goods.

(2) *Advertise properly.* Refrain from employing any untrue, deceptive or misleading advertising.

(3) *Adhere to advertising.* Conduct the licensed sale in strict conformity with any advertising or holding out incident thereto.

(Code 1979, § 6-126; Ord. No. 1-15-91, 2-5-1991)

Sec. 12-269. - Penalty for violation.

Any person, firm, corporation or association convicted of violating any provision of this article shall be guilty of a misdemeanor and shall be fined not more than $500.00 and may be imprisoned for not more than six months, or both. Each day that an offense under this article continues shall be considered a separate offense and shall be punishable as such.

(Code 1979, § 6-127; Ord. No. 1-15-91, 2-15-1991)

Secs. 12-270—12-286. - Reserved.

ARTICLE IX. - RENTAL AND LEASE TAX[6]

Footnotes:

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State Law reference— Authority to impose, Code of Ala. 1975, §§ 40-12-220—4-12-227, 40-9-30.

Sec. 12-287. - Levied; rate.

There is hereby levied, in addition to all privilege license taxes of every kind now imposed by law, and shall be collected as herein provided, a privilege or license tax against persons on account of the business activities and in the amounts to be determined by the application of rates against gross proceeds as follows:

(1) Upon each person whose place of business is within the city engaging or continuing to engage in the business of leasing or renting tangible personal property within the city or outside the city, at the rate of two percent of the gross proceeds derived by the lessor therefrom; provided that the privilege license tax levied in this article shall not apply to any leasing or rental, as lessor, by the United States of America, the state, or any municipality or county in the state.

(2) Upon each person whose place of business is not within the corporate limits of the city but who engages in or continues in the business of leasing or renting tangible personal property used or to be used within the city, at the rate of two percent of the gross proceeds derived by the lessor therefrom from the tangible personal property used or to be used within the city; provided that the privilege license tax levied in this article shall not apply to any leasing or rental, as lessor, by the United States of America, the state or any municipality or county in the state.

(Ord. No. 02-04-92, § 6, 1-18-1992)

Sec. 12-288. - Exemptions.

There are exempted from the computation of the amount of the privilege license tax levied, assessed or payable under this article the gross proceeds accruing from the leasing or rental of tangible personal property which the city is prohibited from taxing under the Constitution or laws of the United States, or under the Constitution and laws of the state.

(Ord. No. 02-04-92, § 2, 2-18-1992)

Sec. 12-289. - When payment due.

(a) The privilege license tax levied under the provisions of this article, except as otherwise provided, shall be due and payable in monthly installments on the first day of the month next succeeding the month in which the privilege license tax accrues. On the first day of each month, every person on whom the amounts levied by this article are imposed shall render to the city, on a form prescribed by the city, a true and correct statement showing the gross proceeds of his business, for the next preceding month, the amount of gross proceeds which are not subject to the privilege license tax or are not to be used as a measurement of the amounts due by such person and the nature thereof, together with such other information as the city may require, and at the time of making such monthly report such person shall compute the privilege license taxes due and shall pay to the city the amounts shown to be due.

(b) Such report and such payment shall be delinquent if not rendered and paid on or before the 20th day of the month of the succeeding month of which the tax is due and payable.

(c) If any person subject to this article should fail to render any report required hereby or should willfully make a false statement of facts in the statements or returns required hereunder, he shall be guilty of a misdemeanor and, upon conviction, shall be punished as provided in section 12-292.

(Ord. No. 02-04-92, § 3, 2-18-1992)

Sec. 12-290. - Reports of cash and credit rentals.

Any person taxable under this article, making cash and credit leases or rentals, may, if he desires, report such cash leases or rentals only, and he shall thereafter include in each monthly report all cash and credit collections made during the month preceding, and shall pay the privilege license tax due thereon at the time of filing such report.

(Ord. No. 02-04-92, § 4, 2-18-1992)

Sec. 12-291. - Records.

(a) It shall be the duty of every person engaging in or continuing in any business for which a privilege tax is imposed by this article to keep and preserve suitable records of the gross proceeds of any such business and such other books or accounts as may be necessary to determine the amount of tax for which he is liable under the provisions of this article. It shall be the duty of every person to keep and preserve for a period of three years all invoices of gross proceeds proceeding or accruing from the leasing or rental herein taxed, and all such books, invoices, and other records shall be open for examination at any time by the revenue officer or his authorized representative. Any person leasing who in addition leases for re-leasing shall keep his books so as to show separately the gross proceeds of leasing and the gross proceeds of leasing for re-leasing.

(b) The books, records and accounts mentioned above shall at all times be open to examination by the revenue officer or his authorized representative, upon request by the revenue officer. Upon demand by the revenue officer or his authorized representative, it shall be the duty of any person subject to this license tax to submit to the revenue officer or his authorized representative, for inspection and examination, during reasonable business hours, in the city, all books of account. Each occurrence of a failure to keep records, or allow examination thereof, shall constitute a separate offense.

(Ord. No. 02-04-92, § 5, 2-18-1992)

Sec. 12-292. - Penalty.

Any person who shall fail to keep records as required by this article or who shall refuse to permit their examination or who violates any other provisions of this article shall be guilty of an offense against the city and, upon conviction, shall be punished as prescribed in section 12-73.

(Ord. No. 02-04-92, § 6, 2-18-1992)

Sec. 12-293. - Collection of taxes.

Collection of the taxes in this article shall be the responsibility of the state department of revenue.

(Ord. No. 11-04-97, 11-4-1997)

Chapter 14 - COURT AND CRIMINAL PROCEDURE[1]

Footnotes:

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State Law reference— Municipal courts generally, Code of Ala. 1975, § 12-14-1 et seq.; powers of municipal judgments generally, Code of Ala. 1975, § 12-14-31; powers of courts as to trial and disposition of cases generally, Code of Ala. 1975, § 12-14-10; issuance of arrest and search warrants by municipal judges, Code of Ala. 1975, § 12-14-32; municipal court costs authorized, Code of Ala. 1975, § 12-14-14; court costs, fees, and fines in criminal cases, Code of Ala. 1975, § 12-19-150 et seq.; court costs may be imposed in municipal criminal cases, Code of Ala. 1975, § 12-19-153; additional costs for peace officers' annuity fund, Code of Ala. 1975, § 36-21-67; docket fees in district court and circuit court, Code of Ala. 1975, § 12-19-171; fees required to be uniform, Code of Ala. 1975, § 12-19-170; fair trial tax, Code of Ala. 1975, § 12-59-250; requirement for working out judgment if not paid within time prescribed, Code of Ala. 1975, § 12-14-12.

ARTICLE I. - IN GENERAL

Sec. 14-1. - Establishment of municipal court.

There is hereby established, effective December 27, 1977, a municipal court for the city, pursuant to the provisions of Code of Ala. 1975, title 12, ch. 14.

(Code 1979, § 8-1; Ord. No. 10-26-77, § 1, 11-1-1977)

Sec. 14-2. - Jurisdiction.

The municipal court shall have jurisdiction of all prosecutions for the breach of ordinances of the municipality within its corporate limits and police jurisdiction. This jurisdiction shall also extend to all prosecutions for violations of state misdemeanors and violations committed within the corporate limits and police jurisdiction of the municipality where such offenses have been made against the municipality.

(Code 1979, § 8-2; Ord. No. 10-26-77, § 2, 11-1-1977)

Sec. 14-3. - Time and place of holding court.

The municipal court shall be held at such time and place as the governing body may determine, with the advice of the municipal judge.

(Code 1979, § 8-3; Ord. No. 10-26-77, § 3, 11-1-1977)

Sec. 14-4. - Judge—Office established; qualifications; term; oath; filling vacancy; disqualification.

(a) The municipal court shall consist of one municipal judge to be appointed by a vote of a majority of the members elected or appointed to the municipal governing body. The judge shall be appointed for a term of two years. The municipal judge shall be eligible for reappointment upon the expiration of his term. He shall hold office until his successor is appointed and qualified.

(b) The municipal judge must be licensed to practice law in the state and must be a qualified elector of the state. No judge shall be otherwise employed in any capacity by the municipality during his term of office.

(c) The office of the municipal judge shall be vacant if he dies, resigns, or is removed; and vacancies shall be filled by the municipal governing body in the same manner as original appointments are made. Any person so appointed shall be eligible to serve for two years from the date of appointment.

(d) The municipal judge shall, before assuming office, take and sign the oath provided by the state constitution and a copy thereof shall be filed in the office of the secretary of state, the administrative director of courts and the clerk of the municipality.

(e) The municipal judge shall be subject to all grounds of disqualification from hearing specific cases as are applicable to circuit court judges.

(Code 1979, § 8-4; Ord. No. 10-26-77, § 4, 11-1-1977)

State Law reference— Appointment, qualifications and term of office, Code of Ala. 1975, § 12-14-30.

Sec. 14-5. - Same—Compensation.

The annual salary of the municipal judge is as established from time to time. This salary shall not be diminished during the judge's term of office. Any general increase in the compensation of all or substantially all municipal employees shall be applied proportionately to the salary of the municipal judge.

(Code 1979, § 8-5; Ord. No. 10-26-77, § 5, 11-1-1977)

Sec. 14-6. - Same—Acting.

In the absence from the city, death, disability, or disqualification of a municipal judge, for any reason, the mayor of the municipality shall have the authority to designate a person, licensed to practice law in the state and a qualified elector of the state, not otherwise employed in any capacity by the municipality, to serve as acting municipal judge with all power and authority of a duly appointed municipal judge. No such acting

judge may serve for more than 30 successive days or a total of 60 days in any calendar year; provided that when the duly appointed municipal judge is disqualified pursuant to the state constitution, the time of service limitations for acting judges shall not apply during such disqualification.

(Code 1979, § 8-6; Ord. No. 10-26-77, § 11, 11-1-1977)

State Law reference— Acting judge; designation, qualifications, limitation, Code of Ala. 1975, § 12-14-34.

Sec. 14-7. - Same—Reports.

(a) The municipal judge shall report on the proceedings of the municipal court as required by law or rule.

(b) The municipal judge shall be required to make a report to the council on the operation of the municipal court every month.

(Code 1979, § 8-7; Ord. No. 10-26-77, §§ 12, 13, 11-1-1977)

Sec. 14-8. - Magistrates.

The municipal judge shall take steps to have a magistrate appointed for the city pursuant to Rule 18 of the Alabama Rules of Judicial Administration. The powers of the magistrate shall be limited to:

(1) Issuance of arrest warrants;

(2) Granting of bail in minor misdemeanor or violation prosecutions;

(3) Receiving of pleas of guilty in minor misdemeanors or violations where a schedule of fines has been prescribed by law or rule;

(4) Accountability to the municipal court for all uniform traffic tickets and complaints, monies received and records of offenses; and

(5) Such other authority as may be granted by law.

(Code 1979, § 8-8; Ord. No. 10-26-77, § 10, 11-1-1977)

State Law reference— Authority of magistrates, Code of Ala. 1975, § 12-14-51.

Sec. 14-9. - Powers of the mayor.

The mayor may remit fines and such costs as are payable to the municipality and commute sentences imposed by municipal judges or the court to which an appeal was taken for violations of municipal ordinances, and may grant pardons, after conviction, for violation of such ordinances, and he shall report his action to the governing body at the first regular meeting thereof in the succeeding month with his reasons therefor in writing.

(Code 1979, § 8-9; Ord. No. 10-26-77, § 7, 11-1-1977)

State Law reference— Similar provisions, Code of Ala. 1975, § 12-14-15; funds earmarked, Code of Ala. 1975, § 12-14-18.

Sec. 14-10. - Powers of the court.

(a) The municipal judge shall have the power to admit to bail any person charged with the violation of any municipal ordinance by requiring an appearance bond, with good security, to be approved by the municipal judge or his designee in an amount not to exceed $500.00 and may, in his discretion, admit to bail such person on a personal recognized bond conditioned on the appearance of such person before him on a day named therein to answer the charges preferred against him.

(b) The municipal judge shall have the authority to punish any person convicted of violating any municipal ordinance with a fine of not more than $500.00 and/or a sentence of imprisonment or hard labor for a period not exceeding six months, except, when in the enforcement of the penalties prescribed in Code of Ala. 1975, § 32-5A-191, such fine shall not exceed $5,000.00 and such sentence of imprisonment or hard labor shall not exceed one year; provided, however, no fine or sentence of imprisonment shall exceed the maximum fine or sentence provided by the city ordinance violated, nor shall the fine or sentence exceed the maximum fine and sentence provided for commission of a substantially similar offense under state law. The penalty imposed on a corporation shall consist of the fine only, plus costs of court.

(c) The municipal judge, in his judgment, may provide that if a fine and costs are not paid within the time prescribed, the defendant, unless indigent, shall work out the amount of the judgment under the direction of the municipal authority allowing not less than $10.00 for each day's service.

(d) Upon each conviction in municipal court for a violation of any ordinance of the city, there shall be taxed against the defendant as court costs the sum of $10.00, and there shall also be taxed as costs the additional costs and fees imposed by the statutes of the state, and the latter such costs and fees shall be remitted pursuant to said statutes. All costs taxed for the city, as hereinabove provided, shall be paid into the city treasury. In addition to any court costs and fees authorized above, there is hereby levied and assessed additional court costs and fees in the amount of $17.50

for traffic fine violations and $17.50 for misdemeanor violations. The costs and fees, when collected, shall be paid into a special municipal fund designated as the "corrections fund." The funds shall be allocated exclusively for the operation and maintenance of the municipal jail, any juvenile detention center, or the court complex.

(e) Upon conviction, the court may, upon a showing of inability to make immediate payment of fines and costs, accept defendant's bond with or without surety and with waiver of exemptions as to personalty, such fines and costs to be payable within 90 days and upon nonpayment of which execution may issue as upon judgment in state courts.

(f) The municipal judge shall have the authority to continue the case from time to time to permit the fine and costs to be paid, remit fines, costs and fees, impose intermittent sentences, establish work release programs, require attendance of educational, corrective or rehabilitative programs, suspend driving privileges for such times and under such conditions as provided by law and order hearings to determine the competency of the defendant to stand trial; provided, further, the judge may enter an order authorizing the defendant to drive under the conditions set forth in the order.

(g) All cases in municipal court shall be tried by a municipal judge without a jury.

(h) The municipal judge may suspend execution of sentence and place a defendant on probation for varying periods of time, not to exceed two years, under the procedures and conditions set out in Code of Ala. 1975, § 12-14-18.

(i) The municipal judge may administer oaths, compel the attendance of witnesses and compel the production of books and papers, punish by fine not exceeding $50.00 and/or imprisonment not exceeding five days any person found and adjudged to be in contempt of court, and shall have power coextensive with the jurisdiction of the district court to issue writs and other processes, and to approve and declare bonds forfeited. The municipal judge shall designate any other municipal officers who shall be authorized to approve appearance and appeal bonds.

(j) The municipal court shall take judicial notice of the ordinances of the municipality.

(k) The sheriff of the county and all law enforcement officers of the municipality shall obey the municipal judge having legal authority in faithfully executing the warrants and processes committed to them for service according to their mandates.

(Code 1979, § 8-10; Ord. No. 10-26-77, § 6, 11-1-1977; Ord. No. 10-30-84, 11-6-1984; Ord. No. 06-17-97, 6-17-1997)

State Law reference— Similar provisions, Code of Ala. 1975, §§ 12-14-1—12-14-14.

Sec. 14-11. - Warrants.

The municipal judge is authorized to issue arrest and search warrants upon affidavit for municipal ordinance violations returnable to the municipal court and for violations of state law returnable to any state court.

(Code 1979, § 8-11; Ord. No. 10-26-77, § 9, 11-1-1977)

State Law reference— Similar provision, Code of Ala. 1975, § 12-14-32.

Sec. 14-12. - Appeals.

(a) All appeals from judgments of the municipal court shall be to the circuit court of the circuit in which the violation occurred for trial de novo.

(b) The municipality may appeal, within 60 days without bond, from a judgment of the municipal court holding a municipal ordinance invalid.

(c) A defendant may appeal in any case within 14 days from the entry of judgment by filing notice of appeal and giving bond with or without surety approved by the court or the clerk in an amount not more than $500.00 and costs, as fixed by the court, conditioned upon the defendant's appearance before the circuit court. The municipal court may waive the appearance bond upon satisfactory showing that the defendant is indigent or otherwise unable to provide a surety bond. If an appeal bond is waived, a defendant sentenced to imprisonment shall not be released from custody, but may obtain release at any time by filing a bond approved by the municipal court. If the defendant is not released, the prosecutor shall notify the circuit court clerk and the case shall be set for trial at the earliest practicable time.

(d) When an appeal has been taken, the municipality shall file the notice and other documents in the court to which the appeal is taken within 15 days, failing which the municipality shall be deemed to have abandoned the prosecution, the defendant shall stand discharged and the bond shall be automatically terminated.

(e) Upon trial or plea of guilty in the circuit court on appeal, the court may impose any penalty or sentence which the municipal court might have imposed.

(f) Upon failure of an appellant to appear in circuit court when the case is called for trial, unless good cause for such default is shown, the court shall dismiss the appeal and enter judgment of default on the appeal bond, and may also issue a warrant for arrest of the appellant. A copy of the order shall be delivered by the circuit court clerk to the clerk of the municipal court. The circuit court may, on motion of defendant made within 30 days of the order of dismissal, set aside the dismissal and other orders and reinstate the appeal on such terms as the court may prescribe for good cause shown by the defendant.

(g) Upon receipt of notice of dismissal of a defendant's appeal, the municipal court may issue a warrant for arrest of the defendant, who may also be arrested without a warrant as an escapee. Upon arrest, the defendant shall be delivered to the municipal authorities and punished in accordance with the judgment of the municipal court.

(h) If a judgment is entered against a defendant upon appeal, the circuit court shall remand the defendant to the municipal authorities for punishment in accordance with the judgment of the circuit court, unless, when the judgment is for fine and costs only, the judgment is paid or a judgment is conferred therefor in favor of the municipality with sureties or as otherwise provided for convictions under state law.

(i) Upon receipt of payment of fines and costs upon appeals, the clerk of the circuit court shall within 30 days pay 90 percent of such fines and forfeitures, and ten percent of the costs, to the treasurer of the municipality. The circuit court clerk shall be liable on his bond for such fines and costs, plus a penalty of five percent per month for default in such payments.

(j) From the judgment of the circuit court, the municipality, in a case holding invalid an ordinance, or the defendant, in any case, may appeal to the court of criminal appeals in like manner as in cases of appeal for convictions of violation of the criminal laws of the state. If the appeal is taken by the municipality, it shall not be required to give surety for the cost of the appeal. When taken by the defendant, he may give bail with sufficient sureties, conditioned that he will appear and abide by the judgment of the appellate court, and failing to give bail he must be committed to the municipal jail; but he may give such bail at any time pending the appeal. When an appeal is taken by the defendant and bail is given pending the appeal, and the judgment of conviction is affirmed or the appeal is dismissed, the defendant is bound by the undertaking of bail to surrender himself to the municipal authorities within 15 days from the date of such affirmance or dismissal, and if he shall fail to do so, the clerk of the circuit court from which the appeal is taken, upon motion of the municipality, must endorse the bail bond forfeited, and a writ of arrest must be issued by the clerk to the sheriff. Upon arrest, the defendant shall be delivered to the municipal authorities and the sentence must, without delay, be carried out as if no appeal had been taken. If bail is forfeited as herein provided, a conditional judgment must be rendered by the court in favor of the municipality and the same proceedings had thereon for the municipality as is authorized by law to be had in the name of the state in state cases.

(Code 1979, § 8-13; Ord. No. 10-26-77, § 8, 11-1-1977)

State Law reference— Appeals, Code of Ala. 1975, §§ 12-14-70, 12-14-71.

Sec. 14-13. - Use of county jail for municipal prisoners.

The city jail is the designated jail for city misdemeanor prisoners; in the alternative, the county jail is a designated place of detention, as the city shall pay such fees designated by the county governing body.

Secs. 14-14—14-44. - Reserved.

ARTICLE II. - DEFERRED PROSECUTION PROGRAM

Sec. 14-45. - Establishment of program.

The Alabama Legislature has for many years, through bills of statewide application and local bills, provided for the possibility of rehabilitative treatment in lieu of undergoing prosecution. The theory behind such legislation is that a criminal conviction imposing a fine or jail sentence may not be beneficial to society as a program designed to rehabilitate the accused in a manner that may avoid future offenses. It is belief of this council that this theory is sound and supported by affirmative results. The council hereby establishes a program of deferred prosecution which does not provide a right to the accused, but such program provides a privilege to those granted admission based upon the guidelines and the rules herein established.

(Ord. No. 10-16-07A, § 12, 11-6-2007)

Sec. 14-46. - Supervision of program.

The deferred prosecution program (hereinafter referred to as "program") shall be under the direct supervision and control of the city prosecutor, hereinafter referred to as "prosecutor." The municipal court clerk shall keep and maintain all records of the program, including applications, certifications, completion certificates and other information pertinent to the applicant's participation in the program. The said records shall be kept and maintained separate and apart from all other municipal court records except for cross references to the applicant's original offense file.

(Ord. No. 10-16-07A, § 2, 11-6-2007)

Sec. 14-47. - Conditions for admission to program.

Any person charged with a crime or violation where the jurisdiction of the Daleville Municipal Court is proper may apply for admittance to the program subject to the following limitations and conditions:

(1) Deferred prosecution shall be available only one time for the same or similar offense. Deferred prosecution will not be available if the applicant has any prior alcohol, drug, or domestic violence conviction from any jurisdiction. Deferred prosecution will not be available if the accused was granted youthful offender status for any prior alcohol, drug or domestic violence arrest.

(2) In alcohol or drug cases, the deferred prosecution must include, at a minimum, the enrollment in an alcohol or drug rehabilitation program.

(3) If there are any companion traffic cases with a DUI arrest, the accused must plead guilty and settle those cases as a prerequisite to being eligible to apply for deferred prosecution of the DUI case.

(4) The accused must complete a deferred prosecution application form containing such information as the prosecutor determines to be needed and appropriate.

(5) Deferred prosecution will not be available for any offense involving serious injury to a person.

(Ord. No. 10-16-07A, § 3, 11-6-2007)

Sec. 14-48. - Recommendation required for approved admission.

In order to participate in the program, an applicant must receive the affirmative recommendation of the prosecutor. Final approval for approval for participation shall be at the discretion of the Daleville Municipal Judge, hereinafter referred to as "judge." Such recommendation and approval must be noted in writing on the application submitted by the offender.

(Ord. No. 10-16-07A, § 4, 11-6-2007)

Sec. 14-49. - Context for admission to program.

Admittance to the program shall be appropriate in any of the following instances:

(1) There is a probability justice will be served if the applicant is placed in the program.

(2) It is determined that the needs of the city and the applicant can be met through the program.

(3) The applicant appears to pose no substantial threat to the safety and well-being of the community.

(4) It appears the applicant is not likely to be involved in further criminal activity.

(5) The applicant will likely respond to rehabilitative treatment.

(Ord. No. 10-16-07A, § 5, 11-6-2007)

Sec. 14-50. - Information required for evaluation.

Prior to being admitted to the program or as a part of the prosecutor's evaluation process, an applicant may be required to furnish information concerning past criminal history, educational history, work record, family history, medical or psychiatric treatment or care received, psychological tests taken, and any other information concerning the

applicant which the prosecutor believes has a bearing on the decision as to whether or not the applicant should be admitted to the program.

(Ord. No. 10-16-07A, § 6, 11-6-2007)

Sec. 14-51. - Applicant requirements.

An applicant who enters into the program shall satisfy each of the following requirements:

(1) The applicant must be eligible for and must sign to have any bond on his case where deferred prosecution is sought based on personal recognizance, cash or property bond and not a security bond.

(2) Voluntarily waive, in writing, his right to a speedy trial.

(3) Agree, in writing, to the conditions of the program established by the prosecutor.

(4) If there is a victim of the crime, agree in writing to a restitution agreement within a specified period of time and in an amount to be determined by the prosecutor taking into account circumstances of the applicant and victim.

(5) The applicant must enter a plea of guilty and pay the court costs to the charge for which deferred prosecution is sought. The guilty plea shall be submitted to the judge who shall withhold final adjudication until the applicant successfully completes the program or is terminated from the program.

(Ord. No. 10-16-07A, § 7, 11-6-2007)

Sec. 14-52. - Applicant acceptance fee.

(a) An applicant may be assessed a fee when the applicant is approved for the program. The amount of the assessment for participation in the program shall be in addition to any court costs and assessments for victims of drug, alcohol, or anger management required by law, and are in addition to costs of supervision, treatment, and restitution for which the person may be responsible. An applicant may not be denied access into the program based solely on his inability to pay. Program fees established by this act may be waived or reduced for just cause, including indigency of the applicant, at the discretion of the judge. Any determination of indigence of the applicant for the purposes of deferred prosecution fee waiver or reduction shall be made by the judge. A schedule of payments for any these fees may be established by the prosecutor.

(b) The following fees shall be applied to applicants accepted in the program:

(1) DUI offenses: up to $5,000.00.

(2) Domestic violence offenses: up to $1,000.00.

(3) Other misdemeanor offenses: up to $500.00.

(4) Traffic offenses: up to $250.00.

(5) Violations: up to $100.00.

(c) All fees assessed and collected by the program shall be paid into the general fund of the city to defray the administration and the cost of the program and for use for any other municipal purpose.

(Ord. No. 10-16-07A, § 8, 11-6-2007)

Sec. 14-53. - Agreement between prosecutor and applicant.

In any case in which an applicant is admitted into a program, there shall be a written agreement between the prosecutor and the applicant. The agreement shall include the terms of the program which may include any of the following:

(1) Participate in an education setting to include, but not be limited to, K through 12, college, job training school, trade school, GED classes, or adult basic education courses.

(2) If appropriate, attempt to learn to read and write.

(3) Financially support his children or pay child support.

(4) Refrain from the use of alcohol or drugs or frequenting places where alcohol or drugs are sold or used and submitting to periodic or random drug testing.

(5) Refrain from contact with certain persons or premises.

(6) Maintain or seek employment.

(7) Attend individual, group, or family counseling.

(8) Pay approved restitution to a victim if any is due.

(9) Pay court costs and fees.

(10) Observe curfews or home detention or travel constraints as set out in the applicant's agreement.

(11) Enter into an agreement with the prosecutor to have restitution, court costs, fines, fees, or child support either withheld or garnished from the wages or salary of the applicant and applied to the above.

(12) Participation in a substance abuse program, including, but not limited to, being admitted to a drug or alcohol treatment program on an inpatient or out-patient basis or receive other treatment alternatives for substance abuse.

(13) Refraining from the possession or use of any deadly weapon or dangerous instrument.

(Ord. No. 10-16-07A, § 9, 11-6-2007)

Sec. 14-54. - Agreement termination.

(a) If the participant violates the conditions of the program agreed to in writing by the applicant, the prosecutor may terminate the participation of the participant. The participant shall be given written notice of the intent of the prosecutor to terminate him or her from the program, including the reason for termination.

(b) The prosecutor may waive a violation for good cause shown as to why the applicant should stay in the program.

(Ord. No. 10-16-07A, § 10, 11-6-2007)

Sec. 14-55. - Non-liability.

Neither the prosecutor or judge shall be liable, criminally or civilly, for the conduct of any person while participating in the program.

(Ord. No. 10-16-07A, § 11, 11-6-2007)

Sec. 14-56. - Final adjudication upon program completion.

At such time that a participant successfully completes the program and adheres to all of its terms and agreements, the prosecutor shall recommend final adjudication of the participant's plea to the original offense. The judge shall consider the prosecutor's recommendation and, upon being satisfied of such successful completion, the case shall be dismissed. In the event the judge is not satisfied that the participant has successfully completed the program and adhered to its terms and agreements, the participant may be ordered to continue the program until satisfaction has occurred or, in the alternative, the judge may terminate the participant from the program and accept the plea of guilty and assess penalties.

(Ord. No. 10-16-07A, § 12, 11-6-2007)

Chapter 16 - EMERGENCY MANAGEMENT SERVICES AND DISASTER PREPAREDNESS[1]

Footnotes:

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State Law reference— Emergency Management Act, Code of Ala. 1975, § 31-9-1 et seq.; mutual aid agreements, Code of Ala. 1975, § 31-9-9; local emergency management agency and emergency powers of political subdivisions, Code of Ala. 1975, § 31-9-10; certified directors of local emergency management agency, Code of Ala. 1975, § 31-9-61; compensation of local emergency management directors, Code of Ala. 1975, § 31-9-62; employees of political subdivisions rendering outside aid, Code of Ala. 1975, § 31-9-11; political activities by emergency management agency, Code of Ala. 1975, § 31-9-19; Emergency Interim Succession Act, Code of Ala. 1975, § 29-3-1 et seq.

ARTICLE I. - IN GENERAL

Sec. 16-1. - Definition.

As used in this chapter, the term "emergency management" shall include measures for the mobilization, organization and direction of the civilian population and necessary support agencies to prevent, or minimize, the effects of natural disasters, as well as the effects of a nuclear war, or any subversive activities against the populace, communities, business, government, and other facilities and installations. Further the term "emergency management" shall include all elements of the definition thereof contained in Code of Ala. 1975, § 31-9-3.

(Code 1979, § 7-1; Ord. of 2-27-1961, § 1)

Sec. 16-2. - Emergency management organization—Composition.

The city emergency management organization shall consist of officers and employees of the municipality, with volunteer forces enrolled to aid them during an emergency, and all groups, organizations and persons who make the agreement on operation of law; which organization is charged with duties necessary for the protection of life and property in the city during an emergency.

(Code 1979, § 7-2; Ord. of 2-27-1961, § 4)

Sec. 16-3. - Same—Powers and duties.

It shall be the duty of the emergency management organization of the city, and it is hereby empowered:

(1) To develop a municipal plan in conjunction with the county survival plan. This plan shall provide for the effective mobilization of all resources of the municipality, both private and public.

(2) To consider and recommend to the city council for approval all plans and agreements, in conjunction with, and as a part of, the county emergency management organization.

(3) To have all powers and duties assigned by state law.

(Code 1979, § 7-3; Ord. of 2-27-1961, § 2)

State Law reference— Powers of city, Code of Ala. 1975, § 31-9-10.

Sec. 16-4. - Emergency management services director.

There is hereby created the office of city emergency management. The director of public safety is hereby designated to that position, and have the following duties:

(1) To represent or work with the mayor on all matters pertaining to emergency management and disaster preparedness;

(2) During periods of emergency, to direct the services of all municipal emergency management forces;

(3) To obtain and utilize cooperation of county officials in the preparation and implementation of all emergency management and disaster preparedness plans; and

(4) To perform all duties assigned by state law.

(Code 1979, § 7-4; Ord. of 2-27-1961, § 3)

State Law reference— Powers of local director, Code of Ala. 1975, § 31-9-9.

Sec. 16-5. - Plan.

The city emergency management plan shall be based upon plans formulated by the county emergency management plan.

(Code 1979, § 7-5; Ord. of 2-27-1961, § 5)

Sec. 16-6. - Priority of laws.

Emergency measures adopted pursuant to this article shall, in an emergency, take precedence over conflicting existing ordinances.

(Code 1979, § 7-6; Ord. of 2-27-1961, § 6)

Secs. 16-7—16-30. - Reserved.

ARTICLE II. - EMERGENCY INTERIM SUCCESSION

Sec. 16-31. - Definitions.

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

Attack means any attack or series of attacks by an enemy of the United States causing, or which may cause, substantial damage or injury to civilian property or persons in the United States in any manner, by sabotage or by the use of bombs, missiles, shellfire, or atomic, radiological, chemical, bacteriological, or biological means or other weapons or processes.

Duly authorized deputy means a person who is presently authorized to perform all of the functions, exercise all of the powers and discharge all of the duties of an office in the event the office is vacant or at such times as it lacks administration due to the death, absence or disability of the incumbent officer.

Emergency interim successor means a person designated pursuant to this article for possible temporary succession to the powers and duties, but not the office, of a city officer in the event that such officer or any duly authorized deputy is unavailable to exercise the powers and discharge the duties of the office.

Unavailable means either that a vacancy in office exists and there is no deputy authorized to exercise the powers and discharge the duties of the office, or that the lawful incumbent of the office (including any deputy exercising the powers and discharging the duties of an office because of a vacancy) and his duly authorized deputy are absent or unable, for physical, mental or legal reasons, to exercise the powers and discharge the duties of the office.

(Code 1979, § 7-20; Ord. No. 20, § 2, 2-5-1962)

State Law reference- Similar definitions, Code of Ala. 1975, § 29-3-3.

Sec. 16-32. - Designation, status, qualifications and term of emergency interim successors.

(a) *Elective officers.* Within 30 days after first entering upon the duties of his office, the mayor and each member of the city council shall, in addition to any duly authorized deputy (any other elective officers), designate such number of emergency interim successors to his office and specify their rank in order of succession after any duly authorized deputy so that there will not be less than three duly authorized deputies or emergency interim successors, or combination thereof, for the office.

(b) *Appointive officers.* The city council shall, within the time specified in subsection (a) of this section, in addition to any duly authorized deputy, designate for appointive officers, including the city clerk, chief of police, and fire chief, such number of emergency interim successors to these officers and specify their rank in order of succession after any duly authorized deputy so that there will be not less than three duly authorized deputies or emergency interim successors, or combination thereof, for each officer.

(c) *Review of designations.* The incumbent in the case of those elective officers specified in subsection (a) of this section, and the city council in the case of those appointive officers specified in subsection (b) of this section, shall review and, as necessary, promptly revise the designations of emergency interim successors to ensure that at all times there are at least three such qualified emergency interim successors or duly authorized deputies, or any combination thereof, for each officer specified.

(d) *Qualifications.* No person shall be designated to serve as an emergency interim successor unless he may, under the constitution and statutes of this state and the ordinances of this city, hold the office of the person to whose powers and duties he is designated to succeed, but no provision of any ordinance prohibiting an officer or employee of this city from holding another office shall be applicable to an emergency interim successor.

(e) *Status of emergency interim successor.* A person designated as an emergency interim successor holds that designation at the pleasure of the designator; provided that he must be replaced if removed. He retains this designation as emergency interim successor until replaced by another appointed by the authorized designator.

(Code 1979, § 7-21; Ord. No. 20, § 3, 2-5-1962)

State Law reference— Authority and requirements, Code of Ala. 1975, §§ 29-3-15, 29-3-16.

Sec. 16-33. - Assumption of powers and duties of officer by emergency interim successor.

If in the event of an attack, any officer named in section 16-32(a) and (b) and any duly authorized deputy is unavailable, his emergency interim successor highest in rank in order of succession who is not unavailable shall, except for the power and duty to appoint emergency interim successors, exercise the powers and discharge the duties of such officer. An emergency interim successor shall exercise these powers and discharge these duties only until such time as the lawful incumbent officer or any duly authorized deputy or an emergency interim successor higher in rank in order of succession exercises, or resumes the exercise of, the powers and discharge of the duties of the office, or until, where an actual vacancy exists, a successor is appointed to fill such vacancy or is elected and qualified as provided by law.

(Code 1979, § 7-22; Ord. No. 20, § 4, 2-5-1962)

Sec. 16-34. - Recording and publication of successors' names.

The name, address and rank in order of succession of each duly authorized deputy shall be filed with the city clerk and each designation, replacement, or change in order of succession of emergency interim successors shall become effective when the designator files with the city clerk the successors' name, address and rank in order of succession. The city clerk shall keep on file all such data regarding duly authorized deputies and emergency interim successors and it shall be open to public inspection.

(Code 1979, § 7-23; Ord. No. 20, § 5, 2-5-1962)

Sec. 16-35. - Formalities of taking office.

At the time of their designation, emergency interim successors shall take such oath and do such other things, if any, as may be required to qualify them to exercise the powers and discharge the duties of the office to which they may succeed.

(Code 1979, § 7-24; Ord. No. 20, § 6, 2-5-1962)

Sec. 16-36. - Quorum and vote requirements.

In the event of an attack:

(1) Quorum requirements for the city council shall be suspended; and

(2) Where the affirmative vote of a specified proportion of members for approval of an ordinance, resolution or other action would otherwise be required, the same proportion of those voting thereon shall be sufficient.

(Code 1979, § 7-25; Ord. No. 20, § 7, 2-5-1962)

Secs. 16-37—16-60. - Reserved.

ARTICLE III. - EMERGENCY MANAGEMENT COMMUNICATION DISTRICT

Sec. 16-61. - District created.

There is hereby created the Daleville Emergency Management Communication District, which shall encompass all of the territory lying within the corporate limits of the city.

(Ord. No. 07-21-92A, § 1, 7-21-1992)

Sec. 16-62. - Governing body of district.

The Daleville Emergency Management Communication District shall be governed by a board of commissioners consisting of the members of the city council and the mayor of the city.

(Ord. No. 07-21-92A, § 2, 7-21-1992)

Sec. 16-63. - Powers and duties.

The board of commissioners of the emergency management communications district herein created shall:

(1) Levy on all of the telephone subscribers within the emergency management communications district an emergency telephone service charge as established under state law;

(2) Obtain the personnel, lines and equipment necessary to upgrade the Basic 911 Emergency Service in order to provide Enhanced Emergency Service or E-911 Service, as defined in Code of Ala. 1975, §11-98-1, as amended;

(3) Collect from local telephone companies on a quarterly basis the amount collected by these companies attributable to the emergency telephone service charge to telephone subscribers;

(4) Disburse funds collected from the emergency telephone service charge, or any other source in the discharge of its responsibilities under law;

(5) Where the revenues set in subsection (1) of this section prove to be in excess of the amounts needed to operate the service, the board of commissioners shall reduce the subscribers' levy accordingly; and

(6) Appoint as staff to administer, under the board's direction, the Enhanced 911 Emergency Service, the personnel of the Daleville Department of Public Safety.

(Ord. No. 07-21-92A, § 3, 7-21-1992)

Chapter 18 - FIRE PREVENTION[1]

Footnotes:

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State Law reference— Authority to council to do all things necessary to prevent conflagration and give security to the inhabitants of the city from fires, Code of Ala. 1975, § 11-43-59; authority to maintain and operate a fire department, Code of Ala. 1975, § 11-43-140 et seq.; personnel standards and education, Code of Ala. 1975, § 36-32-7 et seq.; authority of municipalities with regard to installation of fire sprinkler systems, Code of Ala. 1975, § 34-33-9; refusal to assist in fire control, Code of Ala. 1975, § 13A-10-6.

ARTICLE I. - IN GENERAL

Sec. 18-1. - Fire code—Adopted; authentication.

(a) The 2009 International Fire Code, or such other technical code as established from time to time, shall be the fire prevention code adopted for enforcement in the municipal limits.

(b) The city clerk is authorized, directed and empowered to insert, at an appropriate place therein, a certificate to the effect that said code is an official publication of fire regulations, and that said publication in book form, affecting the city, by authority and under the direction of the city council, is to be and become effective as the fire code of said city.

(Code 1979, § 9-1; Ord. No. 4-5-77B, 4-26-1977; Ord. No. 8-15-78C, §§ 1, 2, 9-6-1978)

State Law reference— Authority to adopt by reference, Code of Ala. 1975, § 11-45-8(c)(5).

Sec. 18-2. - Same—Amendments; conflicts; violations.

(a) The fire code hereinabove adopted is subject to all amendments or modifications and to conflicting provisions contained in this Code.

(b) Any person violating the fire code hereinabove adopted shall be subject to punishment as provided in section 1-8.

(Code 1979, § 9-2)

Sec. 18-3. - Firefighting apparatus and equipment—Adequacy.

The department of public safety shall be equipped with such firefighting apparatus and other equipment as may be required from time to time to maintain its efficiency and properly protect life and property from fire.

(Code 1979, § 9-3; Ord. No. 20, § 4, art. 1, 4-2-1962)

Sec. 18-4. - Same—Purchase.

Recommendations of firefighting apparatus and equipment needed shall be made by the chief, and, after approval by the mayor, shall be purchased in such manner as may be designated by the city council.

(Code 1979, § 9-4; Ord. No. 20, § 4, art. 2, 4-2-1962)

Sec. 18-5. - Same—Housing therefor.

All firefighting equipment of the department of public safety shall be safely and conveniently housed in such places as may be designated by the city council.

(Code 1979, § 9-5; Ord. No. 20, § 4, art. 3, 4-2-1962)

Sec. 18-6. - Same—For turning in alarm.

Suitable arrangement or equipment shall be provided for citizens to turn in an alarm, and for notifying all members of the public safety department so that they may promptly respond.

(Code 1979, § 9-6; Ord. No. 20, § 4, art. 4, 4-2-1962)

Sec. 18-7. - Same—Improper use.

No person shall use any fire apparatus or equipment for any private purpose, nor shall any person willfully and without proper authority take away or conceal any article used in any way by the department of public safety.

(Code 1979, § 9-7; Ord. No. 20, § 4, art. 5, 4-2-1962)

Sec. 18-8. - Same—Permission to use.

No person shall enter any place where fire apparatus is housed or handle any apparatus or equipment belonging to the department of public safety unless accompanied

by, or having the special permission of, an officer or authorized member of such department.

(Code 1979, § 9-8; Ord. No. 20, § 4, art. 6, 4-2-1962)

Sec. 18-9. - Same—Driving over hose.

No person shall drive any vehicle over fire hose except upon specific orders from the director of public safety or other officer in charge where the hose is issued.

(Code 1979, § 9-9; Ord. No. 20, § 5, art. 4, 4-2-1962)

State Law reference— Similar provision, Code of Ala. 1975, § 32-5-73.

Sec. 18-10. - Duties of director of public safety in event of fire.

It is hereby made the special duty of the director of public safety, and other peace officers who may be on duty and available for fire duty, to respond to all fire alarms and assist in the protection of life and property, in requesting traffic, maintaining order, and in enforcing observance of all sections of this chapter.

(Code 1979, § 9-10; Ord. No. 20, § 6, art. 3, 4-2-1962)

Sec. 18-11. - Right-of-way of vehicles.

All motor equipment and all personal cars of public safety department members shall have the right-of-way over all other traffic when responding to an alarm.

(Code 1979, § 9-11; Ord. No. 20, § 5, art. 2, 4-2-1962)

State Law reference— Similar provision, Code of Ala. 1975, § 32-5-112.

Sec. 18-12. - Obstructing station, hydrant, etc.

No person shall park any vehicle or otherwise cause any obstruction to be placed within 20 feet of the driveway entrance to any fire station or other place where fire apparatus is stored, or within 15 feet of any fire hydrant or cistern.

(Code 1979, § 9-12; Ord. No. 20, § 5, art. 5, 4-2-1962)

State Law reference— Similar provision, Code of Ala. 1975, § 32-5-151 (a)(4), (10).

Sec. 18-13. - Compliance with fire hazard abatement order.

Any person so served with a notice to abate any fire hazard shall comply therewith and promptly notify the public safety director.

(Code 1979, § 9-13; Ord. No. 20, § 2, art. 6, 4-2-1962)

Sec. 18-14. - Service charge outside city—Schedule.

There is hereby imposed by the city a firefighting service charge, as established from time to time, for firefighting services, including grass and woods fires, rendered by the department of public safety to homeowners, business owners, store owners, boardinghouse or roominghouse owners, lessees, property owners, and the owners of any other improvement or owned real estate that would be subject to the ravages of fire.

(Code 1979, § 9-14; Ord. No. 8-17-70B, § 1, 8-17-1970)

State Law reference— Authority to go beyond corporate limits and police jurisdiction, Code of Ala. 1975, § 11-43-141.

Sec. 18-15. - Same—Applicable on each occasion.

The above-mentioned firefighting service charge shall be imposed on each occasion that firefighting services are rendered.

(Code 1979, § 9-15; Ord. No. 8-17-70B, § 2, 8-17-1970)

Sec. 18-16. - Same—Billing.

All bills for firefighting services rendered hereunder shall be due and payable within ten days after the services are rendered or within ten days of the date of the statement rendered to the recipient of said services by the city.

(Code 1979, § 9-16; Ord. No. 8-17-70B, § 3, 8-17-1970)

Sec. 18-17. - Same—Suit to recover.

The mayor is authorized and empowered to file suit in the name of and on behalf of the city against any recipient of firefighting services who has failed or refused to pay for said services after 30 days from the date of the statement for services rendered is prepared and mailed by the city.

(Code 1979, § 9-17; Ord. No. 8-17-70B, § 4, 8-17-1970)

Secs. 18-18—18-37. - Reserved.

ARTICLE II. - FIREWORKS[2]

Footnotes:

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State Law reference— Fireworks, Code of Ala. 1975, § 8-17-210; state law article does not affect local ordinance restricting sale or use of fireworks, Code of Ala. 1975, § 8-17-226.

Sec. 18-38. - Definitions.

The definitions in Code of Ala. 1975, § 8-17-210 are adopted by reference.

Sec. 18-39. - Manufacture, sale and discharge of fireworks.

(a) The manufacture of fireworks within the jurisdictional area is prohibited, except under special permits as are required by local and state regulations.

(b) Except as hereinafter provided, it shall be unlawful for any person to possess, store, to offer for sale, expose for sale, sell at retail, or use or explode any fireworks; provided that the fire official shall have power to adopt reasonable rules and regulations for the granting of permits for supervised public displays of fireworks by a jurisdiction, fair associations, amusement parks, other organizations or for the use of fireworks by artisans in pursuit of their trade. Every such use or display shall be handled by a competent operator approved by the fire authority having jurisdiction, and shall be of such character and so located, discharged or fired so as not to be hazardous to property or endanger any person.

(c) Applications for permits shall be made in writing at least ten days in advance of the date of the display. After such privilege shall be granted, sale, possession, use and distribution of fireworks for such display shall be lawful for that purpose only. No permit granted hereunder shall be transferable.

(Code 1979, § 9-51)

Sec. 18-40. - Bond for fireworks display required.

The permittee shall furnish a bond or certificate of insurance in an amount deemed adequate by the administrative authority for the payment of all damages which may be caused either to a person or to property by reason of the permitted display, and arising from any acts of the permittee, his agents, employees or subcontractors.

(Code 1979, § 9-52)

Sec. 18-41. - Dates sale authorized.

The term "permissible items of fireworks," as defined in Code of Ala. 1975, § 8-17-217, may be sold at retail from June 25 to July 5, both inclusive, and December 15 to January 1, both inclusive, of each year only.

(Code 1979, § 9-53; Ord. No. 11-23-65, § 4, 11-29-1965)

Sec. 18-42. - Exemptions.

Nothing in this article shall be construed to prohibit the use of fireworks by railroads or other transportation agencies for signal purposes of illumination, or the sale or use of blank cartridges for a show or theater, or for signal or ceremonial purposes in athletics or sports or for use by military organizations.

(Code 1979, § 9-54)

Sec. 18-43. - Retail sale where paints, gasoline, etc., are used, stored or sold.

No fireworks are to be sold at retail at any location where paints, oils or varnishes are kept for use or sale, unless such paints, oils or varnishes are kept in the original unbroken containers; nor where resin, turpentine, gasoline or other inflammable substance which may generate inflammable vapors is used, stored or sold.

(Code 1979, § 9-55; Ord. No. 11-23-65, § 5, 11-29-1965)

State Law reference— Fireproof building required, Code of Ala. 1975, § 11-47-12.

Sec. 18-44. - Disposal of unfired fireworks.

Any fireworks that remain unfired after the display is concluded shall be immediately disposed of in a way safe for the particular type of fireworks remaining.

(Code 1979, § 9-56)

Sec. 18-45. - Sale to children under 16 or to intoxicated persons.

It shall be unlawful to offer for sale or to sell fireworks of any description or kind to children under the age of 16 years or to any intoxicated person.

(Code 1979, § 9-57; Ord. No. 11-23-65, § 7, 11-29-1965)

Sec. 18-46. - Public display under state fire marshal regulations.

Nothing in this article shall apply to the possession, sale, disposal, use or explosion of fireworks for public display in accordance with rules and regulations promulgated by the state fire marshal pursuant to Code of Ala. 1975, § 36-19-9. Any person proposing to hold a public display of fireworks shall give notice thereof to the state fire marshal at least five days prior thereto and the fire marshal may, for good cause, disapprove the display and prohibit its being held.

(Code 1979, § 9-58; Ord. No. 11-23-65, § 8, 11-29-1965)

Sec. 18-47. - Violation of article or regulations—Punishment.

Any person who violates any provision of this article, or any regulation promulgated under the authority of it, shall be guilty of a misdemeanor, and, upon conviction, shall be punished as provided in section 1-8.

(Code 1979, § 9-59; Ord. No. 11-23-65, § 10, 11-29-1965)

Sec. 18-48. - Same—Seizure of fireworks.

The fire authority having jurisdiction shall seize, take, remove, or cause to be removed, at the expense of the owner, all stocks of fireworks offered or exposed for sale, stored, or held in violation of this article.

(Code 1979, § 9-60)

Chapter 20 - FLOOD DAMAGE PREVENTION

ARTICLE I. - IN GENERAL

Sec. 20-1. - Statutory authorization.

The legislature of the state has, in Code of Ala. 1975, §§ 11-19-1—11-19-24, 11-45-1—11-45-11, 11-52-1—11-52-15, 11-52-30—11-52-36, 11-52-50—11-52-54, 11-52-70—11-52-84 and 41-9-166, authorized local government units to adopt regulations designed to promote the public health, safety, and general welfare of its citizenry.

Sec. 20-2. - Findings of fact.

(a) The flood hazard areas of the city are subject to periodic inundation which results in loss of life and property, health and safety hazards, disruption of commerce and governmental services, extraordinary public expenditures for flood relief and protection, and impairment of the tax base, all of which adversely affect the public health, safety and general welfare.

(b) These flood losses are caused by the occupancy in flood hazard areas of uses vulnerable to floods, which are inadequately elevated, floodproofed, or otherwise unprotected from flood damages, and by the cumulative effect of obstructions in floodplains causing increases in flood heights and velocities.

Sec. 20-3. - Statement of purpose.

It is the purpose of this chapter to promote the public health, safety and general welfare and to minimize public and private losses due to flood conditions in specific areas by provisions designed to:

(1) Require that uses vulnerable to floods, including facilities which serve such uses, be protected against flood damage at the time of initial construction;

(2) Restrict or prohibit uses which are dangerous to health, safety and property due to water or erosion hazards, or which increase flood heights, velocities, or erosion;

(3) Control filling, grading, dredging and other development which may increase flood damage or erosion;

(4) Prevent or regulate the construction of flood barriers which will unnaturally divert floodwaters or which may increase flood hazards to other lands; and

(5) Control the alteration of natural floodplains, stream channels, and natural protective barriers which are involved in the accommodation of floodwaters.

Sec. 20-4. - Objectives.

The objectives of this chapter are to:

(1) Protect human life and health;

(2) Minimize damage to public facilities and utilities, such as water and gas mains, electric, telephone and sewer lines, streets and bridges, located in floodplains;

(3) Help maintain a stable tax base by providing for the sound use and development of floodprone areas in such a manner as to minimize flood blight areas,

(4) Minimize expenditure of public money for costly flood control projects;

(5) Minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the general public;

(6) Minimize prolonged business interruptions; and

(7) Ensure that potential home buyers are notified that property is in a flood area.

Sec. 20-5. - Lands to which this chapter applies.

This chapter shall apply to all areas of special flood hazard within the jurisdiction of the city.

Sec. 20-6. - Basis for area of special flood hazard.

The areas of special flood hazard identified by the Federal Emergency Management Agency in its flood insurance study (FIS), dated August 16, 2009, with accompanying maps and other supporting data and any revision thereto, are adopted by reference and declared a part of this chapter. For those land areas acquired by a municipality through annexation, the current effective FIS and data for the city are hereby adopted by reference. Areas of special flood hazard may also include those areas known to have flooded historically or defined through standard engineering analysis by governmental agencies or private parties but not yet incorporated in an FIS:

For community number 010061.

Sec. 20-7. - Establishment of development permit.

A development permit shall be required in conformance with the provisions of this chapter prior to the commencement of any development activities.

Sec. 20-8. - Compliance.

No structure or land shall hereafter be located, extended, converted or altered without full compliance with the terms of this chapter and other applicable regulations.

Sec. 20-9. - Abrogation and greater restrictions.

This chapter is not intended to repeal, abrogate, or impair any existing ordinance, easements, covenants, or deed restrictions. However, where this chapter and another conflict or overlap, whichever imposes the more stringent restrictions shall prevail.

Sec. 20-10. - Interpretation.

In the interpretation and application of this chapter, all provisions shall be:

(1) Considered as minimum requirements;

(2) Liberally construed in favor of the city council; and

(3) Deemed neither to limit nor repeal any other powers granted under state statutes.

Sec. 20-11. - Warning and disclaimer of liability.

The degree of flood protection required by this chapter is considered reasonable for regulatory purposes and is based on scientific and engineering considerations. Larger floods can and will occur; flood heights may be increased by manmade or natural causes. This chapter does not imply that land outside the areas of special flood hazard or uses permitted within such areas will be free from flooding or flood damages. This chapter shall not create liability on the part of the city or by any officer or employee thereof for any flood damages that result from reliance on this chapter or any administrative decision lawfully made thereunder.

Sec. 20-12. - Penalties for violation.

Violation of the provisions of this chapter or failure to comply with any of its requirements, including violation of conditions and safeguards established in connection with grants of variance or special exceptions, shall constitute a misdemeanor. Any person who violates this chapter or fails to comply with any of its requirements shall, upon conviction thereof, be fined not more than $500.00 or imprisoned for not more than 30 days, or both, and, in addition, shall pay all costs and expenses involved in the case. Each day such violation continues shall be considered a separate offense. Nothing herein contained shall prevent the city from taking such other lawful actions as are necessary to prevent or remedy any violation.

Sec. 20-13. - Savings clause.

If any section, subsection, sentence, clause, phrase, or word of this chapter is for any reason held to be noncompliant with 44 CFR 59—78, such decision shall not affect the validity of the remaining portions of this chapter.

Sec. 20-14. - Definitions.

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

Addition (to an existing building) means any walled and roofed expansion to the perimeter of a building in which the addition is connected by a common load-bearing wall other than a fire wall. Any walled and roofed addition which is connected by a fire wall or is separated by an independent perimeter load-bearing wall shall be considered new construction.

Appeal means a request for a review of the administrative official's interpretation of any provision of this chapter.

Area of shallow flooding means a designated AO or AH zone on a community's flood insurance rate map (FIRM) with base flood depths from one to three feet, and/or where a clearly defined channel does not exist, where the path of flooding is unpredictable and indeterminate, and where velocity flow may be evident.

Area of special flood hazard means the land in the floodplain within a community subject to a one percent or greater chance of flooding in any given year. In the absence of official designation by the Federal Emergency Management Agency, areas of special flood hazard shall be those designated by the local community and referenced in section 20-6.

Base flood means the flood having a one percent chance of being equaled or exceeded in any given year.

Basement means that portion of a building having its floor subgrade (below ground level) on all sides.

Building means any structure built for support, shelter, or enclosure for any occupancy or storage.

Development means any manmade change to improved or unimproved real estate, including, but not limited to, buildings or other structures, mining, dredging, filling, grading, paving, excavation, drilling operations, and storage of equipment or materials.

Elevated building means a non-basement building which has its lowest elevated floor raised above ground level by foundation walls, pilings, posts, columns, piers, or shear walls.

Existing construction means any structure for which the start of construction commenced before September 2, 2003 (i.e., the effective date of the first floodplain management code or ordinance adopted by the community as a basis for that community's participation in the National Flood Insurance Program (NFIP)).

Existing manufactured home park or subdivision means a manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including, at a minimum, the installation of utilities, the construction of streets, and final site grading or the pouring of concrete pads) is completed before September 2, 2003 (i.e., the effective date of the first floodplain management regulations adopted by a community).

Expansion to an existing manufactured home park or subdivision means the preparation of additional sites by the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads).

Flood or *flooding* means a general and temporary condition of partial or complete inundation of normally dry land areas from:

(1) The overflow of inland or tidal waters; or

(2) The unusual and rapid accumulation or runoff of surface waters from any source.

Flood hazard boundary map (FHBM) means an official map of a community, issued by the Federal Insurance Administration, where the boundaries of areas of special flood hazard have been designated as zone A.

Flood insurance rate map (FIRM) means an official map of a community, on which the Federal Emergency Management Agency has delineated the areas of special flood hazard and/or risk premium zones applicable to the community.

Flood insurance study/flood elevation study means an examination, evaluation and determination of flood hazards and, if appropriate, corresponding water surface elevations, or an examination, evaluation and determination of mudslide and/or flood-related erosion hazards.

Floodplain means any land area susceptible to being inundated by water from any source.

Floodway (regulatory floodway) means the channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than a designated height.

Functionally dependent facility means a facility which cannot be used for its intended purpose unless it is located or carried out in close proximity to water. The term "functionally dependent facility" includes only docking facilities, port facilities that are necessary for the loading and unloading of cargo or passengers, and shipbuilding, and ship repair facilities. The term "functionally dependent facility" does not include long-term storage or related manufacturing facilities.

Highest adjacent grade means the highest natural elevation of the ground surface, prior to construction, next to the proposed walls of a structure.

Historic structure means any structure that is:

(1) Listed individually in the National Register of Historic Places (a listing maintained by the U.S. Department of Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register;

(2) Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district;

(3) Individually listed on a state inventory of historic places and determined as eligible by states with historic preservation programs which have been approved by the Secretary of the Interior; or

(4) Individually listed on a local inventory of historic places and determined as eligible by communities with historic preservation programs that have been certified either:

    a. By an approved state program as determined by the Secretary of the Interior; or

b. Directly by the Secretary of the Interior in states without approved programs.

Levee means a manmade structure, usually an earthen embankment, designed and constructed in accordance with sound engineering practices to contain, control, or divert the flow of water so as to provide protection from temporary flooding.

Levee system means a flood protection system which consists of a levee, or levees, and associated structures, such as closure and drainage devices, which are constructed and operated in accordance with sound engineering practices.

Lowest floor means the lowest floor of the lowest enclosed area (including basement). An unfinished or flood-resistant enclosure used solely for parking of vehicles, building access, or storage, in an area other than a basement, is not considered a building's lowest floor, provided that such enclosure is not built so as to render the structure in violation of other provisions of this Code.

Manufactured home means a building, transportable in one or more section, built on a permanent chassis and designed to be used with or without a permanent foundation when connected to the required utilities. The term "manufactured home" also includes park trailers, travel trailers, and similar transportable structures placed on a site for 180 consecutive days or longer and intended to be improved property.

Manufactured home park or subdivision means a parcel (or contiguous parcels) of land divided into two or more manufactured home lots for rent or sale.

Mean sea level means the average height of the sea for all stages of the tide. Mean sea level is used as a reference for establishing various elevations within the floodplain. For purposes of this chapter, the term "mean sea level" is synonymous with National Geodetic Vertical Datum (NGVD) of 1929, or other datum.

National Geodetic Vertical Datum (NGVD), as corrected in 1929, is a vertical control used as a reference for establishing varying elevations within the floodplain.

New construction means any structure for which the start of construction commenced after September 2, 2003 (i.e., the effective date of the first floodplain management ordinance adopted by the community as a basis for community participation in the (NFIP)), and includes any subsequent improvements to such structures.

New manufactured home park or subdivision means a manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including, at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed on or after September 2, 2003 (i.e., the effective date of the first floodplain management regulations adopted by a community).

Recreational vehicle means a vehicle which is:

(1) Built on a single chassis;

(2) 400 square feet or less when measured at the largest horizontal projection;

(3) Designed to be self-propelled or permanently towable by a light duty truck; and

(4) Designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel, or seasonal use.

Remedy a violation means to bring the structure or other development into compliance with state or local floodplain management regulations, or, if this is not possible, to reduce the impacts of its noncompliance. Ways that impacts may be reduced include protecting the structure or other affected development from flood damages, implementing the enforcement provisions of the chapter or otherwise deterring future similar violations, or reducing federal financial exposure with regard to the structure or other development.

Repetitive loss means flood-related damages sustained by a structure on two separate occasions during a ten-year period for which the cost of repairs at the time of each such flood event, on the average, equals or exceeds 25 percent of the market value of the structure before the damages occurred.

Sec. 1316. No new flood insurance shall be provided for any property which the administrator finds has been declared by a duly constituted state or local zoning authority or other authorized public body to be in violation of state or local laws, regulations or ordinances which are intended to discourage or otherwise restrict land development or occupancy in floodprone areas.

Start of construction means the date the development permit was issued, provided the actual start of construction, repair, reconstruction, or improvement was within 180 days of the permit date. The actual start means the first placement of permanent construction of the structure, such as the pouring of slabs or footings, installation of piles, construction of columns, or any work beyond the stage of excavation, and includes the placement of a manufactured home on a foundation. Permanent construction does not include initial land preparation, such as clearing, grading and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for a basement, footings, piers or foundations or the erection of temporary forms; nor does it include the installation on the property of buildings appurtenant to the permitted structure, such as garages or sheds not occupied as dwelling units or part of the main structure. (Note: accessory structures are not exempt from any chapter requirements.) For a substantial improvement, the actual start of construction means the first alteration of any wall, ceiling, floor, or other structural part of a building, whether or not that alteration affects the external dimensions of the building.

Structure means a walled and roofed building that is principally above ground, a manufactured home, a gas or liquid storage tank.

Substantial damage means damage of any origin sustained by a structure whereby the cost of restoring the structure to its before damaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred. The term "substantial damage" also means flood related damages sustained by a structure on two separate occasions during a ten-year period for which the cost of repairs at the time of each such flood event, on the average, equals or exceeds 25 percent of the market value of the structure before the damages occurred.

Substantial improvement.

(1) The term "substantial improvement" means any reconstruction, rehabilitation, addition, or other improvement of a structure, the cost of which equals or exceeds 50 percent of the market value of the structure before the start of construction of the improvement. The term "substantial improvement" includes structures which have incurred repetitive loss or substantial damage, regardless of the actual repair work performed. The market value of the building should be the appraised value of the structure prior to the start of the initial repair or improvement, or, in the case of damage, the value of the structure prior to the damage occurring. The term "substantial damage" includes structures which have incurred substantial damage, regardless of the actual amount of repair work performed.

(2) For the purposes of this definition, the term "substantial improvement" is considered to occur when the first alteration of any wall, ceiling, floor, or other structural part of the building commences, whether or not that alteration affects the external dimensions of the building. The term "substantial damage" does not, however, include either:

   a. Any project for improvement of a structure to correct existing violations of state or local health, sanitary, or safety code specifications which have been identified by the local code enforcement official and which are the minimum necessary to ensure safe living conditions; or

   b. Any alteration of a historic structure, provided that the alteration will not preclude the structure's continued designation as a historic structure.

Substantially improved existing manufactured home parks or subdivisions means that the repair, reconstruction, rehabilitation or improvement of the streets, utilities and pads equals or exceeds 50 percent of the value of the streets, utilities and pads before the repair, reconstruction or improvement commenced.

Variance is a grant of relief from the requirements of this chapter which permits construction in a manner otherwise prohibited by this chapter.

Violation means the failure of a structure or other development to be fully compliant with the community's floodplain management regulations. A structure or other development without the elevation certificate, other certifications, or other evidence of compliance required in 44 CFR 60.3(b)(5), (c)(4), (c)(10), (d)(3), (e)(2), (e)(4), or (e)(5) and corresponding parts of this chapter is presumed to be in violation until such time as that documentation is provided.

Secs. 20-15—20-28. - Reserved.

ARTICLE II. - ADMINISTRATION

Sec. 20-29. - Designation of administrator.

The director of public safety is hereby appointed to administer and implement the provisions of this chapter.

Sec. 20-30. - Permit procedures.

Application for a development permit shall be made to the floodplain administrator on forms furnished by the community prior to any development activities, and may include, but not be limited to, the following: Plans in duplicate drawn to scale showing the elevations of the area in question and the nature, location, dimensions, of existing or proposed structures, fill placement, storage of materials or equipment, and drainage facilities. Specifically, the following information is required:

(1) *Application stage.*

a. Elevation in relation to mean sea level (or highest adjacent grade) of the regulatory lowest floor level, including basement, of all proposed structures.

b. Elevation in relation to mean sea level to which any nonresidential structure will be floodproofed.

c. Design certification from a registered professional engineer or architect that any proposed nonresidential floodproofed structure will meet the floodproofing criteria of sections 20-52(2) and 20-55(2).

d. Description of the extent to which any watercourse will be altered or relocated as a result of a proposed development.

(2) *Construction stage.*

a. For all new construction and substantial improvements, the permit holder shall provide to the floodplain administrator an as-built certification of the regulatory floor elevation or floodproofing level using appropriate FEMA elevation or floodproofing certificate immediately after the lowest floor or floodproofing is completed. When floodproofing is utilized for nonresidential structures, said certification shall be prepared by or under the direct supervision of a professional engineer or architect and certified by same.

b. Any work undertaken prior to submission of these certifications shall be at the permit holder's risk. The floodplain administrator shall review the above-referenced certification data submitted. Deficiencies detected by such review shall be corrected by the permit holder immediately and prior to further progressive work being allowed to proceed. Failure to submit certification or failure to make said corrections required hereby shall be cause to issue a stop-work order for the project.

Sec. 20-31. - Duties and responsibilities of the administrator.

(a) Duties of the floodplain administrator shall include, but not be limited to:

(1) Review all development permits to ensure that the permit requirements of this chapter have been satisfied, and, ensure that sites are reasonably safe from flooding.

(2) Review proposed development to ensure that all necessary permits have been received from governmental agencies from which approval is required by federal

or state law, including Section 404 of the Federal Water Pollution Control Act Amendments of 1972, 33 USC 1344; and require that copies of such permits be provided and maintained on file.

(3) When base flood elevation data or floodway data have not been provided in accordance with section 20-6, obtain, review and reasonably utilize any base flood elevation and floodway data available from a federal, state or other sources in order to administer the provisions of article III of this chapter.

(4) Verify and record the actual elevation, in relation to mean sea level (or highest adjacent grade), of the regulatory floor level, including basement, of all new construction or substantially improved structures in accordance with section 20-30(2).

(5) Verify and record the actual elevation, in relation to mean sea level, to which any new or substantially improved structures have been floodproofed, in accordance with section 20-52(2) and 20-55(2).

(6) When floodproofing is utilized for a structure, obtain certification of design criteria from a registered professional engineer or architect in accordance with sections 20-30(1)c and 20-52(2) or 20-55(2).

(7) Notify adjacent communities and the state department of natural resources prior to any alteration or relocation of a watercourse and submit evidence of such notification to the Federal Emergency Management Agency (FEMA), and the state department of economic and community affairs/office of water resources/NFIP state coordinator's office.

(8) For any altered or relocated watercourse, submit engineering data/analysis within six months to the FEMA and state to ensure accuracy of community flood maps through the letter of map revision process. Ensure flood-carrying capacity of any altered or relocated watercourse is maintained.

(9) Make the necessary interpretation where interpretation is needed as to the exact location of boundaries of the areas of special flood hazard (for example, where there appears to be a conflict between a mapped boundary and actual field conditions), the floodplain administrator shall make the necessary interpretation. Any person contesting the location of the boundary shall be given a reasonable opportunity to appeal the interpretation as provided in this chapter.

(b) All records pertaining to the provisions of this chapter shall be maintained in the office of the floodplain administrator and shall be open for public inspection.

Secs. 20-32—20-50. - Reserved.

ARTICLE III. - PROVISIONS FOR FLOOD HAZARD REDUCTION

Sec. 20-51. - General standards.

In all areas of special flood hazard, the following provisions are required:

(1) New construction and substantial improvements of existing structures shall be anchored to prevent flotation, collapse and lateral movement of the structure.

(2) New construction and substantial improvements of existing structures shall be constructed with materials and utility equipment resistant to flood damage.

(3) New construction and substantial improvements of existing structures shall be constructed by methods and practices that minimize flood damage.

(4) Elevated buildings. All new construction and substantial improvements of existing structures that include any fully enclosed area located below the lowest floor formed by foundation and other exterior walls shall be designed so as to be an unfinished or flood-resistant enclosure. The enclosure shall be designed to equalize hydrostatic flood forces on exterior walls by allowing for the automatic entry and exit of floodwaters.

   a. Designs for complying with this requirement must either be certified by a professional engineer or architect or meet the following minimum criteria:

      1. Provide a minimum of two openings having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding;

      2. The bottom of all openings shall be no higher than one foot above grade; and

      3. Openings may be equipped with screens, louvers, valves and other coverings and devices, provided they permit the automatic flow of floodwater in both directions.

   b. So as not to violate the lowest floor criteria of this chapter, the unfinished or flood-resistant enclosure shall only be used for parking of vehicles, limited storage of maintenance equipment used in connection with the premises, or entry to the elevated area.

   c. The interior portion of such enclosed area shall not be partitioned or finished into separate rooms.

(5) All heating and air conditioning equipment and components, all electrical, ventilation, plumbing, and other service facilities shall be designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding.

(6) Manufactured homes shall be anchored to prevent flotation, collapse, and lateral movement. Methods of anchoring may include, but are not limited to, use of over-the-top or frame ties to ground anchors. This standard shall be in addition to and consistent with applicable state requirements for resisting wind forces.

(7) New and replacement water supply systems shall be designed to minimize or eliminate infiltration of floodwaters into the system.

(8) New and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of floodwaters into the systems and discharges from the systems into floodwaters.

(9) On-site waste disposal systems shall be located and constructed to avoid impairment to them or contamination from them during flooding.

(10) Any alteration, repair, reconstruction or improvement to a structure which is not compliant with the provisions of this chapter, shall be undertaken only if the nonconformity is not furthered, extended or replaced.

Sec. 20-52. - Specific standards.

In all areas of special flood hazard designated as A1-30, AE, AH, A (with estimated BFE), the following provisions are required:

(1) *New construction and substantial improvements.* Where base flood elevation data is available, new construction and substantial improvement of any structure or manufactured home shall have the lowest floor, including basement, elevated no lower than one foot above the base flood elevation. Should solid foundation perimeter walls be used to elevate a structure, openings sufficient to facilitate the unimpeded movements of floodwaters shall be provided in accordance with standards of section 20-51(4).

(2) *Nonresidential construction.* New construction and substantial improvement of any nonresidential structure located in A1-30, AE, or AH zones may be floodproofed in lieu of elevation. The structure, together with attendant utility and sanitary facilities, must be designed to be watertight to one foot above the base flood elevation, with walls substantially impermeable to the passage of water, and structural components having the capability of resisting hydrostatic and hydrodynamic loads and the effect of buoyancy. A registered professional engineer or architect shall certify that the design and methods of construction are in accordance with accepted standards of practice for meeting the provisions above, and shall provide such certification to the official as set forth above and in section 20-31(a)(6).

(3) *Standards for manufactured homes and recreational vehicles.* Where base flood elevation data is available:

a. All manufactured homes placed and substantially improved:

1. On individual lots or parcels;

2. In new or substantially improved manufactured home parks or subdivisions;

3. In expansions to existing manufactured home parks or subdivisions; or

4. On a site in an existing manufactured home park or subdivision where a manufactured home has incurred substantial damage as the result of a flood,

must have the lowest floor, including basement, elevated no lower than one foot above the base flood elevation.

b. Manufactured homes placed and substantially improved in an existing manufactured home park or subdivision may be elevated so that either:

1. The lowest floor of the manufactured home is elevated no lower than one foot above the level of the base flood elevation; or

2. Where no base flood elevation exists, the manufactured home chassis and supporting equipment is supported by reinforced piers or other foundation elements of at least equivalent strength and is elevated to a maximum of 60 inches (five feet) above grade.

c. All manufactured homes must be securely anchored to an adequately anchored foundation system to resist flotation, collapse and lateral movement. (Refer to section 20-51.)

d. All recreational vehicles placed on sites must either:

1. Be on the site for fewer than 180 consecutive days, fully licensed and ready for highway use if it is licensed, on it's wheels or jacking system, attached to the site only by quick disconnect type utilities and security devices, and have no permanently attached structures or additions; or

2. Meet all the requirements for new construction, including the anchoring and elevation requirements of subsections (3)(a) and (c) of this section.

(4) *Standards for subdivisions.*

a. All subdivision proposals shall be consistent with the need to minimize flood damage;

b. All subdivision proposals shall have public utilities and facilities, such as sewer, gas, electrical and water systems, located and constructed to minimize flood damage;

c. All subdivision proposals shall have adequate drainage provided to reduce exposure to flood hazards; and

d. Base flood elevation data shall be provided for subdivision proposals and all other proposed development, including manufactured home parks and subdivisions, greater than 50 lots or five acres, whichever is the lesser.

Sec. 20-53. - Floodways.

Located within areas of special flood hazard established in section 20-6 are areas designated as floodways. A floodway may be an extremely hazardous area due to velocity of floodwaters, debris or erosion potential. In addition, the area must remain free of encroachment in order to allow for the discharge of the base flood without increased flood heights. Therefore, the following provisions shall apply:

(1) The community shall select and adopt a regulatory floodway based on the principle that the area chosen for the regulatory floodway must be designed to carry the waters of the base flood, without increasing the water surface elevation of that flood more than one foot at any point.

(2) Encroachments are prohibited, including fill, new construction, substantial improvements or other development, within the adopted regulatory floodway.

Development may be permitted, however, provided it is demonstrated through hydrologic and hydraulic analyses performed in accordance with standard engineering practice that the encroachment shall not result in any increase in flood levels or floodway widths during a base flood discharge. A registered professional engineer must provide supporting technical data and certification thereof.

(3) A community may permit encroachments within the adopted regulatory floodway that would result in an increase in base flood elevations, provided that the community first applies for a conditional FIRM and floodway revision, fulfills the requirements for such revisions as established under the provisions of 44 CFR 65.12, and receives the approval of the administrator.

(4) Require, until a regulatory floodway is designated, that no new construction, substantial improvements, or other development (including fill) shall be permitted within zones A1-30 and AE on the community's FIRM, unless it is demonstrated that the cumulative effect of the proposed development, when combined with all other existing and anticipated development, will not increase the water surface elevation of the base flood more than one foot at any point within the community.

(5) Only if subsection (2), (3) or (4) of this section is satisfied, then any new construction or substantial improvement shall comply with all other applicable flood hazard reduction provisions of this article.

Sec. 20-54. - Building standards for streams without established base flood elevations (approximate A zones).

(a) Located within the areas of special flood hazard established in section 20-6, where streams exist but no base flood data have been provided (approximate A zones), the following provisions apply:

(1) When base flood elevation data or floodway data have not been provided in accordance with section 20-6, then the floodplain administrator shall obtain, review, and reasonably utilize any scientific or historic base flood elevation and floodway data available from a federal, state, or other source, in order to administer the provisions of this article. Only if data is not available from these sources shall subsections (a)(2) and (4) of this section apply.

(2) No encroachments, including structures or fill material, shall be located within an area equal to the width of the stream or 25 feet, whichever is greater, measured from the top of the stream bank, unless certification by a registered professional engineer is provided demonstrating that such encroachment shall not result in any increase in flood levels during the occurrence of the base flood discharge.

(3) All development in zone A must meet the requirements of sections 20-51 and 20-52.

(4) In special flood hazard areas without base flood elevation data, new construction and substantial improvements of existing structures shall have the lowest floor of the lowest enclosed area (including basement) elevated no less than three feet

above the highest adjacent grade at the building site. Also, in the absence of a base flood elevation, a manufactured home must also meet the elevation requirements of section 20-52(3)b.2, in that the structure must be elevated to a maximum of 60 inches (five feet). Openings sufficient to facilitate the unimpeded movements of floodwaters shall be provided in accordance with standards of section 20-51(4).

(b) The floodplain administrator shall certify the lowest floor elevation level and the record shall become a permanent part of the permit file.

Sec. 20-55. - Standards for areas of shallow flooding (AO zones).

Areas of special flood hazard established in section 20-6 may include designated AO shallow flooding areas. These areas have base flood depths of one to three feet above ground, with no clearly defined channel. The following provisions apply:

(1) All new construction and substantial improvements of residential and nonresidential structures shall have the lowest floor, including basement, elevated to the flood depth number specified on the flood insurance rate map (FIRM) above the highest adjacent grade. If no flood depth number is specified, the lowest floor, including basement, shall be elevated at least two feet above the highest adjacent grade. Openings sufficient to facilitate the unimpeded movements of floodwaters shall be provided in accordance with standards of section 20-51(4). The administrator shall certify the lowest floor elevation level and the record shall become a permanent part of the permit file.

(2) New construction and the substantial improvement of a nonresidential structure may be floodproofed in lieu of elevation. The structure, together with attendant utility and sanitary facilities, must be designed to be watertight to the specified FIRM flood level or two feet (if no map elevation is listed) above highest adjacent grade, with walls substantially impermeable to the passage of water, and structural components having the capability of resisting hydrostatic and hydrodynamic loads and the effect of buoyancy. A registered professional engineer or architect shall certify that the design and methods of construction are in accordance with accepted standards of practice for meeting the provisions above, and shall provide such certification to the official as set forth above and as required in section 20-30(1)c and (2).

(3) Drainage paths shall be provided to guide floodwater around and away from any proposed structure.

Secs. 20-56—20-73. - Reserved.

ARTICLE IV. - VARIANCE PROCEDURES

Sec. 20-74. - Protocol for variance appeals.

(a) The appointed board, as established by the city, shall hear and decide requests for appeals or variance from the requirements of this chapter.

(b) The board shall hear and decide appeals when it is alleged an error in any requirement, decision, or determination is made by the local official in the enforcement or administration of this chapter.

(c) Any person aggrieved by the decision of the appointed board may appeal such decision to the appropriate court.

(d) Variances may be issued for the repair or rehabilitation of historic structures upon a determination that the proposed repair or rehabilitation will not preclude the structure's continued designation as a historic structure and the variance is the minimum to preserve the historic character and design of the structure.

(e) Variances may be issued for development necessary for the conduct of a functionally dependent use, provided that the criteria of this article are met, no reasonable alternative exists, and the development is protected by methods that minimize flood damage during the base flood and create no additional threats to public safety.

(f) Variances shall not be issued within any designated floodway if any increase in flood levels during the base flood discharge would result.

(g) In reviewing such requests, the appointed board shall consider all technical evaluations, relevant factors, and all standards specified in this section and other sections of this chapter.

(h) Conditions for variances.

(1) A variance shall be issued only when there is:

a. A finding of good and sufficient cause;

b. A determination that failure to grant the variance would result in exceptional hardship; and

c. A determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisance, cause fraud on or victimization of the public, or conflict with existing local laws or ordinances.

(2) The provisions of this chapter are minimum standards for flood loss reduction, therefore any deviation from the standards must be weighed carefully. Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief; and, in the instance of a historic structure, a determination that the variance is the minimum necessary so as not to destroy the historic character and design of the building.

(3) Any applicant to whom a variance is granted shall be given written notice specifying the difference between the base flood elevation and the elevation of the proposed lowest floor and stating that the cost of flood insurance will be commensurate with the increased risk to life and property resulting from the reduced lowest floor elevation.

(4) The administrator shall maintain the records of all appeal actions and report any variances to the Federal Emergency Management Agency and the state department of economic and community affairs/office of water resources, upon request.

(i) Upon consideration of the factors listed above and the purposes of this chapter, the appointed board may attach such conditions to the granting of variances as it deems necessary to further the purposes of this chapter.

Chapter 22 - GARBAGE, TRASH AND WEEDS[1]

Footnotes:

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State Law reference— Solid Wastes Disposal Act, Code of Ala. 1975, title 22, ch. 27; disposal authority of city, Code of Ala. 1975, §§ 11-47-135, 22-27-3, 22-27-5; authority to require cutting of weeds, Code of Ala. 1975, § 11-47-140; Solid Wastes and Recyclable Materials Management Act, Code of Ala. 1975, § 22-27-1 et seq.; local government solid waste disposal authorities, Code of Ala. 1975, § 11-89A-1 et seq.; authority of municipality to regulate method of waste collection and disposal, Code of Ala. 1975, § 22-27-3; municipal authority to establish fees for waste collection and disposal, Code of Ala. 1975, § 22-27-5; municipal authority to regulate hauling and disposal of garbage and establish incinerators, Code of Ala. 1975, § 11-47-135.

ARTICLE I. - IN GENERAL

Sec. 22-1. - Abandoned refrigerators, etc.

It shall be unlawful to abandon any refrigerator, freezer, icebox or other device having a compartment large enough to enclose a human being in any place accessible to children without first removing the doors of such refrigerator, freezer, icebox or other device.

(Code 1979, § 10-7; Ord. No. 10-17-66B, § 1, 10-28-1966)

Sec. 22-2. - Building, etc., debris; bulky material.

All rubbish, garbage, trash, straw, tree limbs, and building debris from erection, repair, or remodeling of buildings on private property, and from clearing, landscaping or removing trees from property by agreement or contract, and other refuse of a bulky nature which cannot be placed in containers, shall be removed by the owner, tenant or contractor.

(Code 1979, § 10-8; Ord. No. 1-18-77B, § 13, 2-1-1977)

Sec. 22-3. - Prevention of accumulations which may be scattered by the wind.

No person shall allow garbage, trash, paper, or litter to accumulate or remain on premises under his control in such manner that it may be scattered or blown on to any street, alley, avenue or other public place or onto the premises of others in the city.

(Code 1979, § 10-9; Ord. No. 1-18-77B, § 15, 2-1-1977)

State Law reference— Health nuisances and abatement by county health officer, Code of Ala. 1975, title 22, ch. 10.

Sec. 22-4. - Depositing or spilling in streets.

It shall be unlawful to deposit, or to permit to fall from any vehicle, any garbage, refuse or ashes on any public street or alley in the city; provided this section shall not be construed to prohibit placing garbage, refuse or ashes in a container complying with the provisions of this chapter preparatory to having such material collected and disposed of in the manner provided herein.

(Code 1979, § 10-10; Ord. No. 1-18-77B, § 4, 2-1-1977)

Sec. 22-5. - Placing leaves, etc., in right-of-way.

It shall be unlawful for any person to dump or deposit, or cause to be dumped or deposited, any grass, leaves or branches in the right-of-way of any public street or alley or public way in the city, except when placed for collection as authorized in this chapter.

(Code 1979, § 10-11; Ord. No. 10-17-66B, § 7, 10-28-1966)

Sec. 22-6. - Depositing on premises of another.

It shall be unlawful to dump or place any garbage, refuse or ashes on any premises in the city without the consent of the owner of such premises. For the purpose of this section, vehicles or parts of vehicles not in condition for normal use shall be considered as refuse.

(Code 1979, § 10-12; Ord. No. 10-17-66B, § 8, 10-28-1966; Ord. No. 1-18-77B, § 5, 2-1-1977)

Sec. 22-7. - Storage so as to create fire hazard.

It shall be unlawful to permit or store any combustible refuse in such a way as to create a fire hazard.

(Code 1979, § 10-13; Ord. No. 10-17-66B, 10-28-1966)

Sec. 22-8. - Methods of disposal.

It shall be unlawful to dispose of any garbage, refuse, or ashes anywhere in the city except in an incinerator, as authorized by law, or disposal device, properly constructed

and operated or in a lawfully established garbage or refuse dump. Such material not so properly disposed of shall be placed in containers for the collection by the city, as herein prescribed.

(Code 1979, § 10-14; Ord. No. 1-18-77B, § 6, 2-1-1977)

State Law reference— Air pollution control, Code of Ala. 1975, § 22-28-1 et seq.

Secs. 22-9—22-34. - Reserved.

ARTICLE II. - WEEDS AND VEGETATION

Sec. 22-35. - Control of grass and weeds.

(a) *Duty of abutting owners or occupants to cut between curbs and sidewalks.* It shall be the duty of all owners or occupants of residence or business houses or vacant lots fronting on any of the public streets to keep the grass, weeds or any other vegetation growing in the space between the sidewalk and property lines and sidewalks and the curbs or street boundary mown or cut down so as not to obstruct or inconvenience pedestrians using such sidewalks.

(b) *Vegetation not to grow to height of more than 12 inches.* It shall be unlawful for any person to permit weeds or vegetation of any kind to grow to a height in excess of 12 inches on any premises or vacant lot owned or occupied by him within the city.

(c) *To be cut on notice from city.* Whenever weeds or vegetation of any kind shall grow on any premises or vacant lots within the city to a height in excess of 12 inches, the city shall give notice in writing to the owner or occupant thereof that such weeds or vegetation must be cut within ten days from the date of service on the owner or occupant of such premises or vacant lots.

(d) *Manner of serving notice to cut weeds, etc.* Service of notice provided for in subsection (c) of this section shall be made as follows:

  (1) When owner is a resident of the city, by personal service.

  (2) When owner is not a resident of the city, by personal service upon the occupant of the property.

  (3) When property is vacant and owner does not reside within the city, by posting the notice on the property.

(e) *Failure to comply with notice to cut; cutting by city.* If, after the expiration of the notice, as provided for by subsection (c) of this section, the weeds or vegetation of any kind have not been cut, then the city may cut, or cause to be cut, the weeds or vegetation and shall charge the cost of same against the owner or occupant.

(f) *Penalty for failure to comply with this section.* Any owner or occupant of any vacant lot or premises who shall receive the notice as provided for in subsections (c) through (e) of this section, and shall fail, neglect or refuse within the time provided to cut the weeds or vegetation, as in such notice is required, shall be guilty of a misdemeanor.

(Code 1979, § 10-19; Ord. No. 3-6-79, §§ 1-6, 3-20-1979)

State Law reference— City may require weeds to be cut, Code of Ala. 1975, § 11-47-140.

Sec. 22-36. - Violation.

(a) Unless otherwise provided, any person violating any provision of this article shall be subject to punishment as provided in section 1-8, and a separate offense shall be deemed committed on each day during or on which a violation occurs or continues.

(b) The fact that garbage, refuse or ashes remains on an occupant's premises in the city in violation of this article shall be prima facie evidence that the occupant of such premises is responsible for the violation occurring.

(Code 1979, § 10-20; Ord. No. 1-18-77B, § 12, 2-1-1977)

Secs. 22-37—22-60. - Reserved.

ARTICLE III. - GARBAGE, TRASH, AND RUBBISH COLLECTION

Sec. 22-61. - Definitions.

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

Commercial contractor means a person, firm, or corporation licensed and permitted by the city to collect commercial garbage within the corporate limits of the city.

Garbage includes all waste accumulations of animal, fruit or vegetable matter that attend the preparation, use, cooking, dealing in or storage of meat, fowl, fish, fruits, or vegetables; also, tin cans or other containers originally used for foodstuffs, including waste and discarded materials, including rubbish.

Person shall be taken to mean and include a natural person, firm, association, partnership, corporation, trustee, executor, masculine or feminine, as the context may require.

Residence means single-family dwellings, duplexes, townhouses, apartments, and trailers.

Residence unit means single-family residence, mobile home, trailer, or other occupied dwelling, each apartment in an apartment complex or house, each trailer or mobile home in a trailer park.

Roll-out container means a polyethylene container designed to contain solid waste materials, including garbage and rubbish, and which shall have suitable wheels and a handle so it can be pushed or pulled with little effort, and can be lifted and dumped in a semiautomated manner by hydraulic dumping units attached to standard city garbage vehicles.

Rubbish means all nonputrescrible solid wastes, consisting of both combustible and noncombustible wastes, such as paper, cardboard, glass, cloth and similar materials.

Sanitation department means a department of the city. The superintendent of sanitation shall be the duly designated head of the sanitation department.

Trash means leaves, yard clippings, limbs, debris from pruning or processing plant material, furniture, appliances, and other discarded items.

(Ord. No. 12-06-94, § 1, 12-20-1994)

Sec. 22-62. - Collection and disposal service established.

There is hereby established in the city, a garbage, trash and rubbish collection, hauling and disposal service, to be operated by the sanitation department. The collection, hauling and disposal of garbage shall be made by the sanitation department not less frequently than once each week in residential areas. Rubbish, trash, leaves, grass, straw and shrubbery trimmings shall be collected once per week in residential areas on scheduled collection days. All collection schedules are subject to change due to legal holidays or weather conditions, or other circumstances deemed by the city to justify such change.

(Ord. No. 12-06-94, § 2, 12-20-1994)

Sec. 22-63. - Collection and disposal of garbage and trash in residential areas.

(a) *Disposal of garbage and lightweight trash in residential areas.* The city shall provide each resident a roll-out container for the purpose of storage of garbage. On scheduled garbage pick-up days, the resident will be required to place the roll-out container at the curbside not later than 7:00 a.m. and remove the roll-out container from the curbside not later than 7:00 p.m. on the same day. The resident will be responsible for cleaning of the roll-out container. The city will be responsible for repair or replacement of roll-out containers damaged or stolen through no fault of the resident. Upon proof of disability because of health, age or other reasons, the sanitation department will collect garbage from roll-out containers placed near the back

entrance of such residence upon agreement with the department. No collection personnel shall enter houses or buildings.

(b) *Disposal of trash in residential areas.*

(1) All leaves, limbs, prunings, appliances, furniture and discarded items shall be placed behind the curb, not in the street, and will be picked up once per week.

(2) All grass clippings shall be placed in plastic trash bags and sealed tightly to prevent spilling.

(3) All sanitary items, disposal diapers and other materials used in the care of infants, convalescents, or bedridden people, shall be placed in double plastic, sealed airtight bags, and placed in roll-out containers for collection on scheduled garbage collection days.

(4) Where garbage fee is not paid at a vacant lot or unoccupied residence, the owner or contractor is responsible for the removal of trash and other items.

(5) Building debris, such as scrap lumber, plaster, roofing, concrete, brickbats and sanding dust, resulting from the construction, repair, remodeling, removal or demolition of any building or appurtenance on private property, and dirt, stumps and tree trunks, will not be removed by the sanitation department, but the owner shall cause such waste to be privately moved.

(6) The city shall not be responsible for the collecting and hauling of rubbish, trash, limbs, brush or other debris from private property preliminary to, during or subsequent to construction of new buildings of whatever type prior to occupance. Such material shall be removed by the owner of such property or the contractor responsible for the accumulation of the same.

(7) It shall be the responsibility of all fence companies, tree surgeons, pulpwood contractors, nurseries and landscape contractors or any individual or company doing work on private property to remove from premises all residue and rubbish resulting from such work.

(Ord. No. 12-06-94, § 3, 12-20-1994)

Sec. 22-64. - Collection services.

(a) All bills for service shall be rendered monthly on the same statement rendered by the water and sewer board of the city for water and sewer services handled in the same manner as prescribed by the water and sewer board of the city.

(b) The water and sewer board of the city is hereby designated as the agent for collection of garbage fees, and said board shall remit the same to the city clerk on a weekly basis; provided, however, that where the person liable for the fees prescribed has no water or sewer service furnished to such person by the board, such shall be paid to the office of the city clerk on a monthly basis, such payment shall be due by the first day of each month and such payment shall be delinquent after the 15th of each such month.

(c) Failure to pay the charges herein provided shall constitute a violation of this article and shall be unlawful, and shall be punishable as provided by law.

(Ord. No. 12-06-94, § 4, 12-20-1994)

Sec. 22-65. - Dumping of garbage on streets.

No person shall place or cause to be placed upon the public streets, sidewalks or alleys of the city any garbage, trash, refuse or other waste unless the same is placed in a garbage or trash container as herein provided.

(Ord. No. 12-06-94, § 5, 12-20-1994)

Sec. 22-66. - Unauthorized removal of garbage from containers.

It shall be unlawful for any person to remove any garbage, rubbish or other like material from any garbage can or other container within the city after it has been placed therein, except under the order of an officer, agent or employee of the sanitation department or by some other authorized person removing same for disposal.

(Ord. No. 12-06-94, § 6, 12-20-1994)

Sec. 22-67. - Businesses not to sweep trash into streets or curblines.

It shall be unlawful for firms or business houses to permit the residue from their sweeping of buildings, parking areas or sidewalks to be swept into curblines or streets, but they shall have such residue or trash placed in proper receptacles.

(Ord. No. 12-06-94, § 7, 12-20-1994)

Sec. 22-68. - Authority of sanitation superintendent to further regulate garbage and trash collection.

The sanitation superintendent has the authority to cause to be made departmental regulations of an orderly, efficient and economically feasible residential garbage and trash collection system.

(Ord. No. 12-06-94, § 8, 12-20-1994)

Sec. 22-69. - Commercial garbage collection.

The collection of all commercial garbage and trash which requires a dumpster shall be provided by a commercial garbage contractor that is licensed and has a current permit to operate within the city. All commercial establishments which have dumpsters in front of or to the side of their businesses, which are within 100 feet of a road or street, shall enclose the dumpster in a wooden fence or other acceptable privacy fence of at least six feet in height.

(Ord. No. 12-05-95, 12-19-1995)

Sec. 22-70. - Jurisdiction and mandatory compliance.

(a) The city shall not furnish garbage collection outside the corporate limits of the city.

(b) Each person, firm or corporation doing business in the corporate limits of the city or residing within the corporate limits of the city shall comply with the requirements of this article whether or not they desire the services to be rendered. The provisions of this article are mandatory and not voluntary.

(Ord. No. 12-06-94, § 10, 12-20-1994)

Chapter 24 - HEALTH AND SANITATION[1]

Footnotes:

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State Law reference— Authority and powers of city generally, Code of Ala. 1975, §§ 11-45-1, 11-45-8(c)(6), 11-47-130—11-47-140, 11-53-2, 22-1-2; jurisdiction of county health officer, Code of Ala. 1975, §§ 22-3-2, 22-3-5.

ARTICLE I. - IN GENERAL

Sec. 24-1. - Noises—Generally.

It shall be unlawful and constitute a nuisance for any person to make, create or maintain any unreasonable, loud, disturbing noise or noise of such character, intensity or duration as to be detrimental to life, health, comfort or repose of any individual, within the city or its police jurisdiction.

(Code 1979, § 11-1)

Sec. 24-2. - Same—Certain sounds or loud conditions prohibited.

The following noises, among others, are prohibited under the terms of section 24-1:

(1) *Horns, signaling devices, etc.* The sounding of any horn or signaling device on any automobile, motorcycle, bus or other vehicle on any street or public place of the city, except as a danger warning; the creation by means of any such signaling device of any unreasonably loud or harsh sound; the sounding of any such device for an unnecessary and unreasonable period of time; the use of any signaling device, except one operated by hand or electricity; the use of any horn, whistle or other device operated by engine exhaust; and the use of any such signaling device by a motorist when traffic is for any reason held up.

(2) *Radios, phonographs, etc.* The use or operation of any radio receiving set, musical instrument, phonograph or other machine or device for the producing or reproducing of sound in such manner as to disturb the peace, quiet and comfort of the neighboring inhabitants between the hours of 10:00 p.m. and 7:00 a.m. with louder volume than is necessary for convenient hearing for a person of normal hearing who is in the room, vehicle or chamber in which such machine or device is operated and who is a voluntary listener thereto or allowing such use or operation. The operation of any such set, instrument, phonograph, machine or device in a residential area between the hours of 10:00 p.m. and 7:00 a.m., in such a manner as to be plainly audible to any person other than the player or operator of the device at a distance of 50 feet in a building or structure, shall be prima facie evidence of a violation of this section.

(3) *Loudspeakers, amplifiers for advertising, etc.* The use or operation of any radio, receiving set, musical instrument, phonograph, loudspeaker, sound amplifier or other machine or device for the producing or reproducing of sound which is cast upon the public streets for the purpose of commercial advertising or attracting the attention of the public to any building, product, service, merchandise or political candidate, or allowing such use or operation, except as authorized by the city council.

(4) *Yelling, shouting, etc.* Yelling, shouting, hooting, whistling or singing on the public streets, particularly any time or place so as to disturb the quiet, comfort or repose of persons in any office, or in any dwelling, hotel or other type of residence, or of any persons in the vicinity.

(5) *Animals, birds, etc.* The keeping of any animal or bird which by causing frequent or long continued noise shall disturb the comfort or repose of any persons in the vicinity.

(6) *Steam whistles.* The blowing of any steam whistle attached to any stationary boiler, except to give notice of the time to begin or stop work or as a warning of fire or danger, or upon request of proper city authorities.

(7) *Exhausts.* The discharge into the open air of the exhaust of any steam engine, stationary internal combustion engine or motor vehicle, except through a muffler or other device which will effectively prevent loud or explosive noises therefrom.

(8) *Defect in vehicle or load.* The use of any automobile, motorcycle or vehicle so out of repair, so loaded or in such manner as to create loud grating, grinding, rattling or other noises.

(9) *Loading, unloading and opening boxes, etc.* The creation of a loud and excessive noise in connection with the loading or unloading of any vehicle, or the opening and destruction of bales, boxes, crates and containers on Sundays, Christmas, New Year's or Thanksgiving or before 7:00 a.m. or after 11:00 p.m.; provided, however, that under emergency conditions the city may grant exceptions thereto.

(10) *Adjacent to schools, courts, churches, hospitals, etc.* The creation of any excessive noise on any street adjacent to any school, institution of learning, church or court while the same is in use, or adjacent to any hospital, which unreasonably interferes with the workings of such institutions, or which disturbs or unduly annoys patients in the hospital; provided conspicuous signs are displayed in such streets indicating that the same is a school, hospital, church or court street.

(11) *Hawkers, peddlers, etc.* The shouting and crying of peddlers, hawkers and vendors which disturbs the peace and quiet of the neighborhood.

(12) *Drums, etc.* The use of any drum or other instrument or device for the purpose of attracting attention by creation of noise to any performance, show or sale.

(13) *Firearms and fireworks.* The explosion of firecrackers, skyrockets, Roman candles, pinwheels or any other form of fireworks or the unnecessary shooting of any firearms, except as specifically authorized by law or the proper official.

(14) *Transportation of metal rails, pillars and columns.* The transportation of rails, pillars or columns of iron, steel or other material, over and along the streets and other public places upon vehicles or in any other manner so loaded as to cause noises or as to disturb the peace and quiet on such streets or other public places.

(15) *Operation of public transportation buses.* The causing, permitting or continuing of any excessive, unnecessary and avoidable noise in the operation of a public transportation bus.

(16) *Pile drivers, hammers, etc.* The operation of any pile driver, steam shovel, pneumatic hammer, derrick, steam or electric hoist or other appliance, the use of which is attended by loud or unusual noise, except on written permission of the city prescribing the locality where and the hours during which such operation is permissible.

(17) *Blowers.* The operation of any noise-creating blower or power fan, or any internal combustion engine, the operation of which causes noise due to the explosion of operating gases or fluids, unless the noise from such blower or fan is muffled and such engine is equipped with a muffler device sufficient to deaden such noise.

(18) *Air conditioning units.* Self-contained, one-room air conditioning units up to one-ton capacity attached to the outside walls or windows of buildings within the city, and operated for the comfort of the occupants of such buildings, shall not be deemed in violation of this chapter where proof is established that such units are maintained in good mechanical condition. Air conditioning units of more than one-ton capacity may not be operated within the city except where remote compressors are housed in soundproof rooms, or where attached or immediately adjoining compressors are sound treated or baffled, and cooling coil and condensation water is disposed of, as prescribed by the city.

(Code 1979, § 11-2; Ord. No. 8-21-90, 9-4-1990; Ord. No. 08-20-02, 8-20-2002)

Sec. 24-3. - Introduction of fluorides into city water supply.

(a) *Approval.* As a matter in the conservation of the health of the inhabitants of the city, approval is given to the introduction of fluorides into the city's water supply in accordance with the regulations of the state department of public health.

(b) *Installation of facilities.* The water and sewer board of the city is hereby vested with the authority to install the necessary facilities for the introduction of fluorides into its water supply, and to introduce such fluorides into the water supply, in accordance with the regulations of the state department of public health.

(Code 1979, § 11-3; Ord. No. 1-6-81, §§ 1, 2, 1-20-1981)

Secs. 24-4—24-24. - Reserved.

ARTICLE II. - SEWAGE DISPOSAL[2]

Footnotes:

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State Law reference— Authority of city to regulate, Code of Ala. 1975, §§ 11-50-55, 11-53-2, 22-26-4.

Sec. 24-25. - Definitions.

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

Dwelling means a house or building, or portion thereof, which is occupied, in whole or in part, as the home, residence, or sleeping place of one or more human beings, either permanently or transiently.

Multiple dwelling means a dwelling occupied otherwise than as a "private dwelling" or a "two-family dwelling." Multiple dwellings are, for the purpose of this article, divided into two classes, viz: Class "A" and Class "B," defined as follows:

(1) Class "A" multiple dwellings are dwellings which are occupied more or less permanently for residence purposes by several families, and in which the rooms are occupied in apartments, suites, or groups, and include tenant houses, flats, apartment houses, apartment hotels, bachelor apartments, studio apartments, kitchenette apartments, and all other dwellings similarly occupied, whether or not specifically enumerated herein.

(2) Class "B" multiple dwellings are dwellings which are occupied, as a rule, transiently as the more or less temporary abiding place of individuals who are lodged, with or without meals, and in which, as a rule, the rooms are occupied singly. This class includes hotels, lodginghouses, boardinghouses, furnished roominghouses, convents, asylums, hospitals, jails, and all other dwellings similarly occupied, whether or not specifically enumerated herein.

Private dwelling means a dwelling occupied by but one family alone.

Sanitary, when used in connection with or as alluding to a type or character of privy, water closet, or other appliance or method used for or in connection with the disposal or handling of human excreta, shall be interpreted to mean privies, water closets or other appliances or methods used for, or in connection with, such purposes, the type, construction, capacity, location and character of which have been approved by the county board of health.

Septic tank means a watertight tank or receptacle used as a temporary reservoir for the purpose of receiving or depositing the sewage, contents, or drainage from a water closet and which is connected with a system of subsurface drainage or other outlet in such manner as will afford final disposal of such sewage, contents or drainage in a safe

and sanitary manner. Provided, no septic tank shall be installed under the provisions of this article having less than 500 gallons effective capacity, or less than 36 inches of effective depth. Provided, further, no tank shall be used which is connected to a tile drain and no tank shall be used with less than 150 feet of drain tile laid in not less than six inches of porous filtering material. The size and length of drain, and the depth, size and material of the filtering material, shall be approved by the county board of health, or its duly authorized representative.

Two-family dwelling means a dwelling occupied by but two families.

Water closet means a type of closet or receptacle normally containing a portion of water into which human excreta will, in the course of proper or ordinary use thereof, fall or be deposited and which water closet is connected to water under pressure and so constructed and equipped that such excreta will be washed or carried by water flowing or caused to flow through the same at appropriate intervals into sewer or other system of drainage or method used for the disposal of such excreta, sewage or contents, in a sanitary manner.

Water under pressure available. Water under pressure shall be deemed available when water is piped to the outside line of the lot upon which such dwelling or other building is located.

(Code 1979, § 11-20; Ord. No. 6-6-66, §§ 3, 6, 6-20-1966)

Sec. 24-26. - Accessibility of sewers.

The provisions of this article with reference to sewer connections shall be deemed to apply where connection with a public sewer is, or becomes, reasonably accessible; connection shall be deemed to be reasonably accessible when such public sewers are within a distance of 200 feet of any outside line of the lot upon which a dwelling, or other building, is located, provided such sewer may be reached without crossing the property of another, and provided, further, that when such property or premises is not subdivided into lots, and so designated and available surveys or maps of record, then the distance specified above shall be deemed to apply to the nearest portion of said dwellings or other buildings.

(Code 1979, § 11-21; Ord. No. 6-6-66, § 21, 6-20-1966)

Sec. 24-27. - Enforcement—By county board of health; compliance by all persons.

The county board of health, or its duly authorized representative, being specifically empowered and directed by the state law, is hereby empowered and directed by the city council to make such inspections and investigations and to take such legal steps as may be necessary to regulate and control the type, construction, reconstruction, location, use and maintenance of all privies, water closets, septic tanks, and all appurtenances thereto

or used in connection therewith, in the city and its police jurisdiction, and it shall be unlawful for any person to use or maintain in the city or its police jurisdiction, any water closet or other method of sewage disposal not in accordance with the provisions of this article, or not approved by, or in accordance with, the regulations and specifications, general and uniform in this nature, promulgated by the county board of health.

(Code 1979, § 11-22; Ord. No. 6-6-66, § 2, 6-20-1966)

Sec. 24-28. - Same—Prohibiting use or occupancy; requiring vacating of premises.

It shall be the duty of the county board of health, or its duly authorized representative, to prohibit the use or occupancy of all dwellings, buildings, or premises not equipped as required in this article, and, when necessary, to order or cause such buildings, dwellings or premises to be vacated.

(Code 1979, § 11-23; Ord. No. 6-6-66, § 18, 6-20-1966)

Sec. 24-29. - Same—Inspection of premises.

All water closets, privies, and septic tanks within the city and its police jurisdiction shall be subject to inspection or investigation by the county board of health, or its duly authorized representatives, at all reasonable times, and said board of health, or its representatives, shall have the right to enter upon or into all property, premises, or buildings for such purposes at all reasonable times.

(Code 1979, § 11-24; Ord. No. 6-6-66, § 25, 6-20-1966)

Sec. 24-30. - Applicability of regulations.

The provisions of this article relating to the type, capacity, construction or location of a water closet, pit privy, or septic tank, shall be held to apply to such water closets, pit privies, and septic tanks as are now or may hereafter be constructed, reconstructed, rebuilt, repaired, or installed, and it shall be unlawful to construct, reconstruct, rebuild, repair or install a water closet, pit privy or septic tank except in accordance with the provisions hereof.

(Code 1979, § 11-25; Ord. No. 6-6-66, § 4, 6-20-1966)

Sec. 24-31. - Responsibility for sanitary facilities—Generally.

It shall be unlawful for any person, including any agent, to construct or maintain within the city or its police jurisdiction any dwelling, building, premises, or other place where

human beings reside, are employed or congregate, or to rent, lease, use, or permit to be used for such purposes any such dwelling, building, premises, or other place which is not provided with adequate facilities for the disposal in a sanitary manner of the bodily discharges of such persons; the method, type, construction, capacity, and location of which shall be in accordance with the provisions of this article.

(Code 1979, § 11-26; Ord. No. 6-6-66, § 1, 6-20-1966)

Sec. 24-32. - Same—Of landlords.

It shall be unlawful for dwellings or other buildings, or premises which are not provided with sanitary water closets, or privy facilities, in accordance with the provisions of this article, to be leased or rented for the purpose of residence or occupancy by human beings to be used or occupied for such purposes.

(Code 1979, § 11-27; Ord. No. 6-6-66, § 16, 6-20-1966)

Sec. 24-33. - Same—For cost of installation.

The cost of providing water closets, or other methods of excreta disposal required by the provisions of this article, shall be borne by the owner or agent of the property upon which said water closets are located.

(Code 1979, § 11-28; Ord. No. 6-6-66, § 22, 6-20-1966)

Sec. 24-34. - Responsibility for sanitary sewage disposal.

It shall be unlawful for any person owning or controlling property, or for tenants or occupants of such property or premises, in the city or its police jurisdiction, to dispose of or to permit the disposal of human excreta on or about such property or premises except in a water closet or pit privy, as provided in this article.

(Code 1979, § 11-29; Ord. No. 6-6-66, § 5, 6-20-1966)

State Law reference— Facilities menacing public health, Code of Ala. 1975, § 22-26-1.

Sec. 24-35. - Declaration of nuisance; abatement.

All water closets, septic tanks, privies and appurtenances thereto on any premises in the city or its police jurisdiction, not constructed, located, equipped or maintained in accordance herewith, are hereby declared to be insanitary, a menace to the public health and a nuisance, and shall be abated in accordance with law.

(Code 1979, § 11-30; Ord. No. 6-6-66, § 26, 6-20-1966)

Sec. 24-36. - Unprotected water supplies.

When water suitable for use by human beings, the source and quality of which are approved for such use by the state board of health, or its duly authorized representatives, become available, that is, is piped to the outside line of the lot upon which any dwelling or other building within the intent of this article is located, where human beings reside or congregate, then maintenance or use of water for domestic purposes from unprotected water supplies on such premises not so approved is hereby declared to be unlawful.

(Code 1979, § 11-31; Ord. No. 6-6-66, § 3, 6-20-1966)

Sec. 24-37. - Water flush closets—Requirements where sanitary sewer unavailable.

In the city and its police jurisdiction where sanitary sewers are not available, but water under pressure is available, there shall be provided for each:

(1) Private dwelling, one separate water flush closet, located within the house and connected to a septic tank, as prescribed in sections 24-25 and 24-42;

(2) Two-family dwelling, one separate water flush closet for each family, located within the dwelling and connected to a septic tank, as prescribed in sections 24-25 and 24-42;

(3) Multiple dwelling of Class "A," a minimum of one separate water flush closet, located within the house and connected to septic tank, as prescribed in sections 24-25 and 24-42, for each 15 persons or fraction thereof occupying same;

(4) Multiple dwellings of Class "B," a minimum of one separate water flush closet, located within the house and connected to a septic tank, as prescribed in sections 24-25 and 24-42, for each 20 persons or fraction thereof occupying the same.

(Code 1979, § 11-32; Ord. No. 6-6-66, § 9, 6-20-1966)

Sec. 24-38. - Same—Installation and connection when sanitary sewer available; discontinuance of septic tank use.

When an approved water supply under suitable pressure is available and a sanitary sewer system is, or becomes, available within a reasonable distance from any dwelling, building, or other place in the city or its police jurisdiction, where human beings reside, are employed or congregate, a water closet, or water closets, as herein prescribed, connected to such water under pressure and sanitary sewer shall be immediately installed in accordance with the provisions of this article, and after such installation has been made,

it shall be unlawful to maintain, use, or permit to be used, in, on or about such dwelling, premises or place, any other type of water closet, or privy, or dry closet; provided a water closet connected to a septic tank in accordance with the provisions of this article when constructed, maintained and used prior to the time a sanitary sewer was made available for such dwelling, building, or premises may be continued in use so long as the same is approved by the county health officer, or his representative, but when such septic tank, or the use or maintenance thereof, is no longer approved by the county health officer, or his representative, then such water closet or closets shall be connected with the sanitary sewer.

(Code 1979, § 11-33; Ord. No. 6-6-66, § 17, 6-20-1966)

Sec. 24-39. - Same—Requirements where sanitary sewer available.

In the city and its police jurisdiction, where sanitary sewers are or become available and water under pressure is or becomes available, there shall be provided for each:

(1) Private dwelling, one separate water flush closet, located within the dwelling and connected to said sewers;

(2) Two-family dwelling, one separate water flush closet for each family, located within the dwelling and connected to said sewers;

(3) Multiple dwellings of Class "A," a minimum of one separate water flush closet, located within the dwelling and connected to said sewer for each 15 persons or fraction thereof occupying same;

(4) Multiple dwellings of Class "B," a minimum of one separate water flush closet, located within the dwelling and connected to said sewer for each 20 persons or fraction thereof occupying same.

(Code 1979, § 11-34; Ord. No. 6-6-66, § 10, 6-20-1966)

Sec. 24-40. - Same—Adequate construction, light and ventilation of enclosures.

All rooms, buildings, or enclosures, in which such water closets are located, shall be substantially constructed and have adequate provisions for light and ventilation.

(Code 1979, § 11-35; Ord. No. 6-6-66, § 12, 6-20-1966)

Sec. 24-41. - Same—Prohibited out of doors.

No water flush closet shall be located out of doors or outside of the principal building, the equipment of which it is intended to become a part.

(Code 1979, § 11-36; Ord. No. 6-6-66, § 20, 6-20-1966)

Sec. 24-42. - Construction of septic tanks.

Septic tanks of types approved by the county board of health may be constructed and maintained upon issuance of permit by the county board of health, or its duly authorized representatives, to serve premises where sanitary sewers are not available, the construction of same to be approved and inspected by the county health officer, or his representative, before being covered, and the permit for construction shall also provide for the agreement to connect to sanitary sewer system when same is available to such premises.

(Code 1979, § 11-43; Ord. No. 6-6-66, § 15, 6-20-1966)

Sec. 24-43. - Use of defective facilities.

It shall be unlawful for a person to use or permit to be used a water closet or septic tank which is defective, unclean, or for any reason insanitary, or which does not conform to the provisions of this article, and each use thereof shall be deemed a separate offense.

(Code 1979, § 11-44; Ord. No. 6-6-66, § 19, 6-20-1966)

Sec. 24-44. - Performance by city, recovery of cost; punishment of violator.

(a) In the case of the failure of any person, or such person's agent, in the city, or its police jurisdiction, to comply with the provisions of this article within 15 days after written notice, the city council may order its agent or representative to install proper water closets, or septic tanks as provided in this article, and connect such water closets with such septic tanks or with the sewerage system of the city, the expense of same to be assessed against the property and the cost thereof to be a lien upon the property in favor of the city, superior to all other liens, to be collected as other debts are collected or liens enforced. When water closets, or septic tanks are installed and connections made by the city under the provisions of this article, the mayor shall prepare a statement, in writing, setting forth the name of the owner, and a description of the property upon which the improvements have been made, together with the cost of the installation of such privies, water closets, or septic tanks, and sanitary connections, which must be signed by the mayor in his official capacity and filed with the probate judge in the county for record in the mortgage or lien records of the county. The filing of such statement shall operate as notice of such lien from the date of its filing.

(b) Such person in violation shall be subject to punishment as provided in section 1-8, for each day such violation continues, except as provided in section 24-43.

(Code 1979, § 11-45; Ord. No. 6-6-66, §§ 23, 27, 28, 6-20-1966)

Secs. 24-45—24-61. - Reserved.

ARTICLE III. - ABANDONED MOTOR VEHICLES

Sec. 24-62. - Definitions.

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

Property means any real property within the city or its police jurisdiction which is not a street or highway.

Vehicle means a machine propelled by power, other than human power, designed to travel along the ground by use of wheels, treads, runners, or slides, and transport persons or property or pull machinery, and shall include, without limitation, automobiles, trucks, trailers, motorcycles, tractors, buggies, and wagons.

(Code 1979, § 11-50)

Sec. 24-63. - Abandonment on street—General prohibition; presumption.

No person shall abandon any vehicle within the city or its police jurisdiction. It shall be presumed that any vehicle which has been left at any place on a street or highway within the city for a period of 72 hours consecutively is an abandoned vehicle.

(Code 1979, § 11-51)

Sec. 24-64. - Same—Leaving of wrecked, nonoperating vehicle on street.

No person shall leave any partially dismantled, nonoperating, wrecked, or junked vehicle on any street or highway within the city.

(Code 1979, § 11-52)

Sec. 24-65. - Wrecked, etc., vehicles on private property.

No person in charge or control of any property, whether as owner, tenant, occupant, lessee, or otherwise, shall allow any partially dismantled, nonoperating, wrecked, junked

or discarded vehicle to remain on such property longer than five days, and no person shall leave any such vehicle on any property within the city for a longer time than five days, except that this section shall not apply with regard to a vehicle in an enclosed building; a vehicle on the premises of a business enterprise operated in a lawful place and manner, when necessary to the operation of such business enterprise; a vehicle positioned out of view of traffic traversing streets and highways; or a vehicle in an appropriate storage place or depository maintained in a lawful place and manner by the city. Such dismantled or wrecked vehicles which are stored or maintained in order to sell or salvage the parts from such vehicles must be obscured behind a permanent blinded fence.

(Code 1979, § 11-53; Ord. No. 3-20-84, 5-1-1984)

Sec. 24-66. - Impounding and disposition—Authority and duties of police.

The chief of police, or any member of his department designated by him, is authorized to remove or have removed any vehicle left at any place within the city which reasonably appears to be in violation of this article or lost, stolen, or unclaimed. Any vehicle so taken up and removed shall be stored in a suitable place provided by the city to protect it from deterioration. A permanent record giving the date of the taking of each vehicle, the place where found and taken, and a description of the vehicle shall be kept by the chief of police.

(Code 1979, § 11-54)

State Law reference— Disposition of abandoned motor vehicles, Code of Ala. 1975, § 32-13-1 et seq.; Uniform Disposition of Unclaimed Property Act, Code of Ala. 1975, § 35-12-20 et seq.; authority of municipality to take up and store personal property, Code of Ala. 1975, § 11-47-116.

Sec. 24-67. - Same—Redemption by owner.

The owner of any vehicle taken up and stored as herein provided may redeem the same at any time prior to its sale by paying the reasonable expense of taking the vehicle in charge, its maintenance and storage and the cost of publication.

(Code 1979, § 11-55)

Sec. 24-68. - Same—Sale.

At least every six months, the chief of police shall sell at public auction to the highest bidder for cash the vehicles herein authorized to be removed and taken up and which shall have been taken up and stored for a period of three months or more, the sales to be made after notice of the time and place therefor shall have first been given by publication once a week for two successive weeks in a newspaper of general circulation published in the city (or, if there is no such newspaper, by posting such notice in a conspicuous place at the city hall or police station). The first publication (or posting of notice, as the case may be) shall be at least 20 days before the sale. Each vehicle shall be sold separately and a notation in the storage record book shall be made of the amount received for each vehicle. The person making the sale shall have the right to reject any and all bids if the amount bid is unreasonably low and shall have the right to continue the sales from time to time if no bidders are present. After deducting and paying all expenses incurred in the removal, taking up, storing, maintaining and selling of the vehicles, the balance, if any, shall be paid into the general fund of the city.

(Code 1979, § 11-56)

Sec. 24-69. - Punishment for violation.

In addition to the remedies provided in this article, any person violating any of the provisions of this article shall be deemed guilty of a misdemeanor and, upon conviction thereof, shall be punished as provided in section 1-8.

(Code 1979, § 11-57)

Secs. 24-70—24-96. - Reserved.

ARTICLE IV. - SMOKING REGULATIONS

Sec. 24-97. - Purpose.

The purpose of this article is to:

(1) Protect the public health and welfare by prohibiting smoking in public places, except in designated smoking areas, and by regulating smoking in places of employment; and

(2) Strike a reasonable balance between the needs of persons who smoke and the needs of nonsmokers to breath smoke-free air and to recognize that where these needs conflict, the need to breathe smoke-free air shall have priority.

(Ord. No. 08-15-06, § 1, 9-5-2006)

Sec. 24-98. - Definitions.

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

Bar or *cocktail lounge* means any establishment which is primarily engaged in the business of selling and dispensing alcoholic beverages.

Business means any sole proprietorship, partnership, joint venture, corporation or other business entity formed for profit-making purposes, including retail establishments where goods or services are sold as well as professional corporations and other entities where legal, medical, dental, engineering, architectural or other professional services are delivered.

Business agent means an individual who has been designated by the owner or operator of any establishment to be the manager or otherwise in charge of said establishment.

Dining area means any enclosed area containing a counter or tables upon which meals are served.

Employee means any person who is employed by any employer in consideration for direct or indirect monetary wages or profit, and any person who volunteers his services for a nonprofit entity.

Employer means any person, including a municipal corporation, or nonprofit entity who employs the services of one or more individual persons.

Enclosed means a space, structure, facility, or any portion thereof, bounded by walls (with or without windows) continuous from floor to ceiling and served by heating and air conditioning (HVAC) systems, and through which air can circulate from one portion to another, including, but not limited to, offices, rooms, hallways, customer service areas, foyers, common areas, waiting areas, restrooms, lounges, and eating areas.

Food and/or beverage establishment means any establishment which is required to have a business license from the city and which provides food and/or beverage under a permit from the health department and/or an on-premises liquor license from the alcohol and beverage control (ABC) board.

Minor means a person who is not at least 19 years of age.

Motion picture theater means any theater engaged in the business of exhibiting motion pictures.

Nonprofit entity means any corporation, unincorporated association or other entity created for charitable, philanthropic, educational, political, social or other similar purposes, the net proceeds from the operation of which are committed to the promotion of the objects or purposes of the organization and not private financial gain. A public agency is not a nonprofit entity within the meaning of this article.

Place of employment.

(1) The term "place of employment" means any enclosed area under the control of a public or private employer in which employees normally frequent during the course of employment, including, but not limited to, work areas, employee lounges and restrooms, conference and classrooms, employee cafeterias and hallways.

(2) A private residence is not a place of employment unless it is used as a child care or health care facility.

(3) The dining area of a restaurant is not a place of employment.

Public place means any enclosed area to which the public is invited or in which the public is permitted, including, but not limited to, city-owned facilities, banks, educational facilities, health facilities, public transportation facilities, reception areas, restaurants, retail food production and marketing establishments, retail service establishments, retail stores, theaters and waiting rooms. A private residence is not a public place.

Restaurant means any coffee shop, cafeteria, sandwich stand, private and public school cafeteria, and any other eating establishment which gives or offers food for sale to the public, guests or employees, as well as kitchens in which food is prepared on the premises for serving elsewhere, including catering facilities, except that the term "restaurant" shall not include a cocktail lounge or tavern if the cocktail lounge or tavern is a bar as defined in this section.

Retail tobacco store means a retail store utilized primarily for the sale of tobacco products and accessories and in which the sale of other products is merely incidental.

Separated bar area means a room or area where alcohol is served that is totally enclosed by a solid floor to ceiling wall, is adequately ventilated and equipped with a self-closing door.

Service line means any indoor line at which one or more persons are waiting for or receiving service of any kind, whether or not such service involves the exchange of money.

Smoking means inhaling, exhaling, burning or carrying any lighted cigar, cigarette, pipe, weed, plant or other combustible substance in any manner or in any form.

Smoking establishment means any restaurant which permits patrons to smoke throughout the entire facility. Smoking establishments shall not provide separate nonsmoking areas.

Sport arena means a sports pavilion, gymnasium, health spa, boxing arena, swimming pool, roller and ice rink, bowling alley and other similar places where members of the general public assemble, either to engage in physical exercise, participate in athletic competition or witness sports events.

(Ord. No. 08-15-06, § 2, 9-5-2006)

Sec. 24-99. - Application of article to city-owned facilities.

All enclosed facilities owned by the city shall be designated as no smoking, except in designated smoking areas.

(Ord. No. 08-15-06, § 3, 9-5-2006)

Sec. 24-100. - Smoking in public places.

(a) Smoking shall be prohibited in all enclosed places within the city, including, but not limited to, the following places:

(1) Elevators.

(2) Buses, taxicabs and other means of public transit under the authority of the city; and ticket, boarding and waiting areas of public transit depots. However, this prohibition does not prevent the establishment of separate waiting areas of equal size for smokers and nonsmokers;

(3) Restrooms.

(4) Service lines.

(5) Retail stores, except areas in such stores not open to the public and all areas within tobacco stores.

(6) All areas available to and customarily used by the general public in all city-owned facilities, nonprofit entities and businesses patronized by the public.

(7) Public areas of aquariums, galleries, libraries and museums when open to the public.

(8) Any building not open to the sky which is primarily used for exhibiting any motion picture, stage, drama, lecture, musical recital or other similar performance, except when smoking is part of a stage production.

(9) Sports arenas (enclosed) and convention halls, except in designated smoking areas.

(10) Every room, chamber, place of meeting or public assembly, including school buildings, under the control of any board, council, commission, committee, including joint committees, or agencies of the city or any political subdivision of the state during such time as a public meeting is in progress, to the extent such place is subject to the jurisdiction of the city.

(11) Waiting rooms, hallways, wards and semi-private rooms of health facilities, including, but not limited to, hospitals, clinics, physical therapy facilities, doctors' offices and dentists' offices.

(12) Polling places.

(b) Notwithstanding any other provision of this section, any owner, operator, manager or other person who controls any establishment or facility described in this section may declare that entire establishment or facility as a nonsmoking establishment.

(Ord. No. 08-15-06, § 4, 9-5-2006)

Sec. 24-101. - Food and beverage establishments designated as "smoke-free" or "smoking."

(a) It shall be the responsibility of the owner of the food and beverage establishment to designate his establishment as one of the following:

(1) Smoke-free; or

(2) Smoking.

(b) For establishments designated as smoke-free, no smoking by any persons (employees or patrons) at anytime will be allowed in any part of the enclosed areas at the establishment.

(c) For establishments designated as smoke-free, signage shall be posted conspicuously on or adjacent to each and every door to the establishment that is generally accessed by patrons or employees, plainly visible from the exterior of the building to persons entering through the door. Signage shall be no smaller than 8.5 inches by 11 inches, with white lettering on a red or black background, and include the following statements: "This establishment is a SMOKE-FREE facility," with letters no smaller than five-eighths-inch tall; "SMOKING is prohibited throughout this facility at all times," with letters no smaller than one-fourth-inch tall; and "City of Daleville Ordinance No. 08-15-06, " with letters no smaller than one-eighth-inch tall.

(d) For establishments designated as smoking, smoking by patrons shall be allowed throughout all enclosed areas generally occupied by patrons.

(e) For establishments as designated as smoking, signage shall be posted conspicuously or adjacent to each and every door to the establishment that is generally accessed by patrons or employees, plainly visible from the exterior of the building to persons entering through the door. Signage shall be no smaller than 8.5 inches by 11 inches, with white lettering on a red and black background, and include the following statements: "This establishment is a SMOKING facility" with letters no smaller than five-eighths-inch tall; "SMOKING is allowed throughout this facility at all times," with letters no smaller than one-fourth-inch tall; "There is no nonsmoking section," with letters no smaller than one-fourth-inch tall; and "City of Daleville Ordinance No. 08-15-06, " with letters no smaller than one-eighth-inch tall.

(f) For establishments designated smoking, patrons shall not be offered a choice of a nonsmoking section. If ashtrays are made available/distributed for patrons, they shall be made available/distributed throughout all enclosed areas generally occupied by patrons.

(g) Two or more food and beverage establishments operating under separate permits and/or licenses shall not be directly connected by any interior means of access, including, but not limited to, doorways, windows, service bars or service windows, unless each has the same designation (smoke-free or smoking). If smoking is chosen for any but not all of the establishments, each one for which smoking is chosen must have HVAC systems which serve only that area, and the HVAC systems shall be balanced so as to keep a zero percent pressure environment in all doorways and windows, and be physically separated in its entirety by walls which extend from floor to ceiling and any doors to that area must be self closing.

(h) Food and beverage establishments who elect to be smoke-free may offer employees a separate designated smoking area outside the establishment.

(i) Smoking may be permitted in hotel, motel, inn, bed and breakfast and lodging rooms that are rented to guests designated as "smoking rooms." A facility which offers such rooms for rent to guests may add additional language to the required signage after "Smoking is prohibited throughout this facility at all times" stating "Lodging rooms are available for guests who smoke" in matching letters.

(Ord. No. 08-15-06, § 5, 9-5-2006)

Sec. 24-102. - Places of employment.

(a) It shall be the responsibility of employers to provide smoke-free areas for nonsmoking employees within existing facilities to the maximum extent but employers are not required to incur any expense to make structural or other physical modifications in providing these areas.

(b) Each employer having an enclosed place of employment located within the city shall adopt, implement, make known and maintain a written smoking policy which shall contain, at a minimum, the following:

(1) Any employee in a place of employment shall have the right to designate his work area as a nonsmoking area and to post the area with an appropriate sign, to be provided by the employer. If, due to the proximity of smokers, size of the work area, poor ventilation or other factors, such designation does not reduce the effects of smoke to the satisfaction of the employee, the employer shall make additional accommodation by expanding the size of the work area subject to the prohibition against smoking or implementing other measures reasonably designed to eliminate the effects of smoke on the employee.

(2) Smoking shall be prohibited in all common work areas in a place of employment, unless every person who works in that area agrees in writing that a smoking area will be designated.

(3) There shall be provided and maintained separate and contiguous nonsmoking areas of not less than 50 present of the seating capacity and floor space in cafeterias, lunchrooms and employee lounges, or provision and maintenance of

separate and equal sized cafeterias, lunchrooms and employee lounges for smokers and nonsmokers.

(4) Employers have the right to designate smoking within their facilities so long as it does not infringe on the rights of nonsmokers.

(5) If any dispute arises under the smoking policy, the health concerns of the nonsmoker shall be given precedence.

(c) The smoking policy shall be communicated to all employees within ten days of its adoption.

(d) All employers shall supply a written copy of the smoking policy upon request to any existing or prospective employee.

(e) Notwithstanding any other provision of this section, every employer shall have the right to designate any place of employment or any portion thereof as a nonsmoking area.

(Ord. No. 08-15-06, § 6, 9-5-2006)

Sec. 24-103. - Exceptions to restrictions.

(a) Notwithstanding any other section of this article to the contrary, the following areas shall not be subject to the smoking restrictions of this article:

(1) Bars, cocktail lounges or taverns which prohibit the admission of minors.

(2) Private residences, except when used as a child care or health acre facility.

(3) Hotel and motel rooms rented to guests.

(4) Retail tobacco stores and tobacco processors.

(5) A restaurant which elects to become a "smoking establishment," provided they comply with the requirements regarding the posting of notice.

(6) Hotel and motel conference or meeting rooms and public and private assembly rooms, while these places are being used for private functions.

(7) A private, enclosed office, if all persons present consent, and further provided that this exception shall not be construed to permit smoking in the reception areas of lobbies or offices. This exception does not apply to city-owned facilities.

(b) Notwithstanding any other provision of this section, any owner, operator, manager or other person who controls any establishment described in this section may declare that entire establishment as a nonsmoking establishment.

(Ord. No. 08-15-06, § 7, 9-5-2006)

Sec. 24-104. - Posting of signs.

(a) No smoking signs, with letters of not less than five-eighths inch in height or the international "no smoking" symbol, consisting of a pictorial representation of a burning cigarette enclosed in a red circle with a red bar across it, shall be clearly, sufficiently and conspicuously posted in every building or other place where smoking is regulated by this article by the owner, operator, manager or other person having control of such building or other place. Restaurants shall comply with section 24-101(c).

(b) Every theater owner, manager or operator shall conspicuously post signs in the lobby stating that smoking is prohibited within the theater or auditorium, and, for motion picture theaters, such information shall be shown upon the screen for at least five seconds prior to the showing of each feature motion picture.

(Ord. No. 08-15-06, § 8, 9-5-2006)

Sec. 24-105. - Reasonable distance to be observed from all entryways where smoking is prohibited.

In order to prevent secondhand smoke from entering a public place and place of employment where smoking is prohibited, every person who is smoking shall smoke a reasonable distance from all entrance ways, passageways, operable windows, or ventilation systems of any enclosed area where smoking is prohibited, but not less than 15 feet, so as to ensure smoke does not enter the smoke-free establishment or area. Any person who fails to comply with this provision after an oral request to cease smoking by the owner, operator, manager or other person having control of the smoke free establishment or enclosed area shall be in violation of this article.

(Ord. No. 08-15-06, § 9, 9-5-2006)

Sec. 24-106. - Enforcement.

(a) This article is enforceable by any duly sworn police officer employed by the city, the county health officer, or a duly authorized representative thereof, as otherwise allowed by law for prosecution of offenses.

(b) Any citizen who desires to register a complaint under this article may initiate enforcement with the magistrate of the city.

(c) The fire department or the health department shall require, while an establishment is undergoing otherwise mandated inspections, a self-certification from the owner, manager, operator or other person having control of such establishment that all requirements of this article have been complied with.

(d) Any owner, manager, operator or employee of any establishment regulated by this article may inform any person violating this article of the appropriate provisions of this article.

(e) Notwithstanding any other provision of this article, a private citizen may bring legal action to enforce this article.

(Ord. No. 08-15-06, § 10, 9-5-2006)

Sec. 24-107. - Violations and penalties.

(a) It shall be the responsibility of the owner, business agent, manager or other person having control of any business and/or establishment to ensure compliance with all sections of this article pertaining to his place of business. A violator of this article may receive:

(1) In the case of a first violation, a fine of up to $100.00;

(2) In the case of a second violation within 24 months of the first violation, a fine of up to $500.00; and

(3) In the case of three or more violations within 24 months of the second or current violation, a fine of up to $500.00 for each violation.

(b) No provision, clause or sentence of this section shall be interpreted as prohibiting the city from suspending or revoking any license or permit issued by and within the jurisdiction of the city for repeated violations of this article.

(c) If the owner, business agent, manager or other person having control of such food and beverage business and/or establishment attempts to enforce this article and a patron violated it (smokes in smoke-free establishment), then the owner, business agent, manager or other person having control shall not be deemed to be in violation of this article and the patron shall be subject to a fine as follows:

(1) In the case of a first violation, a fine of up to $100.00;

(2) In the case of a second violation within 24 months of the first violation, a fine of up to $500.00; and

(3) In the case of three or more violations within 24 months of the second or current violation, a fine of up to $500.00 for each violation.

(d) Each calendar day an owner, business agent, manager or other person having control of a business and/or establishment operates in violation of any provision of this article shall be deemed a separate violation; each calendar day a patron violates this article (i.e., smokes in a smoke-free establishment) shall be deemed a separate violation.

(Ord. No. 08-15-06, § 11, 9-5-2006)

Sec. 24-108. - Nonretaliation.

No owner, business agent, manager or other person having control of a business and/or food and beverage establishment shall discharge, refuse to hire, refuse to serve or in any manner retaliate or take any adverse personnel action or other adverse action against any employee, applicant, customer or person because such employee, applicant, customer or person takes any action in furtherance of the enforcement of this article or exercises any right conferred by this article.

(Ord. No. 08-15-06, § 12, 9-5-2006)

Sec. 24-109. - Notification requirements.

Restaurants shall notify the city business license division in writing of their status (smoke-free or smoking) within 30 days of the passage of this article. If within 90 days of their initial status choice (smoke-free or smoking) a restaurant wishes to change their status (smoke-free or smoking), they may do so in writing by notifying the business license division. Thereafter, if a restaurant wishes to change their status (smoke-free or smoking), they may do so in writing only at the time they renew/purchase the business license. There is no fee associated with the initial election or change in smoking status.

(Ord. No. 08-15-06, § 13, 9-5-2006)

Sec. 24-110. - Governmental agency cooperation.

The city council may request other governmental and educational agencies having facilities within the city to establish local operating procedures in cooperation and compliance with this article.

(Ord. No. 08-15-06, § 14, 9-5-2006)

Sec. 24-111. - Effect of other laws.

(a) Nothing in this article shall be deemed to amend or repeal any fire, health or other law, ordinance or regulation so as to permit smoking in areas where it is prohibited by such fire, health or other law, ordinance or regulation.

(b) Nothing in this article shall be deemed to preempt the further limitation of smoking in the city by any local regulatory body within the limits of its authority and jurisdiction.

(c) If any provision, clause, sentence, paragraph or word of this article, or the application thereof to any person, entity or circumstances shall be held invalid, such invalidity shall not affect the other provisions of this article which can be given effect without

the invalid provisions or application, and to this end the provisions of this article are declared severable.

(Ord. No. 08-15-06, § 15, 9-5-2006)

Chapter 26 - HUMAN RELATIONS

ARTICLE I. - IN GENERAL

Secs. 26-1—26-18. - Reserved.

ARTICLE II. - HOUSING[1]

Footnotes:

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State Law reference— Alabama Fair Housing Law, Code of Ala. 1975, § 24-8-1 et seq.; local fair housing law, Code of Ala. 1975, § 24-8-12(c).

Sec. 26-19. - Declaration of policy.

It is hereby declared to be the policy of the city that all persons shall have a fair and equal opportunity to purchase, own, lease, or occupy real estate located within the city without discrimination because of race, color, religion, sex, disability, familial status, age or national origin.

(Code 1979, § 13.5-21)

Sec. 26-20. - Definitions.

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

Agent means any real estate broker, real estate salesman and any other person or entity who is acting for some other person or entity within the relationship of principal and agent.

Discriminate means to categorically distinguish between persons on the basis or by reason of race, color, religion, sex, disability, familial status, age or national origin.

Owner means any person holding legal or equitable title to or any interest in real estate located within the city.

Residential real property means any structure or portion thereof (including single-family, multifamily and transient accommodations) used for the purpose of providing basic shelter for its occupants.

Unlawful real estate practice means any act of commission or omission by any agent or owner which is herein declared to be a violation of this article.

(Code 1979, § 13.5-22)

Sec. 26-21. - Unlawful real estate practice.

It shall be an unlawful real estate practice and unlawful for any agent or owner to:

(1) Make any distinction, discrimination or restriction against any person in price, terms, conditions or privileges of any kind relating to the sale, rental, lease or occupancy of any residential real property, or in furnishing of any facilities or services in connection therewith predicated upon race, color, religion, sex, disability, familial status, age or national origin of the prospective or actual buyer, tenant or occupant thereof.

(2) Publish, circulate, issue or display, or cause to be published, circulated, issued, or displayed, any communication, notice, advertisement, sign or writing of any kind relating to the sale, rental or leasing of such real property predicated upon the race, color, religion, sex, disability, familial status, age or national origin of any prospective buyer, lessee or renter.

(3) Refuse to sell, lease or rent real property for residential purposes because of the race, color, religion, sex, disability, familial status, age or national origin of the proposed buyer or renter.

(4) Discriminate or to participate in discrimination in connection with borrowing or lending money, guaranteeing loans, accepting mortgages or otherwise obtaining or making available funds for the purchase, acquisition, construction, rehabilitation, repair or maintenance of any residential real property because of the race, color, religion, sex, disability, familial status, age or national origin of any person.

(5) Cheat, exploit, or overcharge any person for residential real property because of the race, color, religion, sex, disability, familial status, age or national origin of such person.

(6) Solicit for sale, lease or listing for sale or lease any residential real property on the ground of loss of value due to the present or prospective entry into any neighborhood of any person or persons of any particular race, color, religion, sex, disability, familial status, age or national origin.

(7) Distribute or cause to be distributed within any neighborhood material or statements designed to induce any owner of residential real property to sell or lease his property because of any present or prospective change in the composition of any neighborhood due to the race, color, religion, sex, disability, familial status, age or national origin of any person.

(8) Deliberately and knowingly refuse examination of residential real property to any person because of race, color, religion, sex, age, or national origin of such person.

(Code 1979, § 13.5-23)

Sec. 26-22. - Enforcement.

(a) *Penalties.* Any person or entity violating any provision of this article shall be fined, upon conviction, not less than $2.00 nor more than $100.00, and cost of court for each offense. Each day such violation continues shall constitute a separate offense.

(b) *Complaints.* Any person aggrieved in any manner by any violation of any provision of this article may file a written complaint setting forth his grievance with the mayor. Said complaint shall state the name and address of the complaint and of the person or entity against whom the complaint is besought, and shall also state the alleged facts surrounding the violation of this article. The chief of police is hereby fully authorized to immediately investigate such complaint thus filed. Upon completion of his investigation, the chief of police shall report his findings in writing to the mayor, who will at such time initiate appropriate legal or conciliatory action.

(Code 1979, § 13.5-24)

Chapter 28 - LAW ENFORCEMENT

ARTICLE I. - IN GENERAL

Secs. 28-1—28-18. - Reserved.

ARTICLE II. - PROCEDURES CONCERNING ABANDONED AND STOLEN PROPERTY

Sec. 28-19. - Taking up and storing of abandoned or stolen personal property.

The chief of police, or public safety director in the capacity of chief of police, is hereby authorized to take up and store any abandoned or stolen personal property found within the corporate limits, or within the police jurisdiction, of the city. A permanent record, giving the date of the taking of each piece of such property, the place where found and taken, and a description of the property, shall be kept by or under the direction of the chief of police. The property so taken shall be stored in a suitable place to protect it from deterioration. All expenses incurred in the taking up, storing, maintaining and selling of the property shall be paid from the general fund of the city by the treasurer, upon the approval of the chief of police and the city council.

(Ord. No. 03-19-96, § 1, 4-2-1996)

Sec. 28-20. - Property in custody of police department as evidence.

The chief of police is hereby authorized to store any personal property that comes into the possession of the police department as evidence in any case, in any court, and to retain same until the case has been finally disposed of, including any appeals; on the conclusion of the case, said property, except prohibited firearms, is to be returned to the owner. Upon the conclusion of the case, the chief of police shall notify the owner, in writing, at his last known address, that said property is available to be returned to him. If the owner does not claim said property within three months after the date of said written notice, or if the owner of the property should be unknown, the property shall be sold as hereinafter provided.

(Ord. No. 03-19-96, § 2, 4-2-1996)

Sec. 28-21. - Redemption of property.

The owner of the property taken up and stored may redeem the same at any time prior to its sale, by paying the reasonable expense of taking the property in charge, its storage and maintenance and pro rata cost of publications.

(Ord. No. 03-19-96, § 3, 4-2-1996)

Sec. 28-22. - Records.

A permanent record shall be kept by the police department of all property coming into the possession of the police department, giving the date of the taking of each piece of such property, place where found and taken, and a description of each piece of property. The property so taken, or held as evidence, shall be stored in a suitable place to protect it from deteriorating; provided, however, if the property is perishable, the same may be sold at once, without notice, in which case the proceeds shall be held for a period of six months for the account of the owner, and, if not called for within that time, shall be converted into the general fund.

(Ord. No. 03-19-96, § 4, 4-2-1996)

Sec. 28-23. - Sale at public auction.

The chief of police may, as often as every six months, sell at public auction, to the highest bidder for cash, at the public safety building or an approved governmental online sale website, the property which shall have been taken up and stored for a period of three months or more, such sale is to be made after giving notice of the time, place of sale, and a description of the property to be sold, by publication of a notice, once a week for two consecutive weeks, in a newspaper of general circulation in the city, the first publication to be at least 20 days prior to the sale. Each article shall be sold separately and in notation recorded in the storage record book, which shall be kept by the police department, of the amount received by each article. The person making the sale shall have the right to reject any or all bids if the amount bid be unreasonably low, and shall have the right to continue the sales from time to time if no bidders are present or the amount bid is unreasonably low.

(Ord. No. 03-19-96, § 5, 4-2-1996)

Sec. 28-24. - Abandoned or condemned rifles and shotguns.

Abandoned rifles or abandoned shotguns or rifles or shotguns that have been taken as evidence and are unclaimed, may be sold, but the same shall be sold only to licensed dealers and must be sold by sealed bid. The guns may be sold individually or in lots, whichever the chief of police deems to be to the best advantage of the city. Any amount

realized therefrom shall be promptly paid to the city clerk, and the chief of police shall report such sale to the city council in his next monthly report.

(Ord. No. 03-19-96, § 6, 4-2-1996)

Sec. 28-25. - Prohibited sales.

The following items shall not be sold under the provisions of this article; alcoholic beverages, drugs and drug paraphernalia, gambling devices, prohibited knives, hand guns or other items as determined by the chief of police to be contraband or which he determines should be destroyed.

(Ord. No. 03-19-96, § 7, 4-2-1996)

Sec. 28-26. - Cash.

Any cash funds that are coming into the hands of the police department or cash that may be in any device or in gambling devices, or comes into the hands of the police department in any way, shall be paid into the general fund, by delivery thereof to the city clerk, who will issue a receipt therefor to the chief of police, designating in said receipt the exact name of the person, firm or corporation from whom said cash funds were taken and, if known, the name or style of the case and docket number. The chief of police shall, after delivering any such cash to the city clerk, report in writing, to the city council, that he has delivered the cash to the city clerk and set forth all information pertaining thereto by which the same could be identified. The report shall be made to the city council in the monthly report of the police department.

(Ord. No. 03-19-96, § 8, 4-2-1996)

Sec. 28-27. - Auctioneers and observers.

At all auctions, the chief of police, or such police officer as he may designate, shall act as auctioneer, and there shall be present at said auction the chairperson of the police committee or public safety committee for the purpose of observing said auction, and seeing that said auction is fairly conducted in accordance with the provisions of this article.

(Ord. No. 03-19-96, § 9, 4-2-1996)

Sec. 28-28. - No sale to police officer or city employee.

No property which is sold under this article shall be sold to any officer or employee of the city, and no such officer or employee, either directly or indirectly, shall bid on, negotiate for, or buy any property under the provisions of this article.

(Ord. No. 03-19-96, § 10, 4-2-1996)

Sec. 28-29. - Geographic limits.

This article shall apply to the corporate limits of the city and its police jurisdiction.

(Ord. No. 03-19-96, § 12, 4-2-1996)

Chapter 30 - LIBRARY[1]

Footnotes:

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State Law reference— Authority regarding libraries generally, Code of Ala. 1975, § 11-90-1 et seq.

Sec. 30-1. - Library established.

Whereas the city council did officially appoint a library board in November of 1968, in accordance with state law; and whereas the original and successor library board membership was appointed; and whereas the city did establish a permanent community reading room (library) in the Daleville Community Center on February 1, 1972; therefore, the city council herein declares that the community reading room (library) is a duly established library in accordance with Code of Ala. 1975, §§ 11-90-1—11-90-4.

(Code 1979, § 12-1; Res. No. 3-22-77, § 3, 3-22-1977)

Chapter 32 - MASSAGE PARLORS, MASSEURS, AND MASSEUSES

Sec. 32-1. - Definitions.

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

Establishment means a place of business or operation of any kind.

Massage parlor means any establishment, building, room, or place, other than a regularly licensed hospital, medical clinic, nursing home, or dispensary, the offices of a physician, a surgeon, or an osteopath, where nonmedical, nonsurgical, non-osteopathic and nonchiropractic manipulative exercises, massages or procedures are practiced upon the human body, or any part thereof, for other than cosmetic or beautifying purposes, with or without the use of mechanical or other devices, by anyone not a physician, surgeon, osteopath, or chiropractor or of a similar registered status, and shall include any place where baths, exercises or similar services are offered.

Masseur (male), masseuse (female) means a person who practices any one or more of the arts of body massage, either by hand or mechanical apparatus, oil rubs, corrective gymnastics, mechanotherapy, including color therapy, dietetics, hot packs, cabinet, tub, shower, sitz, vapor, steam or any other special type of bath.

(Code 1979, § 13-1; Ord. No. 1-18-77C, § 2, 2-1-1977)

Sec. 32-2. - Declaration of necessity.

It is hereby declared that the business of operating massage parlors as defined herein are businesses affecting the public health, safety, and general welfare, and that in order to protect the public interest, health, safety, and general welfare, it is necessary that such businesses be regulated in order to prevent their use for activities, other than those for which they are licensed, and in order to protect the public health and safety.

(Code 1979, § 13-2; Ord. No. 1-18-77C, § 1, 2-1-1977)

Sec. 32-3. - Business license—Required.

No massage parlor shall be opened to members of the public or operated for any other purposes without the owner thereof first having obtained a business license as hereinafter provided from the city, which business license shall contain thereon the name of each masseur, masseuse, or attendant employed for such purpose by such licensed business.

(Code 1979, § 13-3; Ord. No. 1-18-77C, § 3, 2-1-1977)

Sec. 32-4. - Same—Payment of fee; information on license.

Every owner, proprietor or operator of a massage parlor where there is applied manual, mechanical or other massages to the human body, trunk or limbs for a fee, hire, reward, or without such fee, hire or reward, and there is applied or administered such manual, mechanical or other massages to members of the public generally, or to other persons, shall pay a license fee to the city clerk as required by the privilege license schedule of the city, and said license shall contain thereon the name of each masseur, masseuse, or attendant employed for such purpose by such licensed business.

(Code 1979, § 13-4; Ord. No. 1-18-77C, § 4, 2-1-1977)

Sec. 32-5. - Same—Sign to be displayed; operation under authorized name.

(a) Every massage parlor shall display a legible sign not larger than permitted by the zoning ordinance of the city, upon which sign the words "licensed masseur" or "licensed masseuse," or both, shall conspicuously appear thereon. Said sign shall contain letters no less than three inches in height and shall be displayed in such a manner that the words "licensed masseur" or "licensed masseuse" may be readily observed or read by persons upon entering the premises occupied by any massage parlor.

(b) No massage parlor shall operate under any name or conduct its operation under any designation not specified in its license issued by the city in accordance with this article.

(Code 1979, § 13-5; Ord. of 2-1-1977, § 19)

Sec. 32-6. - Health examination; employment of licensed practitioners.

(a) No applicant for a license to conduct or operate a massage parlor, nor any applicant for a masseur or masseuse license as herein required, shall be granted same unless he shall first present for inspection to the city a written verification by a licensed physician, bearing a date not more than 20 days prior to the date of application, evidencing that said applicant is free of any contagious, infectious or communicable disease.

(b) No masseur, masseuse or other employee or attendant applying or administering massages shall be employed in any massage parlor without first having obtained a license as herein provided.

(Code 1979, § 13-6; Ord. No. 1-18-77C, § 10, 2-1-1977)

Sec. 32-7. - Practitioner's license—Required; application.

(a) No person shall work as a masseur, masseuse or massage parlor attendant without having obtained a license therefor from the city as hereinafter provided.

(b) All applications for a masseur, masseuse or other attendant's license shall be filed with the police department, and such application shall be verified by the applicant under oath and shall contain the following information concerning the applicant:

(1) Full name.

(2) Present address.

(3) How long he resided at present address.

(4) Address for previous two years.

(5) Age, sex and height.

(6) Color of eyes and hair.

(7) All places of previous employment, if any, for the past three years.

(8) Whether applicant has previously been licensed elsewhere as a masseur or masseuse and whether any such license has been revoked, and for what cause.

(9) The name and address of the employer or operator for whom the applicant expects to be employed as a masseur or masseuse.

(10) At the time of filing such application, the applicant shall furnish or permit the city to produce a full set of applicant's fingerprints.

(11) At the time any application is filed hereunder, the applicant shall pay to the city the sum of $5.00, which shall not be returnable whether or not the license is issued.

(Code 1979, § 13-7; Ord. No. 1-18-77C, § 11, 2-1-1977)

Sec. 32-8. - Same—Licensee character and ability; witnesses thereto.

Any applicant for a license under section 32-7 shall at the time of applying therefor present at least two persons to the chief of police or to such other person as he shall designate, who are over 21 years of age and who both have a residence and business address in the city, who shall attest under oath in writing, or orally, or both, as the chief of police or his designee may direct, to the good character of the applicant and to the fact that the applicant is a person qualified and skilled as a bona fide masseur or masseuse who is trained, experienced and knowledgeable in the art of kneading, massaging and striking the muscular parts of the human body and that the applicant is learned and an expert in his knowledge of the human anatomy as well as the circulatory and nerve system of the human body.

(Code 1979, § 13-8; Ord. No. 1-18-77C, § 12, 2-1-1977)

Sec. 32-9. - Same—Investigation of applicant; temporary permit; appeals.

(a) The chief of police or his designee shall conduct an investigation of each applicant for a masseur or masseuse license, and a report of such investigation and a copy of the police record of the applicant, if any, shall be attached to the application.

(b) Should the chief of police or his designee, after considering the applicant's application, together with the sworn statements submitted on behalf of said applicant as required in section 32-8, determine that the applicant is not in fact a person possessing the training, skills and knowledge required of a bona fide masseur or masseuse, or that the applicant does not in good faith intend to pursue the art, trade or occupation of a masseur or masseuse, the chief of police or his designee shall disapprove said application within 15 days after the date of filing thereof or the chief of police may, when an investigation cannot be completed within 15 days, issue a temporary permit to the applicant to expire 15 days from the date of issuance, whereupon the chief of police shall then approve or deny the application.

(c) If the application is denied, the applicant may appeal such denial in writing within ten days thereafter, which said appeal shall be filed with the city clerk. Thereafter the city council shall at a regular or adjourned meeting hear said appeal and the applicant shall be permitted to present such relevant evidence as the applicant shall wish for consideration by the council, which said appeal hearing shall be held not later than 21 days from the filing thereof with the city clerk.

(Code 1979, § 13-9; Ord. No. 1-18-77C, § 13, 2-1-1977)

Sec. 32-10. - Same—Issuance; fee; and renewal.

Upon approval of an application for a masseur or masseuse license, either by the chief of police or the city council, the city clerk shall be authorized to issue such license to said applicant upon payment by the applicant of the sum of $750.00, for the current license year, which license shall contain a license number, together with the applicant's name, address, age, sex, name of employer, place of employment, signature and a passport-type photograph of at least two inches by two inches in size made within 30 days of the application and furnished to the chief of police by the applicant or made by the city at the request of the applicant. Any application for a reissuance of a license as hereinafter required or for the renewal of any license required hereunder for a subsequent license year shall be accompanied by the written verification of a licensed physician as required by section 32-6 and by duplicate photographs as heretofore described in this section. Upon any application for a license reissuance, or any renewal, the applicant shall surrender the old license or shall provide the city with a written affidavit that said license is either lost or destroyed, together with the details of such loss or destruction.

(Code 1979, § 13-10; Ord. No. 1-18-77C, § 14, 2-1-1977)

Sec. 32-11. - Same—Display.

Every masseur or masseuse licensed in accordance with this chapter, while engaged in any activity licensed herein, shall at all times carry upon his person such license or any reissue thereof and shall exhibit same to any client or customer upon request, or to any police officer of the city or any license or health inspector or other similar official.

(Code 1979, § 13-11; Ord. of 2-1-1977, § 16)

Sec. 32-12. - Same—Change of place of employment.

(a) Upon any change of employer or place of employment of any licensee under section 32-7 said licensee shall apply to the director of finance of the city for a reissuance of the existing license, which reissued license shall show upon its face the name and business address of the new employer of said licensee as well as applicant's address, age, sex, and signature, for which reissuance the licensee shall pay to the city the sum of $5.00. Upon any such reissuance, said licensee shall surrender his replaced or old license.

(b) No masseur or masseuse shall work for any owner, operator, or proprietor whose name and business address is not identical to that shown upon said masseur's or masseuse's license issued hereunder.

(Code 1979, § 13-12; Ord. No. 1-18-77C, § 15, 2-1-1977)

Sec. 32-13. - Care of licenses.

It shall be unlawful for any person except the mayor or a council member, to change, amend or deface any license issued under this chapter, except upon the expiration of the license period shown thereon.

(Code 1979, § 13-14; Ord. No. 1-18-77C, § 17, 2-1-1977)

Sec. 32-14. - Massages at licensed location and during open hours only.

(a) No massage shall be administered or applied by any masseur or masseuse licensed hereunder except upon the premises of the regular place of business for which a license to operate a massage parlor has been duly issued by the city.

(b) It shall be unlawful for any person to render any service to the public upon the premises of a massage parlor except during the time that the establishment is open for free access thereto by the public, during which time all portions of such

establishment shall be open to the inspection of any inspector of the county health department, and to the chief of police and any officer of the police department.

(Code 1979, § 13-15; Ord. No. 1-18-77C, § 21, 2-1-1977)

Sec. 32-15. - Health and sanitary requirements.

(a) Any massage parlor licensed under the provisions of this chapter shall at all times comply with all health regulations, rules and requirements as shall now or hereafter be promulgated by the county department of health, and any premises used for the purposes of a massage parlor shall during all hours of operation be made open and available to inspection by the county department of health and city police department for the purpose of ensuring compliance with said health rules, regulations and requirements.

(b) No towels, wash cloths, or other linen items shall come in contact with the body, or any part thereof, of any customer or patron at a massage parlor that have not been boiled and laundered since last used.

(c) Every person applying or administering massages shall cleanse his hands thoroughly by washing same with soap and hot water before attending or massaging any person.

(d) Any person while applying or administering massages shall be clothed from the shoulders to the knees by a robe, smock or other opaque apparel so that the person of the customer shall be protected from bodily contact with the person applying or administering the massage except for the hands and arms of said person applying or administering said massage.

(e) Any massage parlor licensed pursuant to this chapter shall be equipped with running hot and cold water, and with all appliances, furnishings and materials as may be necessary to enable persons employed in and about said massage parlor to comply with the provisions of this chapter.

(Code 1979, § 13-16; Ord. No. 1-18-77C, § 9, 2-1-1977)

Sec. 32-16. - Violation of state law or city ordinance, including prostitution, obscenity, etc.

(a) No owner or manager of a massage parlor shall authorize or tolerate in his establishment any activity or behavior prohibited by the laws of the state or the ordinances of the city, including such laws proscribing acts of prostitution, sodomy, adultery, fornication, or any lewd or obscene act or performance.

(b) Any conviction of the manager or any employee of a massage parlor of a violation of any of the aforegoing mentioned laws and ordinances shall be grounds for revocation of the license of said establishment as herein provided.

(Code 1979, § 13-17; Ord. No. 1-18-77C, § 5, 2-1-1977)

Sec. 32-17. - Prior conviction of prostitution.

It shall be a violation of this chapter for any licensee hereunder to employ any operator, attendant, masseur, masseuse or other employee to perform or administer massages who has within the past 24 months been convicted of prostitution.

(Code 1979, § 13-18; Ord. No. 1-18-77C, § 7, 2-1-1977)

Sec. 32-18. - Practicing behind locked doors; fondling, etc.; disrobing by patron.

(a) No masseur, masseuse or other employee or attendant in any massage parlor shall apply or administer any massage or other treatment to any person behind locked doors, nor shall he or she at any time massage, manipulate, fondle or otherwise touch or have physical contact with the genitals or private parts of any patron, client or other person in any massage parlor.

(b) No customer, patron, client or other person shall at any time while in any massage parlor, disrobe completely or become nude, or expose his genitals or buttocks while in the presence of any other person of either sex.

(c) Any person violating the provisions of this section shall, upon conviction, be punished as provided in section 1-8 and, in addition to such penalty, it shall be grounds for revocation of the license of the owner or manager of the establishment.

(Code 1979, § 13-19; Ord. No. 1-18-77C, § 18, 2-1-1977)

Sec. 32-19. - Use as a dormitory.

No massage parlor shall be used as or for a dormitory or place of sleep, nor shall any licensee under this chapter permit any massage parlor to be so used.

(Code 1979, § 13-20; Ord. No. 1-18-77C, § 20, 2-1-1977)

Sec. 32-20. - Revocation of licenses.

(a) Any license issued pursuant to this chapter, both as originally adopted or as amended, whether to an owner, operator or proprietor, or any masseur, masseuse, or attendant, may be revoked by the city upon the violation of any section, requirement or provision of this chapter by any such licensee or his agent, attendant or employee; provided said licensee shall first be notified of said violation and be afforded a hearing before the city council. Written notice of any violation hereunder

and any hearing thereon before the city council may be given to the licensee by delivering said notice by hand to the licensee or, if the licensee is an owner, operator or proprietor of a massage parlor, to any adult person employed by such licensee at the licensed premises, or the deposit of said notice postage prepaid with the United States postal service and addressed to the licensee at the licensed premises, not less than ten days prior to such hearing before the city council. At such hearing, the licensee may present such relevant evidence and such witnesses as he shall wish to call before said city council.

(b) In the event of any revocation of a license for the operation of a massage parlor in accordance with this section, said licensee shall not be entitled to the issuance of a subsequent license by the city within 12 months following the date of revocation hereunder.

(Code 1979, § 13-21; Ord. No. 1-18-77C, § 6, 2-1-1977)

Chapter 34 - OFFENSES AND MISCELLANEOUS PROVISIONS[1]

Footnotes:

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State Law reference— State criminal code generally, Code of Ala. 1975, § 13A-1-1 et seq.; authority of municipality to regulate discharge of firearms, Code of Ala. 1975, § 13A-11-61.3; penalties for ordinance violations, Code of Ala. 1975, § 11-45-9; issuance of summons and complaint in lieu of arrest for violation of certain ordinances, Code of Ala. 1975, § 11-45-9.1.

ARTICLE I. - IN GENERAL

Sec. 34-1. - State law misdemeanors, violations and other offenses adopted.

(a) Any person or corporation committing an offense within the corporate limits of the city, or within the police jurisdiction thereof, which is declared by laws of the state now existing or hereafter enacted to be a misdemeanor, shall be guilty of an offense against the city.

(b) Any person or corporation committing an offense within the corporate limits of the city, or within the police jurisdiction thereof, which is declared by laws of the state now existing or hereafter enacted to be a violation, shall be guilty of an offense against the city.

(c) Any person or corporation committing within the corporate limits of the city, or within the police jurisdiction thereof, an offense as defined by Code of Ala. 1975, § 13A-1-2 of the Alabama Criminal Code, which offense is not declared by laws of the state now existing or hereafter enacted to be a felony, misdemeanor or violation, shall be guilty of an offense against the city.

(d) Any person found to be in violation of subsection (a), (b) or (c) of this section shall, upon conviction, be punished by fine of not less than $1.00 nor more than $500.00 and/or may be imprisoned or sentenced to hard labor for the city for a period not exceeding six months, at the discretion of the court trying the case. Any corporation found to be in violation of subsection (a), (b) or (c) of this section shall, upon conviction, be punished by a fine of not less than $1.00 nor more than $500.00, at the discretion of the court trying the case.

(Code 1979, § 14-1; Ord. No. 1, 10-1-1958; Ord. No. 30, § 1, 12-7-1964; Ord. No. 30A, § 1, 12-7-1964; Ord. No. 11-5-73A, §§ 1, 2, 11-5-1973; Ord. No. 12-18-79, §§ 1-4, 1-8-1980)

Sec. 34-2. - Going uninvited into residences by peddlers, etc.

It shall be unlawful for any solicitor, peddler, hawker, itinerant merchant or transient vendor of merchandise, insurance or contracts for insurance to go in or upon any private residence in the city, not having been requested or invited so to do by the owner or occupant of said private residence, for the purpose of soliciting orders for the sale of goods, wares, merchandise, insurance or contracts for insurance and/or disposing of and/or peddling or hawking the same; and any such act is hereby declared to be a nuisance.

(Code 1979, § 14-22; Ord. No. 12-15-92)

Secs. 34-3—34-22. - Reserved.

ARTICLE II. - WEAPONS[2]

Footnotes:

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State Law reference— Limitation on authority of municipalities to regulate handguns, Code of Ala. 1975, § 13A-11-61.3; authority of municipality to regulate discharge of firearms, Code of Ala. 1975, § 13A-11-61.3(g)(11).

Sec. 34-23. - Discharging firearms.

(a) It shall be unlawful for any person, firm, or corporation to discharge or cause the discharge of any firearm within the city limits, except as provided herein.

(b) It shall be unlawful for any person, firm, or corporation to maintain or operate any form of outdoor shooting range or club, outdoor skeet range or club, or shooting gallery within the city limits, except as provided herein.

(c) An indoor shooting range shall be allowed, provided that, prior to the operation of the shooting range, the facility shall be approved by the city planning commission.

(d) This section shall not apply to or be construed to prohibit the lawful discharge of firearms in any of the following circumstances:

  (1) The execution of the law or performance of duties by law enforcement officer.

  (2) Military parade or ceremony conducted under the supervision of an appropriate commissioned or non-commissioned officer.

  (3) Discharge for protection or in legal defense of person or property as otherwise allowed by law.

  (4) Game hunting on properties zoned AGR-2. Hunting must conform to state laws.

(e) Each violation of this section shall be a separate offense. Anyone who is found in violation of this article shall be guilty of an ordinance violation and shall be fined not more than $500.00 per offense and/or sentenced to 30 days in jail.

(Code 1979, § 14-87; Ord. No. 04-12-14, §§ 1-5, 4-15-2014)

Sec. 34-24. - Firing BB and pellet guns by minors.

It shall be unlawful for any child under 16 years of age to fire a BB gun or pellet gun within the city limits unless accompanied by the parent of such child or other adult person.

(Code 1979, § 14-88; Ord. of 2-20-1961, § 1)

Secs. 34-25—34-51. - Reserved.

ARTICLE III. - OBSCENE MATTER[3]

Footnotes:

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State Law reference— Similar provisions, Code of Ala. 1975, § 13A-12-200.1 et seq.

Sec. 34-52. - Definitions.

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

Distribute means to transfer possession of, import, export, sell, rent, lend, transfer possession of or title to, display, exhibit, show, present, provide, broadcast, transmit, retransmit, communicate by telephone, play, orally communicate or perform, whether with or without consideration.

Knowingly means having actual or constructive knowledge of the character and content of the subject matter. A person has constructive knowledge if a reasonable inspection under the circumstances would disclose the nature of the subject matter and the failure to inspect it for the purpose of avoiding such disclosure.

Obscene means, to the average person, when applying contemporary local standards, the work or matter, taken as a whole, appeals to the prurient interest; the work or matter depicts or describes, in a patently offensive way, sexual conduct, actual or simulated, normal or perverted; and a reasonable person would find the work or material, taken as a whole, lacks serious literary, artistic, political or scientific value.

Sado-masochistic abuse means flagellation or torture by or upon a person undressed or clad in undergarments, a mask or bizarre costume, or the condition of being fettered, bound or otherwise physically restrained on the part of one undressed or so clothed.

Sexual conduct means any act of masturbation, excretory functions, homosexuality, sado-masochistic abuse, nudity, sexual intercourse or physical contact with a person's clothed or unclothed genitals, pubic area, buttocks, or, if such a person is a female, breast, whether or not any such conduct is actual or simulated, and lewd exhibition of the male and female genitals.

Work or *matter* means any book, magazine, newspaper or other printed or written material, or any picture, drawing, poster, photograph, motion picture, or other pictorial representation or any statue or figure or any recording transcription or mechanical, chemical or electrical reproduction, or any other articles, equipment, machines or materials.

(Code 1979, § 14-100; Ord. No. 7-1-74, § 1, 7-15-1974)

Sec. 34-53. - Exclusions from applicability of article.

The possession or exhibition forbidden by this article shall not apply to a possession or exhibition by a police officer, sheriff, deputy sheriff or other peace officer, or any person under their supervision and control, or any judge, jury or attache of a court, or any member of a legislature body, municipal, state or federal, when such possession or exhibition thereof is connected with the prosecution or investigation of a violation or possible violation of this article or other law or the consideration of legislation or proposed legislation designed to eliminate or reduce obscenity in any form, nor to any possession or exhibition by any person where such possession or exhibition is for a bona fide scientific or educational purpose.

(Code 1979, § 14-101; Ord. No. 7-1-74, § 8, 7-15-1974)

Sec. 34-54. - Publishing, etc., with intent to distribute, etc.

It shall be unlawful for any person to knowingly publish, print, exhibit, distribute or have in his possession with intent to distribute, exhibit, sell or offer for sale, in the city or the police jurisdiction thereof, any obscene matter.

(Code 1979, § 14-103; Ord. No. 7-1-74, § 3, 7-15-1974)

Sec. 34-55. - Sale, etc., to minor under age 18 years.

It shall be unlawful for any person, with knowledge that a person is a minor under 18 years of age, or who, while in possession of such facts that he should reasonably know that such person is a minor under 18 years of age, to knowingly send or cause to be sent, exhibited, distributed, sold or offered for sale, any obscene matter to any such minor under 18 years of age in the city or the police jurisdiction thereof.

(Code 1979, § 14-104; Ord. No. 7-1-74, § 4, 7-15-1974)

Sec. 34-56. - Hiring minor under age 18 years.

It shall be unlawful for any person, with knowledge that a person is a minor under 18 years of age, or who, while in possession of such facts that he should know that such person is a minor under 18 years of age, to hire, employ or use such minor to do or assist in doing of any act described in sections 34-54 and 34-55.

(Code 1979, § 14-105; Ord. No. 7-1-74, § 5, 7-15-1974)

Sec. 34-57. - Promoting sale.

It shall be unlawful for any person to write or create advertising for, or otherwise promote the sale or distribution of, matter represented or held out by him to be obscene.

(Code 1979, § 14-106; Ord. No. 7-1-74, § 6, 7-15-1974)

Sec. 34-58. - Coercing dealer to receive.

It shall be unlawful for any person to knowingly as a condition to a sale, allocation, consignment, or delivery for resale of any paper, magazine, book, periodical, publication or other merchandise, to require that the purchaser or cosignee receive any matter reasonably believed by such purchaser or cosignee to be obscene, or to deny or threaten to deny a franchise, or to revoke or threaten to revoke, or to impose any penalty, financial or otherwise, by reason of the failure of any such person to accept such matter, or by reason of the return of such matter.

(Code 1979, § 14-107; Ord. No. 7-1-74, § 7, 7-15-1974)

Secs. 34-59—34-89. - Reserved.

ARTICLE IV. - NUISANCES

Sec. 34-90. - Definition.

For the purposes of this article, the term "nuisance" shall mean:

(1) Anything that unlawfully causes hurt, inconvenience or damage.

(2) That class of wrongs that arises from the unreasonable, unwarrantable or unlawful use by a person of such person's own property, either real or personal, or from such person's own improper, indecent, unsightly or unlawful personal conduct, working an obstruction of or injury to the right of another or of the public, and producing material annoyance, inconvenience, discomfort or hurt to another person or to the general public.

(3) Anything which is injurious to health, or is indecent or offensive to the senses, or an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property or another.

(Code 1979, § 14-108; Ord. No. 3-20-84A, 4-3-1984)

Sec. 34-91. - Nuisance unlawful.

It shall be unlawful for any person to permit or maintain the existence of any nuisance on any property under such person's control.

(Code 1979, § 14-109; Ord. No. 3-20-84A, 4-3-1984)

Sec. 34-92. - Continuing offenses.

In all cases, the person whose duty it is to abate any nuisance shall be liable for separate and distinct offenses for each day the nuisance is allowed to remain after it has become such person's duty to abate it by notice of the enforcing official.

(Code 1979, § 14-110; Ord. No. 3-20-84A, 4-3-1984)

Sec. 34-93. - Responsibility for enforcement; reports.

(a) The chief of police, administrative official, director of public works, fire marshal, health officer and such other public employees as may be designated by the administrative official shall be responsible for reporting any such nuisance whether or not specifically recognized by ordinance.

(b) Such report shall be made to the administrative official or a representative designated by resolution of the city council, who is hereby authorized to abate any such nuisance found to exist in the city.

(Code 1979, § 14-111; Ord. No. 3-20-84A, 4-3-1984)

Sec. 34-94. - Owner's, etc., area of responsibility.

It shall be the responsibility of owners, agents, occupants and lessees to keep their property free of nuisances. Owners, agents, occupants and lessees whose properties face on municipal sidewalks and strips between streets and sidewalks shall be responsible for keeping those sidewalks and strips free of nuisances. Owners, agents, occupants and lessees whose properties face on municipal alleys shall be responsible for keeping the area from their property to the center line of the alley free of nuisances.

(Code 1979, § 14-112; Ord. No. 3-20-84A, 4-3-1984)

Sec. 34-95. - Notice to abate nuisance.

(a) Whenever in the opinion of the enforcing official a nuisance exists as defined in this Code or other applicable law or ordinance, such official shall order the owner, agent, occupant or lessee of the property on which the nuisance is located to abate the same. Abatement shall mean full and complete removal of any declared nuisance.

(b) The enforcing official shall give written notice to the owner, agent, occupant or lessee of the existence of the nuisance, shall describe the particulars which make it a nuisance, shall order the manner in which it shall be abated, and shall state the time within which the nuisance must be abated.

(c) Said notice shall be sent by certified mail to that person shown by the records of the tax assessor of the county to have been the person last assessed for payment of state, county and city ad valorem tax on the property where the nuisance is situated.

(d) Said notice shall also be posted in a conspicuous place on the property.

(e) Where service of said notice by certified mail has been attempted but the return receipt shows a failure of service, the notice shall be published once a week for four consecutive weeks in a newspaper of general circulation in the city.

(f) The notice shall require the owner, agent, occupant or lessee to complete the abatement of the nuisance within 60 days from the date of the notice; provided, however, the enforcing official may stipulate a different time, but in no case more than 120 days.

(g) The notice may also require the vacation of a building or structure forthwith and prohibit its occupation until the required repairs and improvements have been completed, inspected and approved by the enforcing official. In such cases, the enforcing official shall post at each entrance to the building or structure a sign stating: "THIS STRUCTURE IS UNSAFE. ITS USE OR OCCUPANCY HAS BEEN PROHIBITED BY THE CITY OF DALEVILLE," or words of similar import, which sign shall be signed and dated. Said sign shall remain until the required repairs and improvements have been made or the structure has been demolished and removed.

Said sign shall not be removed without permission of the enforcing official whose name is affixed thereon. No person shall enter the structure except for the purpose of making the required repairs or demolishing the structure.

(h) The notice shall state that if the nuisance is not abated within the stated time, the enforcing official may institute legal proceedings against the owner, agent, occupant or lessee for violation of this Code.

(Code 1979, § 14-113; Ord. No. 3-20-84A, 4-3-1984)

State Law reference— Authority to abate nuisance, Code of Ala. 1975, §§ 6-5-122 et seq., 11-47-117, 11-47-118; abatement by county health officer, Code of Ala. 1975, § 22-10-2.

Sec. 34-96. - Appeals from notice to abate.

Any person receiving notice of a nuisance and an order to abate the same from the enforcing official may appeal said order to the housing board of adjustment and such appeals must be written and filed with the board of adjustment within ten days of the date of such notice. No appeal filed later than ten days after the notice shall be considered unless the enforcing official consents. The appellant shall have the same right of appeal from the board's decision as provided in the International Residential Code.

(Code 1979, § 14-114; Ord. No. 3-20-84A, 4-3-1984)

Sec. 34-97. - Failure to comply with notice to abate.

(a) In case the owner, agent, occupant or lessee shall fail, neglect or refuse to comply with the notice to abate the nuisance, the enforcing official may proceed to prosecute said person for a violation of the provisions of this Code or other applicable ordinance.

(b) In case the owner, agent, occupant or lessee shall fail, neglect or refuse to comply with the notice to abate the nuisance, the enforcing official shall notify the city council of such fact. The city council shall hold a public hearing before authorizing the abatement of the nuisance by the enforcing official and also before levying an assessment on the property.

(c) Notice of the public hearing to determine whether the city council should order the enforcing official to abate the nuisance shall be given by causing a notice of such hearing to be sent by certified mail to the owner, agent, occupant or lessee at least ten days before the date of such hearing. Such notice shall also be published once in a newspaper of general circulation in the city at least five days prior to the hearing.

(d) After the public hearing, the city council may by resolution order the enforcing official to proceed with the work specified in such notice or may order such nuisance demolished or removed. If the owner, agent, occupant or lessee of the property shall

appear at the public hearing, no further notice of the order of the city council shall be required. If the owner, agent, occupant or lessee fails to appear, notice of the order of the city council shall be mailed to such person's last known address and shall be published once in a newspaper of general circulation in the city.

(e) Upon the expiration of ten days from the date of publication under subsection (d) of this section, or ten days from the date of the order if notice by publication is not required, the enforcing official or such official's designated representative or agent shall proceed to carry out the order of the city council.

(Code 1979, § 14-115; Ord. No. 3-20-84A, 4-3-1984)

Sec. 34-98. - Assessment of cost—Levy.

(a) Upon completion of the work ordered by the city council, the enforcing official shall compute the actual expense, including, but not limited to, total wages paid, value of the use of equipment, advertising expenses, postage, and materials purchased, which was incurred by the city as a result of such work. An itemized statement of such expenses shall be mailed to the last known address of the owner, agent, occupant or lessee of the property, whereupon the said owner, agent, occupant or lessee shall pay to the city the amount of expenses stated on said statement.

(b) In the event the owner, agent, occupant or lessee shall fail or refuse for a period of 30 days to pay off and discharge the expenses, the enforcing official shall report such failure to the city council at the next regular meeting following the expiration of that period.

(c) The city council shall hold a public hearing before causing the actual expense of such work to be levied as a special assessment against the property. Notice of such public hearing shall be published in a newspaper of general circulation in the city at least five days prior to the hearing. After the public hearing, the city council may by resolution assess all or part of such expenses against the property.

(d) Any assessment against property under this section shall not be final until ten days after adoption by the city council. Once the assessment has become final, the city clerk shall have such resolution recorded in the office of the judge of probate of the county.

(Code 1979, § 14-116; Ord. No. 3-20-84A, 4-3-1984)

Sec. 34-99. - Same—Collection; remedy of city.

(a) In the event the owner, agent, occupant or lessee shall fail or refuse to discharge the assessment after a period of 30 days from the date the assessment was made final, the city may commence an action in any court of competent jurisdiction to recover said expenses.

(b) In addition to remedies otherwise provided for herein, the enforcing official may cause an action to be instituted to enjoin or abate any nuisance.

(Code 1979, § 14-117; Ord. No. 3-20-84A, 4-3-1984)

Sec. 34-100. - Construction of article.

This article shall be construed to contain all power granted to municipalities under Code of Ala. 1975, §§ 11-40-10, 11-47-117, 11-47-131 and 11-47-140, as amended, providing for controlling nuisances, sanitation and good public health and safety and conditions.

(Code 1979, § 14-118; Ord. No. 3-20-84A, 4-3-1984)

Secs. 34-101—34-128. - Reserved.

ARTICLE V. - ALARM SYSTEMS

Sec. 34-129. - Definitions.

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

Act of God means an unusual, extraordinary, sudden and unexpected manifestation of the forces of nature which cannot be prevented by reasonable human care, skill or foresight. Such manifestations include hurricanes, tornadoes, earthquakes or other violent conditions.

Alarm system means any mechanical or electrical device which is designed for the detection of a fire or an unauthorized entry into a building, structure or facility, or when emergency assistance is needed, and which emits a sound or transmits a signal to or activates a sensor in an agency of the city prompting an emergency response.

False alarm means an alarm signal necessitating response by the police or fire department or other emergency personnel of the city wherein an emergency situation does not exist.

(Ord. No. 05-19-92, § 1, 6-16-1992)

Sec. 34-130. - Notice of person to call when system is activated.

The permittee shall conspicuously place on the premises where the alarm system is situated a notice or system for notifying the persons to call when the alarm system has been activated.

(Ord. No. 05-19-92, § 3, 6-16-1992)

Sec. 34-131. - Deactivation of system.

The permittee will inactivate or cause to inactivate the audible system within 30 minutes after notification of its activation.

(Ord. No. 05-19-92, § 4, 6-16-1992)

Sec. 34-132. - Testing, installation which may activate system.

Any installation or testing of the equipment that may possibly activate an emergency response from the city must be approved in advance by the chief of police, or his designee; otherwise it shall constitute a false alarm.

(Ord. No. 05-19-92, § 5, 6-16-1992)

Sec. 34-133. - False alarms.

A permittee will be subject to the following false alarm fees and other penalties related thereto:

(1) Each false alarm in excess of two within a 30-day period of time will be subject to the following fee schedule, excluding those caused by an act of God, as determined by the police chief:

   a. Third false alarm $10.00

   b. Fourth false alarm 15.00

   c. Fifth and subsequent alarms, each incident 25.00

(2) The chief of police shall have the prerogative to temporarily disrupt service for a specified period for any alarm system faults or inadequacies to be corrected, or to discontinue such service permanently upon due notice to the permittee by first class mail or delivery in person by the city.

(Ord. No. 05-19-92, § 6, 6-16-1992)

Sec. 34-134. - Approval of alarm system.

No person or firm shall install an alarm system within the city unless it is approved by the Underwriters Laboratories or American National Standards Institute.

(Ord. No. 05-19-92, § 7, 6-16-1992)

Secs. 34-135—34-151. - Reserved.

ARTICLE VI. - PARADES AND PERMIT ISSUANCE

Sec. 34-152. - Definition of parade.

The term "parade" shall mean any march, procession, demonstration, motorcade or promenade consisting of persons, animals or vehicles, floats, or a combination thereof, having a common purpose, design, destination or goal, upon any street, park or public place in the city, which parade, march, procession, demonstration, motorcade or promenade does not comply with normal and usual traffic regulation and control.

Sec. 34-153. - Permit.

No person shall engage in, participate in, aid, form or start any parade unless a parade permit shall have been obtained from the director of public safety under the provisions of this article.

Sec. 34-154. - Application.

A person seeking the issuance of a permit under this article shall file an application in person on forms provided between the hours of 9:00 a.m. and 5:00 p.m. on Mondays through Fridays, legal holidays excepted, with the director of public safety. An application for a permit shall be filed with the director of public safety not less than ten days (Saturdays, Sundays and legal holidays excluded), nor more than 45 days, before the date upon which the parade is proposed to be conducted.

Sec. 34-155. - Application contents.

The application for a parade permit shall set forth the following information:

(1) The name, address and telephone number of the person seeking to conduct the parade.

(2) If the parade is proposed to be conducted for or on behalf of an organization, the address and telephone number of the headquarters of the organization, and of the authorized director or manager with responsibility for the parade with the organization.

(3) The proposed date for conduct of the parade.

(4) The route to be traveled, the starting point and the termination point.

(5) The approximate number of persons who, and animals and vehicles which, will constitute the parade; the types of animals, and description of all vehicles, including a description of any sound amplification equipment or be used.

(6) The hours when the parade will start and terminate.

(7) The location by street names of any assembly areas for the parade.

(8) The time at which units of the parade will begin to assemble at the assembly areas.

(9) If the parade is designed to be held by, and on behalf of or for, any person other than the applicant, the applicant shall file with the chief of police a communication in writing from this person authorizing the applicant to apply for the permit on his behalf.

(10) Any additional information which the chief of police shall find reasonably necessary to a fair determination regarding issuance of a permit.

Sec. 34-156. - Issuance of permit.

The director of public safety shall issue a permit as provided for under this article when, from a consideration of the application and from any other information obtained by the chief of police, he finds that:

(1) The conduct of the parade will not substantially interrupt the safe and orderly movement of other traffic contiguous to its route.

(2) The conduct of the parade will not require the diversion of so many police officers to properly police the line of movement and contiguous areas as to unreasonably diminish normal police protection of the city.

(3) The conduct of the parade will not require the diversion of so many emergency vehicles and ambulances so as to unreasonably diminish normal service to the city.

(4) The concentration of persons, animals and vehicles at assembly points of the parade will not unduly interfere with proper fire and police protection of, or ambulance service to, areas contiguous to the assembly areas.

(5) The conduct of the parade will not unduly interfere with the movement of firefighting equipment en route to a fire.

(6) The parade is scheduled to move from its point of origin to its point of termination expeditiously and without unreasonable delays.

(7) The conduct of the parade will not interfere or conflict with any other parade for which a permit has been issued.

(8) No other parade permit has been granted, or is under consideration, for any portion of the time sought by the applicant, nor shall a permit be granted for a parade which will commence after sunset.

(9) The parade is not to be held for the sole purpose of advertising any product or goods and is not designed to be held purely for private profit.

Sec. 34-157. - Parade permit contents.

Each parade permit shall state the following information:

(1) The starting and conclusion times for the parade.

(2) What portions of the streets to be traversed may be occupied by the parade.

(3) The maximum length of the parade in miles and fractions thereof.

(4) The assembly and disbanding areas, and times for each.

(5) That the amplification of sound permitted to be emitted from amplification equipment be fixed and not variable.

(6) That the permit holder shall advise all parade participants, either orally or in writing, of the terms and conditions of the permit, prior to commencement of the parade.

(7) Any other information that the director of public safety shall find reasonably necessary for the protection of persons or property.

Sec. 34-158. - Alternate permit.

The director of public safety, in denying an application for a parade permit, is empowered to authorize the conduct of a parade on a date, at a time or over a route different from that named by the applicant. An applicant desiring to accept an alternate permit shall file a written notice of acceptance with the director of public safety at least ten days prior to the alternate commencement date. An alternate parade permit shall conform to the requirement of, and shall have the effect of, a parade permit under this article.

Sec. 34-159. - Compliance by permit holder.

A permit holder shall comply with all permit directions and conditions, all application commitments and with all applicable laws and ordinances. The parade chairperson or other person heading or leading the parade shall carry the parade permit on his person during the parade.

Sec. 34-160. - Appeal procedure.

Any applicant aggrieved by the denial of a parade application, or of a condition that he deems unreasonable, shall have the right to appeal to the city council. Notice of appeal shall be filed by the applicant in writing with the city clerk within two days of the denial or notice of the condition; Saturdays, Sundays, and legal holidays are excluded. The city clerk shall place the appeal on the agenda for the next regular meeting of the council, provided there is a meeting scheduled within ten days of the filing of the notice of appeal. If no regularly scheduled meeting is scheduled within ten days after the filing of the notice of appeal, the city clerk shall call a special meeting to be held within ten days of the filing of the notice of appeal. The applicant may agree, in writing, to an extension of the time for holding this meeting. The city council shall consider the appeal and may reverse, affirm or modify in any regard the determination of the director of public safety.

Sec. 34-161. - Revocation of permit.

The director of public safety shall have the authority to revoke a permit issued by him, upon violation of standards for issuance of said permit as set forth, or when, by reason of disaster, emergency, public calamity, riot, or other civil or military disturbance, the safety of the public or property requires revocation. Notice of the revocation shall be delivered in writing to the permit holder in person or by certified mail.

Sec. 34-162. - Public conduct during parades.

(a) No person shall unreasonably hamper, obstruct or impede, or interfere with, any parade or public assembly or with any person, vehicle or animal participating in a parade or public assembly.

(b) No driver of a vehicle shall drive between the vehicles or persons comprising a parade when the vehicles or persons are in motion and are conspicuously designated as a parade, unless specifically authorized to do so by a law enforcement officer.

(c) The chief of police shall have the authority, when reasonably necessary, to prohibit or restrict the parking of vehicles along a highway, street or road, or part thereof, constituting a part of the parade route. The chief of police shall post "no parking" signs, and it shall be unlawful for any person to park or leave unattended any vehicle in violation thereof. No person shall be liable for parking on a street where "no parking" signs are not posted pursuant to this section.

Sec. 34-163. - Obstructing streets by assembling.

Any person who shall assemble a crowd or hold a public meeting in any street without a parade permit, as provided in this article, shall, upon conviction, be punished as set forth in section 1-8.

Chapter 36 - PERSONNEL

ARTICLE I. - IN GENERAL

Sec. 36-1. - Personnel officer—Designated; staff authorized.

The city clerk is hereby designated to perform the duties of personnel officer. He may have other staff members designated to assist him or may designate any member of his staff to assist him.

(Code 1979, § 15-1; Ord. No. 5-3-77B, § 3, 5-17-1977)

Sec. 36-2. - Same—Duties.

The personnel officer shall be responsible for the personnel administration system and shall direct all of its administrative and technical activities. His duties shall include, but not be limited to, the following:

(1) Encourage and exercise leadership in the development of effective personnel administration practices within the municipality;

(2) Investigate from time to time the operation and effect of the system and the policies made thereunder, and report his findings and recommendations to the mayor and governing body;

(3) Establish and maintain comprehensive personnel records for each employee in the municipality's service, including for each employee his classification, pay rate, date of employment and other relevant data;

(4) Advise the mayor and governing body on matters affecting the most effective use of manpower resources; and

(5) Make an annual report to the mayor and governing body regarding the status of the personnel administration program.

(Code 1979, § 15-2; Ord. No. 5-3-77B, § 4, 5-17-1977)

Sec. 36-3. - Personnel system established; merit principles.

There is hereby established a personnel system for the city. Such system shall be established on the following merit principles:

(1) Recruiting, selecting and advancing employees on the basis of their relative ability, knowledge, and skills, including open competition of qualified applicants for initial appointment;

(2) Establishing pay rates consistent with the principle of providing comparable pay for comparable work;

(3) Training employees, as needed to ensure high quality performance;

(4) Retaining employees on the basis of the adequacy of their performance, correcting inadequate performance and separating employees whose inadequate performance cannot be corrected; and

(5) Ensuring fair treatment of applicants and employees in all aspects of personnel administration without regard to political affiliation, race, color, creed, national origin or ancestry, sex or religion.

(Code 1979, § 15-3; Ord. No. 5-3-77B, § 1, 5-17-1977)

Sec. 36-4. - Classified service—Composition; exceptions.

(a) The classified service shall include all employees serving in continuing positions in the municipality, except the following:

(1) Members of the municipal governing body and other elected officials.

(2) Members of appointed boards and commissions, municipal judges and municipal attorneys.

(3) Persons employed to work less than full-time.

(4) Administrative officials appointed by the mayor and/or governing body, including, but not limited to, all department heads, the fire chief and the police chief.

(5) Volunteer personnel who receive no regular compensation from the municipality.

(6) Temporary positions scheduled for less than one year's duration, unless specifically covered by the action of the mayor and council.

(7) Persons performing work under contract for the municipality who are not carried on the payroll as employees.

(b) Nothing herein shall be construed as precluding the mayor and/or governing body from filling any excepted positions in the manner in which positions in the classified service are filled.

(Code 1979, § 15-4; Ord. No. 5-3-77B, § 2, 5-17-1977)

Sec. 36-5. - Same—Classification plan adopted; conditions.

The classification plan on file in the city clerk's office is hereby adopted for the employees of the city, with the following conditions:

(1) The appropriate class titles are hereby assigned to the existing employees as shown on the list.

(2) Any new employee shall be assigned a class title as best fits the position to which he is assigned by the appointing authority.

(3) The list of class (job) titles are the official titles adopted by the city and may be changed, added to, or deleted from, only by the governing body through an amendment to this section.

(4) A job description shall be prepared for each job title as the position is filled. This description shall include the following:

a. A definition of the job;

b. Examples of work performed (duties);

c. Required knowledge, skills and abilities;

d. Qualifications; and

e. Any necessary special requirements.

(5) The effective date of this section was August 16, 1977.

(Code 1979, § 15-5; Res. No. 8-16-77A, 8-16-1977)

Sec. 36-6. - Personnel rules and regulations—Preparation; policies.

The personnel officer shall be responsible for promulgation of personnel rules and regulations for the municipality. Such rules shall become effective upon passage of an appropriate ordinance by the governing body. The policies shall provide for:

(1) The classification of all positions, based on duties, authority and responsibility of each position, with adequate provisions for reclassification of any positions warranted by changed circumstances;

(2) A pay plan for classified service positions;

(3) Announcement of employee vacancies and acceptance of application for employment;

(4) Preparation and administration of examinations, if appropriate;

(5) Establishment and use of eligibility lists, if appropriate;

(6) Establishment of promotion policies and procedures;

(7) Transfer, promotion and reinstatement of employees;

(8) Performance evaluations of employees, including those on probationary periods;

(9) Separation of employees from the classified service by resignation, suspension, dismissal, layoff, or incapacity to perform required duties;

(10) Grievance and appeal procedures;

(11) Establishment of hours of work, holidays, vacations, leave regulations and procedures;

(12) Outside employment of municipal employees;

(13) Establishment of a probation period for all employees prior to final appointment;

(14) Development of employee morale, safety and training programs; and

(15) Such other matters as may be necessary to carry out the intent and purpose of the system.

(Code 1979, § 15-6; Ord. No. 5-3-77B, § 5, 5-17-1977)

Sec. 36-7. - Same—Adoption.

The personnel rules and regulations which have been printed in booklet form and are on file in the city clerk's office are hereby adopted as the rules and regulations governing personnel actions of the city.

(Code 1979, § 15-7; Ord. No. 6-7-77, § 1, 6-7-1977)

Sec. 36-8. - Pay plan adopted; conditions.

The pay plan on file in the city clerk's office is hereby adopted for the employees of the city.

(Code 1979, § 15-8; Res. No. 8-16-77B, 9-6-1977; Ord. No. 6-18-85, 7-2-1985; Ord. No. 2-4-86, 2-18-1986)

Sec. 36-9. - Payroll verification.

The personnel officer or his authorized agent shall be responsible for the certification of the payroll vouchers that the persons named therein have been appointed and employed in accordance with the provisions of this chapter and the policies thereunder. The disbursing officer of the municipality shall not make or approve or take part in making or approving any payment for the personal service to any person holding a position in the municipality, unless said payroll voucher or account of such pay bears the certification of the personnel officer or his authorized agent.

(Code 1979, § 15-9; Ord. No. 5-3-77B, § 6, 5-17-1977)

Sec. 36-10. - Affirmative action plan.

The affirmative action plan, on file in the city clerk's office, is adopted as the official policy of the city.

(Code 1979, § 15-10; Res. No. 2-15-77B, 3-1-1977)

Sec. 36-11. - Workmen's compensation.

The city, commencing on March 1, 1977, shall self insure its workmen's compensation obligations which are imposed on the city by the state workmen's compensation law.

(Code 1979, § 15-11; Res. No. 1-4-77A, § 1, 1-18-1977)

Editor's note— As to agreement for handling of claims, see Res. No. 1-4-77B, adopted Jan. 18, 1977.

Sec. 36-12. - Unemployment compensation—Financing method for city.

The Alabama Unemployment Compensation Law (Code of Ala. 1975, § 25-4-8) requires coverage of political subdivisions and their instrumentalities under said law, and said law provides for an option by such entities to finance benefit costs of former employees between either the contributory (tax rate) method or making payments in lieu of contributions (reimbursing system), and this body, namely the city council as governing body of the city, desires to make its option known; now therefore this body does record its option to choose the reimbursement method to finance such benefit costs, effective January 1, 1978, and further this body does designate and authorize the mayor of the city to sign all documents pertaining to the election of such option and to furnish any and all information and reports as are required for the proper administration of such option and other requirements of the state department of industrial relations in its administration of the Alabama Unemployment Compensation Law.

(Code 1979, § 15-13; Res. No. 12-6-77, 12-20-1977)

Sec. 36-13. - Same—Financing method for water works and sewer board.

The Alabama Unemployment Compensation Law (Code of Ala. 1975, § 25-4-8) requires coverage of political subdivisions and their instrumentalities under said law, and said law provides for an option by such entities to finance benefit costs of former employees between either the contributory (tax rate) methods or making payments in lieu of contributions (reimbursing system), and this body, namely, the water works and sewer board of the city, desires to make its option known; now therefore, this body does record its option to choose the contributory method to finance such benefit costs, effective January 1, 1978, and further this body does designate and authorize the superintendent to sign all documents pertaining to the election of such option and to furnish all information and reports as are required for the proper administration of such option and other requirements of the Alabama Unemployment Compensation Law.

(Code 1979, § 15-14; Res. No. 12-13-77, 12-13-1977)

Secs. 36-14—36-44. - Reserved.

ARTICLE II. - RETIREMENT

Sec. 36-45. - State retirement system—Adopted.

The Employee's Retirement System of Alabama is hereby adopted as the official retirement plan for all regular, full-time, budgeted employees of the city, who are otherwise eligible to participate in said system.

(Code 1979, § 15-20; Res. No. 8-2-71, 8-2-1971)

Sec. 36-46. - Same—Scope.

Upon approval of the Employee's Retirement System of Alabama, to be effective October 1, 1971, the following provisions are included:

(1) All fully budgeted positions on a normal full working time basis shall be eligible for participation.

(2) The city agrees to make all prior contributions at the rate as determined by the actuary of the Employee's Retirement System of Alabama, with state prior service rate to be applicable until such determination or prior service rate is made.

(3) The city agrees to make contributions at the normal rate for current service, which is the same as the state normal rate.

(4) The city agrees to pay for the initial cost of the preliminary valuation by the actuary to determine the accrued liability on account of prior service and to pay the cost of the valuation after one full year of coverage and any other cost for special services of the actuary plus the regular administrative cost of operation of the system.

(5) The city agrees to submit all information as required by the Employee's Retirement System of Alabama relative to its employees.

(Code 1979, § 15-21; Res. No. 8-2-71, 8-2-1971)

Sec. 36-47. - Social security—Determination of coverage.

It is hereby declared to be the policy and purpose of the city to extend, effective as of October 1, 1958, to the employees and officials thereof, not excluded by law or by ordinance, and whether employed in connection with a governmental or proprietary function, the benefits of the system of old age and survivor's insurance as authorized by

the Federal Social Security Act, and amendments thereto, including Public Law 734, 81st Congress. In pursuance of said policy, and for that purpose, the city shall take such action as may be required by applicable state or federal laws or regulations.

(Code 1979, § 15-22; Ord. No. 4, § 1, 4-27-1959)

State Law reference— Authority, Code of Ala. 1975, § 36-28-5.

Sec. 36-48. - Same—Execution of agreements.

(a) The mayor is hereby authorized and directed to execute all necessary agreements and amendments thereto with the state agency authorized to act to secure coverage of employees and officials as provided in section 36-47.

(b) There is hereby excluded herefrom any authority to make any agreement with respect to any position or any employee or official now covered, or authorized to be covered, by any other ordinance or law creating any retirement system for any employee or official of the said city.

(Code 1979, § 15-23; Ord. No. 4, §§ 2, 6, 4-27-1959)

Sec. 36-49. - Same—Withholdings and contributions.

(a) Withholdings from salaries or wages of employees and officials for the purpose provided in section 36-47 are hereby authorized to be made in the amounts and at such times as may be required by applicable state or federal laws or regulations, and shall be paid over to the state or federal agency designated by said laws or regulations to receive such amounts.

(b) There shall be appropriated from available funds such amounts at such times as may be required by applicable state or federal laws or regulations for employer's contributions, which shall be paid over to the state agency designated by such laws or regulations to receive same.

(Code 1979, § 15-24; Ord. No. 4, §§ 3, 4, 4-27-1959)

Sec. 36-50. - Same—Records and reports.

The city shall keep such records and make such reports as may be required by applicable state or federal laws or regulations.

(Code 1979, § 15-25; Ord. No. 4, § 5, 4-27-1959)

Sec. 36-51. - Same—Adoption of law; excluded officers and employees.

The city does hereby adopt the terms, conditions, requirements, reservations, benefits, privileges, and other conditions thereunto appertaining, of Title II of the Social Security Act as amended by Public Law No. 734, 81st Congress, for and on behalf of all the officers and employees thereof, save and except any of such officers and employees now covered or authorized to be covered by any retirement system provided by law, and further excepting any official or employee who occupies any position, office, or employment not authorized to be covered by applicable state or federal laws or regulations; and further excluding emergency employees; part-time employees; officials or employees whose compensation is on a fee basis; agricultural labor, if such work would be excluded if performed for a private employer; and services performed by a student enrolled and regularly attending classes at a school or institution, and would be excluded if performed for a private employer.

(Code 1979, § 15-26; Ord. No. 4, § 7, 4-27-1959)

Secs. 36-52—36-75. - Reserved.

ARTICLE III. - POLICE RESERVE FORCE

Sec. 36-76. - Established; composition, qualifications, terms.

An active police reserve force, hereinafter called "reserve," is hereby established within the police department of the city. The reserve shall consist of as many members as the chief of police authorizes, each of whom shall be in good physical condition, of good character and not less than 19 years of age and meet or exceed the minimum qualifications required of regular police officers by state law. Appointments to the reserve shall be made by the police chief with the approval of the mayor. Such appointments shall be for two year terms, except that any member of the reserve may be discharged without cause, and without hearing, by the chief of police with the approval of the mayor.

(Code 1979, § 15-30)

State Law reference— Establishment of police force, Code of Ala. 1975, § 11-43-55; peace officers standards, Code of Ala. 1975, § 36-21-46.

Sec. 36-77. - Oath of office; rules and regulations.

All members of the reserve shall take and subscribe to the same oath required of regular police officers of the city upon accepting their appointment and shall also abide by the same rules and regulations as regular police officers.

(Code 1979, § 15-31)

Sec. 36-78. - Officer in charge; promulgation of rules and regulations.

The reserve shall function under the immediate direction of the chief of police or designated assistant, who shall provide for its organization and training. The chief of police is hereby authorized to establish rules and regulations as may be necessary for the efficient operation of the reserve.

(Code 1979, § 15-32)

Sec. 36-79. - Identification cards, badges and uniforms.

Each member of the reserve shall be issued an identification card and badge, and the same uniform worn by regular police officers. The uniform shall be worn while on duty in the same manner prescribed for regular officers. Uniforms shall not be worn or badges, weapons, ammunition or I.D. cards displayed while not on duty.

(Code 1979, § 15-33)

Sec. 36-80. - Duties, rights, privileges and authority.

Reserve members shall perform the same general duties as regular police officers, provided they are under a regular police officer's immediate control and supervision. Reserve members shall not make inquiries, conduct investigations, make arrests, issue summons, or otherwise perform the duties of a regular police officer when not on duty and specifically directed to do so by a regular police officer of the city. A reserve member is not entitled to act as an agent, servant, or employee of the city when not on duty and not in full uniform. While on duty and in full uniform, reserve members shall have the right to carry a concealed gun about their persons.

(Code 1979, § 15-34)

Sec. 36-81. - Minimum performance.

Members of the reserve shall be required to complete a minimum of 16 hours duty per month, attend regular training sessions, and meet minimum requirements as required by the reserve rules and regulations.

(Code 1979, § 15-35)

Sec. 36-82. - False personation.

It shall be a misdemeanor for any person not a member of the reserve to wear, carry, or display a reserve identification card, badge, or uniform, or in any way to represent himself to be connected with the reserve.

(Code 1979, § 15-36)

Chapter 38 - PLANNING AND CONSERVATION[1]

Footnotes:

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State Law reference— Creation, composition, and powers of municipal planning commission, Code of Ala. 1975, §§ 11-52-2—11-52-7; zoning commission generally, Code of Ala. 1975, § 11-52-79.

Sec. 38-1. - City planning board—Created, membership.

Pursuant to Code of Ala. 1975, § 11-52-1 et seq., there is hereby created a planning commission for the city, to consist of nine members, to be appointed for the terms and in the manner set forth in said statute. The city planning commission is hereby appointed as the zoning board of the city, and shall exercise all of the powers and duties of a zoning board pursuant to the authority provided in Code of Ala. 1975, § 11-52-79.

(Code 1979, § 16-1; Ord. No. 2-15-77D, § 1, 3-22-1977; Ord. No. 2-6-96, 2-20-1996)

Sec. 38-2. - Same—Master plan.

The planning commission is authorized and empowered to make and adopt a master plan for the physical development of the city, including any areas outside its boundaries which, in the commission's judgment, bear relation to the planning of such municipality. Such plan, with the accompanying maps, plats, charts and descriptive mater, shall show the commission's recommendations for the development of said territory including:

(1) The general location, character, and extent of streets, viaducts, subways, bridges, waterways, waterfronts, boulevards, parkways, playgrounds, squares, parkways, aviation fields, and other public ways, grounds and open spaces;

(2) The general location of public buildings and other public property, and the general location and extent of public utilities and terminals, whether publicly or privately owned or operated, for water, light, sanitation, transportation, communication, power, and other purposes; and

(3) The removal, relocation, widening, narrowing, vacating, abandonment, change of use or extension of any of the foregoing ways, grounds, open spaces, buildings, property, utilities, or terminals, as well as a zoning plan for the control of the height, area, bulk, location and use of the buildings and premises.

(Code 1979, § 16-2; Ord. No. 2-15-77D, § 2, 3-22-1977)

Sec. 38-3. - Same—Progression of planning; powers and authority.

As the work of making the whole master plan progresses, said commission may from time to time adopt and publish a part, or parts thereof, any such part to cover one or more major sections or divisions of the municipality, or one or more of the aforesaid or other functional matters to be included in the said plan. The planning commission is hereby authorized and empowered to exercise all powers and do all things authorized to such commission by said statute as it may deem necessary for its work.

(Code 1979, § 16-3; Ord. No. 2-15-77D, § 3, 3-22-1977)

Sec. 38-4. - Same—Powers as to subdivisions.

The planning commission is also authorized and empowered to exercise all powers and to do all things authorized to such commission by the statute and to exercise such control as is authorized under the statute with reference to subdivision of unimproved property within five miles of the corporate limits of the city.

(Code 1979, § 16-4; Ord. No. 2-15-77D, § 4, 3-22-1977)

Chapter 40 - STREETS, SIDEWALKS AND OTHER PUBLIC WAYS[1]

Footnotes:

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State Law reference— Authority of city with regard to public improvements, including streets, Code of Ala. 1975, §§ 11-48-1 et seq., 11-49-1 et seq.; authority of city with regard to use of public streets for construction or operation of public utility or private enterprise, Code of Ala. 1975, § 11-49-1.

Sec. 40-1. - Adoption of state standards for accommodating utilities.

The city hereby formally adopts the State of Alabama Department of Transportation Utilities Manual as standards (as written and future amendments thereto) for use by the city for accommodating utilities on roads and streets under the jurisdiction of the city on those roads and streets which have or will involve the expenditure of state or federal highway funds.

(Code 1979, § 17-1; Ord. No. 9-20-71, 10-4-1971)

Sec. 40-2. - Depositing injurious articles.

It shall be unlawful to throw or deposit any glass, tacks, nails or other similar articles on any street, alley or sidewalk or other public place in the city.

(Code 1979, § 17-2; Ord. No. 10-17-66B, § 6, 10-28-1966)

State Law reference— Similar provision, Code of Ala. 1975, § 23-5-4.

Chapter 42 - TATTOO PARLORS[1]

Footnotes:

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State Law reference— Regulation of tattooing, branding, and body piercing, Code of Ala. 1975, § 22-17A-1 et seq.; rules for body art practice and facilities, Ala. Admin. Code, 420-3-23-.01 et seq.

Sec. 42-1. - Definitions.

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

Tattoo means to mark or color the skin by pricking in coloring matter so as to form indelible marks or figures or by the production of scars.

Tattoo artist means any person who actually performs the work of tattooing.

Tattoo establishment means any room or space where tattooing is practiced or where the business of tattooing is conducted or any part thereof.

Tattoo operator means any person who controls, operates, conducts or manages any tattoo establishment, whether actually performing the work of tattooing or not.

(Code 1979, § 17.5-1; Ord. No. 1-8-85A, § 1, 1-8-1985)

Sec. 42-2. - License from city.

(a) No person shall operate a tattoo establishment or engage in the practice or business of tattooing as a tattoo operator or as a tattoo artist unless such person shall first secure a license from the state department of health, and then from the city clerk. Applications for such license shall be made in writing on a form prescribed by the city clerk, wherein the applicant shall agree to conform to all ordinances, rules and regulations governing such places now in effect or as subsequently enacted, and to permit such examination and inspection as may be deemed necessary by the public safety director. Before such permit is granted, it shall be the duty of the public safety director or appointed official to cause an inspection to be made of the premises or tattoo establishment in which the business is to be conducted and to refuse said permit if the condition of the premises, its equipment, or the health of the applicant shall not conform to the requirements of this chapter; but if the same do conform to the requirements of this chapter, the city clerk shall issue the license requested. It shall be the further duty of the public safety director or appointed official to cause inspections to be made from time to time of all tattoo establishments and requirements thereof, and if said place of business is not maintained, conducted or operated in conformity with the requirements of this chapter, as now enacted or as

subsequently amended, then the city clerk may suspend the permit or the operator or artist until said tattoo establishment and the operation thereof is made to conform to the requirements of this chapter.

(b) All licenses issued pursuant to this chapter shall, unless sooner revoked as hereinafter set forth, expire on September 30 following their date of issue. Application for the renewal of licenses shall be made on or before September 1 following their date of issue and the requirements for the renewal thereof shall be the same as for new permits as set forth in this chapter.

(c) All permits granted shall be issued in the name of the individual person applying therefor, shall give the location of the tattoo establishment where said applicant will operate, and shall not be transferable.

(d) Each tattoo artist, other than the tattoo operator who performs the work of tattooing at the tattoo establishment, shall obtain a tattoo artist permit before performing any tattoo work. The permit may be obtained from the city clerk.

(Code 1979, § 17.5-2; Ord. No. 1-8-85A, § 2, 1-8-1985)

Sec. 42-3. - Penalties.

Any person who shall conduct a tattoo establishment or engage in business as a tattoo operator or tattoo artist without first securing a license therefor, or when such permit previously issued has been revoked or suspended, shall, upon conviction thereof, be fined not less than $50.00 nor more than $500.00, and each day's operation shall constitute a separate offense. A violation of any of the provisions of this chapter by any person shall constitute a misdemeanor.

(Code 1979, § 17.5-6; Ord. No. 1-8-85A, § 6, 1-8-1985)

Sec. 42-4. - Application for license.

Applicants for license under this chapter shall file with the city license and revenue officer a sworn application in writing, in duplicate, on a form to be furnished by the city license and revenue officer, which shall give the following information:

(1) Name and description of the applicant.

(2) Date of birth and driver's license number of the applicant.

(3) Full local address of the applicant, and the length of time the applicant has resided within the city.

(4) If employed, the name and address of the employer, together with credentials establishing the relationship.

(5) The length of time for which the right to do tattooing is desired and the location where such is to be done.

(6) A photograph of the applicant, taken within 60 days immediately prior to the date of filing the application, which picture shall be two inches by two inches, showing the head and shoulders of the applicant in a clear and distinguishing manner.

(7) The fingerprints of the applicant, and the names of at least two reliable property owners of the county who will certify as to the applicant's good character and business respectability or, in lieu of the names of such references, such other available evidence as to the good character and business responsibility of the applicant, as will enable an investigator to properly evaluate such character and business responsibility.

(8) A statement as to whether or not the applicant has been convicted of any crime, misdemeanor or violation of any municipal criminal ordinance, in any state, the nature of the offense and the punishment or penalty assessed therefor.

(Code 1979, § 17.5-7; Ord. No. 1-8-85A, § 7, 1-8-1985)

Sec. 42-5. - Investigation fee.

At the time of filing the application for the permit, a fee of $10.00 shall be paid to the city license and revenue officer to cover the cost of an investigation of the facts stated therein.

(Code 1979, § 17.5-8; Ord. No. 1-8-85A, § 8, 1-8-1985)

Sec. 42-6. - License fee.

The cost for a license will be $300.00.

(Code 1979, § 17.5-9; Ord. No. 1-8-85A, § 11, 1-8-1985)

Chapter 44 - TELECOMMUNICATIONS

ARTICLE I. - IN GENERAL

Secs. 44-1—44-18. - Reserved.

ARTICLE II. - WIRELESS TELECOMMUNICATIONS TOWERS AND FACILITIES

Sec. 44-19. - Purpose and legislative intent.

The Telecommunications Act of 1996 affirmed the city's authority concerning the placement, construction and modification of wireless telecommunications facilities. The city council finds that wireless telecommunications facilities may pose a unique hazard to the health, safety, public welfare and environment of the city and its inhabitants. The city also recognizes that facilitating the development of wireless service technology can be an economic development asset to the city and of significant benefit to the city and its residents. In order to ensure that the placement, construction or modification of wireless telecommunications facilities is consistent with the city's land use policies, the city is adopting a single, comprehensive, wireless telecommunications facilities application and permit process. The intent of this article is to minimize the negative impact of wireless telecommunications facilities, establish a fair and efficient process for review and approval of applications, ensure an integrated, comprehensive review of environmental impacts of such facilities, and protect the health, safety and welfare of the city.

(Ord. No. 5-20-14, § 1, 5-20-2014)

Sec. 44-20. - Title.

This article may be known and cited as the "Wireless Telecommunications Facilities Siting Ordinance for the City of Daleville."

(Ord. No. 5-20-14, § 2, 5-20-2014)

Sec. 44-21. - Severability.

(a) If any word, phrase, sentence, part, section, subsection, or other portion of this article or any application thereof to any person or circumstance is declared void, unconstitutional, or invalid for any reason, then such word, phrase, sentence, part, section, subsection, or other portion, or the proscribed application thereof, shall be severable, and the remaining provisions of this article, and all applications thereof, not having been declared void, unconstitutional, or invalid, shall remain in full force and effect.

(b) Any special use permit issued under this article shall be comprehensive and not severable. If part of a permit is deemed or ruled to be invalid or unenforceable in any material respect, by a competent authority, or is overturned by a competent authority, the permit shall be void in total, upon determination by the city council.

(Ord. No. 5-20-14, § 3, 5-20-2014)

Sec. 44-22. - Definitions.

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

Accessory facility or structure means an accessory facility or structure serving or being used in conjunction with wireless telecommunications facilities, and located on the same property or lot as the wireless telecommunications facilities, including, but not limited to, utility or transmission equipment storage sheds or cabinets.

Applicant means any person submitting an application to the city for a special use permit for wireless telecommunications facilities.

Application means the form approved by the council, together with all necessary and appropriate documentation that an applicant submits in order to receive a special use permit for wireless telecommunications facilities.

Antenna means a system of electrical conductors that transmit or receive electromagnetic waves or radio frequency signals. Such waves shall include, but not be limited to, radio, television, cellular, paging, personal telecommunications services (PCS), and microwave telecommunications.

Co-location means the use of the same telecommunications tower or structure to carry two or more antennas for the provision of wireless services by two or more persons or entities.

Commercial impracticability or *commercially impracticable* shall have the meaning in this article and any special use permit granted hereunder as is defined and applied under the United States Uniform Commercial Code (UCC).

Completed application means an application that contains all information and/or data necessary to enable the council to evaluate the merits of the application, and to make an informed decision with respect to the effect and impact of wireless telecommunications facilities on the city in the context of the permitted land use for the particular location requested.

Direct to home satellite services or *direct broadcast service* or *DBS* means only programming transmitted or broadcast by satellite directly to subscribers' premises without the use of ground receiving equipment, except at the subscribers' premises or in the uplink process to the satellite.

EPA means state and/or federal environmental protection agencies or its duly assigned successor agency.

FAA means the Federal Aviation Administration, or its duly designated and authorized successor agency.

FCC means the Federal Communications Commission, or its duly designated and authorized successor agency.

Freestanding tower means a tower that is not supported by guy wires and ground anchors or other means of attached or external support.

Height means, when referring to a tower or structure, the distance measured from the pre-existing grade level to the highest point on the tower or structure, even if said highest point is an antenna.

NIER means non-ionizing electromagnetic radiation.

Person means any individual, corporation, estate, trust, partnership, joint stock company, association of two or more persons having a joint common interest, or any other entity.

Personal wireless facility. See *Wireless telecommunications facilities.*

Personal wireless services or *PWS* or *personal telecommunications service* or *PCS* shall have the same meaning as defined and used in the 1996 Telecommunications Act.

Telecommunication site. See *Wireless telecommunications facilities.*

Special use permit means the official document or permit by which an applicant is allowed to construct and use wireless telecommunications facilities as granted or issued by the city.

Telecommunications means the transmission and reception of audio, video, data, and other information by wire, radio frequency, light, and other electronic or electromagnetic systems.

Telecommunications structure means a structure used in the provision of services described in the definition of the term "wireless telecommunications facilities."

Temporary means in relation to all aspects and components of this article, something intended to, or that does, exist for fewer than 90 days.

Wireless telecommunications facilities or *telecommunications tower* or *telecommunications site* or *personal wireless facility* means a structure, facility or location designed, or intended to be used as, or used to support, antennas, as well as antennas or any functional equivalent equipment used to transmit or receive signals. The term "wireless telecommunications facilities" or "telecommunications tower" or "telecommunications site" or "personal wireless facility" includes, without limit, freestanding towers, guyed towers, monopoles, and similar structures that employ camouflage technology, including, but not limited to, structures such as a multi-story building, church steeple, silo, water tower, sign or other similar structures intended to mitigate the visual impact of an antenna or the functional equivalent of such. The term "wireless telecommunications facilities" or "telecommunications tower" or "telecommunications site" or "personal wireless facility" is a structure intended for transmitting and/or receiving radio, television, cellular, paging, personal telecommunications services, or microwave telecommunications, but excluding those

used exclusively for fire, police and other dispatch telecommunications, or exclusively for private radio and television reception and private citizen's bands, amateur radio and other similar telecommunications.

(Ord. No. 5-20-14, § 4, 5-20-2014)

Sec. 44-23. - Overall policy and desired goals for special use permits for wireless telecommunications facilities.

In order to ensure that the placement, construction, and modification of wireless telecommunications facilities protects the city's health, safety, public welfare, environmental features and other aspects of the quality of life specifically listed elsewhere in this article, the council hereby adopts an overall policy with respect to a special use permit for wireless telecommunications facilities for the express purpose of achieving the following goals:

(1) Implementing an application process for persons seeking a special use permit for wireless telecommunications facilities.

(2) Establishing a policy for examining an application for and issuing a special use permit for wireless telecommunications facilities that is both fair and consistent.

(3) Establishing reasonable time frames for granting or not granting a special use permit for wireless telecommunications facilities, or recertifying or not recertifying, or revoking the special use permit granted under this article.

(4) Promoting and encouraging, wherever possible, the sharing and/or co-location of wireless telecommunications facilities among service providers.

(5) Promoting and encouraging, wherever possible, the placement, height and quantity of wireless telecommunications facilities in such a manner as to minimize adverse aesthetic impacts to the land, property, buildings, and other facilities adjacent to, surrounding, and in generally the same area as the requested location of such wireless telecommunications facilities.

(Ord. No. 5-20-14, § 5, 5-20-2014)

Sec. 44-24. - Special use permit application and other requirements.

(a) All applicants for a special use permit for wireless telecommunications facilities or any modification of such facility shall comply with the requirements set forth in this section. The council is the officially designated agency or body of the community to whom applications for a special use permit for wireless telecommunications facilities must be made, and that is authorized to review, analyze, evaluate and make decisions with respect to granting or not granting, recertifying or not recertifying, or revoking special use permits for wireless telecommunications facilities. The council may at its discretion delegate or designate other official agencies of the city to accept, review,

analyze, evaluate and make recommendations to the council with respect to the granting or not granting, recertifying or not recertifying, or revoking special use permits for wireless telecommunications facilities.

(b) An application for a special use permit for wireless telecommunications facilities shall be signed on behalf of the applicant by the person preparing the same and with knowledge of the contents and representations made therein and attesting to the truth and completeness of the information. The landowner, if different than the applicant, shall also sign the application. At the discretion of the council, any false or misleading statement in the application may subject the applicant to denial of the application without further consideration or opportunity for correction.

(c) Applications not meeting the requirements stated herein or which are otherwise incomplete may be rejected by the council.

(d) The applicant shall include a statement in writing:

(1) That the applicant's proposed wireless telecommunications facilities shall be maintained in a safe manner, and in compliance with all conditions of the special use permit, without exception, unless specifically granted relief by the council in writing, as well as all applicable and permissible local codes, ordinances, and regulations, including any and all applicable county, state and federal ordinances, rules, and regulations.

(2) That the construction of the wireless telecommunications facilities is legally permissible, including, but not limited to, the fact that the applicant is authorized to do business in the state.

(e) No wireless telecommunications facilities shall be installed or constructed until the site plan is reviewed and approved by the council, and the special use permit has been issued.

(f) All applications for the construction or installation of new wireless telecommunications facilities shall be accompanied by a report containing the information hereinafter set forth. The report shall be signed by a licensed professional engineer registered in the state. Where this section calls for certification, such certification shall be by a qualified state licensed professional engineer acceptable to the city, unless otherwise noted. The application shall include, in addition to the other requirements for the special use permit, the following information:

(1) Documentation that demonstrates the need for the wireless telecommunications facility to provide service primarily within the city.

(2) Name, address and phone number of the person preparing the report.

(3) Name, address, and phone number of the property owner, operator, and applicant, to include the legal form of the applicant.

(4) Postal address and tax map parcel number of the property.

(5) Zoning district or designation in which the property is situated.

(6) Size of the property stated both in square feet and lot line dimensions, and a diagram showing the location of all lot lines.

(7) Location of nearest residential structure.

(8) Location of nearest habitable structure.

(9) Location, size and height of all structures on the property which is the subject of the application.

(10) Location, size and height of all proposed and existing antennas and all appurtenant structures.

(11) Type, locations and dimensions of all proposed and existing landscaping and fencing.

(12) The number, type and design of the telecommunications tower's antennas proposed and the basis for the calculations of the telecommunications tower's capacity to accommodate multiple users.

(13) The make, model and manufacturer of the tower and antennas.

(14) A description of the proposed tower and antennas and all related fixtures, structures, appurtenances and apparatus, including height above pre-existing grade, materials, color and lighting.

(15) The frequency, modulation and class of service of radio or other transmitting equipment.

(16) Transmission and maximum effective radiated power of the antennas.

(17) Direction of maximum lobes and associated radiation of the antennas.

(18) Applicant's proposed tower maintenance and inspection procedures and related system of records.

(19) Certification that NIER levels at the proposed site are within the threshold levels adopted by the FCC.

(20) Certification that the proposed antennas will not cause interference with existing telecommunications devices, which certification shall be reviewed by a licensed engineer designated by the city.

(21) A copy of the FCC license applicable for the use of wireless telecommunications facilities.

(22) Certification that a topographic and geomorphologic study and analysis has been conducted, and that, taking into account the subsurface and substrata, and the proposed drainage plan, the site is adequate to ensure the stability of the proposed wireless telecommunications facilities on the proposed site, which certification shall be reviewed by a licensed engineer designated by the city.

(23) Propagation studies of the proposed site and all adjoining proposed, in-service or existing sites.

(24) The applicant shall disclose in writing any agreement in existence prior to submission of the application that would limit or preclude the ability of the applicant to share any new telecommunications tower that it constructs.

(g) In the case of a new telecommunications tower, the applicant shall be required to submit a written report demonstrating its efforts to secure shared use of existing telecommunications towers or use of existing buildings or other structures within the city. Copies of written requests and responses for shared use shall be provided to the council.

(h) The applicant shall furnish written certification that the telecommunications facility, foundation and attachments are designed and will be constructed ("as built") to meet all local, county, state and federal structural requirements for loads, including wind and ice loads.

(i) After construction and prior to receiving a certificate of compliance, the applicant shall furnish written certification that the wireless telecommunications facilities are grounded and bonded so as to protect persons and property and installed with appropriate surge protectors.

(j) A visual impact assessment shall be required for all new construction:

(1) A zone of visibility map which shall be provided in order to determine locations where the tower may be seen.

(2) Pictorial representations of before and after views from key viewpoints both inside and outside of the city, including, but not limited to, state highways and other major roads; state and local parks; other public lands; historic districts; preserves and historic sites normally open to the public; and from any other location where the site is visible to a large number of visitors, travelers or residents. The council, acting in consultation with its consultants or experts, will provide guidance concerning the appropriate key sites at a pre-application meeting.

(3) An assessment of the visual impact of the tower base, guy wires and accessory buildings from abutting and adjacent properties and streets.

(k) Any and all representations made by the applicant to the council, on the record, during the application process, whether written or verbal, shall be deemed a part of the application and may be relied upon in good faith by the council.

(l) The applicant shall, in a manner approved by the council, demonstrate and provide in writing and/or by drawing how it shall effectively screen from view its proposed wireless telecommunications facilities base and all related facilities and structures.

(m) All utilities from wireless telecommunications facilities sites shall be installed underground and in compliance with all ordinances, rules and regulations of the city, including specifically, but not limited to, the National Electrical Safety Code and the National Electrical Code, where appropriate. The council may waive or vary the requirements of underground installation of utilities whenever, in the opinion of the council, such variance or waiver shall not be detrimental to the health, safety, general welfare and environment, including the visual and scenic characteristics of the area.

(n) All wireless telecommunications facilities shall contain a demonstration that the facility is sited so as to have the least adverse visual effect on the environment and its character, and the residences in the area of the wireless telecommunications facilities sites.

(o) Both the wireless telecommunications facility and any and all accessory or associated facilities shall maximize use of building materials, colors and textures designed to blend with the structure to which it may be affixed and/or to harmonize with the natural surroundings.

(p) At a telecommunications site, an access road and parking shall be provided to ensure adequate emergency and service access. Maximum use of existing roads, whether public or private, shall be made to the extent practicable. Road construction shall at all times minimize ground disturbance and vegetation-cutting. Road grades shall closely follow natural contours to ensure minimal visual disturbance and reduce soil erosion.

(q) A person who holds a special use permit for wireless telecommunications facilities shall construct, operate, maintain, repair, provide for removal of, modify or restore the permitted wireless telecommunications facilities in strict compliance with all current technical, safety and safety-related codes adopted by the city, county, state, or United States, including, but not limited to, the most recent editions of the National Electrical Safety Code and the National Electrical Code, as well as accepted and responsibly workmanlike industry practices and recommended practices of the National Association of Tower Erectors. The codes referred to are codes that include, but are not limited to, construction, building, electrical, fire, safety, health, and land use codes. In the event of a conflict between or among any of the preceding, the more stringent shall apply.

(r) A holder of a special use permit granted under this article shall obtain, at its own expense, all permits and licenses required by applicable rule, regulation or ordinance, and must maintain the same, in full force and effect, for as long as required by the city or other governmental entity or agency having jurisdiction over the applicant.

(s) The council may conduct an environmental review of the proposed project in combination with its review of the application under this article.

(t) An applicant shall submit to the city council the number of completed applications determined to be needed at the pre-application meeting. A copy of the application shall be provided to the legislative body of all adjacent municipalities.

(u) The applicant shall examine the feasibility of designing a proposed telecommunications tower to accommodate future demand for at least two additional commercial applications, for example, future co-locations. The scope of this examination shall be determined by the council. The telecommunications tower shall be structurally designed to accommodate at least two additional antenna arrays equal to those of the applicant, and located as close to the applicant's antenna as possible without causing interference. This requirement may be waived, provided that the applicant, in writing, demonstrates that the provisions of future shared usage of the telecommunications tower is not technologically feasible, or is commercially impracticable and creates an unnecessary and unreasonable burden, based upon:

(1) The foreseeable number of FCC licenses available for the area.

(2) The kind of wireless telecommunications facilities site and structure proposed.

(3) The number of existing and potential licenses without wireless telecommunications facilities spaces/sites.

(4) Available space on existing and approved telecommunications towers.

(v) The applicant shall submit to the council a letter of intent committing the owner of the proposed new tower, and his successors in interest, to negotiate in good faith for shared use of the proposed tower by other telecommunications providers in the future. This letter shall be filed with the council. Failure to abide by the conditions outlined in the letter may be grounds for revocation of the special use permit. The letter shall commit the new tower owner and their successors in interest to:

(1) Respond within 60 days to a request for information from a potential shared-use applicant.

(2) Negotiate in good faith concerning future requests for shared use of the new tower by other telecommunications providers.

(3) Allow shared use of the new tower if another telecommunications provider agrees in writing to pay reasonable charges. The charges may include, but are not limited to, a pro rata share of the cost of site selection, planning, project administration, land costs, site design, construction and maintenance financing, return on equity, less depreciation, and all of the costs of adapting the tower or equipment to accommodate a shared user without causing electromagnetic interference.

(w) Unless waived by the council, there shall be a pre-application meeting. The purpose of the pre-application meeting will be to address issues which will help to expedite the review and permitting process. A pre-application meeting may also include a site visit, if required. Where the application is for the shared use of an existing telecommunications towers or other high structure, the applicant should seek to waive any section or subsection of this article that may not be required. At the pre-application meeting, the waiver requests, if appropriate, will be decided by the council. Costs of the city's consultants to prepare for and attend the pre-application meeting will be borne by the applicant.

(x) The holder of a special use permit shall notify the city of any intended modification of a wireless telecommunications facility and shall apply to the city to modify, relocate or rebuild a wireless telecommunications facility.

(y) In order to better inform the public, in the case of a new telecommunications tower, the applicant shall, prior to the public hearing on the application, hold a "balloon test" as follows:

The applicant shall arrange to fly, or raise upon a temporary mast, a minimum of a three foot diameter brightly colored balloon at the maximum height of the proposed new tower. The dates (including a second date, in case of poor visibility on the initial date), times and location of this balloon test shall be advertised, by the applicant, at seven and 14 days in advance of the first test date in a newspaper with a general circulation in city and agreed to by the council. The applicant shall inform the council, in writing, of the dates and times of the test, at least 14 days in advance. The balloon shall be flown for at least eight consecutive hours, sometime between 7:00 a.m. and

4:00 p.m. of the dates chosen. The primary date shall be on a weekend, but the second date, in case of poor visibility on the initial date, may be on a weekday.

(z) The applicant will provide a written copy of an analysis, completed by a qualified individual or organization, to determine if the telecommunications tower or existing structure intended to support wireless facilities requires lighting under Federal Aviation Regulation Part 77. This requirement shall be for any new tower, or for an existing structure or building where the application increases the height of the structure or building. If this analysis determines that the FAA must be contacted, then all filings with the FAA, all responses from the FAA and any related correspondence shall be provided in a timely manner.

(Ord. No. 5-20-14, § 6, 5-20-2014)

Sec. 44-25. - Location of wireless telecommunications facilities.

(a) Applicants for wireless telecommunications facilities shall locate, site and erect said wireless telecommunications facilities in accordance with the following priorities, one being the highest priority and four being the lowest priority:

(1) On existing telecommunications towers or other tall structures.

(2) Co-location on a site with existing wireless telecommunications facilities or structures.

(3) On municipally owned properties.

(4) On other property in the city.

(b) If the proposed property site is not the highest priority listed in subsection (a) of this section, then a detailed explanation must be provided as to why a site of a higher priority was not selected. The person seeking such an exception must satisfactorily demonstrate the reasons why such a permit should be granted for the proposed site, and the hardship that would be incurred by the applicant if the permit were not granted for the proposed site.

(c) An applicant may not bypass sites of higher priority by stating the site presented is the only site leased or selected. An application shall address co-location as an option and if such option is not proposed, the applicant must explain why co-location is commercially or otherwise impracticable. Agreements between providers limiting or prohibiting co-location shall not be a valid basis for any claim of commercial impracticability or hardship.

(d) Notwithstanding subsection (c) of this section, the council may approve any site located within an area in the list of priorities set forth in subsection (a) of this section, provided that the council finds that the proposed site is in the best interest of the health, safety and welfare of the city and its inhabitants.

(e) The applicant shall submit a written report demonstrating the applicant's review of the above locations in order of priority, demonstrating the technological reason for the site selection. If the site selected is not the highest priority, then a detailed written

explanation as to why sites of a higher priority were not selected shall be included with the application.

(f) The applicant shall, in writing, identify and disclose the number and locations of any additional sites that the applicant has been, is, or will be considering, reviewing or planning for wireless telecommunications facilities in the city, and all municipalities adjoining the city, for a two-year period following the date of the application.

(g) Notwithstanding that a potential site may be situated in an area of highest priority or highest available priority, the council may disapprove an application for any of the following reasons:

(1) Conflict with safety and safety-related codes and requirements.

(2) Conflict with traffic needs or traffic ordinances, or definitive plans for changes in traffic flow or traffic ordinances.

(3) Conflict with the historic nature of a neighborhood or historical district.

(4) The use or construction of wireless telecommunications facilities which is contrary to an already stated purpose of a specific zoning or land use designation.

(5) The placement and location of wireless telecommunications facilities which would create an unacceptable risk, or the probability of such, to residents, the public, employees and agents of the city, or employees of the service provider or other service providers.

(6) Conflicts with the provisions of this article.

(Ord. No. 5-20-14, § 7, 5-20-2014)

Sec. 44-26. - Shared use of wireless telecommunications facilities and other structures.

(a) Shared use of existing wireless telecommunications facilities shall be preferred by the city, as opposed to the proposed construction of a new telecommunications tower. Where such shared use is unavailable, location of antennas on other pre-existing structures shall be considered and preferred. The applicant shall submit a comprehensive report inventorying existing towers and other appropriate structures within four miles of any proposed new tower site, unless the applicant can show that some other distance is more reasonable, and outlining opportunities for shared use of existing facilities and the use of other pre-existing structures as a preferred alternative to new construction.

(b) An applicant intending to share use of an existing telecommunications tower or other structure shall be required to document the intent of the existing owner to share use. In the event of an application to share the use of an existing telecommunications tower does not increase the height of the telecommunications tower, the council shall

waive such requirements of the application required by this article as may be for good cause shown.

(c) Such shared use shall consist only of the minimum antenna array technologically required to provide service within the city, to the extent practicable, unless good cause is shown.

(Ord. No. 5-20-14, § 8, 5-20-2014)

Sec. 44-27. - Height of telecommunications towers.

(a) The applicant must submit documentation justifying to the council the total height of any telecommunications tower, facility and/or antenna, and the basis therefor. Such justification shall be to provide service within the city, to the extent practicable, unless good cause is shown.

(b) Telecommunications towers shall be no higher than the minimum height necessary. Unless waived by the council upon good cause shown, the maximum height shall be 110 feet, based on three co-located antenna arrays and ambient tree height of 80 feet.

(c) The maximum height of any telecommunications tower and attached antennas constructed after the effective date of the ordinance from which this article is derived shall not exceed that which shall permit operation without artificial lighting of any kind, in accordance with municipal, county, state, and/or any federal statute, code, rule or regulation.

(Ord. No. 5-20-14, § 9, 5-20-2014)

Sec. 44-28. - Visibility of wireless telecommunications facilities.

(a) Wireless telecommunications facilities shall not be artificially lighted or marked, except as required by this article or other regulatory authority.

(b) Telecommunications towers shall be of a galvanized finish, or painted with a rust-preventive paint of an appropriate color to harmonize with the surroundings as approved by the council, and shall be maintained in accordance with the requirements of this article.

(c) If lighting is required, the applicant shall provide a detailed plan for sufficient lighting of as unobtrusive and inoffensive an effect as is permissible under state and federal regulations, and an artist's rendering or other visual representation showing the effect of light emanating from the site on neighboring habitable structures within 1,500 feet of all property lines of the parcel on which the wireless telecommunications facilities are located.

(Ord. No. 5-20-14, § 10, 5-20-2014)

Sec. 44-29. - Security of wireless telecommunications facilities.

All wireless telecommunications facilities and antennas shall be located, fenced or otherwise secured in a manner which prevents unauthorized access. Specifically, as follows:

(1) All antennas, towers and other supporting structures, including guy wires, shall be made inaccessible to individuals and constructed or shielded in such a manner that they cannot be climbed or run into; and

(2) Transmitters and telecommunications control points must be installed such that they are readily accessible only to persons authorized to operate or service them.

(Ord. No. 5-20-14, § 11, 5-20-2014)

Sec. 44-30. - Signage.

Wireless telecommunications facilities shall contain a sign no larger than four square feet to provide adequate notification to persons in the immediate area of the presence of an antenna that has transmission capabilities. The sign shall contain the names of the owners and operators of the antennas as well as emergency phone numbers. The sign shall be located so as to be visible from the access point of the site. The sign shall not be lighted unless the council shall have allowed such lighting or unless such lighting is required by applicable provisions of this article. The sign shall be approved by the council before installation. No other signage, including advertising, shall be permitted on any facilities, antennas, antenna supporting structures or antenna towers, unless otherwise required by law.

(Ord. No. 5-20-14, § 12, 5-20-2014)

Sec. 44-31. - Lot size and setbacks.

(a) All proposed wireless telecommunications facilities shall be set back from abutting parcels, recorded rights-of-way and road and street lines a distance sufficient to substantially contain on-site ice-fall or debris from a tower or tower failure, and to preserve the privacy and sanctity of any adjoining properties.

(b) Wireless telecommunications facilities shall be located with a minimum setback from any property line a distance equal to the height of the wireless telecommunications facility, plus ten percent, or the existing setback requirement of the underlying zoning district, whichever is greater. Further, any accessory structure shall be located so as to comply with the applicable minimum setback requirements for the property on which it is situated.

(Ord. No. 5-20-14, § 13, 5-20-2014)

Sec. 44-32. - Retention of expert assistance and reimbursement by applicant.

(a) The council may hire any consultant and/or expert necessary to assist the council in reviewing and evaluating the application and any requests for recertification.

(b) An applicant shall deposit with the city, funds sufficient to reimburse the city for all reasonable costs of consultant and expert evaluation and consultation to the council in connection with the review of any application. The initial deposit shall be $8,500.00 These funds shall accompany the filing of an application and the city will maintain a separate escrow account for all such funds. The city's consultants/experts shall bill or invoice the city no less frequently than monthly for its services in reviewing the application and performing its duties. If at any time during the review process this escrow account has a balance less than $2,500.00, the applicant shall immediately, upon notification by the city, replenish said escrow account so that it has a balance of at least $2,500.00. Such additional escrow funds must be deposited with the city before any further action or consideration is taken on the application. In the event that the amount held in escrow by the city is more than the amount of the actual billing or invoicing at the conclusion of the review process, the difference shall be promptly refunded to the applicant.

(c) The total amount of the funds set forth in subsection (b) of this section may vary with the scope and complexity of the project, the completeness of the application and other information as may be needed by the council or its consultant/expert to complete the necessary review and analysis. Additional escrow funds, as required and requested by the city, shall be paid by the applicant.

(Ord. No. 5-20-14, § 14, 5-20-2014)

Sec. 44-33. - Exceptions from a special use permit for wireless telecommunications facilities.

(a) No person shall be permitted to site, place, build, construct or modify, or prepare any site for the placement or use of, wireless telecommunications facilities as of the effective date of the ordinance from which this article is derived without having first obtained a special use permit for wireless telecommunications facilities. Notwithstanding anything to the contrary in this section, no special use permit shall be required for those exceptions noted in the definition of wireless telecommunications facilities, such as those used exclusively for fire, police and other dispatch telecommunications, or exclusively for private radio and television reception and private citizen's bands, amateur radio and other similar telecommunications.

(b) New construction, including routine maintenance on existing wireless telecommunications facilities, shall comply with the requirements of this article.

(c) All wireless telecommunications facilities existing on or before the effective date of the ordinance from which this article is derived shall be allowed to continue as they presently exist; provided, however, that any modification to existing wireless telecommunications facilities must comply with this article.

(Ord. No. 5-20-14, § 15, 5-20-2014)

Sec. 44-34. - Public hearing required.

(a) Prior to the approval of any application for a special use permit for wireless telecommunications facilities, a public hearing shall be held by the council, notice of which shall be published in a newspaper of general circulation within the city no less than ten calendar days prior to the scheduled date of the public hearing. In order to ensure that nearby landowners are informed, the applicant, at least three weeks prior to the date of said public hearing, shall be required to provide names and address of all landowners whose property is located within 1,500 feet of any property line of the lot on which the new wireless telecommunications facilities are proposed to be located and certify that the applicant has provided notice to said landowners of the public hearing.

(b) The council shall schedule the public hearing referred to in subsection (a) of this section once it finds the application is complete. The council, at any stage prior to issuing a special use permit, may require such additional information as it deems necessary.

(c) The above provisions notwithstanding, if the application is for a special use permit for collocating on an existing telecommunications tower or high structure, where no increase in height of the tower or structure is required, no public hearing will be required prior to the approval of the application.

(Ord. No. 5-20-14, § 16, 5-20-2014)

Sec. 44-35. - Action on an application for a special use permit for wireless telecommunications facilities.

(a) The council will undertake a review of an application pursuant to this article in a timely fashion, and shall act within a reasonable period of time given the relative complexity of the application and the circumstances, with due regard for the public's interest and need to be involved, and the applicant's desire for a timely resolution.

(b) The council may refer any application, or part thereof, to any advisory or other committee for a non-binding recommendation.

(c) Except for necessary building permits, and subsequent certificates of compliance, once a special use permit has been granted hereunder, no additional permits or approvals from the city, such as site plan or zoning approvals, shall be required by the city for the wireless telecommunications facilities covered by the special use permit.

(d) After the public hearing and after formally considering the application, the council may approve, approve with conditions, or deny a special use permit. It's decision shall be in writing and shall be supported by substantial evidence contained in a written record. The burden of proof for the grant of the permit shall always be upon the applicant.

(e) If the council approves the special use permit for wireless telecommunications facilities, then the applicant shall be notified of such approval in writing within ten calendar days.

(f) If the council denies the special use permit for wireless telecommunications facilities, then the applicant shall be notified of such denial in writing within ten calendar days of the council's action.

(Ord. No. 5-20-14, § 17, 5-20-2014)

Sec. 44-36. - Recertification of a special use permit for wireless telecommunications facilities.

(a) At any time between 12 months and six months prior to the five-year anniversary date after the effective date of the special use permit and all subsequent fifth anniversaries of the effective date of the original special use permit for wireless telecommunications facilities, the holder of a special use permit for such wireless telecommunications facilities shall submit a signed written request to the council for recertification. In the written request for recertification, the holder of such special use permit shall note the following:

(1) The name of the holder of the special use permit for the wireless telecommunications facilities.

(2) If applicable, the number or title of the special use permit.

(3) The date of the original granting of the special use permit.

(4) Whether the wireless telecommunications facilities have been moved, re-located, rebuilt, or otherwise modified since the issuance of the special use permit and, if so, in what manner.

(5) If the wireless telecommunications facilities have been moved, re-located, rebuilt, or otherwise modified, then whether the council approved such action, and under what terms and conditions, and whether those terms and conditions were complied with.

(6) Any requests for waivers or relief of any kind whatsoever from the requirements of this article and any requirements for a special use permit.

(7) That the wireless telecommunications facilities are in compliance with the special use permit and compliance with all applicable codes, ordinances, rules and regulations.

(8) Recertification that the telecommunications tower and attachments both are designed and constructed ("as built") and continue to meet all local, county, state and federal structural requirements for loads, including wind and ice loads. Such recertification shall be by a qualified state licensed professional engineer acceptable to the city, the cost of which shall be borne by the applicant.

(b) If, after such review, the council determines that the permitted wireless telecommunications facilities are in compliance with the special use permit and all applicable statutes, local laws, codes, rules and regulations, then the council shall issue a recertification special use permit for the wireless telecommunications facilities, which may include any new provisions or conditions that are mutually agreed upon, or required by applicable statutes, ordinances, local ordinances, ordinances, codes, rules and regulations. If, after such review, the council determines that the permitted wireless telecommunications facilities are not in compliance with the special use permit and all applicable statutes, local laws, codes, rules and regulations, then the council may refuse to issue a recertification special use permit for the wireless telecommunications facilities, and, in such event, such wireless telecommunications facilities shall not be used after the date that the applicant receives written notice of such decision by the council. Any such decision shall be in writing and supported by substantial evidence contained in a written record.

(c) If the applicant has submitted all of the information requested by the council and required by this article, and if the council does not complete its review, as noted in subsection (b) of this section, prior to the five-year anniversary date of the special use permit, or subsequent fifth anniversaries, then the applicant for the permitted wireless telecommunications facilities shall receive an extension of the special use permit for up to six months, in order for the council to complete its review.

(d) If the holder of a special use permit for wireless telecommunications facilities does not submit a request for recertification of such special use permit within the timeframe noted in subsection (a) of this section, then such special use permit and any authorizations granted thereunder shall cease to exist on the date of the fifth anniversary of the original granting of the special use permit, or subsequent fifth anniversaries, unless the holder of the special use permit adequately demonstrates to the council that extenuating circumstances prevented a timely recertification request. If the council agrees that there were legitimately extenuating circumstances, then the holder of the special use permit may submit a late recertification request or application for a new special use permit.

(Ord. No. 5-20-14, § 18, 5-20-2014)

Sec. 44-37. - Extent and parameters of special use permit for wireless telecommunications facilities.

The extent and parameters of a special use permit for wireless telecommunications facilities shall be as follows:

(1) Such special use permit shall be non-exclusive.

(2) Such special use permit shall not be assigned, transferred or conveyed without the express prior written consent of the council, and such consent shall not be unreasonably withheld or delayed.

(3) Such special use permit may, following a hearing upon due prior notice to the applicant, be revoked, canceled, or terminated for a violation of the conditions and provisions of the special use permit for wireless telecommunications facilities, or for a material violation of this article after prior written notice to the applicant and the holder of the special use permit.

(Ord. No. 5-20-14, § 19, 5-20-2014)

Sec. 44-38. - Application fee.

(a) At the time that a person submits an application for a special use permit for a new telecommunications tower, such person shall pay a nonrefundable application fee of $5,000.00 to the city. If the application is for a special use permit for collocating on an existing telecommunications tower or high structure, where no increase in height of the tower or structure is required, the fee shall be $2,500.00.

(b) No application fee is required in order to recertify a special use permit for wireless telecommunications facilities, unless there has been a modification of the wireless telecommunications facilities since the date of the issuance of the existing special use permit for which the conditions of the special use permit have not previously been modified. In the case of any modification, the fees provided in subsection (a) of this section shall apply.

(Ord. No. 5-20-14, § 20, 5-20-2014)

Sec. 44-39. - Performance security.

The applicant and the owner of record of any proposed wireless telecommunications facilities property site shall, at its cost and expense, be jointly required to execute and file with the city a bond, or other form of security acceptable to the city as to type of security and the form and manner of execution, in an amount of at least $75,000.00 and with such sureties as are deemed sufficient by the council to ensure the faithful performance of the terms and conditions of this article and conditions of any special use permit issued pursuant to this article. The full amount of the bond or security shall remain in full force

and effect throughout the term of the special use permit and/or until the removal of the wireless telecommunications facilities, and any necessary site restoration is completed. The failure to pay any annual premium for the renewal of any such security shall be a violation of the provisions of the special use permit and shall entitle the council to revoke the special use permit after prior written notice to the applicant and holder of the permit and after a hearing upon due prior notice to the applicant and holder of the special use permit.

(Ord. No. 5-20-14, § 21, 5-20-2014)

Sec. 44-40. - Reservation of authority to inspect wireless telecommunications facilities.

(a) In order to verify that the holder of a special use permit for wireless telecommunications facilities, and any and all lessees, renters, and/or licensees of wireless telecommunications facilities, place and construct such facilities, including towers and antennas, in accordance with all applicable technical, safety, fire, building and zoning codes, ordinances and regulations and other applicable requirements, the city may inspect all facets of said permit holder's, renter's, lessee's or licensee's placement, construction, modification and maintenance of such facilities, including, but not limited to, towers, antennas and buildings, or other structures constructed or located on the permitted site.

(b) The city shall pay for costs associated with such an inspection, except for those circumstances occasioned by said holder's, lessee's or licensee's refusal to provide necessary information, or necessary access to such facilities, including towers, antennas, and appurtenant or associated facilities, or refusal to otherwise cooperate with the city with respect to an inspection, or if violations of this article are found to exist, in which case the holder, lessee or licensee shall reimburse the city for the cost of the inspection.

(c) Payment of such costs shall be made to the city within 30 days from the date of the invoice or other demand for reimbursement. In the event that the findings of violation are appealed in accordance with the procedures set forth in this article, said reimbursement payment must still be paid to the city and the reimbursement shall be placed in an escrow account established by the city specifically for this purpose, pending the final decision on appeal.

(Ord. No. 5-20-14, § 22, 5-20-2014)

Sec. 44-41. - Annual NIER certification.

The holder of the special use permit shall, annually, certify in writing to the city that NIER levels at the site are within the threshold levels adopted by the FCC. The certifying engineer need not be approved by the city.

(Ord. No. 5-20-14, § 23, 5-20-2014)

Sec. 44-42. - Liability insurance.

(a) A holder of a special use permit for wireless telecommunications facilities shall secure and at all times maintain public liability insurance for personal injuries, death and property damage, and umbrella insurance coverage, for the duration of the special use permit in amounts as set forth below:

(1) Commercial general liability covering personal injuries, death and property damage: $1,000,000.00 per occurrence/$2,000,000.00 aggregate.

(2) Automobile coverage: $1,000,000.00.00 per occurrence/$2,000,000.00 aggregate.

(3) Workers' compensation and disability: statutory amounts.

(b) The commercial general liability insurance policy shall specifically include the city and its officers, employees, committee members, attorneys, agents and consultants as additional named insureds.

(c) The insurance policies shall be issued by an agent or representative of an insurance company licensed to do business in the state and with a Best's rating of at least A.

(d) The insurance policies shall contain an endorsement obligating the insurance company to furnish the city with at least 30 days' prior written notice in advance of the cancellation of the insurance.

(e) Renewal or replacement policies or certificates shall be delivered to the city at least 15 days before the expiration of the insurance which such policies are to renew or replace.

(f) Before construction of a permitted wireless telecommunications facilities is initiated, but in no case later than 15 days after the grant of the special use permit, the holder of the special use permit shall deliver to the city a copy of each of the policies or certificates representing the insurance in the required amounts.

(Ord. No. 5-20-14, § 24, 5-20-2014)

Sec. 44-43. - Indemnification.

(a) Any application for wireless telecommunications facilities that is proposed for city property, pursuant to this article, shall contain a provision with respect to indemnification. Such provision shall require the applicant, to the extent permitted by this article, to at all times defend, indemnify, protect, save, hold harmless, and exempt the city, and its officers, employees, committee members, attorneys, agents, and consultants, from any and all penalties, damages, costs, or charges arising out of any and all claims, suits, demands, causes of action, or award of damages, whether compensatory or punitive, or expenses arising therefrom, either at law or in equity, which might arise out of, or are caused by, the placement, construction, erection,

modification, location, products performance, use, operation, maintenance, repair, installation, replacement, removal, or restoration of said wireless telecommunications facilities. With respect to the penalties, damages or charges referenced herein, reasonable attorneys' fees, consultants' fees, and expert witness fees are included in those costs that are recoverable by the city.

(b) Notwithstanding the requirements noted in subsection (a) of this section, an indemnification provision will not be required in those instances where the city itself applies for and secures a special use permit for wireless telecommunications facilities.

(Ord. No. 5-20-14, § 25, 5-20-2014)

Sec. 44-44. - Fines.

(a) In the event of a violation of this article or any special use permit issued pursuant to this article, the council may impose and collect, and the holder of the special use permit for wireless telecommunications facilities shall pay to the city, fines or penalties as set forth below.

(b) A violation of this article is hereby declared to be an offense, punishable by a fine not exceeding $350.00 or imprisonment for a period not to exceed six months, or both, for conviction of a first offense; for conviction of a second offense, both of which were committed within a period of five years, punishable by a fine not less than $350.00 nor more than $700.00 or imprisonment for a period not to exceed six months, or both; and, upon conviction for a third or subsequent offense, all of which were committed within a period of five years, punishable by a fine not less than $700.00 nor more than $1,000.00 or imprisonment for a period not to exceed six months, or both. However, for the purpose of conferring jurisdiction upon courts and judicial officers generally, violations of this article or of such ordinance or regulation shall be deemed misdemeanors and for such purpose only all provisions of ordinance relating to misdemeanors shall apply to such violations. Each week's continued violation shall constitute a separate additional offense.

(c) Notwithstanding anything in this article, the holder of the special use permit for wireless telecommunications facilities may not use the payment of fines, liquidated damages or other penalties to evade or avoid compliance with this article or any section of this article. An attempt to do so shall subject the holder of the special use permit to termination and revocation of the special use permit. The city may also seek injunctive relief to prevent the continued violation of this article, without limiting other remedies available to the city.

(Ord. No. 5-20-14, § 26, 5-20-2014)

Sec. 44-45. - Default and/or revocation.

(a) If wireless telecommunications facilities are repaired, rebuilt, placed, moved, re-located, modified or maintained in a way that is inconsistent or not in compliance with the provisions of this article or of the special use permit, then the council shall notify the holder of the special use permit in writing of such violation. Such notice shall specify the nature of the violation or noncompliance and that the violations must be corrected within seven days of the date of the postmark of the notice, or of the date of personal service of the notice, whichever is earlier. Notwithstanding anything to the contrary in this subsection or any other section of this article, if the violation causes, creates or presents an imminent danger or threat to the health or safety of lives or property, the council may, at its sole discretion, order the violation remedied within 24 hours.

(b) If within the period set forth in subsection (a) of this section the wireless telecommunications facilities are not brought into compliance with the provisions of this article, or of the special use permit, or substantial steps are not taken in order to bring the affected wireless telecommunications facilities into compliance, then the council may revoke such special use permit for wireless telecommunications facilities, and shall notify the holder of the special use permit within 48 hours of such action.

(Ord. No. 5-20-14, § 27, 5-20-2014)

Sec. 44-46. - Removal of wireless telecommunications facilities.

(a) Under the following circumstances, the council may determine that the health, safety, and welfare interests of the city warrant and require the removal of wireless telecommunications facilities:

    (1) Wireless telecommunications facilities with a permit have been abandoned (i.e., not used as wireless telecommunications facilities) for a period exceeding 90 consecutive days or a total of 180 days in any 365-day period, except for periods caused by force majeure or acts of God, in which case, repair or removal shall commence within 90 days.

    (2) Permitted wireless telecommunications facilities fall into such a state of disrepair that it creates a health or safety hazard.

    (3) Wireless telecommunications facilities have been located, constructed, or modified without first obtaining, or in a manner not authorized by, the required special use permit, or any other necessary authorization.

(b) If the council makes such a determination as noted in subsection (a) of this section, then the council shall notify the holder of the special use permit for the wireless telecommunications facilities within 48 hours that said wireless telecommunications facilities are to be removed. The council may approve an interim temporary use agreement/permit, such as to enable the sale of the wireless telecommunications facilities.

(c) The holder of the special use permit, or its successors or assigns, shall dismantle and remove such wireless telecommunications facilities, and all associated structures and facilities, from the site and restore the site to as close to its original condition as is possible, such restoration being limited only by physical or commercial impracticability, within 90 days of receipt of written notice from the council. However, if the owner of the property upon which the wireless telecommunications facilities are located wishes to retain any access roadway to the wireless telecommunications facilities, the owner may do so with the approval of the council.

(d) If wireless telecommunications facilities are not removed or substantial progress has not been made to remove the wireless telecommunications facilities within 90 days after the permit holder has received notice, then the council may order officials or representatives of the city to remove the wireless telecommunications facilities at the sole expense of the owner or special use permit holder.

(e) If the city removes or causes to be removed wireless telecommunications facilities, and the owner of the wireless telecommunications facilities does not claim and remove it from the site to a lawful location within ten days, then the city may take steps to declare the wireless telecommunications facilities abandoned, and sell them and their components.

(f) Notwithstanding anything in this section to the contrary, the council may approve a temporary use permit/agreement for the wireless telecommunications facilities, for no more 90 days, during which time a suitable plan for removal, conversion, or re-location of the affected wireless telecommunications facilities shall be developed by the holder of the special use permit, subject to the approval of the council, and an agreement to such plan shall be executed by the holder of the special use permit and the city. If such a plan is not developed, approved and executed within the 90-day time period, then the city may take possession of and dispose of the affected wireless telecommunications facilities in the manner provided in this section.

(Ord. No. 5-20-14, § 28, 5-20-2014)

Sec. 44-47. - Relief.

Any applicant desiring relief or exemption from any aspect or requirement of this article may request such from the council at a pre-application meeting, provided that the relief or exemption is contained in the original application for either a special use permit, or in the case of an existing or previously granted special use permit, a request for modification of its tower and/or facilities. Such relief may be temporary or permanent, partial or complete, at the sole discretion of the council. However, the burden of proving the need for the requested relief or exemption is solely on the applicant to prove to the satisfaction of the council. The applicant shall bear all costs of the council or the city in considering the request and the relief shall not be transferable to a new or different holder of the permit or owner of the tower or facilities without the specific written permission of the council. Such permission shall not be unreasonably withheld or delayed. No such relief or exemption shall be approved unless the applicant demonstrates by clear and

convincing evidence that, if granted, the relief or exemption will have no significant affect on the health, safety and welfare of the city, its residents and other service providers.

(Ord. No. 5-20-14, § 29, 5-20-2014)

Sec. 44-48. - Moving or removal of co-located facilities and equipment.

(a) If attached to an existing tower or other support structure, unless the city council deems doing so to be in the public interest, it shall be impermissible for a wireless service provider's or carrier's equipment to be relocated from one structure to another without clear and convincing evidence that not to do so would, for technical reasons, prohibit or serve to prohibit the provision of service in the service area served by the existing wireless facility.

(b) If the lease for the existing co-location expires and is not renewed, thereby forcing the facility to be moved, such move shall be allowed upon:

  (1) The provision of clear and convincing evidence satisfactory to the city council of the need to move or relocate the facility; and

  (2) Clear and convincing evidence satisfactory to the city council of the lack of impact on the neighborhood or area of intended new location.

Cancellation or abandonment of a lease by a lessee shall not be deemed a permissible reason for relocating.

(c) The owner of any facility or complex shall be required to provide a minimum of 60 days written notice to the city clerk prior to abandoning any facility or complex.

(Ord. No. 07-15-14, § 29, 7-15-2014)

Sec. 44-49. - Periodic regulatory review by the council.

(a) The council may at any time conduct a review and examination of this entire article.

(b) If after such a periodic review and examination of this article, the council determines that one or more provisions of this article should be amended, repealed, revised, clarified, or deleted, then the council may take whatever measures are necessary in accordance with applicable law in order to accomplish the same. It is noted that, where warranted, and in the best interests of the city, the council may repeal this entire article at any time.

(c) Notwithstanding the provisions of subsections (a) and (b) of this section, the council may, at any time, and in any manner (to the extent permitted by federal, state, or local ordinance), amend, add, repeal, and/or delete one or more provisions of this article.

(Ord. No. 5-20-14, § 30, 5-20-2014)

Sec. 44-50. - Adherence to state and/or federal rules and regulations.

(a) To the extent that the holder of a special use permit for wireless telecommunications facilities has not received relief, or is otherwise exempt, from appropriate state and/or federal agency rules or regulations, then the holder of such a special use permit shall adhere to, and comply with, all applicable rules, regulations, standards, and provisions of any state or federal agency, including, but not limited to, the FAA and the FCC. Specifically included in this requirement are any rules and regulations regarding height, lighting, security, electrical and RF emission standards.

(b) To the extent that applicable rules, regulations, standards, and provisions of any state or federal agency, including, but not limited to, the FAA and the FCC, and specifically including any rules and regulations regarding height, lighting, and security, are changed and/or are modified during the duration of a special use permit for wireless telecommunications facilities, then the holder of such a special use permit shall conform the permitted wireless telecommunications facilities to the applicable changed and/or modified rule, regulation, standard, or provision within a maximum of 24 months of the effective date of the applicable changed and/or modified rule, regulation, standard, or provision, or sooner as may be required by the issuing entity.

(Ord. No. 5-20-14, § 31, 5-20-2014)

Sec. 44-51. - Conflict with other laws or ordinances.

Where this article differs or conflicts with other laws, rules and regulations, unless the right to do so is preempted or prohibited by the county, state or federal government, the more restrictive or protective of the city and the public shall apply.

(Ord. No. 5-20-14, § 32, 5-20-2014)

Chapter 46 - TRAFFIC[1]

Footnotes:

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State Law reference— Motor vehicles and traffic generally, Code of Ala. 1975, § 32-1-1.1 et seq.; Highway and Traffic Safety Coordination Act, Code of Ala. 1975, § 32-4-1 et seq.; municipal regulation of trains and automobiles within corporation limits, Code of Ala. 1975, § 11-47-114; municipal authority with regard to off-street parking facilities, Code of Ala. 1975, § 11-47-240 et seq.; municipal authority to establish speed limits within city's corporate limits, Code of Ala. 1975, § 11-49-4; posting of signs regarding municipal speed limits, Code of Ala. 1975, § 11-49-5; municipal authority to prohibit and restrict use of certain highways, Code of Ala. 1975, § 32-1-3; liability for damage to highways, Code of Ala. 1975, § 32-5-9; local traffic control devices, Code of Ala. 1975, § 32-5-31; authority of municipalities with regard to abandoned vehicles, Code of Ala. 1975, § 32-13-8; municipal testing stations, Code of Ala. 1975, § 32-18-1; rules of the road, Code of Ala. 1975, tit. 32, ch. 5A.

ARTICLE I. - IN GENERAL

Sec. 46-1. - Adoption of state traffic laws and regulations.

In addition to all provisions of law relating to the speed and operation of motor vehicles in the city, there is hereby adopted by the city all rules of the state and all rules and regulations of the state highway department pertaining to the control of traffic and motor vehicles on highways that are misdemeanors under the state laws and a violation of such laws, rules and regulations in the city, or in the police jurisdiction thereof, shall be violations of this Code.

(Code 1979, § 18-1; Ord. No. 8-17-70A, § 8, 8-17-1970; Ord. No. 12-6-77C, § 7, 12-20-1977; Ord. No. 5-17-83, § 7, 5-17-1983; Ord. No. 07-05-95, § 7, 7-18-1995).

Sec. 46-2. - Speed limits—Generally.

(a) No person shall operate a motor vehicle at a greater speed than 30 miles per hour on any street or alley unless otherwise indicated by proper signs or markings.

(b) No person shall operate any automobile, truck, motorcycle or other self-propelled vehicle upon any parking lot in excess of 15 miles per hour.

(c) All ordinances of the city pertaining to traffic are hereby amended to include parking lots, and if an offense occurs on a parking lot and said offense would be a violation on a street or highway, then said offense is a like violation on said parking lot.

(Code 1979, § 18-2; Ord. No. 8-17-70A, § 5, 8-17-1970; Ord. No. 12-6-77C, § 4, 12-20-1977; Ord. No. 4-7-81, 4-7-1981; Ord. No. 5-17-83, § 5, 5-17-1983; Ord. No. 07-05-95, § 5, 7-18-2005)

State Law reference— Authority as to speed limits, Code of Ala. 1975, §§ 11-49-4, 11-49-5, 32-5-91.

Sec. 46-3. - Same—On specific streets and highways.

(a) No person shall operate a motor vehicle at a greater speed than 55 miles per hour in the following listed zones of the city:

(1) On Alabama Highway No. 134 (U.S. 84), from the west city limits (milepost 33.41), thence easterly to Junction Alabama 85 (milepost 34.78), a distance of 1.37 miles.

Note— U.S. 84 overlaps Alabama 134 at this point. However, until the change to metrics is acted upon, mileposts for Alabama 134 (which are in place) will be used for subsection (1).

(2) On Alabama Highway No. 134, from milepost 36.87, thence easterly to the east city limits (milepost 37.68), a distance of 0.81 miles.

(3) On Alabama Highway No. 85, from the south city limits (milepost 16.28), thence northerly for a distance of 2.90 miles (milepost 19.18).

(4) On Alabama Highway No. 92 (US 84), from Junction Alabama 85 (milepost 0.00), thence easterly to the east city limits (milepost 3.48), a distance of 3.48 miles.

Note— U.S. 84 overlaps Alabama 92 at this point. However, until the change to metrics is acted upon, mileposts for Alabama 92 (which are in place) will be used for subsection (a)(4).

(b) No person shall operate a motor vehicle at a greater speed than 45 miles per hour in the following listed zones of the city:

(1) On Alabama Highway No. 134, from milepost 35.49, thence easterly for a distance of 1.38 miles (milepost 36.87).

(2) On Alabama Highway No. 85, from milepost 19.18, thence northerly for a distance of 1.35 miles (milepost 20.53).

(c) No person shall operate a motor vehicle at a greater speed than 35 miles per hour in the following listed zones of the City:

(1) On Alabama Highway No. 134, from Junction Alabama 85 north (milepost 35.04), thence easterly for a distance of 0.45 mile (milepost 35.49).

(2) On Alabama Highway No. 85, from milepost 20.53, thence northerly for a distance of 0.80 mile (milepost 21.33).

(d) No person shall operate a motor vehicle at a greater speed than 30 miles per hour in the following listed zones of the city: On Alabama Highway No. 85, from milepost 21.33, thence northerly for a distance of 1.00 mile to the north city limits (milepost 22.33).

(e) Speed limits as described in this section shall apply so long as the city limits remain as they are at this date. In the event they are extended, this section shall be revised to properly cover the new territory.

(Code 1979, § 18-3; Ord. No. 07-05-95, §§ 1-4, 6, 7-18-2005)

Sec. 46-4. - Chemical breath analysis.

The city, in compliance with Code of Ala. 1975, § 32-5-192(a), designated the Chemical Analysis of Breath by Use of the Drager ALCO Test MK 111 Breath Test as the test to be administered by its officers approved by the state department of forensic sciences to determine the alcoholic content of the blood of any person lawfully arrested for any offense arising out of acts alleged to have been committed while the person was driving a motor vehicle on the public highways of the state while under the influence of intoxicating liquor.

(Ord. No. 05-16-00A, § 1, 5-16-2000)

Sec. 46-5. - Parking in prohibited areas.

No person shall park a motor vehicle in any prohibited area when said prohibited area is properly marked with yellow paint and/or signed.

(Code 1979, § 18-5; Ord. No. 12-6-77C, § 6, 12-20-1977)

Sec. 46-6. - Parking in residential areas restricted.

(a) It shall be unlawful for any person to park or leave unattended any vehicle, except automobiles or trucks of not more than one ton in load capacity, on any residential street, avenue, or public thoroughfare in the city for a period of time in excess of two hours.

(b) The provisions of subsection (a) of this section shall not apply to any vehicle used for the purpose of loading or unloading passengers or personalty at the time it is parked or unattended.

(Code 1979, § 18-6; Ord. No. 3-6-84, 3-3-1984; Ord. No. 02-04-97, 2-18-1997)

Sec. 46-7. - Penalties.

Any person violating any provision of this chapter shall be guilty of a misdemeanor and shall, upon conviction thereof, be punished by a fine of not less than $10.00 nor more than $500.00, and/or may be imprisoned in the municipal jail or sentenced to hard labor for the city for a period of not exceeding six months, at the discretion of the court trying the case, except that fines and imprisonment for violations of the DUI laws shall be set in accordance with Code of Ala. 1975, § 32-5A-194*,* as amended.

(Code 1979, § 18-7; Ord. No. 10-01-91, 10-1-1991; Ord. No. 07-05-95, § 8, 7-18-1995; Ord. No. 09-05-95, 9-19-1995)

Sec. 46-8. - Parking spaces designated for physically handicapped persons.

(a) The chief of police of the city is hereby authorized to designate marked parking spaces within any private parking lot in the city limits serving the general public and having 25 spaces or more, within any city block, or upon any city property for the exclusive parking of motor vehicles driven or in use by physically handicapped persons.

(b) Parking spaces for the handicapped will be designated by the international parking sign for the handicapped as required by state statute.

(c) Permit for the parking of vehicles operated by physically handicapped persons in parking spaces designated for such purpose by the chief of police are those permits issued by the judge of probate or license commissioner as set out and regulated by Code of Ala. 1975, § 32-6-231.

(d) It shall be unlawful for:

  (1) Any person to park any vehicle not displaying said permit in an area designated for handicapped parking.

  (2) The registered owner of a vehicle to allow his vehicle to be so parked.

(e) Any person convicted of violating this section shall be punished by a fine not less than $10.00 nor more than $500.00, or by imprisonment in the city jail for not more than six months, or by both fine and imprisonment.

(f) Proof that the vehicle was registered to such person on the day of the violation shall be prima facie evidence that such registered owner is responsible for such act.

(g) Should any portion of this section be declared unconstitutional, the unconstitutional portion shall be automatically repealed, but the remaining and constitutional portions of this section shall remain in full force and effect.

(Code 1979, § 18-8; Ord. No. 1-7-86, § 1, 1-21-1986)

Sec. 46-9. - Racing motor vehicles.

(a) *License required; application; liability insurance.* It shall be unlawful for any person to conduct, or permit to be conducted, upon lands under his control, drag races or races in which motor vehicles, including motorcycles and go-carts, are used, without first securing a city license. To secure such license, the applicant will be required to file a certificate or satisfactory evidence with the city clerk that such person has in effect insurance to cover personal injury and property damage to participants, spectators and owners of property both on or off the grounds where such races will be conducted. The amount of such insurance is hereby fixed as follows:

  (1) Spectators and participants liability: $100,000.00 combined single limit.

  (2) Spectators and participants liability: $900,000.00; combined single limit excess of $100,000.00.

(b) *Definition.* The terms "conduct" and/or "conducted," as used herein, shall include any preparation for such event. The insurance required shall provide that the city clerk shall be notified in writing 30 days before cancellation or change in the coverage of such insurance.

(Code 1979, § 18-9; Ord. No. 12-15-87, §§ 1, 2, 2-2-1988)

Sec. 46-10. - Skateboards on state highways in city.

(a) The parent of any child and the guardian of any ward shall not authorize or knowingly permit any such child or ward to violate any of the provisions of this section.

(b) It shall be unlawful for any person to ride any skateboard or vehicle of like or similar nature on and along the curb, sidewalk or street of state highways (Highways 85, 84 and 134) in the city.

(Code 1979, § 18-10; Ord. No. 11-15-88, 12-6-1988)

Secs. 46-11—46-38. - Reserved.

ARTICLE II. - IMPOUNDMENT OF AUTOMOBILES OF UNLICENSED DRIVERS

Sec. 46-39. - Conditions for impoundment of vehicle.

If a driver is unable to produce a valid driver's license on the demand of a law enforcement officer, the motor vehicle is subject to impoundment, regardless of ownership, unless the law enforcement officer is reasonably able, by other means, to verify that the driver is properly licensed. Prior to impounding the motor vehicle, a law enforcement office shall make a reasonable attempt to verify the license status of a driver who claims to be properly licensed, but who is unable to produce the license on demand of the law enforcement officer. A notation of the officer's attempt to verify that the driver is properly licensed shall be noted on the departmental report. The driver and occupants of the motor vehicle will be transported to a place of safety by the impounding officer and a vehicle impound report made with full inventory of items in the motor vehicle.

(Ord. No. 03-04-08, § 1, 3-18-2008)

Sec. 46-40. - Exceptions.

(a) A law enforcement officer shall not impound a motor vehicle pursuant to this section if the license of the driver expired within the preceding 60 days and the driver would otherwise have been properly licensed.

(b) If the owner of the motor vehicle or another family member of the owner is present in the motor vehicle and has a valid license, the motor vehicle shall not be impounded or towed.

(c) If there is a medical necessity jeopardizing life or limb, the law enforcement officer may elect not to impound the motor vehicle.

(d) A law enforcement officer who requests that a motor vehicle be towed onto the property of another pursuant to this section shall do so by using a vehicle impounded report.

(Ord. No. 03-04-08, § 1, 3-18-2008)

Sec. 46-41. - Release of impounded vehicle.

A motor vehicle impounded pursuant to this article shall be released if the person redeeming the motor vehicle satisfies in full the $25.00 administration fee to the city and:

(1) The registered owner appears at the Daleville Police Department or a representative of the owner with written notarized authorization from the

registered owner appears and presents a valid driver's license, evidence of auto insurance as required by law, and a copy of the written authorization, if applicable, to be copied by the Daleville Police Department.

(2) If the registered owner presents evidence of auto insurance, but does not have a valid driver's license, he may bring two persons, each with a verified valid license, and the motor vehicle may be released without written notarized permission.

(3) Upon order of a court of competent jurisdiction.

(Ord. No. 03-04-08, § 1, 3-18-2008)

Sec. 46-42. - Recovery of financial loss due to impoundment.

Any owner of a motor vehicle (including a lienholder, person with a security interest in the motor vehicle, a lesser of the motor vehicle, assignee of the lesser, or the person who is registered owner of the motor vehicle) who suffers any loss due to the impoundment of any motor vehicle pursuant to this article may recover the amount of the loss from the driver who was unable to produce a valid driver's license at the request of the law enforcement officer.

(Ord. No. 03-04-08, § 1, 3-18-2008)

Sec. 46-43. - Responsibility for relevant fees and costs.

The person redeeming the motor vehicle from the automobile dealer, wrecker service owner, repair service owner, or person, firm, or governmental entity on whose property the motor vehicle was lawfully towed at the written request of a law enforcement officer pursuant to this article, will be responsible for paying the set fee for the removal and storage of the motor vehicle.

(Ord. No. 03-04-08, § 1, 3-18-2008)

Sec. 46-44. - Right to sell vehicle unclaimed or non-redeemed.

If a motor vehicle impounded pursuant to this article is not redeemed or claimed pursuant to this article within 60 days of the date that it is impounded, then the automobile dealer, wrecker service or repair service owner, or any person, firm, or governmental entity on whose property the motor vehicle was lawfully towed at the written request of a law enforcement officer pursuant to this article may sell the motor vehicle in accordance with Code of Ala. 1975, §§ 32-13-1—32-13-8, as now exist or are hereafter amended.

(Ord. No. 03-04-08, § 1, 3-18-2008)

Secs. 46-45—46-61. - Reserved.

ARTICLE III. - WRECKER SERVICE ON CITY ROTATION LOG

Sec. 46-62. - Definitions.

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

Applicant means the operator of a wrecker service that desires to participate in the rotation log by making application for the same.

Call or *dispatch* means a request for wrecker services by an operator on the rotation log of the department resulting in an operator being required to perform wrecker services pursuant to the provisions hereof.

City means the City of Daleville or any department thereof.

Department means the Daleville Police Department, its chief or representative.

Operator means any person, firm or corporation owning or operating a duly licensed wrecker service that is currently listed as an authorized participant on the rotation log, including employees and drivers.

Police officer means any city police officer or any law enforcement officer of the city.

Rotation log means a sequential list, as maintained by the department, of those operators of wrecker services duly qualified and authorized pursuant to the provisions of this article to receive and respond to consent for such services from a specific operator or towing company. The rotation log may also be used, at the city's discretion, for wrecker services in regard to city vehicles, although the city reserves the right to request such services from any operator it deems appropriate.

Services or *wrecker services* means:

(1) The towing, lifting righting, winching, removal or storage of a wrecked, damaged or disabled vehicle which is otherwise incapable of self-propulsion away from the scene of an accident or other traffic event; and

(2) The towing, lifting, righting, winching, removal or storage of a vehicle any time a police officer deems it necessary to protect the public safety and/or personal property by means of a vehicle capable of doing so and meeting the requirement of this article.

Wrecker, in addition to the conventional and accepted meaning, includes a vehicle meeting the minimum criteria and standards set forth in this article and utilized to provide wrecker services.

(Ord. No. 11-03-09, 11-17-2009)

Sec. 46-63. - Purpose.

(a) The purpose of this article is to establish acceptable standards and criteria for the provision of nonconsensual wrecker services to the city in the city's capacity as a market participant by operators participating on the city's rotation log as the sole or exclusive means of providing wrecker services to the city and the city reserves the right to contract independently of the provisions of this article for wrecker services for any particular aspect of municipal operation it deems appropriate.

(b) Wrecker services pursuant to the provisions of this article shall be administered by the department through the department's representative, who shall have authority to promulgate rules and regulations in furtherance and implementation of this article so long as they do not conflict with any provision hereof.

(c) As regards wrecker service to the public, the terms hereof are not intended to and do not relate to the price, route or provision of consensual towing services as preempted by the Interstate Commerce Commission Termination Act (ICCTA) 1975, 49 USC 14501(c)(1). The term "consensual towing" or "wrecker services" is defined as those situations where the vehicle owner expressly requests towing or wrecker services by a specific towing company and enters into a private contract with the towing or wrecker company for services.

(Ord. No. 11-03-09, 11-17-2009)

Sec. 46-64. - Applications and conditions for participation.

(a) *Written request for participation on the rotation log.* Each applicant desiring to be placed on the rotation log shall file a written application with the department's designated representative.

(b) *Copy of rules and regulations.* The department's representative will furnish each applicant with a copy of the rules and regulations pertaining to the operation of wreckers on the rotation log.

(c) *Investigation of applicant.* The department's representative will furnish each such applicant and applicant's wrecker business and determine if the applicant meets all requirements for participation on the rotation log. The applicant must furnish any additional information requested by the department's representative during the investigation.

(Ord. No. 11-03-09, 11-17-2009)

Sec. 46-65. - Operation.

The following conditions shall govern the conduct of operators on the rotation log:

(1) *Police department dispatch necessary; exception.*

a. Except for private request for consensual wrecker services by the vehicle owner, no operator shall proceed to the scene without being dispatched to do so by the police department.

b. No operator shall solicit business at the scene of an accident.

c. All operators and drivers shall at all times conduct themselves and wrecker services in a reasonable and safe manner.

(2) *Obedience to traffic laws.* Each wrecker driver shall obey all state and municipal traffic laws when responding to a dispatch for wrecker service.

(3) *Rotation log participation.* Participation in the rotation log system shall be considered personal to the operator thereof and shall constitute authorization only to that definite legal entity operating a bona fide wrecker service and shall not be subject to transfer, nor shall the operator sublet, assign or permit the participation by another in any manner of operator's equipment, wreckers or name on the rotation log. Participation on the rotation log shall not constitute a property interest, but rather is a mere license.

(4) *Submission of daytime and nighttime telephone numbers.* Each operator shall furnish the police department communications center with one telephone number to be used for dispatches during the day and one telephone number to be used for dispatches during the night. Any changes in the aforementioned telephone numbers shall be immediately transmitted to the police department communications center. No pagers or answering machines are permitted as call out numbers.

(5) *Twenty-four-hour service.* Each wrecker operator shall maintain and be fully capable of providing 24-hour, seven-day-a-week wrecker service.

(6) *Availability.* A wrecker operator shall not accept a dispatch for wrecker services from the rotation log unless the operator has a wrecker and the necessary equipment immediately available to perform the requested service.

(7) *Response with own wreckers.* The wrecker operator shall respond to a dispatch with its own wreckers and shall not send another wrecker service in response to a rotation dispatch. If it appears to the operator, the city or department representative on the scene that the operator is not capable to perform the required services or needs assistance, the officer or operator may request that another operator be dispatched. The next operator on the log will be dispatched.

(8) *Response while impaired prohibited.* No driver of a wrecker shall respond to a dispatch when he is under the influence of alcoholic beverages, controlled substances or is otherwise impaired.

(9) *Restriction for conviction of crimes.* No operator or wrecker driver shall be on the rotation log that has been convicted of any crime within the past five years that is related to their capability to provide wrecker services to the public in a safe and responsible manner.

(10) *Proficiency.* All operators and wrecker drivers on the rotation list shall be proficient and competent in the operation of such wrecker.

(11) *Driver's license required.* No person shall be an operator or be allowed to operate any wrecker unless such person has a valid state driver's license and a commercial driver's license, if required by law, issued by the state department of public safety.

(12) *Reflective wear required.* All wrecker drivers shall wear reflective vests, coats or shirts while on the scene of any dispatch.

(13) *Removal of glass, debris, etc.* Operators shall remove glass and debris from the scene of a call and apply oil-dry if necessary.

(14) *Notice of acquisition of wrecker.* Each operator on the rotation log shall give notice to the department's representative of any wrecker acquired subsequent to placement on the rotation log. The department's representative will inspect the wrecker to determine if it meets all the criteria that are required by this article.

(Ord. No. 11-03-09, 11-17-2009)

Sec. 46-66. - Standards and requirements.

(a) *Number, capacity and wrecker standards.* Each operator shall maintain a minimum of one operational wrecker ready for immediate response to a dispatch, which shall be well-maintained and in good condition at all times. All wreckers shall be based at operator's facility.

(b) *Equipment requirements.* Each wrecker shall have on it, at all times, the following equipment:

(1) One "sling" and "stay-bar" or other type of device capable of protecting the disabled vehicle while being towed.

(2) Tow bars.

(3) Two or more safety chains.

(4) Two or more fully charged chemical, B.C. rating, fire extinguishers having a minimum of ten pounds capacity each.

(5) One pry bar or wrecker bar capable of prying open doors.

(6) One push-type broom.

(7) One ax.

(8) One flat shovel.

(9) Wheel lift is required, except for wreckers with a 20-ton lifting capacity or more.

(10) A minimum of one snatch block for a rollback wrecker.

(11) A minimum of two snatch blocks for a wrecker boom with eight-ton capacity.

(12) A minimum of four snatch blocks for a wrecker boom with 25-ton capacity.

(13) Warning devices, applicable to trucks, as required by Code of Ala. 1975, §§ 32-5-220 and 32-5-221, and use of the same as required by law.

(14) At least one light bar with rotating beacon or strobe light on each end visible from 360 degrees. In addition, each wrecker shall have an emergency flasher system capable of emitting two amber lights to the front and two red lights to the rear of the vehicle and which shall flash simultaneously. All lighting systems must be visible for a minimum distance of 500 feet.

(15) A minimum of 40 pounds of oil-dry.

(c) *Name, address and telephone number.* The name, address and telephone number of the operator shall be permanently affixed and prominently displayed on both sides of each wrecker.

(d) *License required.* All operators shall be duly licensed by the city revenue department and comply with all applicable state, federal and local laws.

(Ord. No. 11-03-09, 11-17-2009)

Sec. 46-67. - Facilities.

(a) Each operator shall have space available for the storage of vehicles resulting from rotation log dispatches. Such storage area must be well lighted, enclosed by a six-foot chainlink fence or more, and a locked gate. This storage area must be suitable for properly accommodating and protecting all motor vehicles and their contents against damage or theft. This minimum space must be used by the operator to store vehicles that are towed as a result of a rotation log dispatch.

(b) The wrecker company's principle and primary physical and business location shall be within 20 minutes driving distance from time of call to arrival at the scene.

(c) All operators of wrecker services on the rotation log shall reasonably permit, during normal business hours, without charge, the owner or owner's designated representative of any vehicle stored upon or within the operator's facilities to inspect the same, remove items of personal belongings therefrom. In addition, the operator shall also reasonably permit and allow, during normal business hours, without charge, insurance agents, adjusters, and/or law enforcement officers to enter, inspect and photograph any such vehicles.

(Ord. No. 11-03-09, 11-17-2009)

Sec. 46-68. - Records.

(a) Each operator shall maintain accurate records reflecting all wrecker services performed pursuant to this article. Each record of wrecker service shall include the following information:

(1) The date and time the operator was contacted and requested to perform the service.

(2) The name of the person requesting the service.

(3) The location of the vehicle.

(4) A description of the towed vehicle, including license tag and identification number.

(5) The owner or driver of the vehicle, if known.

(6) The service charge and fees.

(b) All records required herein must be available during normal business hours for inspection by the city representatives.

(c) The operator shall maintain the aforementioned records for the current calendar year and the preceding calendar year.

(d) A record of all abandoned motor vehicles is to be maintained by the wrecker company and any abandoned motor vehicle sold or disposed of by the operator shall be in accordance with Code of Ala. 1975, §§ 32-13-1—32-13-8.

(Ord. No. 11-03-09, 11-17-2009)

Sec. 46-69. - Insurance.

(a) Every operator assumes full responsibility and liability for any injury to persons, damage to property, fire or theft resulting from the operator's negligent acts or omissions.

(b) Each operator shall maintain a liability insurance policy issued by an insurance company currently authorized to issue policies of insurance covering risks in the state. The aforementioned insurance policy shall protect the public against loss of life, bodily injury to the person and damage to the property. The coverage shall be for the following amounts:

(1) Not less than $100,000.00 for bodily injury to any one person.

(2) Not less than $300,000.00 for bodily injury in any one accident.

(3) Not less than $100,000.00 for damage to property.

(4) Not less than $20,000.00 in garage keeper's legal liability, which must include fire, explosion, theft, riot and civil commotion, vandalism, collision with a deductible no greater than $1,000.00.

(c) Each policy required herein shall contain an endorsement providing for 30 days' written notice to the legal department of the city prior to any material change therein or cancellation thereof.

(d) A copy of the certificate of insurance is to be filed with the legal department of the city.

(Ord. No. 11-03-09, 11-17-2009)

Sec. 46-70. - Rotation log.

(a) An operator shall promptly respond to a dispatch and arrive with a wrecker on the scene within 20 minutes, under normal driving conditions. If an operator is not capable at the time of dispatch to respond, it shall immediately notify the department's communications center of this fact. The operator will be passed over for that rotation and the dispatch will go to the next operator on the rotation log. Any operator that is late in responding to dispatches for wrecker service without justification may be subject to penalties as provided herein.

(b) When an operator responds to a dispatch, but renders no wrecker services, the operator will not lose its position on the rotation log if the operator provides prompt notification of the same to the department's communications center.

(c) When emergency conditions necessitate, the city reserves the right to request the services of the operator who, in the city's opinion, is best able to handle the situation and/or can reach the scene most expeditiously, regardless of the operator's position on the rotation log. If a dispatch is made under these circumstances, the operator making such a response will not forfeit his respective position on the rotation log.

(d) Upon written request, the police department will furnish an operator with a monthly report of the department's rotation call-out log.

(e) The department's representative has the right to inspect any wrecker or equipment of an operator on the city's rotation log at any time to ascertain if it is being maintained and all required equipment is on the wrecker and in proper operating order.

(f) All operators on the rotation log shall have their wreckers and equipment inspected annually by the department's personnel.

(Ord. No. 11-03-09, 11-17-2009)

Sec. 46-71. - Penalties.

(a) Violation of any rule, regulation or provision of this article as it relates to wrecker services for rotation log dispatches may be cause for suspension or removal of the operator from the rotation log. The department representative shall notify the operator in writing of a violation and the applicable penalty.

(b) The department will reinstate to the rotation log a suspended operator upon written application after the period of suspension has elapsed and after the department has determined that such operator is in compliance with all regulations of this article.

(c) If any violations of the regulations or provisions of this article are deemed by the city representative to be of such a nature as to endanger public safety, the department shall immediately suspend from the rotation log the operator committing such

violation, then provide notice pursuant to the provisions of subsection (a) of this section.

(d) No applications for reinstatement to the rotation log resulting from violation of these regulations will be considered by a transferee of the suspended operator's business interest unless such transfer was the result of a bona fide sale of a majority of the assets of the business for a reasonable consideration. All documents demonstrating the same must be provided to the department's representative.

(e) The following penalties shall be assessed for violations within a one-year period:

(1) First violation: Written warning.

(2) Second violation: Removal from rotation.

(Ord. No. 11-03-09, 11-17-2009)

Sec. 46-72. - Rates and charges.

The maximum fees for wrecker services provided by any wrecker service operator on the rotation log in regard to services provided as a result of a dispatch shall be as established from time to time.

(Ord. No. 11-03-09, 11-17-2009)

Chapter 48 - UTILITIES[1]

Footnotes:

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State Law reference— Alabama Safe Drinking Water Act of 1977, Code of Ala. 1975, § 22-23-30 et seq.; financing of municipal public works; Code of Ala. 1975, § 11-47-3 et seq.; general powers of municipalities regarding public improvements, Code of Ala. 1975, § 11-48-4 et seq.; municipal construction and maintenance of sewers authorized, Code of Ala. 1975, § 11-50-50 et seq.; permits for installation of plumbing within police jurisdiction of municipalities, Code of Ala. 1975, § 22-26-4; municipal water, sewer, solid waste disposal and fire protection districts, Code of Ala. 1975, § 11-89-1 et seq.

Sec. 48-1. - Superintendent of utilities.

(a) The mayor of the city is hereby required to act as the full-time superintendent of the Daleville Water and Sewer Board, and as such shall serve as purchasing agent for such system, make all purchases authorized by the city council therefor, keep a check on meter readings and billings for service and collection therefor, see that the system is kept in proper repair and operation, keep an inventory showing the supplies kept and the equipment on hand for such system, keep a full and complete monthly financial statement of all operating costs, and have all such data and information relative to such systems for the city council on its first meeting in each calendar month.

(b) In addition to the salary now fixed and paid to the mayor, there shall be paid to the mayor for his services as superintendent of the utility system a sum, as is established from time to time, out of the receipts of such utility system.

(c) The city council may, at any regular meeting or special meeting called therefor, discontinue the services of the mayor as superintendent of the utility system, and in the event of such discontinuance of his services as such superintendent of such system, all compensation authorized to be paid in subsection (b) of this section shall lapse.

(Code 1979, § 19-1; Res. No. 17, § 1, 12-1-1961; Ord. No. 10-7-80, § 2, 10-7-1980; Ord. No. 10-1-84, §§ 1—3, 10-1-1984)

Sec. 48-2. - Water works and sewer board sanitary sewer franchise.

(a) The term "the city," as used herein, means the City of Daleville, a municipal corporation in the State of Alabama, as it is now constituted and as it may be hereafter extended and enlarged. The term "the board," as used herein, means the water works and sewer board of the City of Daleville, a public corporation organized and existing

under the provisions of Act No. 175, adopted at the 1951 Regular Session of the Legislature of Alabama, as amended.

(b) There is hereby granted to the board the right, privilege, authority, and franchise to acquire, own, maintain, construct, enlarge, and operate a sanitary sewer system in the city, together with the right, privilege, authority and franchise to lay, construct, operate and maintain pipes, mains, and other conductors, fixtures, and related appurtenances in, along, across, and under the streets, avenues, alleys and other public places within the city for the purpose of conveying and distributing water in and through the city, and to repair, renew, relay and extend such pipes, mains, conductors, fixtures, and related appurtenances, and to make all excavations necessary therefor.

(c) The board shall, and by accepting this franchise agrees that it will, upon making any excavations of the streets, avenues, alleys, public ways and public places in the city, restore the paving or other surface at the point of such excavations in substantially the same condition as before such work was done, all as promptly as may be practicable and within a reasonable length of time thereafter.

(d) The rights, privileges, franchise and authority hereby granted may be exercised by the board or any successors and assigns of the board, and may be mortgaged or conveyed in trust as security for any bonds or other obligations of the board, or of its successors and assigns, all subject nevertheless to the conditions and obligations herein contained.

(Code 1979, § 19-2; Ord. No. 12-1-65B, 12-1-1965)

Editor's note— For such Act, referenced in subsection (a) of this section, see Code of Ala. 1975, § 11-50-310 et seq.

Sec. 48-3. - Water works and sewer board water franchise.

(a) The term "the city," as used herein, means the City of Daleville, a municipal corporation in the State of Alabama, as it is now constituted and as it may be hereafter extended and enlarged. The term "the board," as used herein, means the water works and sewer board of the City of Daleville, a public corporation organized and existing under the provisions of Act No. 175, adopted at the 1951 Regular Session of the Legislature of Alabama, as amended.

(b) There is hereby granted to the board the right, privilege, authority, and franchise to acquire, own, maintain, construct, enlarge, and operate a water works plant and water distribution system in the city, together with the right, privilege, authority and franchise to lay, construct, operate and maintain pipes, mains, and other conductors, fixtures, and related appurtenances in, along, across, and under the streets avenues, alleys and other public places within the city for the purpose of conveying and distributing water in and through the city, and to repair, renew, relay and extend such pipes,

mains, conductors, fixtures, and related appurtenances, and to make all excavations necessary therefor.

(c) The board shall, and by accepting this franchise agrees that it will, upon making any excavations of the streets, avenues, alleys, public ways and public places in the city, restore the paving or other surface at the point of such excavations in substantially the same condition as before such work was done, all as promptly as may be practicable and within a reasonable length of time thereafter.

(d) The rights, privileges, franchise and authority hereby granted may be exercised by the board or any successors and assigns of the board, and may be mortgaged or conveyed in trust as security for any bonds or other obligations of the board, or of its successors and assigns, all subject nevertheless to the conditions and obligations herein contained.

(e) The rights, privileges, consent and franchise herein granted shall begin at the effective date of the ordinance from which this section is derived.

(Code 1979, § 19-4; Ord. No. 12-1-65A, 12-1-1965)

Editor's note— For such Act, referenced in subsection (a) of this section, see Code of Ala. 1975, § 11-50-310 et seq.

Sec. 48-4. - Sewer rates and tap fee.

Sewer rates, fees and charges, and relevant criteria applicable to such rates, fees and charges shall be as established from time to time.

Chapter 50 - VEGETATION

ARTICLE I. - IN GENERAL

Secs. 50-1—50-18. - Reserved.

ARTICLE II. - TREES

Sec. 50-19. - Definitions.

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

Park trees means trees, shrubs, bushes and all other woody vegetation in public parks having individual names, and all areas owned by the city, or to which the public has free access as a park.

Street trees means trees, shrubs, bushes and all other woody vegetation on land lying between property lines on either side of all streets, avenues or ways within the city.

(Code 1979, § 20-21; Ord. No. 3-20-90, § 1, 4-20-1990)

Sec. 50-20. - City tree board—Created; established.

There is hereby created and established a city tree board for the city, which shall consist of five members, citizens and residents of this city, who shall be appointed by the mayor with the approval of the council.

(Code 1979, § 20-22; Ord. No. 3-20-90, § 2, 4-20-1990)

Sec. 50-21. - Same—Term of office.

The term of the five persons to be appointed by the mayor shall be three years. In the event that a vacancy shall occur during the term of any member, his successor shall be appointed for the unexpired portion of the term.

(Code 1979, § 20-23; Ord. No. 3-20-90, § 3, 4-20-1990)

Sec. 50-22. - Same—Compensation.

Members of the board shall serve without compensation.

(Code 1979, § 20-24; Ord. No. 3-20-90, § 4, 4-20-1990)

Sec. 50-23. - Same—Duties and responsibilities.

It shall be the responsibility of the board to study, investigate, counsel and develop and/or update annually, and administer a written plan for the care, preservation, pruning, planting, replanting, removal or disposition of trees and shrubs in parks, along streets and in other public areas. Such plan will be presented annually to the city council, and upon their acceptance and approval shall constitute the official comprehensive city tree plan for the city. The board, when requested by the city council, shall consider, investigate, make findings, report and recommend upon any special matter of question coming within the scope of its work.

(Code 1979, § 20-25; Ord. No. 3-20-90, § 5, 4-20-1990)

Sec. 50-24. - Same—Election of officers; rules and regulations; journal of proceedings; quorum.

The board shall choose its own officers, make its own rules and regulations and keep a journal of its proceedings. A majority of the members shall be a quorum for the transaction of business.

(Code 1979, § 20-26; Ord. No. 3-20-90, § 6, 4-20-1990)

Sec. 50-25. - Street tree species to be planted.

The following list constitutes the official street tree species for the city. No species other than those included in this list may be planted as street trees without written permission of the city tree board:

(1) *Small trees.* Apricot, flowering crabapple, golden rain tree, hawthorn, bradford pear, redbud, soapberry, Japanese lilac tree, flowering peach, purpleleaf plum, and serviceberry.

(2) *Medium trees.* Green ash, hackberry, honeylocust (thornless), linden or basswood, red mulberry (fruitless, male), English oak, red oak, Japanese pagodatree, pecan, river birch, osageorange (thornless, male), persimmon, white poplar, and sassafras.

(3) *Large trees.* Kentucky coffeetree, silver maple, sugar maple, bur oak, sycamore, London plantree sycamore, and cottonwood (cottonless, male).

(Code 1979, § 20-27; Ord. No. 3-20-90, § 7, 4-20-1990)

Sec. 50-26. - Spacing.

The spacing of street trees will be in accordance with the three species size classes listed in section 50-25, and no trees may be planted closer together than the following:

(1) Small trees: 30 feet.

(2) Medium trees: 40 feet.

(3) Large trees: 50 feet; except in special plantings designed or approved by a landscape architect.

(Code 1979, § 20-28; Ord. No. 3-20-90, § 8, 4-20-1990)

Sec. 50-27. - Distance from curb and sidewalk.

The distance trees may be planted from curbs or curblines and sidewalks will be in accordance with the three species size classes listed in section 50-25, and no trees may be planted closer to any curb or sidewalk than the following:

(1) Small trees: Two feet.

(2) Medium trees: Three feet.

(3) Large trees: Four feet.

(Code 1979, § 20-29; Ord. No. 3-20-90, § 9, 4-20-1990)

Sec. 50-28. - Distance from street corners and fireplugs.

No street tree shall be planted closer than 35 feet of any street corner, measured from the point of nearest intersecting curbs or curblines. No street tree shall be planted closer than ten feet of any fireplug.

(Code 1979, § 20-30; Ord. No. 3-20-90, § 10, 4-20-1990)

Sec. 50-29. - Utilities.

No street tree other than those species listed as small trees in section 50-25 may be planted under or within ten lateral feet of any overhead utility wire, or over or within five lateral feet of any underground water line, sewer line, transmission line or other utility.

(Code 1979, § 20-31; Ord. No. 3-20-90, § 11, 4-20-1990)

Sec. 50-30. - Public tree care.

(a) The city shall have the right to plant, prune, maintain and remove trees, plants and shrubs within the lines of all streets, alleys, avenues, lanes, squares and public grounds, as may be necessary to ensure public safety or to preserve or enhance the symmetry and beauty of such public grounds.

(b) The city tree board may remove, or cause or order to be removed, any tree or part thereof which is in an unsafe condition or which, by reason of its nature, is injurious to sewers, electric power lines, gas lines, water lines or other public improvements, or is affected with any injurious fungus, insect or other pest. This section does not prohibit the planting of street trees by adjacent property owners, providing that the selection and location of said trees is in accordance with sections 50-25 through 50-29.

(Code 1979, § 20-32; Ord. No. 3-20-90, § 12, 4-20-1990)

Sec. 50-31. - Tree topping.

It shall be unlawful as a normal practice for any person, firm or city department to top any street tree, park tree, or other tree on public property. Topping is defined as the severe cutting back of limbs to stubs larger than three inches in diameter within the tree's crown to such a degree so as to remove the normal canopy and disfigure the tree. Trees severely damaged by storms or other causes, or certain trees under utility wires or other obstructions where other pruning practices are impractical, may be exempted from this article at the determination of the city tree board.

(Code 1979, § 20-33; Ord. No. 3-20-90, § 13, 4-20-1990)

Sec. 50-32. - Pruning; corner clearance.

Every owner of any tree overhanging any street or right-of-way within the city shall prune the branches so that such branches shall not obstruct the light from any street lamp or obstruct the view of any street intersection and so that there shall be a clear space of eight feet above the surface of the street or sidewalk. Said owners shall remove all dead, diseased or dangerous trees, or broken or decayed limbs which constitute a menace to the safety of the public. The city shall have the right to prune any tree or shrub on private property when it interferes with the proper spread of light along the street from a street light or interferes with visibility of any traffic control device or sign.

(Code 1979, § 20-34; Ord. No. 3-20-90, § 14, 4-20-1990)

Sec. 50-33. - Dead or diseased tree removal on private property.

The city shall have the right to cause the removal of any dead or diseased trees on private property within the city, when such trees constitute a hazard to life and property or harbor insects or disease which constitute a potential threat to other trees within the city. The city tree board will notify in writing the owners of such trees. Removal shall be done by said owners at their own expense within 60 days after the date of service of notice. In the event of failure of owners to comply with such provisions, the city shall have the authority to remove such trees and charge the cost of removal on the owners' property tax notice.

(Code 1979, § 20-35; Ord. No. 3-20-90, § 15, 4-20-1990)

Sec. 50-34. - Removal of stumps.

All stumps of street and park trees shall be removed below the surface of the ground so that the top of the stump shall not project above the surface of the ground.

(Code 1979, § 20-36; Ord. No. 3-20-90, § 16, 4-20-1990)

Sec. 50-35. - Interference with city tree board.

It shall be unlawful for any person to prevent, delay or interfere with the city tree board, or any of its agents, while engaging in and about the planting, cultivating, mulching, pruning, straying or removing of any street trees, park trees or trees on private grounds, as authorized in this article.

(Code 1979, § 20-37; Ord. No. 3-20-90, § 17, 4-20-1990)

Sec. 50-36. - Arborists license and bond.

It shall be unlawful for any person or firm to engage in the business or occupation of pruning, treating or removing street or park trees within the city without first applying for and procuring a license. The license fee shall be $25.00 annually, in advance; provided, however, that no license shall be required of any public service company or city employee doing such work in the pursuit of their public service endeavors. Before any license shall be issued, each applicant shall first file evidence of possession of liability insurance in the minimum amounts of $50,000.00 for bodily injury and $100,000.00 property damage indemnifying the city or any person injured or damaged resulting from the pursuit of such endeavors as herein described.

(Code 1979, § 20-38; Ord. No. 3-20-90, § 18, 4-20-1990)

Sec. 50-37. - Review by city council.

The city council shall have the right to review the conduct, acts and decisions of the city tree board. Any person may appeal from any ruling or order of the city tree board to the city council who may hear the matter and make a final decision.

(Code 1979, § 20-39; Ord. No. 3-20-90, § 19, 4-20-1990)

Sec. 50-38. - Penalty.

Any person violating any provision of this article shall be, upon conviction or a plea of guilty, subject to a fine not to exceed $500.00.

(Code 1979, § 20-40; Ord. No. 3-20-90, § 20, 4-20-1990)

Appendix A - ZONING

Click here to view Appendix A - Zoning.

Appendix B - MAXIMUM FEES IMPOSED BY WRECKERS ON ROTATION LIST

A.	Normal service—Two-axle vehicle (10,000 lbs to less than 26,000 lbs)	$175.00
B.	Normal service—Vehicle with more than two (2) axles	$275.00
	Note: Normal service includes cleaning of debris from roadway, pick up and towing of vehicle to any destination from the scene of the call and disconnect	
C.	Oil-dry	included in normal service
D.	Righting of two-axle vehicle under 10,000 lbs	$50.00
E.	Righting vehicle in excess of 10,000 lbs or with more than two (2) axles not to exceed 26,000 lbs, per hour	$150.00
F.	Righting vehicle in excess of 26,000 lbs, per hour	$275.00

G.	No keys to vehicle	$50.00
H.	Dolly use	$35.00
I.	Additional cleanup (No charge for 1st 15 minutes) afterwards (per 15 minutes)	$20.00
J.	Recovery	$80.00 per hr
K.	Mileage (over 5 miles)	$2.50
L.	Vehicle storage rates:	
	First 24 hours	No charge
	Second 24 hours	$25.00
	Each day thereafter	$25.00
M.	After hours vehicle release	$35.00
N.	A copy of tow bill will be given to officer at scene	

Note: The rates and charges as established herein do not regulate consensual wrecker services, being those situations where the vehicle's owner expressly requests towing or wrecker services by a specific towing company and enters into a private contract with the towing or wrecker company for services.

(Ord. No. 11-03-09, 11-17-2009)

Appendix C - SCHEDULE OF FEES AND CLASSIFICATIONS FOR BUSINESS LICENSES

Section 1. - License classifications.

Code	2002 NAICS Titles/Business License Codes	Schedule
111998	Farming and crop production—agriculture, crop production, nursery, fruit, growers	F

112990	Animal production—dairy, cattle, ranching, sheep, chickens, poultry	F
113110	Forestry—logging, forestry, timber track operations, timber management	F
114119	Fishing and hunting—hunting and trapping, finfish, shellfish, supplies	F
115114	Agriculture support—cotton gins, farm management, post-harvest activities	F
211111	Oil and gas extraction—natural gas liquid extraction, crude extraction	F
212299	Mining—(except for oil and gas) all related mining activities	F
213112	Mining support services—for oil and gas mining activities, oil/gas wells	F
221208	Utilities—electric power or light company	G
221118	Utilities—natural gas company	G
221310	Utilities—water, sewage treatment, steam, and other	G
236043	Contractors—general contractors, comm. bldg, residential, subdivisions	F6
237990	Contractors—heavy construction, highway, bridge, street, water, sewer	F6
238004	Contractors—specialty trade—plumbing, heating and air conditioning	F3
238193	Contractors—specialty trade—painting and wall covering	F1
238090	Contractors—specialty trade—electrical contractors	F3
238041	Contractors—specialty trade—masonry and stone contractors	F3
238310	Contractors—specialty trade—drywall, acoustical & insulation	F1
238340	Contractors—specialty trade—tile, marble, terrazzo & mosaic	F
238054	Contractors—specialty trade—carpentry contractors	F3

238102	Contractors—specialty trade—floor coverings/all types	F1
238003	Contractors—specialty trade—roofing, siding & sheet metal	F3
238067	Contractors—specialty trade—concrete contractors	F4
238264	Contractors—specialty trade—water well drilling & irrigation	F3
238120	Contractors—specialty trade—structural steel erection	F3
238150	Contractors—specialty trade—glass and glazing contractors	F2
238910	Contractors—specialty trade—excavation and site development	F1
238267	Contractors—specialty trade—wrecking and demolition	F2
238290	Contractors—specialty trade—building equipment & mechanical install	F1
238130	Contractors—specialty trades contractors—non-general & non-heavy	F3
311991	Food mfg—meat, seafood, grain, fruit, dairy, animal, poultry processing	F
312212	Beverage mfg—all types of soft drinks, bottled water, breweries, ice	F
312121	Beer—off premises—state regulated through ABC	H
312122	Beer—on premises—state regulated through ABC	H
312131	Wine—state regulated through ABC	H
312132	Beer and wine—wholesale distributor	H
312141	Alcohol—state regulated through ABC	H
313112	Textile mfg—fabric, yarn, carpet, canvas, rope, twine, fabric mills	F
314129	Other mfg—mill operations not covered in 313, rugs, linen, curtains	F

315999	Apparel mfg—women, men, children, hosiery, lingerie, outerwear, accessories	F
316993	Leather and allied products mfg—shoes, luggage, handbag, related products, all footwear	F
321999	Wood mfg—sawmills, wood preservation, veneer, trusses, millwork	F
322229	Paper mfg—pulp, paper, converted products, stationary, tubes, cores	F
323185	Printing—screen, quick, digital, books, lithographic, handbills, comm.	A
324199	Petroleum and coal mfg—asphalt, grease, roofing, paving products	F
325998	Chemical mfg—of fertilizer, wood, pesticide, paint, soap and resin	F
326291	Plastic & rubber mfg—tires, pipe, hoses, belts, bottles, sheet, wrap, film	F
327331	Nonmetallic mfg—clay, glass, cement, lime, pottery, ceramic, brick, tile	F
331521	Primary metal mfg—iron, steel, aluminum, wire, copper foundries	F
332151	Metal fabrication cutlery, structural, ornamental, machine shops	F
333990	Machinery mfg—office machinery, industrial, engines, farm, HVAC	F
334419	Computer & electronic mfg—audio, video, circuit boards, peripherals	F
335211	Appliance mfg—small appliance, lighting, electrical, battery, freezer	F
336112	Transportation mfg—mfg auto, truck, trailer, motor home, boat, ship and motorcycle	F
337129	Furniture mfg cabinets, office, household, beds, kitchen	F
339999	Miscellaneous mfg—misc. manufacturing, medical, dental, jewelry, sporting goods, toys, signs, all other	F2

421990	Wholesale trade—durable, vehicle, machinery, equipment, furniture	A
422114	Wholesale trade—non-durable, wholesale gasoline distributor	A
422990	Wholesale trade—non-durable, paper, apparel, grocery, beverages, dairy	A
441310	Motor vehicle parts and accessories—auto, motorcycles, boats, parts and accessories	A
441021	Motor vehicle—new and/or used automobiles, motorcycles, boats, etc.—dealership and lots	D
442110	Furniture—furniture, home furnishings, stores, floor coverings, window	A
443112	Electronic & appliance store—household, radio, television, computers	A
444130	Building materials and gardening equipment dealers—hardware, paint, home centers, wallpaper, nursery	A
445120	Food & beverage stores—grocery, convenience store, markets	A
445310	Package stores—selling beer, wine and liquor plus general mdse	A
446110	Health and personal care stores—drug stores, pharmacy, cosmetic, optical, health food	A
447115	Gasoline retail—selling gasoline with or without convenience stores	T
448130	Clothing & accessories—men, women, children, infant, shoe, jewelry	A
451110	Sporting goods & hobbies—toy, fish, gun books, games	A
452990	General merchandise stores—department, warehouse clubs, superstores	A
453310	Used merchandise stores—books, miscellaneous, consignment, flea market	E
453220	Miscellaneous retailers—florist, gift, novelty, pet, art, and tobacco	A

454210	Non-store retailers—vending machine operators, direct selling, mail order	F2
454391	Non-store retailer—peddlers license/local peddler	I
481111	Air transportation—airline tickets, shipping, freight, charters service	C
482110	Rail transportation—transportation, ticket office, state regulated	11-51-124
483212	Water transportation—coastal, freight forwarders, inland, passenger	C
484183	Truck transportation—local, long-distance, freight, moving and storage	F3
484230	Truck transportation—terminal—state regulated	37-3-33
485113	Passenger transportation—charter and other vehicle transit services	C
485016	Passenger transportation—bus terminals state regulated	37-3-33
485022	Passenger transportation—buses, taxi cabs, limousine service, buggy or charters	J
487990	Sightseeing transportation—scenic and sightseeing, land, air, water, and special trans	F
492110	Courier—couriers and local messengers, services, local delivery services	F
493262	Warehousing and storage—distribution, household, refrigerated, special	T
511110	Publishing industries except internet—newspaper, book, periodical, databases, software	C
512245	Motion pictures—theatres, videos, recording, drive-ins, sound studios	C
515211	Broadcasting—radio and television stations	C
517242	Telecommunications—telephone local per 11-51-128	K

517320	Telecommunications—telephone long distance per 11-51-128	K
517212	Telecommunications—cellular and other wireless, paging	K
517315	Telecommunications—resellers of service	K
519190	Information services and data processing—providing, storing processing access to information	F3
522028	Bank main office—not branch location or ATM	U
522029	Bank branch or ATM—not main office of bank	U
422030	Savings and loans—not branch location or ATM	U
422031	S&L branch or ATM—not main office of S&L	U
522194	Pawn shop—whether title pawn or merchandise	A
522390	Credit services—companies and activities related to credit and mediation	C
523999	Securities, commodity brokerage, portfolio, investment, other financial services	A
524131	Insurance company and/or it agents—casualty, fire, and/or marine premiums 120/123	11-51-120/123
524128	Insurance company and/or its agents—health, allied and all other premiums 120/123	11-51-120/123
524210	Agent office—administration of third parties, pension funds, annuities, etc	C
525990	Funds, trusts, other financial agencies—funds, plans, and/or programs organized to pool securities or other assets for others, other than the Alabama municipal Funding Corp.	C
531213	Real estate—offices, agents, brokers, management, appraisers	F4

532018	Rental and leasing—auto, truck, trailer, RV, all tangible property	F3
532230	Rental and leasing—movie and video rental	E
541110	Attorney/lawyers—individual and/or firm professional license	C
541211	Accountant/CPAs—individual and/or firm professional license	C
541310	Architect—individual and/or firm professional license	C
541111	Physician—individual and/or firm professional license	C
541210	Dentist—individual and/or firm professional license	C
541311	Chiropractor—individual and/or firm professional license	C
541320	Optometrist—individual and/or firm professional license	C
541330	Engineer—individual and/or firm professional license	C
541360	Surveyor—individual and/or firm professional license	C
541511	Computer programmer—individual and/or professional firm license	C
541198	Photographer—studios, portrait, commercial, services	C
541207	Veterinarian—individual and/or firm professional license	C
541990	Professional services not elsewhere classified—scientific, technical	E
551990	Management companies—offices, enterprises, regional, corporate	F2
561244	Exterminating services—exterminating company and its services	F3
561136	Janitorial firm—janitorial cleaning services—individual or firm	F1
561142	Landscaping services	F1

561190	Administrative services—answering, employment, office, sec., travel	F1
562223	Waste management—companies, trucks, septic tanks, landfill, services	F3
611699	Educational services—technical, computer, sports, services, business	C
621491	HMO—medical centers and services	C
621498	Outpatient care centers—all other types of services	C
621910	Ambulance—ambulance company and/or services	D
622122	Hospitals—surgical, substance abuse, psychiatric, general care, special	C
623110	Nursing care—residential care facility, day care, assisted living	C
623312	Nursing home—care for elderly and continuing care facilities	C
624110	Social assistance—shelters, vocational, child care, abuse, emergency	F21
711310	Arts and sports—dance, musical, teams, tracks, promoters, agents	F1
711320	Special events—promoter or activity—see schedule for rates	L
712110	Museums—museums and historical sites, zoos, botanical gardens, parks	C
713012	Amusement—arcades, golf clubs, marinas, fitness, bowling centers	B
721123	Accommodations—hotels, motels and similar facilities	B
721250	Accommodations—bed and breakfast inns and services	E
721252	Accommodations—trailer parks, RV parks, and travel parks	T
721310	Accommodations—rooming houses and boarding houses	T
722216	Restaurant—full service restaurant facility	B

722027	Restaurant—limited facility or service	B
722320	Caterers—and/or mobile food services	B
722410	Drinking establishment—club, lounge, bar or other	B
811019	Repairs and maintenance—auto, paint/body, carwash, other vehicular	F2
811215	Repairs and maintenance—all electronic equipment	F1
811088	Repairs and maintenance—all appliances, home & garden equipment	F1
812199	Personal services—hair, skin, barber, beautician, diet, nail, tanning, funerals	F3
812990	Fortune teller or clairvoyant—individual reader license	M
910261	Category for number of—vending machines for all types vending	N
910034	Category for number of—pool tables	O
910003	Category for number of—amusement devices and/or games	P
920005	Category for number of—employees as a basis for calculating license	R
930006	Category for number of square feet used for calculating license amount	S
999111	Unclassified miscellaneous business services not elsewhere classified	F
999222	Unclassified miscellaneous personal services not elsewhere classified	F
923001	Administration of human resource programs	F
924002	Administration of environmental quality programs	F
925003	Administration of housing, urban, comm.	F
926004	Administration of economic programs	F

927005	Space, research, and technology	F
928006	National Security and international affairs	F

(Ord. No. 12-04-07, § 22, 12-18-2007)

Section 2. - License fee schedules.

Schedule "A"

If gross receipts are:

More than	but	Less than	
0		24,999	$100.00
25,000		49,999	$150.00
50,000		99,999	$250.00
100,000		199,999	$350.00
200,000		299,999	$450.00
300,000		399,999	$550.00
400,000		499,999	$650.00
500,000		599,999	$750.00
600,000		699,999	$850.00
700,000		799,999	$950.00
800,000		899,999	$1,000.00
900,000		and above	$1,250.00

Schedule "B"

If gross receipts are:

More than	but	Less than	
0		49,999	$100.00
50,000		74,999	$150.00
75,000		99,999	$200.00
100,000		199,999	$250.00
200,000		299,999	$300.00
300,000		399,999	$350.00
400,000		499,999	$400.00
500,000		599,999	$500.00
600,000		699,999	$600.00
700,000		799,999	$700.00
800,000		899,999	$800.00
900,000		999,999	$900.00
1,000,000		and above	$1,000.00

Schedule "C"

If gross receipts are:

More than	but	Less than	
0		49,999	$100.00
50,000		99,999	$150.00
100,000		199,999	$250.00
200,000		299,999	$300.00
300,000		399,999	$350.00
400,000		499,999	$400.00
500,000		599,999	$450.00
600,000		699,999	$500.00
700,000		799,999	$550.00
800,000		899,999	$600.00
900,000		999,999	$650.00
1,000,000		and above	$700.00

Schedule "D"

If gross receipts are:

More than	but	Less than	
0		99,999	$100.00
100,000		199,999	$200.00
200,000		299,999	$300.00

300,000		399,999	$400.00
400,000		499,999	$500.00
500,000		599,999	$600.00
600,000		699,999	$700.00
700,000		799,999	$800.00
800,000		and above	$1,000.00

Schedule "E"

If gross receipts are:

More than	but	Less than	
0		9,999	$50.00
10,000		19,999	$75.00
20,000		29,999	$100.00
30,000		39,999	$125.00
40,000		49,999	$150.00
50,000		and above	$200.00

Schedule "F"—Flat Rate

1.	$50.00
2.	$75.00

3.	$100.00
4.	$150.00
5.	$200.00
6.	$250.00
7.	$300.00
8.	$350.00
9.	$400.00
10.	$450.00
11.	$500.00
12.	$550.00
13.	$600.00
14.	$650.00
15.	$700.00
16.	$750.00
17.	$800.00
18.	$850.00
19.	$900.00
20.	$1,000.00
21.	$25.00

Schedule "G"—Utilities

Amount of license is state regulated. See Section 11-51-129 of the Code of Alabama 1975. For those utilities covered, the license shall not exceed an amount equal to three percent of the gross receipts of the business transacted in the municipality for the previous year.

Schedule "H"—Beer, Wine and Liquor

State of Alabama Code	Classification	Amount	Licensing Notes
040 (Beer On/Off Premises)	312121	$75.00	
050 (Beer Off Premises Only)	312122	$50.00	
060 (Table Wine On/Off Premises)	312131	$75.00	
070 (Table Wine Off Premises Only)	312131	$75.00	
010 (Lounge Retail Liquor Class I)	312121	$75.00	All three codes are part of the package plus the business license code.
	312141	$650.00	
	312131	$75.00	
011 (Package Store Liquor Class II)	312122	$75.00	All three codes are part of the package plus the business license code.
	312141	$650.00	
	312131	$75.00	
020 (Restaurant Retail Liquor)	312121	$75.00	All three codes are part of the package plus the business license code.

	312141	$650.00	
	312131	$75.00	
032 (Club Liquor Class II)	312121	$75.00	All three codes are part of the package plus the business license code.
	312141	$650.00	
	313131	$75.00	
110 (Wholesale Table Wine & Beer)	312132	$375.00	Distributors License

Schedule "I"—Peddlers

Daily Rate	Issued for single day sales activity	$10.00
Weekly Rate	Issued for week long sales activity	$25.00
Monthly Rate	Issued for month long sales activity	$50.00
Yearly Rate	Issued for annual sales activity	$100.00

Schedule "J"—Taxi Cabs and Limousines

In addition to the license thereto, there shall be a decal affixed to each taxi cab or limousine and the cost of said decals shall be according to the following table:

1 taxi cab or limousine	$50.00 per decal
All taxi cabs or limousines over 1	$25.00 per decal

Schedule "K"—Telephones and Telecommunications

[Each city or town must apply Code of Alabama 11-51-128 for telephones and establish other rates and/or schedules for various other telecommunications businesses]

Schedule "L"—Special Events Licenses

[Each city or town has to insert their own schedule for handling special events and all those activities that fall under the category of special events, functions or activities]

Schedule "M"—Fortune Tellers

Annual license rate is $1,000.00 and rate is reduced by $25.00 each year until such time as the annual rate reaches $500.00 and that becomes the minimum rate thereafter.

Schedule "N"—Vending Machines

In addition to the license thereto, there shall be a decal affixed to each machine and the cost of said decals shall be according to the following table:

1 to 5 machines vending any type merchandise or product	$20.00 per decal
6 to 10 machines vending any type merchandise or product	$10.00 per decal
All over 10 machines vending any type merchandise or product	$5.00 per decal

Schedule "O"—Billiard and/or Pool Tables

In addition to the license thereto, there shall be a decal affixed to each machine and the cost of said decals shall be according to the following table:

For 1 to 2 billiard or pool tables	$50.00 per decal
All billiard or pool tables over 2	$25.00 per decal

Schedule "P"—Amusement Devices

In addition to the license thereto, there shall be a decal affixed to each machine and the cost of said decals shall be according to the following table:

For the first 10 machines	$25.00 per decal
All machines over 10	$10.00 per decal

Schedule "Q"—Buses, Trucks and Other Equipment

In addition to the license thereto, there shall be a decal affixed to each piece of equipment and the cost of said decals shall be according to the following table:

From 1 to 2 buses, trucks or other equipment	$50.00 per decal
From 3 to 5 buses, trucks or other equipment	$25.00 per decal
Over 5 buses, trucks or other equipment	$10.00 per decal

Schedule "R"—Number of Employees

R-1	Where personnel are from 1 to 2 people	$100.00
R-2	Where personnel are from 3 to 5 people	$250.00
R-3	Where personnel are from 6 to 10 people	$400.00
R-4	Where personnel are from 11 to 20 people	$550.00
R-5	Where personnel are from 21 to 50 people	$700.00
R-6	Where personnel are from 51 to 75 people	$850.00
R-7	Where personnel is from 76 to 100 people	$1,000.00
R-8	Personnel over 100 to be 1,000.00 + 50.00 per person over 100.	

Schedule "S"—Square Feet

S-1	From zero	to	5,000 Square Feet	$100.00
S-2	From 5,000	to	10,000 Square Feet	$200.00

S-3	From 10,000	to	20,000 Square Feet	$300.00
S-4	From 20,000	to	30,000 Square Feet	$400.00
S-5	From 30,000	to	40,000 Square Feet	$500.00
S-6	From 40,000	to	50,000 Square Feet	$600.00
S-7	From 50,000	to	60,000 Square Feet	$700.00
S-8	From 60,000	to	70,000 Square Feet	$800.00
S-9	From 70,000	to	80,000 Square Feet	$900.00
S-10	From 80,000	to	90,000 Square Feet	$1,000.00
S-11	From 90,000	to	100,000 Square Feet	$1,200.00
S-16	From 100,000 up—plus $0.01 per square foot over 100,000			$1,200.00

Schedule "T"—Per Unit

1.	$50 first unit	$2 each additional unit
2.	$50 first unit	$4 each additional unit
3.	$50 first unit	$5 each additional unit
4.	$25 first unit	$10 each additional unit
5.	$25 first unit	$5 each additional unit
6.	$25 first unit	$2 each additional unit
7.	$10 first unit	$5 each additional unit

8.	$10 first unit	$2 each additional unit

Schedule "U"—Banks/Savings and Loans

Bank ATM Location	$10.00
Bank Branch Location	$10.00
Bank Main Office Facility	$125.00
Savings & Loan ATM Location	$10.00
Savings & Loan Branch Location	$10.00
Savings & Loan Mail Office Facility	$125.00

Schedule "V"—Delivery License

The rate for the delivery license is established in section 12-42 and is:	$100.00

(Ord. No. 12-04-07, § 23, 12-18-2007)

CODE COMPARATIVE TABLE - 1979 CODE

This table gives the location within this Code of those sections of the 1979 Code which are included herein. Sections of the 1979 Code not listed herein have been omitted as repealed, superseded, obsolete or not of a general and permanent nature. For the location of ordinances adopted subsequent thereto, see the table immediately following this table.

1979 Code Section	Section this Code

1-1	1-1
1-2	1-2
1-3	1-3
1-4	1-4
1-5	1-5
1-6	1-6
1-7	1-7
1-8	1-8
1-9	1-9
1-10	1-10
2-1	2-1
2-2	2-2
2-3	2-3
2-4	2-4
2-5	2-5
2-6	2-6
2-7	2-17
2-8	2-18
2-9	2-19

2-10	2-20
2-11	2-21
2-20	2-41
2-51	2-81
2-52	2-82
2-53	2-83
2-54	2-84
2-55	2-85
2-56	2-86
2-57	2-87
2-58	2-88
2.5-21	4-19
2.5-22	4-20
2.5-23	4-21
2.5-24	4-22
2.5-25	4-23
2.5-26	4-24
2.5-27	4-25
2.5-28	4-26

2.5-29	4-27
2.5-30	4-28
2.5-31	4-29
2.5-32	4-30
2.5-33	4-31
2.5-34	4-32
2.5-35	4-33
2.5-36	4-34
2.5-37	4-35
2.5-38	4-36
2.5-39	4-37
2.5-40	4-38
2.5-41	4-39
2.5-42	4-40
2.5-43	4-41
2.5-44	4-42
2.5-45	4-43
2.5-46	4-44
2.5-47	4-45

2.5-48	4-46
2.5-49	4-47
2.5-50	4-48
2.5-51	4-49
2.5-52	4-50
2.5-53	4-51
2.5-54	4-52
2.5-55	4-53
2.5-56	4-54
3-1	6-1
3-2	6-2
3-3	6-3
3-4	6-4
3-5	6-5
3-6	6-6
3-7	6-7
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3-10	6-10

3-11	6-11
3-12	6-12
3-13	6-13
3-14	6-14
3-15	6-15
3-17	6-16
3-18	6-17
3-21	6-18
3-22	6-19
3-23	6-20
3-24	6-21
3-25	6-22
3-26	6-23
3-27	6-44
3-28	6-45
3-29	6-46
3-30	6-47
4-21	8-19
4-22	8-20

4-23	8-21
4-24	8-22
4-25	8-23
4-26	8-24
4-27	8-25
5-5	10-2
5-6	10-3
5-7	10-4
5-8	10-5
5-9	10-6
6-30	12-64
6-31	12-65
6-32	12-66
6-33	12-67
6-34	12-68
6-35	12-69
6-36	12-70
6-37	12-71
6-38	12-72

6-39	12-73
6-40	12-74
6-50	12-125
6-51	12-126
6-52	12-127
6-53	12-128
6-54	12-129
6-55	12-130
6-56	12-131
6-57	12-132
6-60	12-163
6-61	12-164
6-62	12-165
6-63	12-166
6-64	12-167
6-65	12-168
6-66	12-169
6-67	12-170
6-68	12-171

6-69	12-172
6-70	12-173
6-71	12-174
6-80	12-202
6-81	12-203
6-82	12-204
6-83	12-205
6-84	12-206
6-85	12-207
6-86	12-208
6-87	12-209
6-88	12-210
6-100	12-229
6-101	12-230
6-102	12-231
6-103	12-232
6-104	12-233
6-105	12-234
6-106	12-235

6-107	12-236
6-108	12-237
6-109	12-238
6-110	12-239
6-111	12-240
6-112	12-241
6-121	12-263
6-122	12-264
6-123	12-265
6-124	12-266
6-125	12-267
6-126	12-268
6-127	12-269
7-1	16-1
7-2	16-2
7-3	16-3
7-4	16-4
7-5	16-5
7-6	16-6

7-20	16-31
7-21	16-32
7-22	16-33
7-23	16-34
7-24	16-35
7-25	16-36
8-1	14-1
8-2	14-2
8-3	14-3
8-4	14-4
8-5	14-5
8-6	14-6
8-7	14-7
8-8	14-8
8-9	14-9
8-10	14-10
8-11	14-11
8-13	14-12
9-1	18-1

9-2	18-2
9-3	18-3
9-4	18-4
9-5	18-5
9-6	18-6
9-7	18-7
9-8	18-8
9-9	18-9
9-10	18-10
9-11	18-11
9-12	18-12
9-13	18-13
9-14	18-14
9-15	18-15
9-16	18-16
9-17	18-17
9-51	18-39
9-52	18-40
9-53	18-41

9-54	18-42
9-55	18-43
9-56	18-44
9-57	18-45
9-58	18-46
9-59	18-47
9-60	18-48
10-7	22-1
10-8	22-2
10-9	22-3
10-10	22-4
10-11	22-5
10-12	22-6
10-13	22-7
10-14	22-8
10-19	22-35
10-20	22-36
11-1	24-1
11-2	24-2

11-3	24-3
11-20	24-25
11-21	24-26
11-22	24-27
11-23	24-28
11-24	24-29
11-25	24-30
11-26	24-31
11-27	24-32
11-28	24-33
11-29	24-34
11-30	24-35
11-31	24-36
11-32	24-37
11-33	24-38
11-34	24-39
11-35	24-40
11-36	24-41
11-43	24-42

11-44	24-43
11-45	24-44
11-50	24-62
11-51	24-63
11-52	24-64
11-53	24-65
11-54	24-66
11-55	24-67
11-56	24-68
11-57	24-69
12-1	30-1
13-1	32-1
13-2	32-2
13-3	32-3
13-4	32-4
13-5	32-5
13-6	32-6
13-7	32-7
13-8	32-8

13-9	32-9
13-10	32-10
13-11	32-11
13-12	32-12
13-14	32-13
13-15	32-14
13-16	32-15
13-17	32-16
13-18	32-17
13-19	32-18
13-20	32-19
13-21	32-20
13.5-21	26-19
13.5-22	26-20
13.5-23	26-21
13.5-24	26-22
14-1	34-1
14-22	34-2
14-87	34-23

14-88	34-24
14-100	34-52
14-101	34-53
14-103	34-54
14-104	34-55
14-105	34-56
14-106	34-57
14-107	34-58
14-108	34-90
14-109	34-91
14-110	34-92
14-111	34-93
14-112	34-94
14-113	34-95
14-114	34-96
14-115	34-97
14-116	34-98
14-117	34-99
14-118	34-100

15-1	36-1
15-2	36-2
15-3	36-3
15-4	36-4
15-5	36-5
15-6	36-6
15-7	36-7
15-8	36-8
15-9	36-9
15-10	36-10
15-11	36-11
15-13	36-12
15-14	36-13
15-20	36-45
15-21	36-46
15-22	36-47
15-23	36-48
15-24	36-49
15-25	36-50

15-26	36-51
15-30	36-76
15-31	36-77
15-32	36-78
15-33	36-79
15-34	36-80
15-35	36-81
15-36	36-82
16-1	38-1
16-2	38-2
16-3	38-3
16-4	38-4
17-1	40-1
17-2	40-2
17.5-1	42-1
17.5-2	42-2
17.5-6	42-3
17.5-7	42-4
17.5-8	42-5

17.5-9	42-6
18-1	46-1
18-2	46-2
18-3	46-3
18-5	46-5
18-6	46-6
18-7	46-7
18-8	46-8
18-9	46-9
18-10	46-10
19-1	48-1
19-2	48-2
19-4	48-3
20-21	50-19
20-22	50-20
20-23	50-21
20-24	50-22
20-25	50-23
20-26	50-24

20-27	50-25
20-28	50-26
20-29	50-27
20-30	50-28
20-31	50-29
20-32	50-30
20-33	50-31
20-34	50-32
20-35	50-33
20-36	50-34
20-37	50-35
20-38	50-36
20-39	50-37
20-40	50-38

CODE COMPARATIVE TABLE - LEGISLATION

This table gives the location within this Code of those ordinances which are included herein. Ordinances not listed herein have been omitted as repealed, superseded or not of a general and permanent nature.

Title of Legislation	Date	Section	Section this Code

Ord. No. 1	10-1-1958		34-1
Ord. No. 4	4-27-1959	1	36-47
		2	36-48
		3	36-49
		4	36-49
		5	36-50
		6	36-48
		7	36-51
Ord. No. 5-11-59		3	10-1
		4	10-1
		5	10-1
Ord. of 2-20-1961	2-20-1961	1	34-24
Ord. of 2-27-1961	2-27-1961	1	16-1
		2	16-3
		3	16-4
		4	16-2
		5	16-5
		6	16-6
Res. No. 17	12-1-1961	1	48-1

Ord. No. 20	2-5-1962	2	16-31
		3	16-32
		4	16-33
		5	16-34
		6	16-35
		7	16-36
Ord. No. 20	4-2-1962	2, art. 6	18-13
		4, art. 1	18-3
		4, art. 2	18-4
		4, art. 3	18-5
		4, art. 4	18-6
		4, art. 5	18-7
		4, art. 6	18-8
		5, art. 2	18-11
		5, art. 4	18-9
		5, art. 5	18-12
		6, art. 3	18-10
Ord. No. 25	9-16-1963	1	12-163
		3	12-165

		4	12-166
		5	12-167
		6	12-168
		7	12-169
		8	12-170
		9	12-174
		10	12-172
		11	12-171
		12	12-173
Ord. No. 30	12-7-1964	1	34-1
Ord. No. 30A	12-7-1964	1	34-1
Ord. No. 32	3-15-1965	1	12-125
		2	12-126
		3	12-127
		4	12-128
		5	12-129
		6	12-131
		7	12-130
		9	12-132

Ord. No. 11-10-65	10-18-1965	5	12-68
		6	12-69
		7	12-70
		8	12-73
		9	12-65
		10	12-71
		11	12-72
		12	12-74
Ord. No. 11-23-65	11-29-1965	4	18-41
		5	18-43
		7	18-45
		8	18-46
		10	18-47
Ord. No. 12-1-65A	12-1-1965		48-3
Ord. No. 12-1-65B	12-1-1965		48-2
Ord. No. 6-6-66	6-20-1966	1	24-31
		2	24-27
		3	24-25
		-	24-36

		4	24-30
		5	24-34
		6	24-25
		9	24-37
		10	24-39
		12	24-40
		15	24-42
		16	24-32
		17	24-38
		18	24-28
		19	24-43
		20	24-41
		21	24-26
		22	24-33
		23	24-44
		25	24-29
		26	24-35
		27	24-44
		28	24-44

Ord. No. 8-18-66	9-19-1966	1	12-202
		2	12-203
		3	12-204
		4	12-206
		5	12-205
		6	12-207
		7	12-210
		8	12-208
		9	12-209
Ord. No. 10-17-66B	10-28-1966	1	22-1
		6	40-2
		7	22-5
		8	22-6
			22-7
Ord. of 10-28-1966	10-28-1966	1	1-2
Ord. of 11-28-1966	11-28-1966	1	1-8
		2	1-4
		-	1-8
		-	1-10

Ord. of 8-3-1970	8-3-1970	1	2-17
		2	2-18
		3	2-19
		4	2-20
Ord. No. 8-17-70A	8-17-1970	5	46-2
		8	46-1
Ord. No. 8-17-70B	8-17-1970	1	18-14
		2	18-15
		3	18-16
		4	18-17
Res. No. 8-2-71	8-2-1971		36-45, 36-46
Ord. No. 9-20-71	10-4-1971		40-1
Ord. No. 10-17-66D	1-17-1972	2	1-8
Ord. of 2-7-1972	2-7-1972		2-5, 2-6
Ord. No. 11-5-73A	11-5-1973	1	34-1
		2	34-1
Ord. No. 1-21-74	2-4-1974	2	12-65
Ord. No. 7-1-74	7-15-1974	1	34-52
		3	34-54

		4	34-55
		5	34-56
		6	34-57
		7	34-58
		8	34-53
Ord. of 4-4-1976	4-4-1976	1	2-1
		2	2-2
		-	2-4
		3	2-3
Res. No. 1-4-77A	1-18-1977	1	36-11
Ord. No. 1-18-77	2-1-1977	6	6-11
Ord. No. 1-18-77A	2-1-1977	2	6-18
		3-1	6-6
		3-2	6-14
		3-3	6-7
		3-4	6-8
		4	6-9
		5	6-10
		7	6-12

		9-1	6-10
		-	6-21
		9-3	6-19
		9-4	6-13
		9-5	6-22
		9-6	6-20
		10-1	6-2
		10-2	6-3
		10-3	6-4
		12	6-1
		14-2	6-16
		14-3	6-17
Ord. No. 1-18-77B	2-1-1977	4	22-4
		5	22-6
		6	22-8
		12	22-36
		13	22-2
		15	22-3
Ord. No. 1-18-77C	2-1-1977	1	32-2

		2	32-1
		3	32-3
		4	32-4
		5	32-16
		6	32-20
		7	32-17
		9	32-15
		10	32-6
		11	32-7
		12	32-8
		13	32-9
		14	32-10
		15	32-12
		17	32-13
		18	32-18
		20	32-19
		21	32-14
Ord. No. 1-8-77A	2-1-1977	13	6-15
Ord. of 2-1-1977	2-1-1977	1	6-5

		16	32-11
		19	32-5
Res. No. 2-15-77B	3-1-1977		36-10
Ord. No. 2-15-77D	3-22-1977	1	38-1
		2	38-2
		3	38-3
		4	38-4
Res. No. 3-22-77	3-22-1977	3	30-1
Ord. No. 4-5-77B	4-26-1977		18-1
Ord. No. 5-3-77B	5-17-1977	1	36-3
		2	36-4
		3	36-1
		4	36-2
		5	36-6
		6	36-9
Ord. No. 6-7-77	6-7-1977	1	36-7
Res. No. 8-16-77A	8-16-1977		36-5
Res. No. 8-16-77B	9-6-1977		36-8
Ord. No. 9-20-77	9-20-1977		6-9

Ord. No. 10-26-77	11-1-1977	1	14-1
		2	14-2
		3	14-3
		4	14-4
		5	14-5
		6	14-10
		7	14-9
		8	14-12
		9	14-11
		10	14-8
		11	14-6
		12	14-7
		13	14-7
Ord. No. 10-26-77A	11-1-1977	1	1-8
Ord. No. 10-26-77B	11-1-1977	1	1-8
Res. No. 12-13-77	12-13-1977		36-13
Ord. No. 12-6-77C	12-20-1977	4	46-2
		6	46-5
		7	46-1

Res. No. 12-6-77	12-20-1977		36-12
Ord. No. 8-15-78C	9-6-1978	1	18-1
		2	18-1
Ord. No. 3-6-79	3-20-1979	1-6	22-35
Ord. of 6-5-1979	6-5-1979	6	2-86
Ord. No. 6-5-79	6-19-1979	1	2-81
		2	2-82
		3	2-83
		4	2-85
		5	2-85
		7	2-87
		8	2-88
		9	2-84
Ord. No. 7-9-79	7-17-1979	1	6-9, 6-10
Ord. No. 12-18-79	1-8-1980	1-4	34-1
Ord. No. 4-15-80	5-6-1980	1	12-229
		2	12-229
		3	12-231
		4	12-232

		5	12-233
		6	12-234
		7	12-235
		8	12-236
		9	12-237
		10	12-238
		11	12-239
		12	12-240
		13	12-230
		14	12-241
Ord. No. 9-16-80	9-16-1980		6-7
			6-9, 6-10
			6-15
Ord. No. 10-7-80	10-7-1980	2	48-1
Ord. No. 1-6-81	1-20-1981	1	24-3
		2	24-3
Ord. No. 4-7-81	4-7-1981		46-2
Ord. No. 9-1-81	9-15-1981	1	8-19
		2	8-20

		3	8-21
		4	8-22
		5	8-23
		6	8-24
		7	8-25
Ord. No. 9-7-82	9-7-1982		6-9
Ord. No. 5-17-83	5-17-1983	5	46-2
		7	46-1
Ord. No. 7-5-83A	7-5-1983		12-126
Ord. No. 7-5-83B	7-5-1983		12-203
Ord. No. 9-6-83	9-20-1983		App. A, Art. VII, § 7.6
Ord. No. 3-6-84	3-3-1984		46-6
Ord. No. 3-20-84A	4-3-1984		34-90—34-100
Ord. No. 3-20-84B	4-17-1984		App. A, Art. III, § 2
Ord. No. 3-20-84	5-1-1984		24-65
Ord. No. 3-20-84E	6-5-1984		10-2—10-6
Ord. No. 10-1-84	10-1-1984	1	48-1
		2	48-1
		3	48-1

Ord. No. 10-30-84	11-6-1984		14-10
Ord. No. 11-20-84	12-3-1984		8-23
Ord. No. 1-8-85	1-8-1985		App. A, Art. VII, § 1
Ord. No. 1-8-85A	1-8-1985	1	42-1
		2	42-2
		6	42-3
		7	42-4
		8	42-5
		11	42-6
Ord. No. 1-8-85B	1-8-1985		App. A, Art. VII, § 1
Ord. No. 2-5-85	2-19-1985		App. A, Art. VII, § 1
Ord. No. 2-5-85A	2-19-1985		8-23
			8-25
Ord. No. 6-18-85	7-2-1985		36-8
Ord. No. 1-7-86	1-21-1986	1	46-8
Ord. No. 2-4-86	2-18-1986		36-8
Ord. No. 4-1-86	4-15-1986		12-126, 12-127
Ord. No. 4-1-86A	4-15-1986	1	12-72
Ord. No. 7-15-86	8-6-1986	1-3	2-21

Ord. No. 4-07-87	5-5-1987		6-44—6-47
Ord. No. 12-15-87	2-2-1988	1	46-9
		2	46-9
Ord. No. 2-16-88 A	2-16-1988	1	2-5
Ord. No. 2-16-88B	2-16-1988	1	2-6
Ord. No. 8-2-88	8-16-1988		2-81—2-88
Ord. No. 10-18-88	11-1-1988		6-15
Ord. No. 11-15-88	12-6-1988		46-10
Ord. No. 11-21-89A	12-5-1989		2-86
Ord. No. 3-20-90	4-20-1990	1	50-19
		2	50-20
		3	50-21
		4	50-22
		5	50-23
		6	50-24
		7	50-25
		8	50-26
		9	50-27
		10	50-28

		11	50-29
		12	50-30
		13	50-31
		14	50-32
		15	50-33
		16	50-34
		17	50-35
		18	50-36
		19	50-37
		20	50-38
Ord. No. 5-1-90	5-15-1990	1(1.01)	4-19
		1(1.02)	4-20
		2	4-21
		3(3.01)	4-23
		3(3.02)	4-24
		3(3.03)	4-25
		3(3.04)	4-26
		3(3.05)	4-27
		3(3.06)	4-28

		3(3.07)	4-29
		3(3.08)	4-30
		3	4-22
		4(4.01)	4-31
		4(4.02)	4-32
		4(4.03)	4-33
		4(4.04)	4-34
		5(5.01)	4-35
		6(6.01)	4-36
		6(6.02)	4-37
		6(6.03)	4-38
		7(7.01)	4-39
		7(7.02)	4-40
		7(7.03)	4-41
		7(7.04)	4-42
		8(8.01)	4-43
		8(8.02)	4-44
		8(8.03)	4-45
		8(8.04)	4-46

		8(8.05)	4-47
		8(8.06)	4-48
		8(8.07)	4-49
		8(8.08)	4-50
		8(8.09)	4-51
		8(8.10)	4-52
		8(8.11)	4-53
		9(9.01)	4-54
Ord. No. 8-21-90	9-4-1990		24-2
Ord. No. 1-15-90	2-5-1991		12-267
Ord. No. 1-15-91	2-5-1991		12-263—12-266
			12-268
	2-15-1991		12-269
Ord. No. 10-01-91	10-1-1991		46-7
Ord. No. 02-04-92	1-18-1992	6	12-287
	2-18-1992	2	12-288
		3	12-289
		4	12-290
		5	12-291

		6	12-292
Ord. No. 06-03-92	6-3-1992	1	2-120
		2	2-120
		3	2-120
		4	2-120
Ord. No. 05-19-92	6-16-1992	1	34-129
		3	34-130
		4	34-131
		5	34-132
		6	34-133
		7	34-134
Ord. No. 07-21-92A	7-21-1992	1	16-61
		2	16-62
		3	16-63
Ord. No. 12-15-92			34-2
Ord. No. 07-06-93	7-20-1993		12-164
Ord. No. 05-03-94	5-17-1994		4-33
Ord. No. 12-06-94	12-20-1994	1	22-61
		2	22-62

		3	22-63
		4	22-64
		5	22-65
		6	22-66
		7	22-67
		8	22-68
		10	22-70
Ord. No. 07-05-95	7-18-1995	7	46-1
		8	46-7
Ord. No. 09-05-95	9-19-1995		46-7
Ord. No. 12-05-95	12-19-1995		22-69
Ord. No. 2-6-96	2-20-1996		38-1
Ord. No. 2-6-96B	2-20-1996		App. A, Art. III, § 2
Ord. No. 03-19-96	4-2-1996	1	28-19
		2	28-20
		3	28-21
		4	28-22
		5	28-23
		6	28-24

		7	28-25
		8	28-26
		9	28-27
		10	28-28
		12	28-29
Ord. No. 02-04-97	2-18-1997		46-6
Ord. No. 06-17-97	6-17-1997		14-10
Ord. No. 10-07-97	10-7-1997		12-67
Ord. No. 11-04-97	11-4-1997		12-164
			12-293
Ord. No. 11-17-98	11-17-1998		4-31
Ord. No. 11-04-98a	2-2-1999		10-1
Ord. No. 05-16-00A	5-16-2000	1	46-4
Ord. No. 08-20-02	8-20-2002		24-2
Ord. No. 01-21-03	2-4-2003	1	10-31
		2	10-31
		3	10-31
		4	10-31
		5	10-31

		6	10-31
		7	10-31
		8	10-31
		9	10-31
		10	10-31
		11	10-31
		12	10-32
		13	10-33
		14	10-34
Ord. No. 07-05-95	7-18-2005	1-4	46-3
		5	46-2
		6	46-3
Ord. No. 08-15-06	9-5-2006	1	24-97
		2	24-98
		3	24-99
		4	24-100
		5	24-101
		6	24-102
		7	24-103

		8	24-104
		9	24-105
		10	24-106
		11	24-107
		12	24-108
		13	24-109
		14	24-110
		15	24-111
Ord. No. 11-07-06	11-21-2006	1	12-1
Ord. No. 07-10-07	7-24-2007	1	12-75
		2	12-75
Ord. No. 10-16-07A	11-6-2007	2	14-46
		3	14-47
		4	14-48
		5	14-49
		6	14-50
		7	14-51
		8	14-52
		9	14-53

		10	14-54
		11	14-55
		12	14-45
		-	14-56
Ord. No. 12-04-07	12-18-2007	1	12-21
		2	12-22
		3	12-23
		4	12-24
		5	12-25
		6	12-26
		7	12-27
		8	12-28
		9	12-29
		10	12-30
		11	12-31
		12	12-32
		13	12-33
		14	12-34
		15	12-35

		16	12-36
		17	12-37
		18	12-38
		19	12-39
		20	12-40
		21	12-41
		22	App. C, § 1
		23	App. C, § 2
		24	12-42
		25	12-43
Ord. No. 03-04-08	3-18-2008	1	46-39—46-44
Ord. No. 10-16-07	5-27-2008	1	12-64
		2	12-65
		4	12-96
		5	12-97
		6	12-98
Ord. No. 10-17-07	5-27-2008	3	12-66
Ord. No. 11-03-09	11-17-2009		46-62—46-72
			App. B

Ord. No. 01-05-10	1-19-2010	1	8-54
		2	8-55
		3	8-56
Ord. No. 06-19-12	6-19-2012	1	12-76
		2	12-76
Ord. No. 11-5-12	11-5-2012	2	2-41
		3	2-42
		4	2-43
		5	2-41
		6	2-47
		7	2-49
		8	2-50
		9	2-51
		10	2-52
		11	2-53
		12	2-54
		13	2-55
		14	2-56
		15	2-57

		16	2-44
		17	2-61
		18	2-59
		19	2-60
		20	2-60
		21	2-48
		23	2-45
		24	2-58
		25	2-46
Ord. No. 04-12-14	4-15-2014	1-5	34-23
Ord. No. 5-20-14	5-20-2014	1	44-19
		2	44-20
		3	44-21
		4	44-22
		5	44-23
		6	44-24
		7	44-25
		8	44-26
		9	44-27

		10	44-28
		11	44-29
		12	44-30
		13	44-31
		14	44-32
		15	44-33
		16	44-34
		17	44-35
		18	44-36
		19	44-37
		20	44-38
		21	44-39
		22	44-40
		23	44-41
		24	44-42
		25	44-43
		26	44-44
		27	44-45
		28	44-46

		29	44-47
		30	44-49
		31	44-50
		32	44-51
Ord. No. 07-15-14	7-15-2014	29	44-48
Mo. of 5-5-2015	5-5-2015		App. A, Art. I, § 2
			App. A, Art. I, § 7
			App. A, Art. I, § 11
			App. A, Art. II, § 2
			App. A, Art. II, § 4
			App. A, Art. II, § 5
			App. A, Art. III, § 2
			App. A, Art. IV, § 1
			App. A, Art. VI, § 2
			App. A, Art. VI, § 4
			App. A, Art. VI, § 5
			App. A, Art. VI, § 7
			App. A, Art. VII, § 1
			App. A, Art. VII, § 2

			App. A, Art. VII, § 5
			App. A, Art. VII, § 6
			App. A, Art. VII, § 7.1
			App. A, Art. VII, § 7.4

STATE LAW REFERENCE TABLE

This table shows the location within this Code, either in the text or notes following the text, of references to the Code of Alabama, 1975.

Code of Ala. 1975 Section	Section this Code
1-1-15	1-2
3-5-14	Ch. 8 (note)
3-7-13	Ch. 8 (note)
3-7A-2	8-21
3-7A-9	Ch. 8 (note)
	8-20
6-5-122 et seq.	34-95
8-17-210	Ch. 18, Art. II
	18-38
8-17-217	18-41

8-17-226	Ch. 18, Art. II
11-19-1— 11-19-24	20-1
11-40-10	1-2
	34-100
11-42-2	2-1
11-43-2	2-6
11-43-48	2-43
11-43-50	2-41, 2-42
11-43-52	2-46
11-43-55	36-76
11-43-56	Ch. 12 (note)
11-43-59	Ch. 10 (note)
	Ch. 18 (note)
11-43-80	2-5
11-43-82	2-17
11-43-140 et seq.	Ch. 18 (note)
11-43-141	18-14
11-45-1— 11-45-11	20-1

11-45-1	1-8
	Ch. 24 (note)
11-45-7	1-1
11-45-8	Ch. 10 (note)
11-45-8(c)(5)	18-1
11-45-8(c)(6)	Ch. 24 (note)
11-45-9	1-8
	Ch. 34 (note)
11-45-9.1	Ch. 34 (note)
11-46-22	2-3
11-47-3 et seq.	Ch. 48 (note)
11-47-12	18-43
11-47-110	Ch. 8 (note)
11-47-112	Ch. 6 (note)
11-47-114	Ch. 46 (note)
11-47-116	24-66
11-47-117	1-8
	34-95
	34-100

11-47-118	1-8
	34-95
11-47-130— 11-47-140	Ch. 24 (note)
11-47-131	34-100
11-47-135	Ch. 22 (note)
11-47-140	Ch. 22 (note)
	22-35
	34-100
11-47-240 et seq.	Ch. 46 (note)
11-48-1 et seq.	Ch. 40 (note)
11-48-4 et seq.	Ch. 48 (note)
11-49-1 et seq.	Ch. 40 (note)
11-49-1	Ch. 40 (note)
11-49-4	Ch. 46 (note)
	46-2
11-49-5	Ch. 46 (note)
	46-2
11-50-50 et seq.	Ch. 48 (note)
11-50-55	Ch. 24, Art. II

11-50-310 et seq.	48-2, 48-3
11-51-1 et seq.	Ch. 12 (note)
11-51-1	Ch. 12 (note)
11-51-44	12-33
11-51-90 et seq.	Ch. 12 (note)
11-51-90B	12-22
11-51-92	12-40
11-51-102	2-17
11-51-122	12-23
11-51-129	12-22
11-51-150 et seq.	12-35
11-51-180 et seq.	12-22
11-51-200 et seq.	Ch. 12 (note)
11-51-200	Ch. 12 (note)
	Ch. 12, Art. III
11-51-201	12-66
11-51-206	Ch. 12 (note)
11-52-1 et seq.	Ch. 10 (note)
	38-1

11-52-1— 11-52-15	20-1
11-52-2— 11-52-7	Ch. 38 (note)
11-52-30— 11-52-36	20-1
11-52-30	1-2
11-52-50— 11-52-54	20-1
11-52-70 et seq.	App. A (note)
11-52-70— 11-52-84	20-1
11-52-78	App. A, Art. IV, § 1
11-52-79	Ch. 38 (note)
	38-1
11-53-2	Ch. 24 (note)
	Ch. 24, Art. II
11-89-1 et seq.	Ch. 48 (note)
11-89A-1 et seq.	Ch. 22 (note)
11-90-1 et seq.	Ch. 30 (note)
11-90-1— 11-90-4	30-1

11-98-1	16-63
tit. 12, ch. 14	14-1
12-14-1 et seq.	1-8
	Ch. 14 (note)
12-14-1— 12-14-14	14-10
12-14-10	Ch. 14 (note)
12-14-12	Ch. 14 (note)
12-14-14	Ch. 14 (note)
12-14-15	14-9
12-14-18	14-9, 14-10
12-14-30	14-4
12-14-31, 12-14-32	Ch. 14 (note)
12-14-32	14-11
12-14-34	14-6
12-14-51	14-8
12-14-70, 12-14-71	14-12
12-19-150 et seq.	Ch. 14 (note)
12-19-153	Ch. 14 (note)

12-19-170, 12-19-171	Ch. 14 (note)
12-59-250	Ch. 14 (note)
13A-1-1 et seq.	Ch. 34 (note)
13A-1-2	34-1
13A-10-3	Ch. 10 (note)
13A-10-6	Ch. 18 (note)
13A-11-14	Ch. 8 (note)
13A-11-61.3	Ch. 34 (note)
	Ch. 34, Art. II
13A-11-61.3(g)(11)	Ch. 34, Art. II
13A-12-200.1 et seq.	Ch. 34, Art. III
tit. 22, ch. 10	22-3
tit. 22, ch. 27	Ch. 22 (note)
22-1-2	Ch. 24 (note)
22-3-2	Ch. 24 (note)
22-3-5	Ch. 24 (note)
22-10-2	34-95
22-17A-1 et seq.	Ch. 42 (note)

22-23-30 et seq.	Ch. 48 (note)
22-26-1	24-34
22-26-4	Ch. 24, Art. II
	Ch. 48 (note)
22-27-1 et seq.	Ch. 22 (note)
22-27-3	Ch. 22 (note)
22-27-5	Ch. 22 (note)
22-28-1 et seq.	22-8
23-5-4	40-2
24-8-1 et seq.	Ch. 26, Art. II
24-8-12(c)	Ch. 26, Art. II
25-4-8	36-12, 36-13
25-8-11, 25-8-12	6-18
tit. 28	6-18
28-3-162	6-18
28-3-190	6-10
28-3-260(2)	6-18
28-3-266	6-18
28-3A-21	Ch. 6 (note)

28-3A-23	Ch. 6 (note)
29-3-1 et seq.	Ch. 16 (note)
29-3-3	16-31
29-3-15, 29-3-16	16-32
31-9-1 et seq.	Ch. 16 (note)
31-9-3	16-1
31-9-9	Ch. 16 (note)
	16-4
31-9-10	Ch. 16 (note)
	16-3
31-9-11	Ch. 16 (note)
31-9-19	Ch. 16 (note)
31-9-61, 31-9-62	Ch. 16 (note)
32-1-1.1 et seq.	Ch. 46 (note)
32-1-3	Ch. 46 (note)
32-4-1 et seq.	Ch. 46 (note)
32-5-9	Ch. 46 (note)
32-5-31	Ch. 46 (note)
32-5-73	18-9

32-5-91	46-2
32-5-112	18-11
32-5-151(a)(4)	18-12
32-5-151(a)(10)	18-12
32-5-192(a)	46-4
32-5-220, 32-5-221	46-66
tit. 32, ch. 5A	Ch. 46 (note)
32-5A-191	14-10
32-5A-194	46-7
32-6-231	46-8
32-13-1 et seq.	24-66
32-13-1— 32-13-8	46-44
	46-68
32-13-8	Ch. 46 (note)
32-18-1	Ch. 46 (note)
34-33-9	Ch. 18 (note)
35-4-20	1-2
35-12-20 et seq.	24-66
36-19-9	18-46

36-21-46	36-76
36-21-67	Ch. 14 (note)
36-28-5	36-47
36-32-7 et seq.	Ch. 18 (note)
tit. 40	12-41
40-2-1 et seq.	12-22
40-2A-1 et seq.	Ch. 12 (note)
40-2A-3	12-22
40-9-1 et seq.	Ch. 12 (note)
40-9-30	Ch. 12, Art. IX
40-12-220— 4-12-227	Ch. 12, Art. IX
40-12-224	12-42
40-17-320— 40-17-363	Ch. 12, Art. VI
40-21-50— 40-21-64	12-22
40-21-80— 40-21-88	12-22
40-23-1 et seq.	Ch. 12 (note)
40-23-2	12-64

40-23-4	12-66
40-23-25	12-42
40-23-36	12-71
40-23-37	12-64
40-23-82	12-42
40-26-1 et seq.	Ch. 12 (note)
title. 40, ch. 25	Ch. 12, Art. IV
title. 40, ch. 26	Ch. 12, Art. V
tit. 40, ch. 26, art. 10	12-164
41-9-160 et seq.	Ch. 10 (note)
41-9-166	20-1
41-9-170 et seq.	Ch. 10 (note)