

Committee to Study
Home-Sharing
Final Report



City of Vestavia Hills

April 2018

City of Vestavia Hills
Report of the
Committee to Study Home-Sharing
Prepared by: Kimberly Cook

Section 1. INTRODUCTION

Definition. For the purposes of this discussion, home-sharing is when a homeowner in a single-family residential zone elects to rent a room or rooms on his or her property to a transient renter (a renter who occupies the premises less than 30 days). This type of business activity is just one example of a new business model, referred to as a sharing economy, where privately-owned resources are “shared” or leased, for a short period of time, through the use of a central online reservation system.

Several examples of platforms that facilitate reservations such as these are Airbnb.com, VRBO.com and HomeStay.com. Many popular trip-planning websites, such as tripping.com, Expedia and others, connect to these home-sharing websites when searching for lodging options.

Mission. The Mayor formed the Committee to Study Home-Sharing to:

- Advise the Vestavia Hills City Council regarding the impacts of home-sharing in single-family residential zones.
- Guide the City staff in addressing citizen complaints received due to home-sharing.
- Provide information that will inform Council discussions about possible regulation of home-sharing.

Committee. The following committee members contributed to this report:

- Kimberly Cook, Councilor and Committee Chair
- George Pierce, Councilor
- Rebecca Leavings, City Clerk and Zoning Official
- Patrick Boone, City Attorney
- Scott Key, Fire Marshal
- Keith Blanton, Chief Building Inspector
- Conrad Garrison, City Planner
- Bo Seagrist, City License (Revenue) Officer
- Melissa Hipp, Assistant to the City Manager

Scope of Home-sharing in Vestavia Hills. City staff have identified approximately 25-30 home-shares within our City limits. The City discovered these through a cursory search of some of the more popular home-sharing sites and also from citizen reports. As home-sharing has grown in popularity across the world, many governments have passed laws to regulate home-sharing. Within the last year, Vestavia Hills has received a number of complaints from residents about home-sharing operations in single-family residential neighborhoods. The number of complaints prompted City staff to ask the Council to review City policies in regard to home-sharing.

National Perceptions of Home-Sharing. According to a nationwide study, *Shifting Perceptions of Collaborative Consumption* (National League of Cities; 2015), the following were typical concerns of citizens regarding home-sharing:

- 61% - Public safety and general safety concerns
- 10% - Protection of current providers (hoteliers)
- 9% - Non-compliance with current regulations
- 8% - Revenue loss from non-collection of revenue

Respondents identified the following perceived home-sharing benefits:

- Improved services (providing services that consumers want)
- Increased economic activity (attracting new customers to local businesses)
- Increased entrepreneurial activity (creating a business environment that fosters innovation and economic growth)
- Increased city revenue (collecting revenues required by new home-sharing regulations; preventing the loss of revenues that are not being collected because of lack of regulation)

Perhaps because of the sudden, rapid rate of growth in home-sharing, local governments have been slow to regulate, with:

- 58% of local governments having no regulation of home-sharing.
- 24% regulating similar to current services.
- 5% banning them completely.

The study recommended that policy-makers, when considering how or whether to regulate home-sharing:

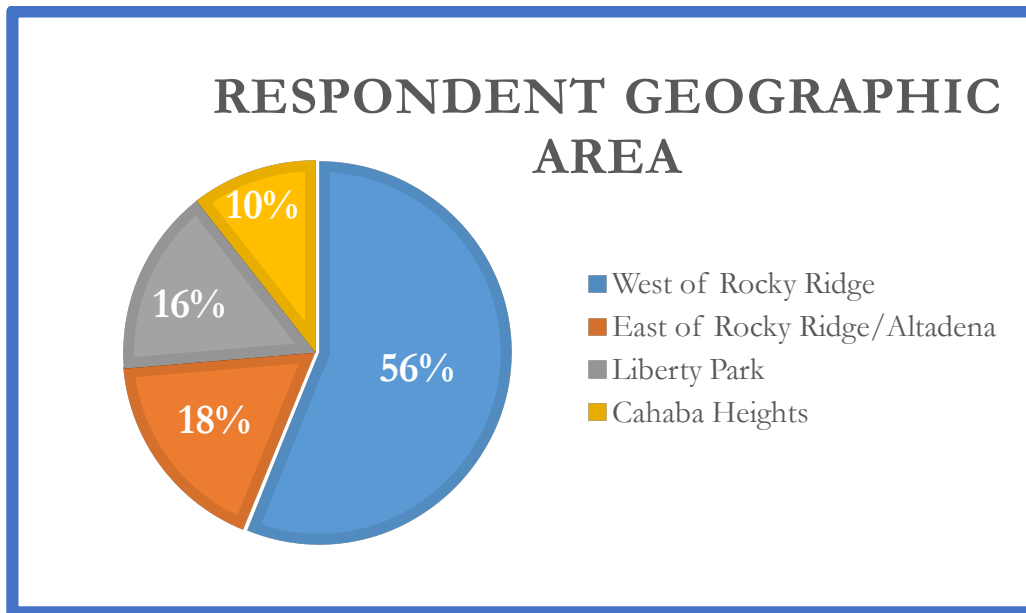
- Focus primarily on the well-being of the citizens and local business owners.
- Consider liability and safety issues.
- Develop policies to provide a fair playing field for commercial hoteliers who are competing with home-sharing providers.
- Address the issue in a timely manner to demonstrate innovation and responsiveness to market demands.

Section 2. LOCAL PERCEPTIONS OF HOME-SHARING

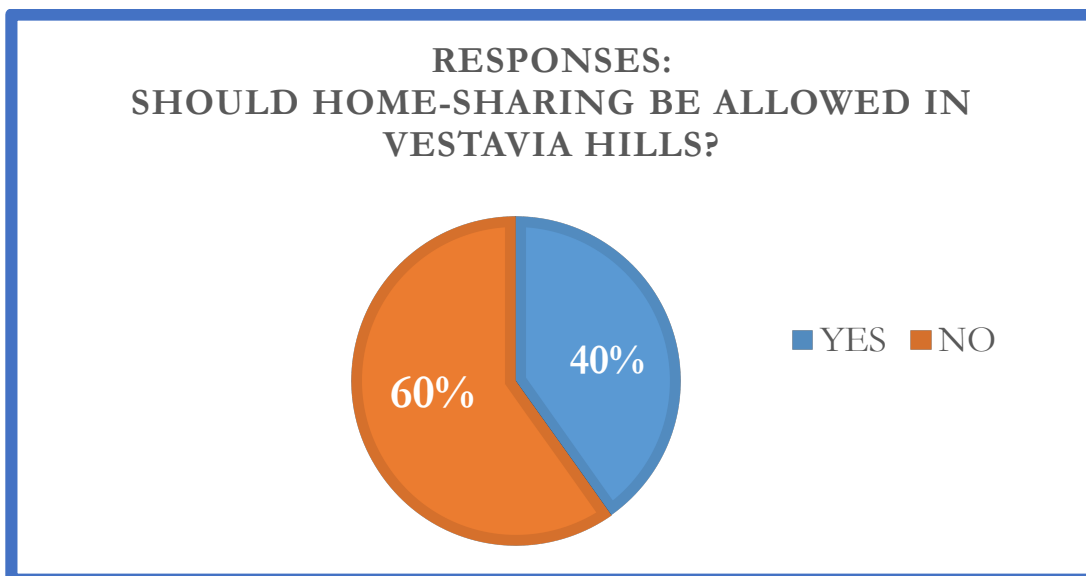
Because home-sharing involves personal property rights, it is a sensitive issue. For this reason, the committee sought public input on the question of whether or not residents were in favor of allowing home-sharing in our City. The City conducted a survey, asking the open-ended question: What are your thoughts on having home-sharing listings available in Vestavia Hills?

Using the Vestavia Hills Listens portal, the City collected 91 responses over 22 days. (See Attachment A, Vestavia Hills Listens Airbnb Feedback, for a more complete analysis of survey results.)

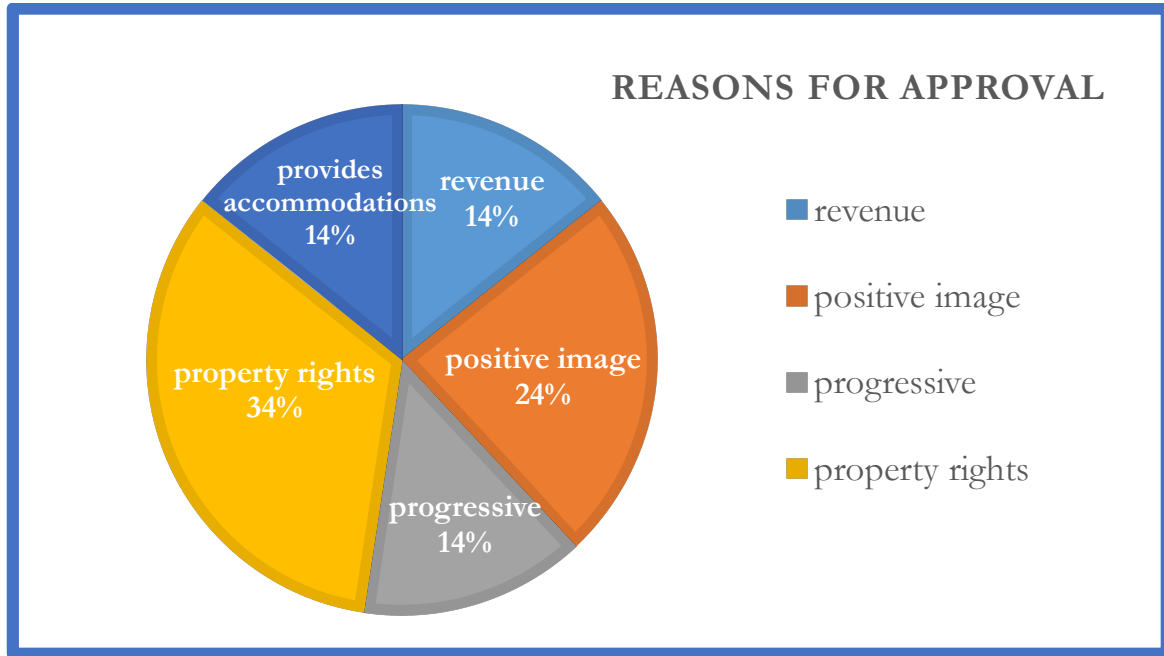
Of those who provided their location, responses came from the following geographic areas:



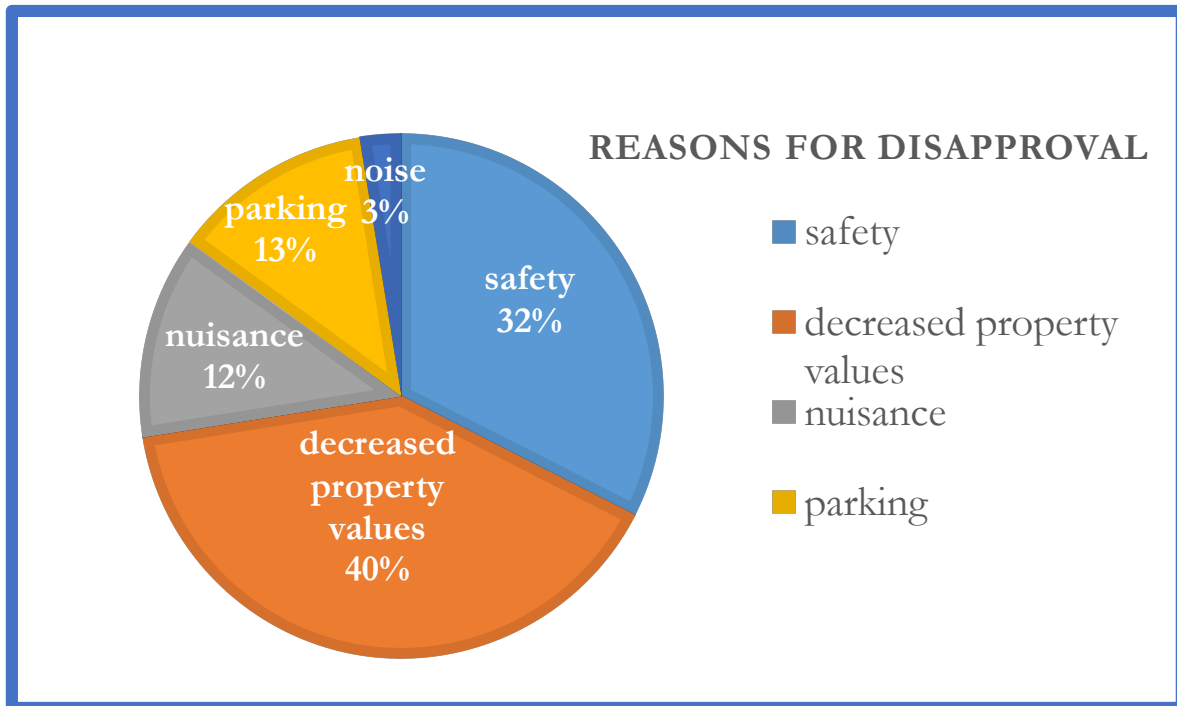
In this informal survey of public opinion, citizen comments showed the clear majority (60%) of respondents did not favor home-sharing in Vestavia Hills; however, a substantial number (40%) were favorable.



Of those who provided a reason for their opinion, the following reasons were given for approving home-sharing:



Of those who expressed an opinion, the following reasons were given for not allowing home-sharing:

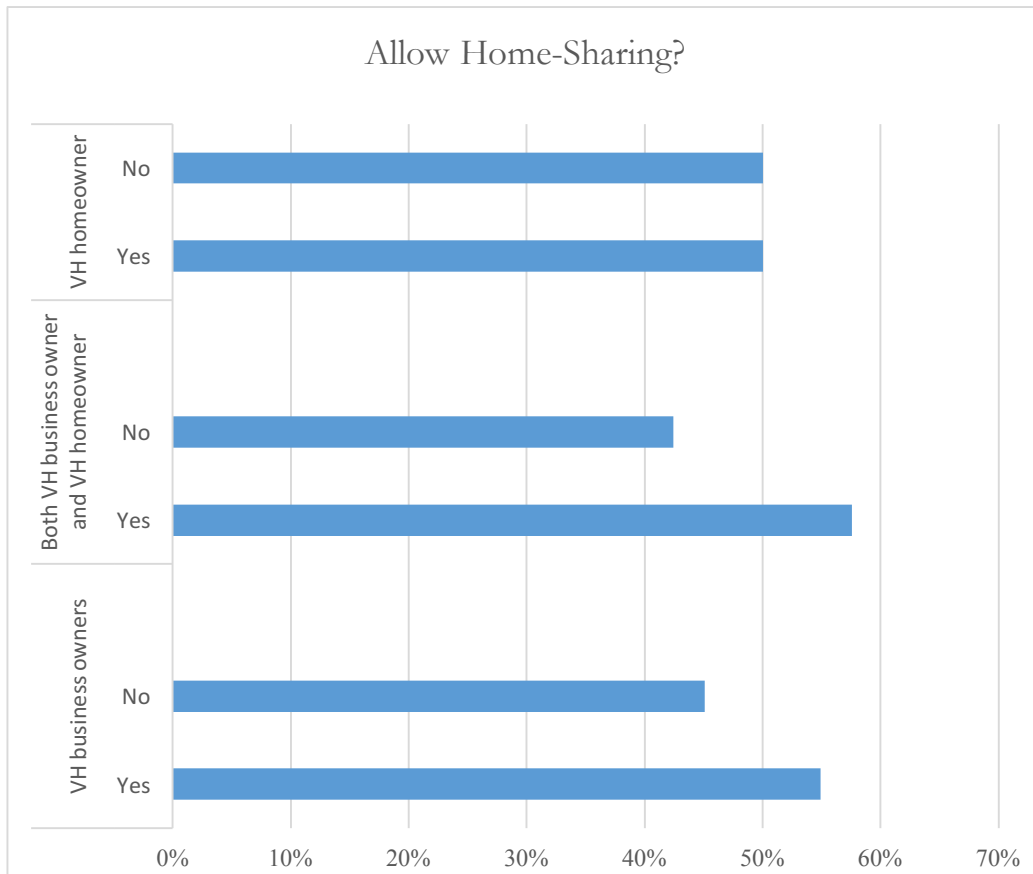


Section 3. BUSINESS COMMUNITY PERCEPTIONS OF HOME-SHARING

The City conducted a survey of the Vestavia Hills Chamber of Commerce to determine the level of support for home-sharing in the business community. The survey elicited 131 responses. (Neutral responses for each question were disregarded.) It should be noted that not all Chamber respondents own or operate a business in Vestavia Hills; however, almost all respondents either own a Vestavia Hills home or operate a business in Vestavia Hills.

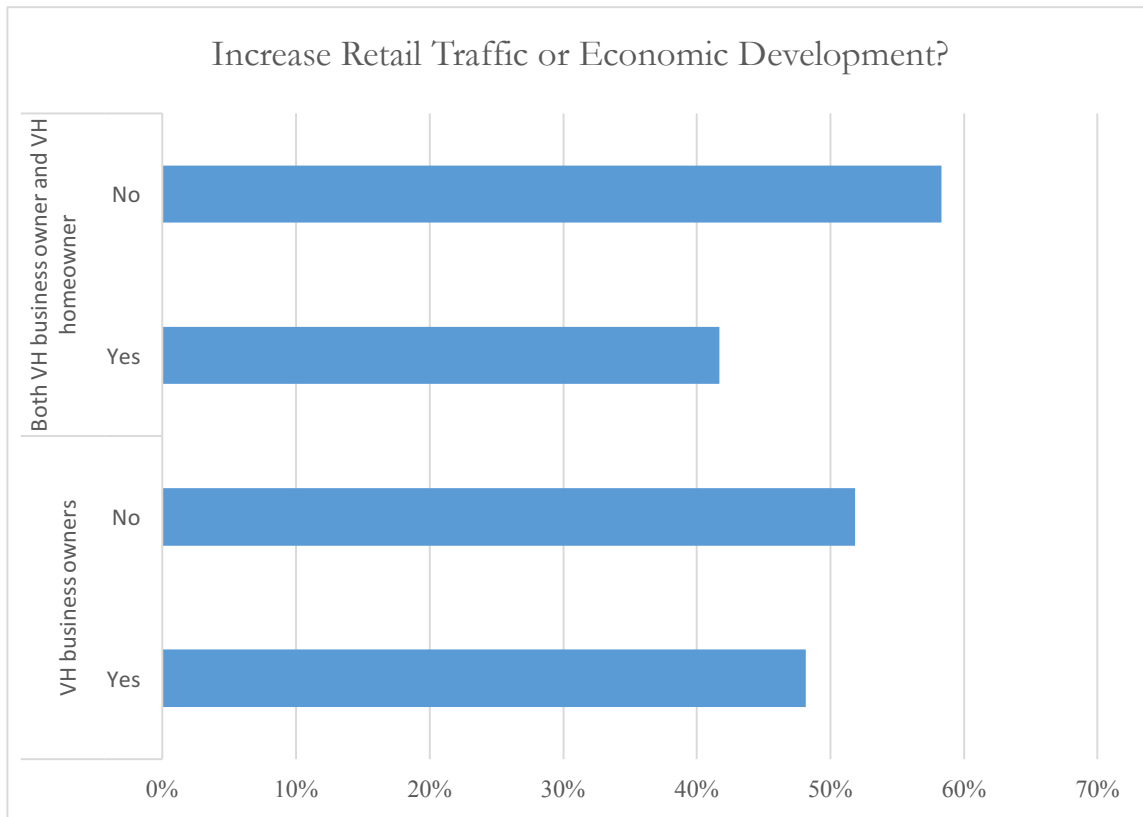
Do you favor allowing regulated home-sharing in Vestavia Hills?

	Favorable	Unfavorable
VH Business Owners	55%	45%
VH Homeowners	50%	50%
Both VH Business Owner and VH Homeowner	58%	42%



Would regulated home-sharing increase retail traffic and/or aid economic development?

	Yes	No
VH Business Owner	48%	52%
VH Business Owner and VH Homeowner	42%	58%



Would you want a nearby neighbor home-sharing in your single-family residential neighborhood?

	Yes	No
VH Homeowner	29%	71%

In summary:

- Respondents who are both business owners and Vestavia Hills homeowners are more favorable than unfavorable to home-sharing. In just looking at respondents who are homeowners, the results are split evenly.
- Most respondents do not believe home-sharing would cause an increase in retail traffic or economic development.
- **Respondents who are also Vestavia Hills homeowners were strongly against having a nearby neighbor home-sharing.**

Section 4. LEGAL REVIEW

Current Regulatory Status of Home-Sharing in Vestavia Hills.

The City asked the City Attorney to answer two legal questions regarding home-sharing:

- Does the City's zoning ordinance currently prohibit homeowners (in single-family residence zones) from entering into short-term rental agreements, otherwise known as home-sharing?
- Might private restrictive covenants prohibit homeowners from engaging in home-sharing?

The short answer to both of these questions is affirmative:

- The City's zoning ordinance currently prohibits homeowners in single-family residence zones from entering into home-sharing agreements.
- If private restrictive covenants state that "this property shall be used solely for detached, single-family dwelling purposes" or "this property shall not be used for any business or trade," then home-sharing would not be allowed in these subdivisions.

The details of the reasons for this opinion are provide in the full legal opinion, which is provided in Attachment B, Vestavia Hills Home-Sharing Legal Opinion, and hereinafter referred to as the "Legal Opinion."

Enforceability. Regarding the enforceability of zoning ordinances and private restrictive covenants, the Legal Opinion states:

- The City has the legal authority to enforce their zoning ordinances.
- Homeowners of the lots situated in a subdivision have the ability to enforce private restrictive covenants in that subdivision.
- The City does not have the authority to enforce private restrictive covenants.

The Legal Opinion also states there is already a facility for approval of home-sharing operations in single-family residence zones:

- The Council may approve **conditional use** in single-family residential zones for home occupations (such as renting rooms) and for such uses as providing bed-and-breakfast and boarding house lodging. Every incidence of such uses would require a separate act by the Council to permit the use.

Legal Considerations for Future Regulation of Home-Sharing.

The Legal Opinion also provides some guidance for what zoning ordinances and private restrictive covenants cannot do:

- "Zoning ordinances cannot lessen the Requirements of a private restrictive covenant." (If a city passes a zoning ordinance that is less restrictive than a private restrictive covenant, then the more stringent requirements of the private restrictive covenants would still apply.)
- "Private restrictive covenants cannot lessen the requirements of a public zoning ordinance." (If homeowners in a subdivision vote to rescind a private restrictive covenant that prohibits home-

sharing but there is a city zoning ordinance prohibiting it, then the more stringent requirement of the zoning ordinance would still apply.)

Section 5. BUILDING SAFETY REVIEW

The Building Safety Official provided information pertaining to home-sharing operations and building code requirements, under the [2015 International Building Code](#) (IBC) hereinafter referred to as the “Building Code.”

The Building Code provides the following definition and classification for lodging houses:

- A Lodging House is: “A one-family dwelling where one or more occupants are primarily permanent in nature and rent is paid for guest rooms.”
- “Owner-occupied lodging houses with five or fewer guest rooms shall be permitted to be constructed in accordance with the *International Residential Code*.” (IBC 310.5.2)

The Building Code requires the following for Lodging Houses:

- The dwelling may have five guestrooms maximum.
- Owner must occupy the home.
- Home must have a fire sprinkler system.
- Home must have an interconnected smoke detector system, with a minimum of one on each level and in each bedroom.
- Building inspector must inspect during any type of construction. (Owner must purchase a permit before conducting any construction.)

The Building Code provides the following definition and classification for boarding houses:

- A Boarding House is: “A building arranged or used for lodging for compensation, with or without meals, and not occupied as a single-family unit.”
- “Boarding houses, transient [less than 30-day], with 10 or fewer occupants, fall under the R-3 Residential Group code requirements.” (IBC 310.5)

The Building Code requires the following for Boarding Houses:

- Fire sprinkler system
- Fire alarm system
- Exit and emergency lighting systems
- Interior bedroom doors that are ½-hour-rated with door closers
- Fire walls separating sleeping units as fire partition
- Inspection and purchase of a [residential building permit](#) **before** start of operation for a new home-share and before any construction.

Regarding the residential building permit requirement:

- The penalty for non-compliance is a stop work order, \$100 fine and a doubled permit fee.
- The permit application must be accompanied by a set of plans stamped by an engineer or architect.
- The cost of each of this permit is: \$9 per \$1000 of contract cost + \$41 issuance fee, with a minimum permit cost of \$50.

In summary, for the typical short-term home-share situation:

- An owner-occupied lodging house must comply with IBC Lodging House requirements (IBC 310.5.2).
- A boarding house without an owner in residence must comply with IBC Boarding House requirements (IBC 310.5).
- The homeowner must purchase a building permit during any type of construction and before beginning of home-share operations.
- The Building Code for home-sharing requires additional fire protection measures not required for a typical residential single-family dwelling and stronger measures are required for non-owner-occupied home-shares as compared to owner-occupied home-shares.

See the Building Inspection Official's entire written report in Attachment C, Home-Sharing Building Code Review.

Section 6. FIRE MARSHAL REVIEW

The City Fire Marshal provided information pertaining to home-sharing operations and enforcement of the [2015 International Fire Code](#) (IFC), hereinafter referred to as the “Fire Code,” and the National Fire Protection Association (NFPA), [101 Life Safety Code, Chapter 26: Lodging or Rooming Houses](#), hereinafter referred to as the “Life Safety Code.”

The Fire Code provides:

- A Lodging House is: “...a one-family dwelling where one or more occupants are primarily permanent in nature and rent is paid for guest rooms.” (Lodging Houses with five or fewer guest rooms fall under Residential Group R-3 and are constructed under the *International Residential Code*.)
- A Boarding House is: “...a building arranged or used for lodging for compensation, with or without meals, and not occupied as a single-family unit.” (Boarding houses with 10 or fewer occupants fall under Residential Group R-3.)

The Fire Code and Life Safety Code, applying to home-shares with fewer than 16 occupants, requires:

- Automatic fire sprinkler system shall be installed throughout the entire structure (with some area limitations, if the house is occupied by the owner during rental) with at least an annual inspection
- Fire alarm system with occupant notification devices (if the owner is not on-site during the rental) with a required annual inspection
- Fire extinguishers (minimum 2A:10BC) every 75 feet of travel distance with a required annual inspection
- Smoke detectors, interconnected, on every level and within each sleeping unit
- If there are fuel-burning appliances (example: gas stove; gas or oil furnace; gas water heater), carbon monoxide detectors, interconnected, on every level and outside each sleeping unit.
- Fire barrier enclosures for interior stairwells, having a minimum ½-hour fire resistance rating with all openings protected with a self-closing door having a minimum ½-hour fire resistance rating
- Smoke partitions, extending from the floor to the underside of the floor or roof deck above, for all sleeping units
- Fire and smoke dampers for HVAC ducts
- Fire safety and evacuation plan with diagram posted on or adjacent to every sleeping unit with required annual inspection
- Continuous, illuminated EXIT signs with required annual inspection
- Inspection and purchase of separate [fire alarm](#) and [fire sprinkler](#) system permits **before** installation for a new home-share

Regarding the fire alarm and sprinkler permit requirement:

- The penalty for non-compliance is a stop work order, \$100 fine and a doubled permit fee.
- Both fire alarm and fire sprinkler permit applications must be accompanied by a set of plans stamped by an engineer or architect.
- The cost of each of these permits is: \$9 per \$1000 of contract cost + \$41 issuance fee, with a minimum permit cost of \$50.

See the Fire Marshal’s entire written report in Attachment D, Home-Sharing Fire Code Review.

Section 7. BUSINESS LICENSE AND APPLICABLE TAXES.

The City, through Ordinance 2315 (See Attachment E, Ordinance 2315) and Ordinance 2747 (See Attachment H, effective June 1, 2018), hereinafter referred to as the “Business License Ordinance,” requires business owners to purchase an annual license to operate. A business is defined as: “Any commercial or industrial activity or any enterprise, trade, profession, occupation, or livelihood, including the lease or rental of residential or nonresidential real estate....” By this definition, a home-share is a business.

The Business License Ordinance assesses fees by “use,” which means the business use for which an individual is purchasing a license. Home-shares are classified as an “accommodations” use, because it is short-term. (For the purposes of tax assessment, this is defined as less than 180 days.)

Homeowners engaging in a home-sharing business must purchase an annual business license for an accommodations use, which is assessed as follows:

- \$150 license issue fee, paid annually

In addition, the Business License Ordinance states:

- The license fee is by location, so a home-share operator with multiple locations must purchase multiple business licenses, one for each location.
- Section 6 of the Business License Ordinance provides it is unlawful to operate a home-share without a business license, and the City may assess fines to the extent allowed by state law, with each day of non-compliant operation constituting a separate offense.
- The purchase of a business license gives the City the right to inspect the business premises.
- The License Officer may refer business license applications to the Council for approval.
- Business licenses for a conditional use are reviewed by the Planning and Zoning Commission and then sent to the Council for approval.
- The Business License Ordinance states if the operation of a licensed business becomes “detrimental to the health, safety, comfort and convenience of the public” or constitutes a nuisance, the City may revoke or suspend the business license.

Private restrictive covenants may require a separate business operation approval.

Section 8. SUMMARY OF HOME-SHARE PROVIDER REQUIREMENTS

The following is a summary of the requirements, under current ordinances, for homeowners to start short-term rentals of their home:

- Check private restrictive covenants to ensure the business use is allowed.
- Apply for a conditional use through the Zoning Official and appear for a public hearing before the Planning and Zoning Commission.
- Obtain fire alarm and fire sprinkler system permits before start of home-share operation.
- Obtain Residential Building permit before start of home-share operation.
- Install necessary building and fire safety measures, as required by the relevant codes.
- Pass Fire and Building Safety inspections.
- Purchase (\$150) and display a business license at each home-share location.
- Appear before the Council for the conditional use public hearing.
- Submit to home inspections as required by the Building Inspector, License Officer and/or Fire Marshal.

Section 9. OPTIONS TO CONSIDER

- Do nothing to change the regulation of home-sharing or leave existing zoning and business license ordinances as they are. This option requires homeowners to take the steps outlined in Section 7, Summary of Home-Share Provider Requirements, to operate a home-share. Since this process is time-consuming and cumbersome—requiring monthly submittal of business license taxes, record-keeping, attendance at hearings, annual business license applications, annual inspections—it is likely that this option will cause home-share operators to avoid compliance. If this option is consistently enforced, it would likely decrease the number of home-share operators in our City.

At the current business license rate, for each home-share location, the City would receive an annual flat \$150 license issue fee.

If current regulations are enforced consistently, potential costs and benefits of this option (over current regulations not being enforced) are as follows:

COST	BENEFIT
Fewer Housing Options for Transient Renters	Increased Public Safety (less transiency)
Lost Revenue Due to Non-Compliance (cumbersome process)	Protection of Property Values
Enforcement Costs (Zoning, Licensing, Building Safety and Fire)	Provides flexibility (decided on a case-by-case basis)
	Higher rental rates (due to higher cost of operations in terms of time, bringing property up to code and license fees)
	Greater Life Safety for Renters
	Slightly Increased Revenue

- Pass an Ordinance to prohibit home-sharing. Other near-by cities have passed or are considering ordinances to define what constitutes a short-term rental and prohibit home-sharing operations. The definition varies by city:
 - The City of Mountain Brook prohibits short-term rentals for a duration less than 30 days and also the advertisement of such. (See Attachment F, Mountain Brook Short-Term Rental Ordinance.)
 - The City of Hoover had an ordinance on their March 5, 2018, agenda that would prohibit rentals of less than 90 days or their advertisement. (See Attachment G, Hoover Short-term Rental Ordinance, Draft.) The draft ordinance provided that the rental of a property for less than 90 days (or its advertisement) would result in penalties ranging from \$100 for a first offense, \$250 for a second offense and a court appearance for a third offense. The ordinance was withdrawn before it came to a vote.

If the new regulation is consistently enforced, potential costs and benefits of this option are as follows:

COST	BENEFIT
Fewer Housing Options for Transient Renters	Increased Public Safety (less transiency and traffic)
Increased Cost of Enforcement (Zoning, Law Enforcement and Courts)	Protected Property Values and Zoning Consistency
Lost Tax Revenue (business and tourism)	Public Welfare (fewer public nuisances)

- Pass an Ordinance to allow, but regulate home-sharing. This might include provisions to allow home-sharing under certain conditions. This would have no impact on Fire and Safety Code requirements or private restrictive covenants that regulate or prohibit home-sharing.

Such regulation might take into account the following variables:

- Owner occupancy (owner-occupied during rental, owner not occupying only during rental, and investor-owner absent all the time)
- Number of rooms to be rented (whole-house or rooms within main house)
- Whether rental space is attached or unattached to main dwelling
- Number of occupants
- Minimum number of consecutive rental days (definition of “short-term”)
- Zoning classification
- Parking conditions and availability
- Minimum rental rate
- Required method of tax collection (through online reservation system)
- Food preparation (cooking and food handling)
- Emergency contact (display of emergency contact when vacant)
- Display of business license required for advertisements, including online posting
- Tax amount (special home-sharing tax)
- Application procedure (identify approval and compliance authority)
- Enforcement procedure and penalties for non-compliance
- Compliance with established Building and Fire Code regulations
- Proof of minimum liability and insurance coverage

Potential costs and benefits of this option, which may vary depending on the provisions of the regulation, are as follows:

COST	BENEFIT
Decreased public safety (more transiency and traffic)	More Housing Options for Transient Renters
Degraded Property Values and Zoning Consistency	Increased Tax Revenue (business and tourism)
Increased risk of public nuisances	Increased Life Safety for Renters
Increased Cost of Enforcement (Zoning, Licensing, Public Safety, Building and Fire Safety, Courts)	Increased revenue for home-share providers

- Amend the Business License Ordinance. Some cities charge a home-share tax that can be collected through the most commonly used reservation systems. The amount of the tax would determine how much home-share operations generate City revenue to cover the cost of enforcement. The Alabama Department of Revenue has the ability to collect and distribute taxes from the Airbnb online reservation system to local municipalities, upon request of the municipality.

The benefit to this option is that the additional tax revenue would offset the additional cost of enforcement and revenue collection.

For comparison, in Roanoke, Virginia, the cost of a home-sharing permit is \$250; in Richmond, Virginia, the cost is \$1000. One home-share operator in Virginia stated: “I’m not exaggerating in that most people who stay with me only know the name “Roanoke”--they know nothing about it. And I can hardly think of anyone who leaves not loving the city and being amazed at what we have here.”

- Adopt a *Laissez-Faire* Approach to Enforcement. Enforce business license, zoning ordinances and building/fire safety codes only if they are reported as a nuisance by a neighbor. If reported, take legal action to force compliance, assessing fines and liens on property until home-share operator is in compliance with zoning, business license, fire/safety codes and ordinances.

COST	BENEFIT
Decreased public safety (more transiency and traffic)	More housing options for transient renters
Degraded property values and zoning consistency	Minimal increase in tax revenue (business and tourism)
Increased risk of public nuisances	No Appreciable Increase in Cost of Enforcement (Zoning, Licensing, Public Safety, Building and Fire Safety, Courts—due to <i>laissez-faire</i> approach)
Degraded respect for city’s authority and efforts to enforce city ordinances	Increased revenue for home-share providers and greater freedom in using property to generate income
Decreased Life Safety for renters (due to lack of code enforcement)	

- Adopt a Pro-Active Approach to Enforcement. Assign city staff or a third-party collection agency the duty of finding non-compliant home-share operators in our City and taking prescribed measures to shut them down. The Zoning Official and License Officer would assume the duty of application processing and revenue collection to offset the cost of enforcement and inspection. The Zoning Official, Building Safety Official and Fire Marshal would assume increased workload in processing applications and inspecting.

COST	BENEFIT
Fewer housing options for transient renters	Increased public safety
Increased enforcement costs (Zoning, Licensing, Public Safety, Building and Fire Safety, Courts)	Increased respect for city’s authority and efforts to enforce city ordinances
Decreased tax revenue (business and tourism)	Decreased risk of public nuisances
	Increased Life Safety for renters (due to vigorous code enforcement)

SECTION 10: CONCLUSION

At the Alabama League of Municipalities Municipal Law Conference, April 14, 2017, presentation, *Municipal Regulations of Short-Term Rentals*, the League recommended cities ask the following questions when making decisions about allowing short-term rentals:

- What are your community's priorities?
- Does your City have sufficient lodging options to support tourism and business?
- Does your city have existing transportation networks that alleviate the need for personal parking at short-term rental locations?
- Does your City have a large demand for lodging due to tourism or business?
- Does your city host major events that create a seasonal demand for housing?
- Does allowing home-sharing that is not regulated (no taxes collected) hurt city revenues because it drives business away from hotels?
- Would allowing home-sharing make our city less attractive to new hoteliers (creating unfair competition)?

Whatever the City decides in terms of regulation and enforcement must be communicated clearly to the public, so that homeowners understand the requirements.

ATTACHMENT A

Vestavia Hills Listens AirBnb Feedback



VESTAVIA HILLS LISTENS AIRBNB FEEDBACK

When we first began to consider whether to allow Airbnb service in Vestavia Hills, our City leaders knew that it would be a very debatable issue. The 91 responses to our VH Listens topic on Airbnb represent strong feelings on both sides and participation from throughout our entire geography. We appreciate those who contributed their thoughts as our Council continues to determine whether Airbnb is suitable for our community.

About the Respondents

The survey generated 91 responses, which were distributed geographically as follows:

37.4%	West of Rocky Ridge (WRR)
9.9%	Liberty Park (LP)
11.0%	East of Rocky Ridge/Altadena (ERR/ALTA)
6.6%	Cahaba Heights (CH)
35.2%	Unregistered (UR)
100.0%	

- The area West of Rocky Ridge was the most highly represented among the registered responses.
- Due to the number of unregistered responses and responses where gender was not stated, it is unknown whether more men or women participated.
- 64.8% of respondents did choose to register, and of those, 34% were aged 40-59.
- Of all respondents, 23% mentioned either having used the service themselves or having a friend or family member who uses it.

Summary

Analysis of survey responses indicated the following attitude regarding whether Airbnb rentals should be allowed in Vestavia Hills:

AREA	FOR	AGAINST
WRR	41.2%	58.8%
LP	22.2%	77.8%
ERR/ALTA	60.0%	40.0%
CH	50.0%	50.0%
UR	31.3%	68.8%

- Most participants (61.5%) were against allowing Airbnb in Vestavia Hills.
- Opposition came mostly from the WRR (35.7%) and unregistered (39.3%) groups
- Within LP respondents, 77.8% were opposed.
- There was some support for Airbnb within the ERR/ALTA group (60%).

- CH respondents were equally divided on the issue.
- Of those who were for allowing the service in Vestavia Hills, half mentioned either being or knowing Airbnb users.
- Of those who mentioned either being or knowing Airbnb users, 85.7% were for allowing it in Vestavia Hills.

Reasons for Support

Those who supported allowing Airbnb commonly cited these reasons:

- Revenue potential for the City
- Income potential for residents
- Filling the need for lodging
- Promotion of Vestavia Hills: bring visitors and promote progressive image of City
- Incentive for absent homeowners to keep up vacant properties

Supporters also made comments that expressed these positions:

- Airbnb's review process gives sufficient ability to vet for both renter and landlord.
- "Stranger danger" is a myth or is not a relevant argument, and residents have no more or less control over who their neighbors are or who visits their neighbors than they would with Airbnb.
- Renters are likely to be business persons/executives, vacationing families, or visitors to colleges.
- Limited regulation by the City plus high rental rates could be used to control issues.
- Utilization of one's property for income is either a private issue and not the City's business (except for taxes) or is the property owner's right as a taxpayer.
- Not allowing Airbnb would reflect negatively on the city and would make our city appear less progressive than surrounding cities.
- Airbnb is not likely to be widespread throughout Vestavia Hills.

Reasons for Opposition

Those who cited opposition to allowing Airbnb commonly cited these reasons:

- Safety concern for having strangers in the neighborhood
- Safety concern for making it easy for potential criminals to scope the neighborhood
- Concern for inadequate vetting/screening of renters
- Belief that the negative effects of short-term rentals would reduce surrounding property values and make properties undesirable for potential buyers
- Parking and traffic concerns
- Desire not to live next to a "hotel" or multi-family type situation
- Expectation that short-term renters would be less respectful than full-time neighbors and generate nuisances: parking, noise, trash, odd hours

Those opposing also made comments that expressed these positions and concerns:

- Homeowners association rules might need clarification and provisions to deal with problems arising from Airbnb properties.

- Respondent has heard “horror stories” regarding how law enforcement was not able to control issues of neighborhood disturbance due to the short-term nature of the rentals.
- Having short-term rentals next door negates a property owner’s investment in a home situated in a stable, safe (familiar) neighborhood zoned for single-family residential.
- Short-term rentals are not appropriate for suburban, non-recreational areas or for places zoned single-family residential.
- If short term rentals are allowed, it should be no less than 30 days.
- City should focus efforts on getting a high-quality hotel in Vestavia Hills and address problems along southern Highway 31.
- If allowed, Airbnb would need regulations with ability to revoke owner’s rights for recurring problems.

ATTACHMENT B

Vestavia Hills Home-Sharing Legal Opinion

PATRICK H. BOONE
ATTORNEY AND COUNSELOR AT LAW
NEW SOUTH FEDERAL SAVINGS BUILDING, SUITE 705
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BIRMINGHAM, ALABAMA 35203-3720
TELEPHONE (205) 324-2018
FACSIMILE (205) 324-2295

October 27, 2017

By Hand Delivery

Councilmember Kimberly Cook
Vestavia Hills Municipal Center
1032 Montgomery Highway
Vestavia Hills, Alabama 35216

In Re: Airbnb Operation

Dear Councilmember Cook:

On October 25, 2017, you requested my legal opinion regarding whether or not an Airbnb operation is prohibited in detached single-family dwelling zoning districts under the current Zoning Ordinance. The purpose of this letter is to respond to your request.

I. FACTS

Wikipedia describes Airbnb and explains how it works.

“**Airbnb** is an [online marketplace](#) and [hospitality service](#), enabling people to lease or rent short-term [lodging](#) including [vacation rentals](#), [apartment rentals](#), [homestays](#), [hostel](#) beds, or [hotel](#) rooms. The company does not own any lodging; it is merely a [broker](#) and receives percentage service [fees](#) ([commissions](#)) from both guests and hosts in conjunction with every booking.^{[4][5][6]} It has over 3,000,000 lodging listings in 65,000 cities and 191 countries,^[7] and the cost of lodging is set by the host.

Airbnb can be accessed via either the Airbnb websites or [mobile applications](#) for [iOS](#), [Apple Watch](#), and [Android](#).^[8] Registration and account creation is free.^[9] On each booking, the company charges guests a 6%-12% guest services fee and charges hosts a 3%-5% host service fee.^[10] Hosts can also offer "experiences", such as excursions, to guests for an additional charge, of which Airbnb takes 20% as a commission.^{[10][11]}

Users can search for lodging using a variety of filters including lodging type, dates, location, and price.^[12] Before booking, users must provide a valid name, [email](#) address, telephone number, photo, payment information, and, if required by the host, a scan of a government-issued ID.^{[13][14]} Guests also are required to agree to any [house rules](#) of the host.^[13]

II. LEGAL ISSUE ONE

A. **LEGAL ISSUE ONE:** Does the City of Vestavia Hills Zoning Ordinance Number 2331, enacted on December 13, 2010, prohibit owners of real property that is zoned for detached single-family dwelling purposes in the City of Vestavia Hills (“City”) from entering into “short term” rental agreements pursuant to Airbnb?

B. **LEGAL OPINION:** It is my legal opinion that the answer to Legal Issue One is in the affirmative.

C. **BASIS FOR LEGAL OPINION:** I base my legal opinion upon the following legal authorities:

1. **Municipalities in Alabama May Divide the Territory Within Its Corporate Limits Into Different Districts:** Municipalities in Alabama may divide the City into different zoning districts by virtue of the authority of Title 11-52-70, *Code of Alabama, 1975*, which provides as follows:

“§11-52-70. **Districts; powers of municipalities as to.** Each municipal corporation in the State of Alabama may divide the territory within its corporate limits into business, industrial and residential zones or districts and may provide the kind, character and use of structures and improvements that may be erected or made within the several zones or districts established and may, from time to time, rearrange or alter the boundaries of such zones or districts and may also adopt such ordinances as necessary to carry into effect and make effective the provisions of this article.”

2. **Municipalities in Alabama Have the Legal Authority to Enact and Enforce Ordinances:** Municipalities in Alabama have the legal authority to enact and enforce ordinances pursuant to Title 11-45-1, *Code of Alabama, 1975*, which reads as follows:

“§11-45-1. **Authorized.** Municipal corporations may from time to time adopt ordinances and resolutions not inconsistent with the laws of the state to carry into effect or discharge the powers and duties conferred by the applicable provisions of this title and any other applicable provisions of law and to provide for the safety, preserve the health, promote the prosperity and improve the morals,

order, comfort and convenience of the inhabitants of the municipality, and may enforce obedience to such ordinances.”

III. THE CITY OF VESTAVIA HILLS ENACTED ZONING ORDINANCE NUMBER 2331 ON DECEMBER 13, 2010

A. **VESTAVIA HILLS ZONING ORDINANCE NUMBER 2331**: The Vestavia Hills City Council enacted Zoning Ordinance Number 2331 (“the Ordinance”) on December 13, 2010 to regulate the general use of private land through the establishment of zones or districts and outlines the intended use for each.

Article 5 of the Ordinance, among other things, created nine (9) different zoning classifications for detached single-family dwellings, namely, E-2, R-1, R-2, R-3, R-4, R-6, R-7, R-8 and R-9. The use of the properties in those nine different zoning districts is limited to detached single-family dwelling purposes.

Table 5 on page 5-12 of the Ordinance sets forth the use regulations for residential districts and provides that home occupations under section 7.1 of the Ordinance and a bed and breakfast as defined in section 2.2.4 of the Ordinance may be approved by the City Council as a conditional use.

Article 2.2 of the Ordinance provides use definitions to be applied to all zoning districts established by the Ordinance. Some of those definitions that are applicable to the question under consideration are set forth below.

“2.2.4. *Bed and Breakfast*. An establishment having guest rooms, which are subordinate and incidental to the main, owner occupied, single-family residential.”

“2.2.5. *Boarding House*. Any building or portion thereof that contains not less than three (3) nor more than nine (9) guest rooms, which are designed or intended to be used, let, or hired out for occupancy by individuals for compensation whether paid directly or indirectly, for a definite period of time longer than thirty (30) days.”

“2.2.18. *Dwelling*. A building containing one or more dwelling units used for residential purposes, but in the case of a building having two or more portions divided by one or more party walls forming a complete separation, each such portion shall be considered a separate dwelling.

1. *Single-family Dwelling*. A building designed for or occupied exclusively by one family and having only one dwelling unit from the ground to roof and having independent outside access.”

“2.2.26. *Home Occupation*. An occupation or activity carried out for gain which is clearly incidental to use of the premises for dwelling purposes in accordance with §7.1 Home Occupations.”

“2.2.27. *Hotel*. A building offering transient lodging accommodations to the general public and which may include other functions, such as restaurants, conference rooms, entertainment, personal services, and recreational facilities. ‘Hotels’ are distinguished from ‘motels’ in that hotel guest rooms are accessible from the interior of the building.”

“2.2.34. *Lodging*. A use in which temporary living quarters are made available to the general public for compensation, including but not limited to hotels and motels.”

B. LEASING OR RENTING RESIDENTIAL REAL ESTATE CONSTITUTES “DOING BUSINESS”: The Alabama Legislature enacted the Municipal Business License Reform Act of 2006 (“Act”), which is set forth in Title 11-51-90, et seq., *Code of Alabama, 1975*. The statute provides that leasing or renting residential real estate constitutes “doing business.”

Title 11-51-90.1, *Code of Alabama, 1975*, reads as follows:

“§11-51-90.1. Definitions. As used in this article, the following terms shall have the following meanings:

(1) BUSINESS. 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.”

On December 3, 2007, the City Council of the City of Vestavia Hills enacted Ordinance Number 2202 as its *Business License Code* (“Code”). The Code adopted Title 11-51-90.1, *Code of Alabama, 1975*, as Section 2(1) of its definition of “Business.”

Vestavia Hills Zoning Code Ordinance Number 2331 prohibits “doing business” in a district zoned for detached single-family dwelling purposes.

IV. CITY ORDINANCES ARE SUBJECT TO THE SAME GENERAL RULES OF CONSTRUCTION AS ARE ACTS OF THE LEGISLATURE

City ordinances are subject to the same general rules of construction as are acts of the legislature (*City of Birmingham v. AmSouth Bank, N.A.*, 591 So.2d 473, 476 (1991)).

In 2007, the Court of Civil Appeals of Alabama decided the case of *University of South Alabama Hospitals v. Blackmon*, 987 So.2d 1138, and set forth Alabama law regarding the construction and interpretation of a statute as follows:

A. The fundamental rule of statutory construction is to ascertain and give effect to the intent of the legislature in enacting the statute (*IMED Corp. v. Systems Eng'g Assocs. Corp.*, 602 So.2d 344, 346 (Ala.1992); see also *Ex parte University of South Alabama*, 761 So.2d 240, 243 (Ala.1999)).

B. When possible, the intent of the legislature should be gathered from the language of the statute (*Perry v. City of Birmingham*, 906 So.2d 174, 176 (Ala.2005) (quoting *Beavers v. Walker County*, 645 So.2d 1365, 1376 (Ala.1994); see also *Ex parte Lamar Advers. Co.*, 849 So.2d 928, 930 (Ala.2002)).

C. Words used in a statute must be given their natural, plain, ordinary, and commonly understood meaning, and where plain language is used a court is bound to interpret that language to mean exactly what it says (*IMED Corp. v. Systems Eng'g Assocs. Corp.*, 602 So.2d 344, 346 (Ala.1992); see also *Ex parte University of South Alabama*, 761 So.2d 243 (Ala.1999); and *Wynn v. Kovar*, 963 So.2d 84, 86 (Ala.Civ.App.2007)).

D. If the language of the statute is unambiguous, then there is no room for judicial construction and the clearly expressed intent of the legislature must be given effect (*IMED Corp. v. Systems Eng'g Assocs. Corp.*, 602 So.2d 344, 346 (Ala.1992); see also *Ex parte University of South Alabama*, 761 So.2d 243 (Ala.1999); and *Wynn v. Kovar*, 963 So.2d 84, 86 (Ala.Civ.App.2007)).

E. When the language of a statute is plain and unambiguous, courts must enforce the statute as written by giving the words of the statute their ordinary plain meaning; they must interpret that language to mean exactly what it says, and, thus, give effect to the apparent intent of the legislature. *Ex parte T.B.*, 968 So.2d 127, 130 (Ala.1997); see also *Perry*, 906 So.2d at 176; *Ex parte Lamar Adver. Co.*, 849 So.2d at 930; *Beavers*, 645 So.2d at 1376-77; *Ex parte United Serv. Stations, Inc.*, 628 So.2d 501 (Ala.1993); and *IMED Corp.*, 602 So.2d at 344.

F. When determining legislative intent from the language is used in a statute, a court may explain the language but it may not detract from or add to the statute; courts may not improve a statute, but may only expound it (*Siegelman v. Chase Manhattan Bank (USA) Nat'l Ass.*, 575 So.2d 1041 (1991)).

G. **WISDOM, PRACTICALITY AND COMMON SENSE:** The rule of common sense must be applied to the construction of the statutes (*Reed v. Chase Home Finance, LLC*, 893 F.Supp.2d 1250, affirmed 723 F.3d 1301)).

H. The legal maxim expression unius est exclusion alterius, "the expression of one thing is the exclusion of another," is frequently applied to aid courts in interpreting statutory language (*Public Bldg. Authority of City of Huntsville v. St. Paul Fire and Marine Ins. Co.*, 80 So.3d 171, rehearing denied)).

Under the doctrine of expression unius est exclusion alterius, the express inclusion of requirements in the law implies an intention to exclude other requirements not so included (*Ex parte University of South Alabama*, 761 So.2d 240, on remand *University of South Alabama v. Garrick*, 761 So.2d 246)).

The Ordinance expressly states that the use of properties in the nine (9) different detached single-family dwellings districts may be used only for detached single-family dwelling purposes and does not specifically permit the renting of rooms to members of the general public.

The rule of “expression unius est exclusion alterius” leads this writer to the conclusion that the inclusion of “detached single-family dwelling purposes” was the intentional exclusion of allowing homeowners to operate a business by renting rooms to tenants.

V. ORDINANCES ARE PRESUMED TO BE VALID

Municipal ordinances are presumed to be valid and reasonable, to be within the scope of the powers granted municipalities to adopt such ordinances, and are not to be struck down unless they are clearly arbitrary and unreasonable (*St. Clair County Home Builders Ass'n v. City of Pell City*, 61 So.3d 992, rehearing denied). An ordinance enacted by a local governing body is presumed reasonable and valid, and, thus, the burden is on the one challenging the ordinance to clearly show its invalidity.—*Id.*

VI. CONCLUSION ONE

The language of Article 5 of the Ordinance is clear and unambiguous, and limits the use of property in E-2, R-1, R-2, R-3, R-4, R-6, R-7, R-8 and R-9 zoning districts to detached single-family dwellings. Therefore, it is my legal opinion that Vestavia Hills Zoning Ordinance Number 2331 would prohibit owners of real property in the City that is zoned for detached single-family dwelling purposes from entering into “short-term” rental agreements pursuant to Airbnb.

VII. ADDITIONAL, BUT HYPOTHETICAL FACTS

For illustration purposes, suppose that property in the City has private restrictive covenants, which provide that, (1) “This property shall be used solely for detached single-family dwelling purposes”; and (2) “This property shall not be used for any purpose of business or trade.”

VIII. LEGAL ISSUE TWO

A. LEGAL ISSUE TWO: Would the private restrictive covenants prohibit the owner of the property from entering into “short-term” rental agreements pursuant to Airbnb?

B. LEGAL OPINION: It is my legal opinion that the answer to Legal Issue Two is in the affirmative.

C. **BASIS FOR LEGAL OPINION:** I base my legal opinion upon the following Alabama legal authorities:

1. **Private Restrictive Covenants:** Restrictive covenants are frequently inserted in deeds by a person owning a body of land who sells a portion thereof, which are inserted by him for the benefit of his remaining land and which in some manner restrict the use of the land conveyed or the improvements to be erected thereon. A restrictive covenant can, among other things, regulate the use of the land, establish the type, kind and minimum size of the structure to be built thereon and require minimum setback distances for the front, rear and both sides of a parcel of land. Such restrictive covenants run with the land and each successor owner is obligated to comply with such restrictive covenants.

Alabama law is crystal clear that where the language of a restrictive covenant is clear and unambiguous, it will be given its plain and manifest meaning (*Tubbs v. Brandon*, 374 So.2d 1358 (Ala.1979); *Laney v. Early*, 292 Ala. 227, 292 So.2d 103 (1974)). It is also well settled that restrictions on the use of land are not favored in the law, and such restrictions are strictly construed in favor of the free use of such property (*Springdale Gayfer's Store Co. v. D.H. Holmes Co.*, 281 Ala. 267, 201 So.2d 855 1947); *Reetz v. Ellis*, 279 Ala. 453, 186 So.2d 915 (1966)). The Supreme Court of Alabama stated in *Springdale Gayfer's Store Co.*, supra:

“Where the language of the restriction is clear and unambiguous, it will be given its manifest meaning, but its construction will not be extended by implication or include anything not plainly prohibited and all doubts and ambiguities must be resolved against the party seeking enforcement. *Bear v. Bernstein*, 251 Ala. 230, 231, 36 So.2d 483, 14 A.L.R.2d 1372.”

2. **Municipalities in Alabama Do Not Have the Legal Authority to Enforce Private Restrictive Covenants:** Municipalities and counties may exercise only the authority given to them by the Legislature. A municipality derives all of its power from the state and no municipality can legislate beyond what the state has either expressly or impliedly authorized. *Jefferson County v. Johnson*, 333 So.2d 143, 145 (Ala.1976) and *Arrington v. Associated General Contractors*, 403 So.2d 893, 902 (Ala.1981).

I have found no legal authority in Alabama that allows a municipality to enforce a private restrictive covenant. The Attorney General of the State of Alabama agrees with me and has written three opinions regarding the authority of a municipality to rezone property when there is a conflicting private restrictive covenant on the land. (*Opinion No. 81-00293*, *Opinion No. 85-00191* and *Opinion No. 88-00357*.)

3. **Enforcement of Private Restrictive Covenant:** Private restrictive covenants applicable to lots in a subdivision may be enforced by any of the owners of the lots situated in that subdivision (*Marengo Hills, Inc. v. Watson*, 368 So.2d 856 (Ala.1979) and *Vestavia Hills Board of Education v. Utz.*, 530 So.2d 1378 (1988)).

4. **Zoning Ordinances Cannot Lessen the Requirements of a Private Restrictive Covenant:** The Supreme Court of Alabama decided the case of *Allen v. Axford*, 285 Ala. 251 in 1969. In that decision, the Court held that a zoning ordinance is not unconstitutional because some lot in the tract zoned from a residential to a business classification was under a covenant running with the lot restrictions to its use (providing that nothing but detached residences may be built on two lots) although the ordinance might be unenforceable as to the lots so restricted. The Court wrote the following language:

“A zoning ordinance could not constitutionally invalidate a covenant running with the land, since such covenant constitutes a contract between the parties which could not be impaired by an ordinance or statute. We did not intend that, nor should, it be concluded from this observation that a zoning ordinance is unconstitutional because some lot in the zoned tract might be under a covenant running with such lot restricting its use. Such a situation might well affect the enforceability of the ordinance as to the lot or lots so restricted in an action between the parties concerned, but would not go to the constitutionality of the ordinance as a whole.”

In *Allen v. Axford*, the land in question was zoned for single-family residential use by the City of Birmingham in 1913. In 1927, the owner of the lot in question imposed a private restrictive covenant on the land limiting its use to single-family residential purposes. In 1966, the then-owner of the property filed an application for rezoning the property from residential to business in order for the property to be developed and used as a gasoline service station. The City of Birmingham enacted an ordinance granting the application and changed the zoning from residential to business. The owner of another residential lot in the same section of the subdivision filed suit alleging that the zoning ordinance was unconstitutional and further sought to enforce the private restrictive covenants.

The Supreme Court of Alabama held that the zoning ordinance was, in fact, constitutional and legal, but that the affect of that ordinance could not lessen the requirements of the private restrictive covenant. The gasoline service station was not allowed to be built because of the private restrictive covenants.

5. **Private Restrictive Covenants Cannot Lessen the Requirements of a Public Zoning Ordinance:** In 1966, the Supreme Court of Alabama decided the case of *Brown v. Morris*, 279 Ala. 241 (1966) and held that a private restrictive covenant imposed on land subsequent to a valid public zoning ordinance may be more, but not less, restrictive. In other words, a private restrictive covenant cannot lessen the requirements of a public zoning ordinance.

In 1948, the City of Gadsden zoned a parcel of land for commercial use. In 1956, the owner of the parcel subdivided the land and imposed private restrictive covenants on the subdivision lots limiting the use to single-family residential purposes. In 1964, Morris commenced construction of a commercial building on Lot One in Block C of the subdivision. Brown, the owner of Lot One in Block A of the same sector, filed a lawsuit to enforce the private restrictive covenants limiting the use of the Morris lot to single-family residential use. The Supreme Court of Alabama decided the case in favor of Brown and enforced the private restrictive covenant. The Court ruled that private restrictive covenants imposed on land subsequent to a valid zoning ordinance may be more restrictive than the zoning ordinance but not less restrictive (i.e., a private restrictive covenant may not LESSEN the requirements of a valid zoning ordinance).

6. Vestavia Hills Zoning Code: Section 14.1 of the *Zoning Code of the City of Vestavia Hills* reads as follows:

“§14.1. **Interpretation and Purpose.** In their interpretation and application the provisions of this Ordinance shall be considered the minimum requirements adopted for the promotion of the public health, safety, morals, convenience, order, prosperity, and general welfare of the community. Where other ordinances or regulations, which may be adopted hereafter, impose greater restrictions than those specified herein, compliance with such other ordinances or regulations is mandatory. This Ordinance shall not lessen the requirements of plats, deeds, or private contract when such requirements are more restrictive than the provisions of this Ordinance.”

IX. CONCLUSION TWO

It is my legal opinion that the property subject to private restrictive covenants that (1) “This property shall be used solely for detached single-family dwelling purposes”; and (2) “This property shall not be used for any purpose of business or trade” could not be used for “short-term” rental purposes pursuant to Airbnb.

Please call me if you have any questions regarding this legal opinion.

Sincerely,



Patrick H. Boone

Vestavia Hills City Attorney

PHB:gp

cc: City Manager Jeffrey D. Downs (by hand)
Mayor Ashley C. Curry (by hand)
City Clerk Rebecca Leavings (by hand)
All Members of City Council (by hand)

ATTACHMENT C

Home-Sharing Building Code Review

1/19/18

Vestavia Hills

The Department of Building Safety

Airbnb Building Code information

The 2015 International Residential Code - Lodging House

- Limits the dwelling to five guestrooms max.
- Owner must live in the home along with guest.
- Install fire sprinkler system.
- Smoke detector on each level and in each bedroom. Interconnected.
- Perform inspection during any type of construction.

The 2015 International Building Code

- R-3 Occupancy limits the building to 10 or fewer transient (less than 30 days) individuals.
- Install fire sprinkler system.
- Install fire alarm system.
- Install exit and emergency lighting.
- Change interior bedroom doors to ½ hour rated with door closers.
- Install walls separating sleeping units as fire partition.
- Perform inspections during any type of construction.

Other areas.

- Zoning – City Clerk review
- License – City Clerk and Finance review
- Inspection frequency – Fire Marshal review

ATTACHMENT D

Home-Sharing Fire Code Review



Air BnB Requirements

(at a minimum)

The following requirements are taken from the International Building Code, International Fire Code, and the NFPA 101 Life Safety Code for Lodging or Rooming Houses. There is no distinction of whether the rental is short-term or not. This is limited to 16 or less individuals.

- Automatic fire sprinkler system shall be installed throughout the entire structure (some area limitations, if the house is occupied by the owner during rental) with at least an annual inspection
- Fire Alarm system with occupant notification devices (if the owner is not on-site during the rental) with at least an annual inspection
- Fire Extinguisher (minimum 2A:10BC) every 75 feet travel distance with at least an annual inspection
- Smoke detectors interconnected on every level and within each sleeping unit
- Where there is fuel burning appliances, carbon monoxide detectors interconnected on every level and outside of each sleeping unit
- Interior stairwells shall be enclosed fire barriers having a minimum ½ hour fire resistance rating with all openings protected with a self-closing door having a minimum ½ hour fire resistance rating
- All sleeping units shall be separated by smoke partitions that extend from the floor to the underside of the floor or roof deck above
- HVAC ducts shall have fire and smoke dampers installed
- An approved fire safety and evacuation plan with diagram shall be posted on or adjacent to every sleeping unit with at least an annual inspection
- Continuous illuminated EXIT signs shall be installed with at least an annual inspection

Scott Key

Battalion Chief / Fire Marshal

Vestavia Hills Fire Department

ATTACHMENT E

Ordinance 2315

ORDINANCE NUMBER 2315

AN ORDINANCE TO ADOPT A NEW BUSINESS LICENSE CODE FOR THE CITY OF VESTAVIA HILLS, ALABAMA, AND FROM YEAR TO YEAR THEREAFTER UNTIL REPEALED OR REVISED AND REPEALING ORDINANCE NUMBERS 2202 AND 2202-A

WHEREAS, the governing body of the City of Vestavia Hills, Alabama, on December 3, 2007, approved and adopted Ordinance 2202, an Ordinance to repeal Ordinance Number 2072, and to adopt a new Business License Code effective January 1, 2008, for the City of Vestavia Hills, Alabama, for the calendar year 2008 and from year to year thereafter until repealed or revised; and

WHEREAS, on February 9, 2009, the City Council adopted and approved and adopted Ordinance Number 2202-A to repeal Section 23[5](L) regarding tobacco taxes; and

WHEREAS, pursuant to the *Municipal Business License Reform Act of 2006* adopted by the Alabama Legislature at their 2006 regular session and other amendments, the Mayor and City Council agree it would be in the best public interest to repeal Ordinance Numbers 2202 and 2202-A with all subsequent amendments and approve and adopt a new business license code for the City of Vestavia Hills, Alabama.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF VESTAVIA HILLS, THAT THE BUSINESS LICENSE CODE FOR THE CITY OF VESTAVIA HILLS, ALABAMA, READS AS FOLLOWS:

5527-5741

BUSINESS LICENSE CODE OF THE
CITY OF VESTAVIA HILLS, ALABAMA
FOR THE YEAR 2009/10 AND EACH SUBSEQUENT YEAR
SCHEDULE OF LICENSES AND FEES

BE IT ORDAINED BY THE CITY OF COUNCIL OF THE CITY OF VESTAVIA

HILLS, ALABAMA, as follows:

SECTION 1.	Levy of tax.	Page 03
SECTION 2.	Definition of terms.	Page 03
SECTION 3.	License term; minimum license.	Page 07
SECTION 4.	License shall be location specific.	Page 08
SECTION 5.	License transfer restrictions.	Page 10
SECTION 6.	Unlawful to do business without a license.	Page 11
SECTION 7.	License must be posted.	Page 11
SECTION 8.	Duty to file report.	Page 11
SECTION 9.	Duty to permit records inspection.	Page 14
SECTION 10.	Unlawful to obstruct municipal designee.	Page 14
SECTION 11.	Privacy of information.	Page 15
SECTION 12.	Failure to file assessment.	Page 15
SECTION 13.	Lien for non-payment of license tax.	Page 16
SECTION 14.	Criminal penalties.	Page 17
SECTION 15.	Civil penalties.	Page 17
SECTION 16.	Penalties and interest.	Page 17
SECTION 17.	Prosecutions unaffected.	Page 18
SECTION 18.	Procedure for denial of new applications.	Page 18
SECTION 19.	Procedure for revocation/suspension of license.	Page 19
SECTION 20.	Refunds on overpayments.	Page 21
SECTION 21.	Delivery License.	Page 22
SECTION 22.	License classification codes.	Page 24
SECTION 23.	License Fee Schedules.	Page 30
SECTION 24.	Exchange of information.	Page 36
SECTION 25.	Effective date.	Page 37
SECTION 26.	Severability.	Page 37
SECTION 27.	Repealer.	Page 37

SECTION 1. Levy of Tax.

Pursuant to the *Code of Alabama, 1975*, the following is hereby declared to be and is adopted as the business license code and schedule of licenses for the City of Vestavia Hills, Alabama, for the year beginning January 1, 2008, and for each subsequent year thereafter. 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 City of Vestavia Hills.

SECTION 2. Definition of terms.

Unless the context clearly requires otherwise, the following terms shall have the following meaning as set forth below:

[1] **BUSINESS.** 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.

[2] **BUSINESS LICENSE.** 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.

[3] **BUSINESS LICENSE REMITTANCE FORM.** 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.

[4] DEPARTMENT or DEPARTMENT OF REVENUE. The Alabama Department of Revenue, as created under Section 40-2-1 et seq., *Code of Alabama, 1975*.

[5] DESIGNEE. 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 Section 40-2A-3 of the *Code of Alabama, 1975*.

[6] GROSS RECEIPTS. 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:

- (a) 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 Article 3, Chapter 21, Title 40; license taxes levied pursuant to Article 2, Chapter 21, Title 40; 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.
- (b) A different basis for calculating the business license may be used by the municipality with respect to certain categories of taxpayers as prescribed in Section 11-51-90B, *Code of Alabama, 1975*.

- (c) For a utility or other entity described in Section 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 Article 3 of Chapter 21 of Title 40, except that nothing herein 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.
- (d) 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.

[7] LICENSE FORM. Any business license application form, renewal reminder notice, business license remittance form, or business license return by whatever name called.

[8] LICENSE OFFICER or MUNICIPAL LICENSE OFFICER. The municipal employee, or his agent or designee, charged by the municipality with the primary responsibility of administering the municipality's business license tax ordinance and related matters thereto.

[9] LICENSE YEAR. The calendar year.

[10] MUNICIPALITY. Any town or city in this state that levies a business license tax from time to time.

[11] PERSON. 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 Alabama 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.

[12] TAXING JURISDICTION. Any municipality that levies a business license tax, or the Department of Revenue acting as agent on behalf of a municipality pursuant to Section 11-51-180 et seq., *Code of Alabama, 1975*, as the context requires.

[13] TAXPAYER. Any person subject to or liable under this chapter 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 chapter 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 who may be affected by any act or refusal to act by the taxing jurisdiction under this chapter, or to keep any information required by this chapter

[14] U.S.C. The applicable title and section of the United States Code, as amended from time to time.

[15] OTHER TERMS. Other capitalized or specialized terms used in this Ordinance, and not defined above, shall have the same meanings ascribed to them in Section 40-2A-3, of the *Code of Alabama*, unless the context therein otherwise specifies.

SECTION 3. License term.

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

- (a) **Full Year.** Every person who commences business before the first day of July shall be subject to and shall pay the annual license for such business in full.

- (b) **Half Year.** Every person who commences business on or after July 1st shall be subject to and shall pay one-half (1/2) the annual license for such business for that calendar year.
- (c) **Issue Fee.** For each license issued there shall be an issue fee of ten dollars (\$10.00) collected and it shall be collected in the same manner as the license tax.
- (d) **Annual Renewal.** Except as provided in subsections (i) or (ii), the business license shall be renewed annually on or before the 31st day of January each year.
 - (i) 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.
 - (ii) Insurance company annual license renewals shall be renewed in accordance with Section 11-51-122 of the *Code of Alabama, 1975*, which states that each year, each insurance company shall furnish the municipality a duly certified statement in writing 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 the municipal code.
 - (iii) On or before December 31 of each year, a renewal reminder shall be mailed to each licensee who purchased a business license during the current year. Said renewal notice shall be mailed via regular U.S. mail to

the licensees' last known address of record with the municipality. Licensees are required to furnish the municipality any address changes for their business prior to December 1st in order for them to receive their notice.

- (iv) 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 his agents to those penalties as prescribed for doing business without a license provided for in the municipal code.

SECTION 4. 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 herein, shall take out and pay for a license for each line of business.
- (c) A taxpayer subject to the license authorized by this Ordinance 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 Ordinance. To establish a bona fide branch office, the taxpayer must demonstrate proof of all following criteria.

- (i) The taxpayer must demonstrate the continuing existence of an actual facility located outside the municipal limits 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.
- (ii) The taxpayer must maintain books and records, which reasonably indicate a segregation or allocation of the taxpayer's gross receipts to the particular facility of facilities.
- (iii) The taxpayer must provide proof that separate telephone listings, signs, and other indications of its separate activity are in existence.
- (iv) 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.
- (v) All business claimed by a branch office or offices must be conducted by and through said office or offices.
- (vi) 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.

SECTION 5. 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 or her 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. Provided that 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 Alabama shall not constitute a transfer for purposes of this chapter, unless (1) the change requires the taxpayer to obtain a new federal employer identification number or Department of Revenue taxpayer identification number or (2), 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.

SECTION 6. 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 up to the maximum amount allowed by Alabama State Law, at the discretion of the court trying the same. Each day shall constitute a separate offense.

SECTION 7. 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 request.

SECTION 8. 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 or her 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 five hundred dollars (\$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 five hundred dollars (\$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 or her right to appeal the final assessment to circuit court within 30 days from the date of the entry of the final assessment.

SECTION 9. Duty to permit inspection and produce records.

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

- (a) 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;

- (b) To furnish information during reasonable business hours, at the licensee's place of business, in the municipality 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 of Alabama, copies of Alabama income tax returns and federal income tax returns.

SECTION 10. 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 Ordinance; 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 Ordinance.

SECTION 11. Privacy.

- (a) It shall be unlawful for any person connected with the administration of this ordinance to divulge any information obtained by him/her in the course of inspection and examination of the books, papers, reports and memoranda of the taxpayer made pursuant to the provisions of this Ordinance, 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 Ordinance.
- (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 its written request through the Mayor's office. It shall be unlawful for any person to violate the provisions of this section.

SECTION 12. Failure to file assessment.

- (a) In any case where a person subject to paying a license tax as provided herein 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 twenty (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/she 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.

SECTION 13. Lien for non-payment 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, Section 11-51-96, *Code of Alabama, 1975*.

SECTION 14. Criminal penalties.

Any person found guilty of violating any of the provisions of this Ordinance shall be fined up to the maximum amount allowed by Alabama state law, at the discretion of the court trying the case, and violations on separate days shall each constitute a separate offense.

SECTION 15. Civil penalties.

In addition to the remedies provided by Section 11-51-150, *Code of Alabama, 1975*, et seq., the continued or recurrent performance of any act or acts within the corporate limits for which a license may be revoked or suspended under this Ordinance 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.

SECTION 16. Penalties and interest.

- (a) All licenses not paid within thirty (30) days from the date they fall due shall be increased by fifteen (15) percent for the first thirty (30) days they shall be delinquent, or fraction thereof, and shall be measured by an additional fifteen (15) percent for a delinquency of sixty (60) or more days, but this provision shall not be deemed to authorize the delay of thirty (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 fifteen (15) percent for the first fifteen (15) days they shall be delinquent, and shall be measured by an additional fifteen (15) percent for a delinquency of forty-five (45) days or more.
- (c) All delinquent accounts (both license taxes and penalties) shall also be charged pursuant to Section 40-1-44, *Code of Alabama, 1975*.

SECTION 17. Prosecutions unaffected.

The adoption of this Ordinance 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 this Ordinance; nor shall any civil action or cause of action existing prior to or at the time of the adoption of this Ordinance be affected in any manner by its adoption.

SECTION 18. 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 (2) 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 fifteen (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.

SECTION 19. 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 Ordinance or of any ordinance of the municipality, or any statute of the State of Alabama 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 of Alabama; 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 hereinabove set forth 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 (10) 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.

SECTION 20. 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 herein, 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 Section 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 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.

SECTION 21. 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;
 - (2) The taxpayer conducts no other business in the municipality other than delivering merchandise and performing the requisite setup and installation of said merchandise;
 - (3) Such delivery, setup 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 seventy-five thousand dollars (\$75,000) during the license year;
 - (5) Any setup 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 10 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 seventy-five thousand (\$75,000) limitation described in the preceding 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 Title 40 of the *Code of Alabama* 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.

SECTION 22. License classifications.

Act 2006-586 of the 2006 Regular Session of the Alabama Legislature known as the “Municipal Business License Reform Act of 2006” requires identification (sector/subsector) numbers based upon the North American Industrial Classification System (NAICS) as a part of the periodic reporting requirements for every business. For municipal business license purposes, each taxpayer must be minimally classified as required. The descriptions listed beside each NAICS code incorporate examples of each category; however, these examples are not all inclusive. A business is classified and licensed based upon the business activity or activities which it conducts within the City. Each business will be placed in the NAICS sector/subsector which best matches its activity or activities and shall pay a license tax based upon the corresponding schedule assigned to its description unless otherwise specified. The Finance Director, Chief Financial Officer or his designee may assign additional digits of each NAICS code for reporting purposes and proper administration of this Ordinance.

CODE	2002 NAICS TITLES / BUSINESS LICENSE CODES	SCHEDULE
111998	Farming and Crop Production – agriculture, crop production, nursery, fruit, growers	5a
112990	Animal Production – dairy, cattle, ranching, sheep, chickens, poultry	5a
113110	Forestry – logging, forestry, timber track operations, timber mgt	5a
114119	Fishing & hunting – hunting and trapping, finfish, shellfish, supplies	5a
115114	Agriculture support – cotton gins, farm mgt, post-harvest activities	5a
211111	Oil and gas extraction – natural gas liquid extraction, crude extraction	5a
212299	Mining - (except for oil and gas) all related mining activities	5a
213112	Mining support services – for oil and gas mining activities, oil/gas wells	5a
221122	Utilities – electric power or light company	10c
221210	Utilities – natural gas company	10b
221310	Utilities – water, sewage treatment, steam, and other	10d
236220	Contractors – general contractors, comm. bldg, residential, subdivisions	2a
237990	Contractors – heavy construction, highway, bridge, street, water, sewer	2a
237210	Developers, Subdividers – except cemeteries	7e
238220	Contractors – specialty trade – plumbing	2b

238210	Contractors – specialty trade – electrical contractors	2b
238221	Contractors – specialty trade – heating & air conditioning; mechanical	2b
238110	Contractors – specialty trade – water well drilling & irrigation	2b
238211	Contractors – specialty trade – security systems	2b
238111	Contractors – specialty trade – not otherwise classified in this table	2b
311991	Food mfg – meat, seafood, grain, fruit, dairy, animal, poultry processing	5a
311813	Food mfg – bakeries, baking on premises and retail sale not for immediate consumption	5a
312212	Beverage mfg – all types of soft drinks, bottled water, breweries, ice	5a
313112	Textile mfg – fabric, yarn, carpet, canvas, rope, twine, fabric mills	5a
314129	Other mfg – mill operations not covered in 313, rugs, linen, curtains	5a
315999	Apparel mfg – women, men, children, hosiery, lingerie outerwear, accessories	5a
316993	Leather and allied products mfg – shoes, luggage, handbag, related products, all footwear	5a
321999	Wood mfg – sawmills, wood preservation, veneer, trusses, millwork	5a
322129	Paper mfg – pulp, paper, and converted products, stationary, tubes, cores	5a
323117	Printing – screen, quick, digital, books, lithographic, handbills, comm.	5a
324199	Petroleum and coal mfg – asphalt, grease, roofing, paving products	5a
325998	Chemical mfg – of fertilizer, wood, pesticide, paint, soap, and resin	5a
326291	Plastic & rubber mfg – tires, pipe, hoses, belts, bottles, sheet, wrap, film	5a
327331	Nonmetallic mfg – clay, glass, cement, lime, pottery, ceramic, brick, tile	5a
331521	Primary metal mfg – iron, steel, aluminum, wire, copper, foundries	5a
332999	Metal fabrication – cutlery, structural, ornamental, machine shops	5a
333990	Machinery mfg – office machinery, industrial, engines, farm, HVAC	5a
334419	Computer & electronic mfg – audio, video, circuit boards, peripherals	5a
335112	Appliance mfg – small appliance, lighting, electrical, battery, freezer	5a
336112	Transportation mfg – mfg auto, truck, trailer, motor home, boat, ship, and motorcycle	5a
337129	Furniture mfg – cabinets, office, household, beds, kitchen	5a
339999	Miscellaneous mfg – Misc. Manufacturing, medical, dental, jewelry, sporting goods, toys, signs, all other	5a
421990	Wholesale trade – durable, vehicle, machinery, equipment, furniture	5h
422720	Wholesale trade – nondurable, wholesale gasoline distributor	5a
422990	Wholesale trade – nondurable, paper, apparel, grocery, beverages, dairy	5a
441140	Motor vehicle parts and accessories – auto, motorcycles, boats, parts and accessories	5a
441110	Motor vehicles - new and/or used automobiles, motorcycles, boats, etc, dealerships and lots	5a
442110	Furniture – furniture, home furnishings, stores, floor coverings, window	5a
443111	Electronic & appliance store – household, radio, television, computers	5a
444190	Building materials and gardening equipment dealers – hardware, paint, home center, wallpaper, nursery	5a
445110	Food & beverage stores – grocery, convenience store, markets	5a
445121	040 Beer – on/off premise – state regulated through ABC	1

455122	050 Beer – off premise – state regulated through ABC	1
455131	060 Table Wine on/off premise – state regulated through ABC	1
455131	070 Table Wine on premise only – state regulated through ABC	1
455121, 455141 & 455131	010 Lounge Retail Liquor Class I – state regulated through ABC.	1
455122, 455141 & 455131	011 Package Store Liquor Class II – state regulated through ABC.	1
455121, 455141 & 455131	020 Restaurant Retail Liquor – state regulated through ABC.	1
455121, 455141 & 455131	032 (Club Liquor Class II) – state regulated through ABC	1
455132	110 Wholesale Table Wine & Beer – state regulated through ABC	1
445310	Package Stores – selling beer, wine and liquor plus general mdse	5a
446110	Health and personal care stores – drug, pharmacy, cosmetic, optical, health food	5a
447110	Gasoline retail - selling gasoline with or without convenience stores	5c
448140	Clothing & accessories – men, women, children, infant, shoe, jewelry	5a
451110	Sporting goods & hobbies – toy, fish, gun, books, games	5a
452990	General merchandise stores – department, warehouse clubs, superstores	5a
452991	General merchandise stores – private, membership	5b
453310	Used merchandise stores – books, miscellaneous, consignment, flea mkt, antiques	
453390	Yard Sale/Garage Sale	5g
453220	Miscellaneous retailers – florist, gift, novelty, pet, art, and tobacco	5a
453991	Tobacco retailers – any business engaged in the peddling and/or distribution of tobacco products as primary retail product (example – cigar shop, tobacco shop)	5a
454113	Non-Store Retailers – vending machine operators, mail order, not magazines and/or newspapers	8a
454212	Non-Store Retailers – magazines and/or newspapers for circulation and distribution daily and weekly in the City (carriers excepted)	8a
454110	Non-Store Retailer – peddlers license, solicitor, canvasser	5d
454120	Non-Store Retailer – day vendor license, organized daily event	5m
481110	Air transportation – airline tickets, shipping, freight, charter service	8a
482110	Rail transportation – transportation, ticket offices, state regulated	11-51-124
483110	Water transportation – coastal, freight forwarders, inland, passenger	5a
484121	Truck transportation – local, long-distance, freight, moving, and storage	8a
484490	Truck transportation – terminal – state regulated	37-3-33
485510	Passenger transportation – charter and other vehicle transit services	8a

	(subject to all applicable ordinances)	
485113	Passenger transportation – bus terminals state regulated (subject to all applicable ordinances)	10e
485320	Passenger transportation – taxi cabs, limousine service, buggy charters (subject to all applicable ordinances)	8a
487110	Sightseeing transportation – scenic and sightseeing, land, air, water, special trans (subject to all applicable ordinances)	8a
492110	Couriers – couriers and local messengers	8a
492120	Delivery	<i>See Section 21 of this ord.</i>
493190	Warehousing and storage – distribution, household, refrigerated, special	5a
511120	Publishing industries except internet – newspaper, book, periodical, databases, software	5a
512131	Motion pictures – theatres, videos, recording, drive-ins, sound studios	8a
515112	Broadcasting – radio and television stations	8a
517110	Telecommunications – telephone local per 11-51-128	10a
517110	Telecommunications – telephone long distance per 11-51-128	10a
517212	Telecommunications – cellular and other wireless, paging	10a
517310	Telecommunications – resellers of service	10a
519512	Information services and data processing – providing, storing, processing, access to information	8a
522110	Bank Main Office – not branch location or ATM	3a
522210	Bank Branch or ATM – not main office of bank	3a
522120	Savings and Loans – not branch location or ATM	3a
522220	S&L Branch or ATM – not main office of S&L	3a
522292	Mortgage company	3b
522298	Pawn shop – whether title pawn or merchandise	5a
522320	Credit services – companies and activities related to credit and mediation	8a
523120	Securities, commodity – brokerage, portfolio, investment, bonds, stocks, other financial services	3c
524210	Insurance company and/or its agents – casualty, fire, and/or marine premiums	4
524220	Insurance company and/or its agents – health, allied and all other premiums	4
525110	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.	3c
531110	Real estate – apartment rental/leasing	7a(1)
531111	Real estate – single family residential rental/leasing	7a(2)
531120	Real estate – non-residential (including commercial, office, retail, agricultural) leasing/rental (except miniwarehouses)	7b
531210	Real estate – brokers, management, appraisers	6
531211	Real estate – agents	7c
531130	Warehousing – self-storage, mini-warehouses	8a
532299	Rental and leasing – auto, truck, trailer, RV, all tangible property	8a

532230	Rental and leasing – movie and video rental	8a
541110	Attorney/Lawyers – individual and/or firm professional license	6
541211	Accountant/CPAs – individual and/or firm professional license	6
541310	Architect – individual and/or firm professional license except landscape architect	6
541320	Architect, Landscape – individual and/or firm professional license	6
541330	Engineer – individual and/or firm professional license	6
541370	Surveyor – individual and/or firm professional license	6
541511	Computer Programmer – individual and/or professional firm license	6
541922	Photographer – studios, portrait, commercial, services	6
541940	Veterinarian – individual and/or firm professional license	6
541410	Interior Decorator – Interior decorating services, interior design consultation	6
541810	Advertising – agency, posters, pamphlets	6
541850	Advertising – billboard display advertising services	9
541920	Professional Associations	5k
541001	Professional Services not elsewhere classified – scientific, technical	6
551110	Management companies – offices, enterprises, regional, corporate	5i
561710	Exterminating services – exterminating company and its services	8a
561720	Janitorial firm – janitorial cleaning services – individual or firm	8a
561730	Landscaping Services – including landscape installation, maintenance, lawn maintenance, etc.	2b
561110	Administrative services – answering, employment, office, sec., travel	8a
561310	Employment Agency	8a
561440	Collection Agency	8a
561621	Security Alarm Services	8a
561510	Travel Agencies/Travel Agents	8a
561611	Detective Agency, Detective, Private Investigator – police check required	8a
561001	Services not otherwise classified in this table	8a
562119	Waste management – companies, trucks, septic tanks, landfill, services	8a
611710	Educational services – technical, computer, sports, services, business, home tutoring	8b
621491	HMO – medical centers and services	11
621420	Outpatient Care Centers – all other types of services	11
621110	Physician/Doctor – individual and/or firm professional license	6
621210	Dentist – individual and/or firm professional license	6
621310	Chiropractor – individual and/or firm professional license	6
621391	Podiatrist – individual and/or firm professional license	6
621320	Optometrist – individual and/or firm professional license	6
621610	Nursing care –health, home health or day care	8a
621910	Ambulance – ambulance company and/or services	8a
622110	Hospitals – surgical, substance abuse, psychiatric, general care, special	11
623110	Nursing Home – continuing care facilities	11
623311	Assisted Living facilities with or without on-site nursing facilities	11

624130	Social assistance – shelters, vocational, child care, abuse, emergency	11
711110	Arts and sports – dance, musical, teams, tracks, promoters, agents	8a
711120	Special events – promoter or activity	8a
712110	Museums – museums and historical sites, zoos, botanical gardens, parks	5a
713120	Amusement – arcades, golf clubs, marinas, fitness/gymnasium facilities, health club, bowling centers	8a
721110	Accommodations – hotels, motels and similar facilities	7d
722110	Restaurant – full/limited service restaurant facility, café, deli, cafeteria	5a
722320	Caterers – and/or mobile food services	8a
722410	Drinking establishment – club, lounge, bar or other	1
811111	Repairs and maintenance – auto, paint/body, carwash, other vehicular	8a
811211	Repairs and maintenance – all electronic equipment	8a
811412	Repairs and maintenance – all appliances, home & garden equipment	8a
811490	Alterations, tailoring	8a
812112	Personal Services – hair, skin, barber, beautician, diet, nail, tanning, funerals	8a
812990	Bail bonding services – individual reader license	8a
812320	Dry cleaning/laundry – full service, pickup and delivery	8a
812310	Dry cleaning/laundry – coin operated and self-service	5f
812990	Fortune teller or Clairvoyant – individual reader license	8a
910110	Category for number of – vending machines for all types vending	5f
910210	Category for number of – pool tables	8a
910310	Category for number of – amusement devices and/or games	8a
920110	Category for number of – employees as a basis for calculating license	5i
999110	Unclassified miscellaneous business services not elsewhere classified	5a
999210	Unclassified miscellaneous personal services not elsewhere classified	8a
923110	Administration of human resource programs	5a
924110	Administration of Environmental Quality Programs	5a
925110	Administration of housing, urban, comm.	5a
926110	Administration of economic programs	5a
927110	Space, research, and technology	5a
928110	National Security and International Affairs	5a

SECTION 23. License Fee Schedules.

1. Beer, Wine, Liquor

<u>State of Alabama Code</u>	<u>Classification</u>	<u>Amount</u>	<u>Licensing Notes</u>
040 (Beer On/Off Premise)	455121	75.00	All three codes are part of the package plus the business license code, PLUS an amount based upon gross receipts as indicated below *1(A). All three codes are part of the package plus the business license code, PLUS an amount based upon gross receipts as indicated below *1(A). All three codes are part of the package plus the business license code, PLUS an amount based upon gross receipts as indicated below *1(A). All three codes are part of the package plus the business license code, PLUS an amount based upon gross receipts as indicated below *1(A). All three codes are part of the package plus the business license code, PLUS an amount based upon gross receipts as indicated below *1(A). Distributors License
050 (Beer Off Premise Only)	455122	50.00	
060 (Table Wine On/Off Premise)	455131	75.00	
070 (Table Wine Off Premise Only)	455131	75.00	
010 (Lounge Retail Liquor Class I)	455121	75.00	
	455141	425.00*	
	455131	75.00	
011 (Package Store Liquor Class II)	455122	75.00	
	455141	425.00*	
	455131	75.00	
020 (Restaurant Retail Liquor)	455121	75.00	
	455141	425.00*	
	455131	75.00	
032 (Club Liquor Class II)	455121	75.00	
	455141	425.00*	
	455131	75.00	
110 (Wholesale Table Wine & Beer)	455132	375.00	

*1(A). Each person licensed by the Board to operate and sell retail liquor under NAICS code 455141 for on-premise or off-premise shall pay an annual license fee of \$425.00 PLUS an amount equal 3% of gross receipts in excess of \$50,000, where the gross receipts are derived from the sale of alcoholic beverages other than beer and wine. This tax shall be due and payable monthly, on or before the 15th day of each month for the sale of the beverages noted above made in the immediately preceding month.

2. Contractors

- 2a. General Contractors including Commercial, Homebuilders and Remodelers
License fee - \$300.00.
- 2b. Contractors – Specialty Trade: Air conditioning and heating, asphalt, paving, cabinet maker, electrical, excavating, fencing, flooring, furnace installation, insulation, painting, plumbing, roofing, septic tank installation, sheet metal, swimming pool, tree surgeon or pruning and subcontractor and/or specialty trade contractors not previously listed. License fee - \$150.00.

3. Financial Services

- 3a. \$10.00 Each branch office.
- 3b. \$150.00 PLUS an amount equal to 3/20th of 1% of all gross fees and commissions in excess of \$50,000, received during the preceeding year.
- 3c. \$150.00 PLUS each person selling stocks, bonds, or other securities shall pay a license fee of 3/20th of 1% of the gross commissions or fees in excess \$50,000 received during the preceeding year.

4. Insurance

Insurance company annual license renewals shall be renewed in accordance with Section 11-51-122 of the *Code of Alabama, 1975*, which states that each year, each insurance company shall furnish the municipality a duly certified statement in writing 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 the municipal code.

5. Merchants & Business Retail & Wholesale, Manufacturing, Etc.

- 5a. \$150.00 Plus an amount equal to $\frac{3}{20}$ of 1% of gross receipts in excess of \$50,000.00 during the preceding year.
- 5b. \$150.00 Plus an amount equal to $\frac{3}{20}$ of 1% of gross receipts (to include membership fees) in excess of \$50,000.00 during the preceding year.
- 5c. \$150.00 Plus an amount equal to $\frac{1}{20}$ of 1% of gross receipts in excess of \$50,000.00 during the preceding year.
- 5d. \$150.00 Each person peddling products including, but not limited to, ice cream, peanuts, sandwiches, donuts, books, magazines, et cetera, delivered by basket, handcart or truck, etc., or solicitor or canvasser.
- 5e. Not Used.
- 5f. \$10.00 For each machine operated by one cent and not more than twenty-five cents.
\$25.00 For each machine operated by twenty-six cents and not more than fifty cents.
\$50.00 For each machine operated by fifty-one cents and not more than one dollar.
\$100.00 For each machine operated by more than one dollar and one cent.
- 5g. \$5.00 Sales will not be a disguise for doing business from residential areas. Said sales shall not be conducted for a period of more than two consecutive days nor more than one sale shall be allowed in any six month period from the same location.
- 5h. \$150.00 PLUS an amount equal to $\frac{3}{20}$ th of 1% of gross receipts in excess of \$150,000 collected during the preceding year.
- 5i. \$150.00 Any person or corporation maintaining an office in the City for the support of the person or corporation shall pay a license determined by the gross annual payroll of the office during the preceding year. A corporation which is a subsidiary of another corporation may not obtain a license under this subsection even if the purpose or function of the office is to provide support for the parent corporation. The license tax shall be \$150.00 PLUS an amount equal to $\frac{3}{20}$ th of 1% of the gross annual payroll in excess of \$100,000 during the preceding year. The payroll is to include all salaries, fees, commissions, bonuses and compensation of any type of all personnel who routinely visit or maintain office space at that location. No person shall be licensed under this subsection to avoid buying a license based on gross receipts of sales or services required in other sections of this Ordinance.

5j. Not used.

5k. \$100.00

5l. Not Used.

5m. Any person, firm, partnership, corporation or other entity engaged in an organized, licensed "Trade Day" event or City licensed equivalent, shall pay a license fee of \$10.00 per day. Every vendor participating in said event shall, in addition to the payment of the business license fee, collect all state, County and City sales taxes on sales of all antiques and related items and remit the same in accordance with applicable laws. Said license fee and completed license form shall be submitted by the vendor to the organizer of said event complete with payment. The organizer shall, in turn, provide the City of Vestavia Hills with a complete listing of vendors for each "Trade Days" event along with payment for the license for said vendor.

6. Professions & Vocations

Each person and each member of a firm or partnership engaged in any practice, profession, or vocation, including, but not limited to, accountants, architects, attorneys, auditors, dentists, chiropractors, physicians, real estate brokers, real estate appraisers, et cetera shall purchase a business license based upon the annual gross receipts from such business during the preceding year as follows.

\$150.00 Plus an amount equal to 3/20 of 1% of fees in excess of \$50,000.00 for the preceding year.

7. Real Estate

7a(1). \$150.00 Every person, firm, company, corporation, partnership or other legal entity engaged in the business of the rental of multi-family residential apartments shall purchase annually a license to do business at a cost of \$150.00 plus one percent (1%) of gross rents in excess of \$50,000.00 collected during the preceding year.

~~7a(2).~~ \$150.00 Every person, firm, company, corporation, partnership or other legal entity engaged in the business of the rental of single-family residences shall purchase annually a license to do business at a cost of \$150.00. NOTE: If rental income is received from no more than one (1) single-family residence, the terms of this license shall not apply.

7b. Every person, firm, company, corporation, partnership or other legal entity engaged in the business of the rental and/or leasing of non-residential

property, units, buildings, tenant space, etc., (except mini-warehouses) shall purchase annually a license to do business at a cost of \$150.00 if gross receipts from said rentals is less than or equal to \$250,000 for the previous calendar year. If gross receipts from said rentals exceed \$250,000 for the previous calendar year, the cost of a license shall be \$500.00. NOTE: Each person, firm, company, corporation, partnership or other legal entity who rents or leases to no more than one (1) tenant or who collects no more than \$5,000 in rent or lease payments per calendar year on all rented or leased property within the City, shall be exempt from this license.

- 7c. \$50.00 for each agent whose office is located within the corporate municipal limits of the City.
- 7d. \$4.00 per room plus 3% of room lodging gross receipts, paid monthly no later than the 20th of the month immediately following the period covered.
- 7e. \$200.00 Development of property.

8. Services

- 8a. \$150.00 PLUS an amount equal to 3/20 of 1% of gross receipts in excess of \$50,000.00 during the preceding year.
- 8b. \$25.00 PLUS an amount equal to 3/20 of 1% of gross receipts in excess of \$75,000.00 during the preceding year.

4556 Resolution

9. Billboard Advertising Display Services

Each person, firm, company or corporation operating under this section shall purchase a license fee of \$150.00 PLUS an amount equal to 3/20 of 1% of gross receipts for such billboard advertising services within the corporate limits during the preceding year. Billboards shall be off-premise advertising as determined in the Vestavia Hills Sign Code.

10. Utilities & Franchises

- 10a. Each person, firm, company or corporation operating a telephone exchange in the City shall pay a license tax on a per capita basis as set forth in Section 11-51-128, Code of Alabama, 1975, recompiled. Each person, firm, company or corporation operating a long distance telephone service in the City shall pay a license tax on a per capita basis as set forth in Section 11-51-128, Code of Alabama, 1975, recompiled. Each person, firm, company or corporation engaged in the business of transmitting television signals by wire or cable in the City, or installing wires or cables for the purpose of transmission of such signals shall pay a license tax as set forth in City Ordinance No. 144 and subsequent amendments thereto.
- 10b. Each person, firm, company or corporation engaged in the business of selling or distribution of natural gas in the City shall pay an amount equal to 3% of the gross receipts of the business transacted by such person, firm, company or corporation in the City during the preceding calendar year from the sale of gas sold or distributed within the City.
- 10c. Each person, firm, company or corporation engaged in the business of selling or distribution of electric current power shall pay an amount equal to 3% of the gross receipts of the business transacted by such person, firm, company, or corporation in the City during the preceding year from the sale of such electric current power sold or distributed within the City.
- 10d. Each person, firm, company or corporation engaged in business of supplying water for public domestic use in the City shall pay an amount equal to 3% of the gross receipts of the business transacted by such person, firm, company or corporation in the City for the preceding calendar year from supplying water from any point or points in the City for any purpose.
- 10e. Each person, firm, company or corporation operating passenger buses in the City shall pay an amount equal to 3% of the aggregate gross receipts from such operation of business routes within the City, to be determined by prorating the basis of the route miles operated within the City to the total number of route miles of said route.

11. Retirement Homes, Nursing Homes, Hospitals, Clinics & Infirmaries

Each person, firm, company or corporation operating under this section shall purchase a license fee of \$150.00 plus an amount equal to 1/10th of 1% of the gross annual receipts collected during the preceding year. Receipts from professions licensed elsewhere may be deducted from the gross annual receipts to determine the license fee due. Gross receipts from all businesses operated within the complex shall be included when determining total fees due, no other licenses shall be required. All businesses operated by other firms within the complex shall be licensed separately.

SECTION 24. 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 Alabama 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 Alabama Department of Revenue, or successor may be liable pursuant to Sections 40-23-25, 40-23-82, or 40-12-224, *Code of Alabama, 1975*.

SECTION 25. Effective date.

This Ordinance shall become effective immediately upon the passage and approval thereof by the City Council of the City of Vestavia Hills, Alabama, and the publication and/or posting thereof as required by Alabama law.

SECTION 26. Severability.

The sections, paragraphs, sentences, clauses and phrases of this Ordinance are severable, and if any phrase, clause, sentence, paragraph or section of this Ordinance shall be declared unconstitutional by a court of competent jurisdiction, then such ruling shall not affect any other paragraphs and sections, since the same would have been enacted by the municipality council without the incorporation of any such unconstitutional phrase, clause, sentence, paragraph or section.

SECTION 27. Repealer.

All ordinances or parts of ordinances in conflict with the provisions of this Ordinance are hereby repealed.

DONE, ORDERED, ADOPTED AND APPROVED, this the 23rd day of November,
2009.

David Carrington
Council President

ATTESTED BY:

Rebecca Leavings
City Clerk

APPOINTED BY:

Alberto C. Zaragoza, Jr.
Mayor

CERTIFICATION:

I, Rebecca H. Leavings, as City Clerk of the City of Vestavia Hills, Alabama, hereby certify that the above and foregoing copy of 1 (one) Ordinance # 2315 is a true and correct copy of such Ordinance that was duly adopted by the City Council of the City of Vestavia Hills on the 23rd day of November, 2009, as same appears in the official records of said City.

Posted at Vestavia Hills Municipal Center, Vestavia Hills Public Library, and Vestavia Hills Recreational Center this the _____ day of _____, 2009.

Rebecca Leavings
City Clerk

ATTACHMENT F

Mountain Brook Short-Term Rental Ordinance

ORDINANCE NO. 1997

**AN ORDINANCE AMENDING CHAPTER 129 OF THE CITY CODE
REGARDING SHORT-TERM RENTALS**

BE IT ORDAINED by the City Council of the City of the City of Mountain Brook, Alabama, that Chapter 129 of the City Code is hereby amended to as follows:

Section 1.

“ARTICLE XXXIII –Short-Term Rentals

Sec. 129-xxx – Intent and Purpose.

- (a) The City of Mountain Brook is committed to maintaining and preserving the quality of its residential character, the housing stock and existing residential communities, scenic beauty, and the natural resources that are the foundation of its economic strength and quality of life.
- (b) The rental of residences for temporary occupancy has been identified as a community concern due to the potential for increased traffic, noise, high occupant turnover, and density in residential districts.
- (c) The number of occupants occupying short-term rentals has the potential to negatively impact the health and safety of residential neighborhoods and nearby residential properties.
- (d) The purpose of this ordinance is to safeguard the peace, safety and general welfare of the residents of Mountain Brook, and their visitors and guests, by eliminating noise, vandalism, overcrowding, high occupancy turnover, diminution of neighborhood character, and other effects that have become associated with the short-term rental of residential dwellings.
- (e) The restrictions established by this ordinance are necessary to protect the integrity and residential character of the city’s residential neighborhoods and the health and safety of the residents of Mountain Brook.
- (f) This ordinance is required to prohibit the rental of residences and the promotion and advertisement of short-term rentals of residences for periods of less than thirty (30) consecutive days, in order to protect the public health, safety, and welfare, and the existing community standards in the City of Mountain Brook relating to residentially zoned property.

Sec. 129-xxx. - Definitions.

For the purposes of this article, the following definitions shall apply:

- (a) “Advertise” or “advertisement.” Any written, electronic, or oral publication, dissemination, solicitation, or circulation which is intended to directly or indirectly induce any person to enter into an agreement for the rental of a residence in violation of this article or other applicable provisions of the Zoning Ordinance of the City of Mountain Brook. This definition includes but is not limited to mailings, print advertisements, internet listings, e-mail publications, Facebook publications, or other oral, printed, or electronic means.

SHORT-TERM RENTALS (< 30 DAYS) 1997

- (b) "Dwelling." A building containing one or more dwelling units. For a part of a building to constitute a separate dwelling unit it must be separated from the remainder of the building by one or more party walls. The word "dwelling" shall not include boarding houses, rooming houses, tents, hotels, mobile homes or other structures designed or used primarily for transients.
- (c) "Dwelling unit." Any building or any part of a building used or designed as a separate residence for a family, including an apartment or one or more rooms forming a single residential unit.
- (d) "Enterprise." Any corporation, association, firm, partnership, LLC, or other legal entity.
- (e) "Facilitate." A person, operator, or enterprise "facilitates" if, acting with knowledge that an operator, managing agency or rental agent is committing or intends to commit the offense of renting a residence in violation of this article, the person or enterprise knowingly provides the operator, managing agency or rental agent with means or opportunity for the commission of said offense.
- (f) "Managing agency" or "rental agent." A person, operator, enterprise, or agency representing the owner of the residence, or a person, enterprise or agency owning more than one residence.
- (g) "Operator." A person or enterprise who is owner or proprietor of a residence, whether in the capacity of owner, lessee, sub-lessee, mortgagee in possession, licensee, managing agency, rental agent, or any other capacity. Where the operator performs his or her functions through a managing agency of any type or character, or where the operator performs his or her functions through a managing agency or the rental agent, the operator has the same duties as its principal.
- (h) "Person." Any individual or a group of individuals, enterprise, managing agency, rental agent, operator, or any entity.
- (i) "Remuneration." Compensation, money, or other consideration given in return for occupancy, possession, or use of real property.
- (j) "Rent." The consideration or remuneration charged whether or not received, for the occupancy or possession of space in a residence, valued in money, whether to be received in money, goods, labor, or otherwise, including all receipts, cash, credits, property or services of any kind.
- (k) "Rental." An arrangement between a transient and an operator whereby rent is received in exchange for the right to possess a residential structure.
- (l) "Residence." Any dwelling, dwelling unit, or structure (in whole or in part) located in any residential zoning district as defined in the Zoning Ordinance and Zoning Map of the City of Mountain Brook, including detached single family dwellings, attached single family dwelling, duplexes, and multi-family dwellings.
- (m) "Solicit." A person "solicits" if, with the intent to promote or facilitate the short-term rental of a residence in violation of this article, or if such person commands, encourages, requests or solicits another person to engage in conduct which would constitute a violation of this article.
- (n) "Transient." Those who reside, possess, or inhabit a residence (or a portion thereof) as defined by this article for a period of less than thirty (30) consecutive calendar days, counting portions of calendar days as full days.

Sec. 129-xxx. - Prohibited Rental Duration.

It shall be unlawful for any Person to rent or possess to rent for any type of remuneration, any residence, as defined by this article, for a period of time of less than thirty (30) consecutive days in duration to any transient.

Sec. 129-xxx. - Advertisement of Short-Term Rentals of Residences Prohibited.

It shall be unlawful for any person to advertise, solicit, or facilitate the rental for a duration less than thirty (30) consecutive days of any residence as defined by this article. Such activity is prohibited, whether by mailings, print advertisements, internet listings, or any other means for communicating such advertisement.

Sec. 129-xxx - Vesting.

1. Existing short-term rentals (previously licensed by the City of Mountain Brook and operating in accordance with the terms of the city's municipal code at the time of business license issuance) as of [THE EFFECTIVE DATE OF THIS ORDINANCE] shall be considered vested short-term rentals only as related to contracts entered into prior to [THE EFFECTIVE DATE OF THE MORATORIUM REGARDING SHORT-TERM RENTALS]. Rental/lease agreements that were entered into prior to [EFFECTIVE DATE OF THE MORATORIUM], as evidenced by a written and validly executed rental agreement or contract provided to the City Zoning Administrator no later than [THE EFFECTIVE DATE OF THE ORDINANCE PLUS 30 DAYS] shall be considered vested.
2. Vesting shall:
 - a. Apply only to date specific contracts entered into in accordance with the terms of the city's municipal code at the time of license issuance;
 - b. Not apply to renewals of existing rental agreements or contracts which are at the option of either of the parties.
3. A vested contract/lease transferred to a subsequent owner shall continue to be vested, but shall not be transferred to a different short-term rental property.”
2. **Repealer.** All ordinances or parts of ordinances heretofore adopted by the City Council of the City of Mountain Brook, Alabama that are inconsistent with the provisions of this ordinance are hereby expressly repealed.
3. **Severability.** If any part, section or subdivision of this ordinance shall be held unconstitutional or invalid for any reason, such holding shall not be construed to invalidate or impair the remainder of this ordinance, which shall continue in full force and effect notwithstanding such holding.
4. **Effective Date.** This ordinance shall become effective immediately upon adoption and publication as provided by law.

ADOPTED: This 11th day of September, 2017.

Council President

APPROVED: This 11th day of September, 2017.

Mayor

CERTIFICATION

I, Steven Boone, City Clerk of the City of Mountain Brook, Alabama, hereby certify the above to be a true and correct copy of an ordinance adopted by the City Council of the City of Mountain Brook, Alabama, as its meeting held on September 11, 2017, as same appears in the minutes of record of said meeting, and published by posting copies thereof on September 12, 2017, at the following public places, which copies remained posted for five (5) days as required by law.

City Hall, 56 Church Street
Gilchrist Pharmacy, 2850 Cahaba Road

Overton Park, 3020 Overton Road
Cahaba River Walk, 3503 Overton Road

City Clerk

ATTACHMENT G

Hoover Short-term Rental Ordinance, Draft

ORDINANCE NO. 18-2359

AN ORDINANCE TO (1) ESTABLISH CHAPTER 6 – BUILDINGS AND BUILDINGS REGULATIONS, ARTICLE III ENTITLED "RESTRICTIONS ON SHORT-TERM RENTAL OF SINGLE-FAMILY RESIDENCES" AND (2) TO PLACE RESTRICTIONS ON SHORT TERM RENTALS OF SINGLE-FAMILY RESIDENCES

NOW, THEREFORE BE IT ORDAINED by the City Council of the City of Hoover, Alabama, in regular meeting duly assembled, a quorum being present, as follows:

Section 1. ESTABLISHMENT OF NEW ARTICLE. Chapter 6 “Buildings and Building Regulations is hereby amended to establish a new article which shall read as follows:

ARTICLE III. “RESTRICTIONS ON SHORT-TERM RENTAL OF SINGLE-FAMILY RESIDENCES”

Sec. 6-50. Scope, Findings and Purpose.

(a) This article applies to all Rentals of Single-Family Residences within the city for periods less than ninety (90) days. Nothing in this article affects the right of the city to impose or collect other applicable fees, charges, or penalties or take other appropriate action to remedy a violation of other ordinances or laws. The mayor and/or his designee has the authority to promulgate and adopt policies to carry out the provisions of this article.

(b) The city is committed to maintaining and preserving the quality of its residential character, the housing stock and existing single-family communities, scenic beauty, and the natural resources that are the foundation of its economic strength and quality of life.

(c) The Rental of Single-Family Residences for temporary occupancy has been identified as a community concern due to the potential for increased traffic, noise, high occupant turnover, and density in single-family residential districts.

(d) The number of occupants occupying short-term Rentals has the potential to create a danger to the health and safety of the residential neighborhood and nearby residential properties.

(e) The purpose of this article is to safeguard the peace, safety and general welfare of the residents of the city, and their visitors and guests, by eliminating noise, vandalism, overcrowding, neighborhood uncertainty, high occupancy turnover, diminution of neighborhood character, and other effects that have become associated with the short-term Rental of single-family residential dwellings.

(f) The restrictions established in this article are necessary to protect the public health, safety and welfare of the residents of the city and the integrity and residential character of the city's single-family residential neighborhoods.

Sec. 6-51. Definitions. For the purposes of this article, the following definitions shall apply unless the context clearly indicates or requires a different meaning:

(a) *"Advertise" or "advertisement"* shall mean any written, electronic, or oral publication, dissemination, solicitation, or circulation which is intended to directly or indirectly induce any Person to enter into an agreement for the Rental of a Single-Family Residence in violation of this article and/or other applicable provisions of the zoning ordinance. This definition includes, but is not limited

to, mailings, print advertisements, internet listings, e-mail publications, Facebook publications, or other oral, printed, or electronic means.

(b) *"Dwelling"* shall mean any building, structure, or portion thereof which is permitted, designed, or used primarily for a Single-Family Residence, except that the word "dwelling" shall not include boarding or rooming houses, tents, dormitories, motels, hotels, or other structures which are not designed or used primarily for a Single-Family Residence as defined by this article.

(c) *"Dwelling Unit"* shall mean any portion of a building used, intended, or designed as a separate abode for one (1) family.

(d) *"Enterprise"* shall mean any corporation, association, firm, partnership, LLC, or other legal entity.

(e) *"Facilitate"* shall mean knowingly providing an Operator, a Managing Agency or a Rental Agent with means and/or opportunity for the commission of an offense of renting a Single-Family Residence in violation of this article while acting with knowledge that an Operator, Managing Agency or Rental Agent is committing or intends to commit such offense.

(f) *"Managing Agency"* or *"Rental Agent"* shall mean a Person, Operator, Enterprise, or agency representing the owner of the Single-Family Residence, or a Person, Enterprise or agency owning more than one Single-Family Residence.

(g) *"Operator"* shall mean a Person or Enterprise who is owner or proprietor of a Single-Family Residence, whether in the capacity of owner, lessee, sublessee, mortgagee in possession, licensee, Managing Agency, Rental Agent, or any other capacity. Where the Operator performs his or her functions through a Managing Agency of any type or character, or where the Operator performs his or her functions through a Managing Agency or the Rental Agent, the Operator has the same duties as its principal.

(h) *"Person"* shall mean any individual or a group of individuals, Enterprise, Managing Agency, Rental Agent, Operator, or any entity.

(i) *"Remuneration"* shall mean compensation, money, or other consideration given in return for occupancy, possession, or use of real property.

(j) *"Rent"* shall mean the consideration or remuneration charged (regardless of actual receipt) in money, goods, labor, or otherwise, including all receipts, cash, credits, property or services of any kind for the occupancy or possession of space in a Single-Family Residence.

(k) *"Rental"* shall mean an arrangement between a Transient and an Operator whereby rent is received in exchange for the right to possess a residential structure.

(l) *"Single-Family Residence"* shall mean any Dwelling, Dwelling Unit, or any structure located in any residential zoning districts as defined in the zoning ordinance.

(m) *"Solicit"* shall mean the commanding, encouraging, requesting or soliciting of another Person to engage in conduct which would constitute a violation of this article with the intent to promote or facilitate the short-term Rental of a Single-Family Residence in violation of this article

(n) *"Transient"* shall mean those Persons who reside, possess, or inhabit a Single-Family Residence as defined by this article for a period of less than ninety (90) consecutive calendar days,

counting portions of calendar days as full days.

Sec. 6-52. Short-Term Rentals of Single-Family Residences Prohibited. It shall be unlawful for a Person to Rent a Single-Family Residence to a Transient for a period of time less than ninety (90) consecutive days in duration.

Sec. 6-53. Advertisement of Short-Term Rentals of Single-Family Residences Prohibited. It shall be unlawful for any Person to advertise, Solicit, or otherwise facilitate the Rental of any Single-Family Residence as defined by this article. This activity is prohibited and includes mailings, print advertisement, internet listings, social media networking sites, or any other means for communicating such advertisement.

Sec. 6-54. Violation; Penalties; Process.

(a) Any Person that has violated or continues to violate this article shall be guilty of a violation. Each act of violation and/or each day upon which any violation shall occur and/or continue to exist shall constitute a separate offense punishable as described herein.

(b) Upon the determination of the building official of the city or his subordinate that a violation of this section exists, a written notice of violation shall be issued to all Persons in violation of this article or any one of them. Such notice shall be issued by first class mail or hand delivery. Service shall be deemed effectuated by first class mail on the third day following the date of mailing. For mailings outside the State of Alabama, service by first class mail is deemed effectuated on the fifth (5th) calendar day following the date of mailing of such notice. The notice shall (a) identify the violation, (b) include a correction order specifying the action required to comply with the provisions of this section, and (c) include a specified time within which to comply. If a violation is not sufficiently corrected in the opinion of the building official within the specified period of time contained in the notice, then a citation and/or notice to appear may be issued by the building official or other enforcement officer directing all Persons or any one or more of them to appear in the municipal court at a time and date stated therein to answer to such violation(s). The defendant(s) shall have all rights secured to persons charged in the city with violations generally. If a defendant is found guilty by the municipal court, the court may impose a fine or imprisonment or both in accordance with the provisions of section 1-5 or 1-6 of this Code.

(c) At any time until the close of business on the last business day before the day set for trial, any defendant may elect to enter a guilty plea to the offense before the municipal magistrate, waive his/her right to a trial and pay a fine and court costs to the court in accordance with the following schedule:

First offense: \$100.00

Second offense: \$250.00

Third offense: Mandatory court appearance.

Multiple offenses shall be cumulative within twelve (12) months from the date of the first offense. The right to elect a guilty plea, waive trial, and pay the fine is terminated following the second offense within said twelve (12) month period.

Sec. 6-55. Civil Penalties. A violation of any portion of this article constitutes a public nuisance per se. The city, as an additional or alternate remedy, may institute equitable or injunctive proceedings in a court of competent jurisdiction to abate uses prohibited by this article.

Secs. 6-56 to 6-70. Reserved.

Section 2. ORDINANCES REPEALED. All ordinances or parts of ordinances in conflict herewith are hereby repealed.

Section 3. SEVERABILITY. That if any part, provision, or section of this Ordinance is declared to be unconstitutional or invalid by any court of competent jurisdiction, all other parts, provisions or sections of this ordinance not thereby affected shall remain in full force and effect. The City of Hoover hereby declares that it would have passed this Ordinance, and each section, subsection, clause or phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses and phrases be declared unconstitutional.

Section 4. LEGAL RIGHTS NOT IMPAIRED. That nothing in this Ordinance or in the code hereby adopted shall be construed to affect any suit or proceeding impending in any court, or any rights acquired, or liability incurred, or any cause or causes of action acquired or existing, under any act or ordinance hereby repealed as cited in Section 2 of this Ordinance; nor shall any just or legal right or remedy of any character be lost, impaired or affected by this Ordinance.

Section 5. ORDINANCE CUMULATIVE; COMPATIBILITY WITH OTHER REGULATIONS. This Ordinance shall not be construed to modify or to repeal any other ordinance, rule, regulation, or other provision of law. The requirements of this Ordinance are in addition to and cumulative to the requirements of any other ordinance, rule, regulation, or other provision of law, and where any provision of this ordinance imposes restrictions different from those imposed by any other ordinance, rule, regulation, or other provision of law, whichever provision is more restrictive or imposes higher protective standards for human health or the environment shall control.

Section 6. PUBLICATION OF ORDINANCE. That the City Clerk of the City of Hoover is hereby ordered and directed to cause this ordinance to be published and that a copy of this Ordinance be entered upon the minutes of the meeting of the City Council.

Section 7. EFFECTIVE DATE OF ORDINANCE. That this Ordinance and the rules, regulations, provisions, requirements, orders and matters established and adopted hereby shall be in full force and effect upon adoption and shall continue in full force and effect from month to month and year to year from its effective date until repealed.

THEREFORE, BE IT RESOLVED, that the City Council of the City of Hoover does hereby ordain, resolve, and enact the foregoing Ordinance for the City of Hoover.

Done this the ____ day of _____, 2018.

Gene Smith, President of the City Council

APPROVED:

Frank V. Brocato, Mayor

ATTESTED:

Margie Handley, City Clerk

ATTACHMENT H

Ordinance 2747

(Effective June 1, 2018)

ORDINANCE NUMBER 2747

**AN ORDINANCE PROVIDING FOR THE LEVY AND COLLECTION OF
CERTAIN PRIVILEGE, LICENSE AND EXCISE TAXES WITHIN THE
CORPORATE LIMITS OF THE CITY OF VESTAVIA HILLS, ALABAMA**

**BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF VESTAVIA HILLS, ALABAMA, AS
FOLLOWS:**

ARTICLE 1

Authority

The City does hereby adopt this Ordinance, and provide for the levy and collection of the within-referenced Privilege, License and Excise Taxes, pursuant to the authority, and in conformity with the purposes, of the "Local Tax Simplification Act of 1998," as amended (codified as Article 3 of Chapter 51 of Title 11 of the Code of Alabama 1975.)

ARTICLE 2

Definitions

Section 2.01 Definitions of Certain Terms

The following terms shall have the following meanings herein:

City shall mean the City of Vestavia Hills, Alabama.

City Clerk shall mean the City Clerk of the City, and any successor to the duties and functions thereof.

City Council shall mean the governing body of the City.

Code of Ordinances shall mean the Vestavia Hills Code of Ordinances, Republished 2013, as at any time amended, restated, or supplemented.

Effective Date shall mean June 1, 2018.

Fiscal Year shall mean the fiscal year of the City as established from time to time.

Leasing Tax shall mean the leasing and rental tax levied pursuant to Section 5.01.

Lodging Tax shall mean the transient occupancy tax levied pursuant to Section 6.01.

Obligations shall mean any direct, indirect, or contingent pecuniary obligation of the City as evidenced by any agreement, bond, contract, document, note, warrant or other instrument.

Prior Taxes and Fees shall mean collectively the following:

- (a) the privilege, license and excise taxes levied pursuant to Ordinance No. 2317, as codified in Article III of Chapter 16 of the Code of Ordinances;
- (b) the privilege license taxes levied pursuant to Ordinance No. 2316, as codified in Article IV of Chapter 16 of the Code of Ordinances;
- (c) the business license fee and privilege license tax levied pursuant to Section 8-38(7)(d) of Article II of Chapter 8 of the Code of Ordinances (as enacted by Section 23 of Ordinance No. 2315).

Privilege, License and Excise Taxes shall mean, collectively, the following taxes levied by this Ordinance within the corporate limits of the City:

- (a) Sales Taxes;
- (b) Use Taxes;
- (c) Leasing Tax; and
- (d) Lodging Tax.

Sales and Use Taxes shall mean, collectively, the Sales Taxes and the Use Taxes.

Sales Taxes shall mean the sales taxes levied pursuant to Section 4.01.

State Leasing Tax Laws shall mean and include Section 40-2A-7, and Article 4 of Chapter 12 of Title 40, of the Code of Alabama 1975, as any time in force and effect, and all regulations of the Alabama Department of Revenue at any time promulgated and effective thereunder, and all laws of the State of Alabama directly relating thereto.

State Lodging Tax Laws shall mean and include Section 40-2A-7, and Chapter 26 of Title 40, of the Code of Alabama 1975, as any time in force and effect, and all regulations of the Alabama Department of Revenue at any time promulgated and effective thereunder, and all laws of the State of Alabama directly relating thereto.

State Sales Tax Laws shall mean and include Section 40-2A-7, and Article 1 of Chapter 23 of Title 40, of the Code of Alabama 1975, as any time in force and effect, and all regulations of the Alabama Department of Revenue at any time promulgated and effective thereunder, and all laws of the State of Alabama directly relating thereto.

State Use Tax Laws shall mean and include Section 40-2A-7, and Article 2 of Chapter 23 of Title 40, of the Code of Alabama 1975, as any time in force and effect, and all regulations of the Alabama Department of Revenue at any time promulgated and effective thereunder, and all laws of the State of Alabama directly relating thereto.

Use Taxes shall mean the use taxes levied pursuant to Section 4.02.

Section 2.02 Incorporation of Phrases, Terms and Words

All phrases, terms and words used in this Ordinance which are defined or used in any of the following statutes shall have the respective meanings, effect and scope in this Ordinance as in such statutes:

- (1) the State Sales Tax Laws; and
- (2) the State Use Tax Laws; and
- (3) the State Leasing Tax Laws; and
- (4) the State Lodging Tax Laws.

ARTICLE 3

Effect of Ordinance

Section 3.01 Effective Date of Privilege, License and Excise Taxes

The levy and collection of the Privilege, License and Excise Taxes shall become effective and commence on the Effective Date and shall continue thereafter as provided in this Ordinance.

Section 3.02 Repeal of Prior Taxes and Fees; Continuation of Accrued Liability Therefor and Pledges Thereof

(a) The Prior Taxes and Fees, and the following ordinances and provisions of the Code of Ordinances, shall terminate and become void and of no further force and effect from and after midnight on May 31, 2018:

- (1) Ordinance No. 2317, as codified in Article III of Chapter 16 of the Code of Ordinances; and
- (2) Ordinance No. 2316, as codified in Article IV of Chapter 16 of the Code of Ordinances; and
- (3) Section 8-38(7)(d) of Article II of Chapter 8 of the Code of Ordinances.

(b) Anything in this Ordinance to the contrary notwithstanding, the liability or obligation of any person for the payment of any amount of any of the Prior Taxes and Fees, or for the payment of any amount of any forfeiture, interest, or penalty with respect thereto, which shall be outstanding and unpaid on the Effective Date (including without limitation taxes becoming due and payable on June 20, 2018) shall survive termination of the ordinances and provisions of the Code of Ordinances pursuant to Section 3.02(a) and shall remain in full force and effect under all provisions thereof and the City shall have and may exercise for the enforcement thereof all rights and remedies thereunder and available at law or in equity (including without limitation the applicable laws of the State of Alabama providing for the enforcement of the corresponding state taxes).

(c) Anything in this Ordinance to the contrary notwithstanding, all commitments and pledges of all or any portion of the Prior Taxes and Fees which shall be subject to an agreement made by the City prior to the Effective Date to or for the benefit of any governmental person or nongovernmental person shall be and remain in full force and effect from and after the Effective Date, in accordance with all terms and provisions thereof, solely with respect to the proceeds of the Privilege, License and Excise Taxes described in Section 4.03(b)(3), Section 5.02(b) and Section 6.02(b) of this Ordinance.

Section 3.03 Amendment of Code of Ordinances

(a) Article III of Chapter 16 of the Code of Ordinances is hereby amended by deletion of said Article III in the entirety thereof and substitution therefor of Article 4, Section 7.02 and Section 7.03 of this Ordinance.

(b) Article IV of Chapter 16 of the Code of Ordinances is hereby amended by deletion of said Article IV in the entirety thereof and substitution therefor of Article 5 and Section 7.04 of this Ordinance.

(c) From and after May 31, 2018 the business license fee levied by Section 8-38(7)(d) of Article II of Chapter 8 of the Code of Ordinances shall be \$150.00 and in consequence thereof the provisions of said Section 8-38(7)(d) are hereby amended by deletion of said provisions in the entirety thereof and substitution therefor of the amount of "\$150.00."

ARTICLE 4

Sales and Use Taxes

Section 4.01 Levy of Sales Taxes

There is 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:

(a) (1) Upon every person, firm or corporation (including the State of Alabama, the University of Alabama, Auburn University, and all other institutions of higher learning in the state, whether the institution be denominational, state, county, or municipal institutions, any association or other agency or instrumentality of the 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 evidence of debt or stocks, nor sales of materials and supplies to any person for use in fulfilling a contract for the painting, repair or reconditioning of vessels, barges, ships, 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 of Alabama Department of Conservation and Natural Resources), an amount equal to four percent (4%) 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 the business at the rates specified, when his or her books are kept so as to show separately the gross proceeds of sales of each business, and when his or her books are not kept he or she shall pay the tax as a retailer, on the gross sales of the business.

(2) Where any used part including tires of an automotive vehicle or a truck trailer, semitrailer, 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 rebuilt part or tire, the tax levied herein shall be paid on the net difference, that is, the price of the new or used part or tire sold less the credit for the used part or tire taken in trade, provided, however, this provision shall not be construed to include batteries.

(b) 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 (excluding, however, athletic contests conducted by or under the auspices of the City Board of Education of the City of Vestavia Hills, but specifically including athletic contests conducted by or under the auspices of any educational institution within this state, or any athletic association thereof, or any other association whether the institution or association be 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 or places 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 (4%) of the gross receipts of any such business. Provided, however, notwithstanding 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 nonpublic primary or secondary school or any athletic event conducted by or under the auspices of the Alabama High School Athletic Association. The tax amount which would have been collected pursuant to this subsection shall continue to be collected by the public or nonpublic primary or secondary school, but shall be retained by the school which collected it and shall be used by the school for school purposes.

(c) 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 percent (1%) of the gross proceeds of the sale of the machines. 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 the machines, attachments and replacements therefor, which are made or manufactured for use on or in the operation of the machines and which are necessary to the operation of such machines and are customarily so used.

(d) (1) 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, semitrailer or 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 percent (1%) of the gross proceeds of the sale of the automotive vehicle or truck trailer, semitrailer or 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 or her stock in trade any automotive vehicle or truck trailer, semitrailer, or house trailer for use by him or her or by his or her employee or agent in the operation of the business, there shall be paid, in lieu of the tax levied herein, a fee of five dollars (\$5.00) per year or part thereof during which the automotive vehicle, truck trailer, semitrailer or house trailer shall remain the property of the person. Each year or part thereof shall begin with the day or anniversary date, as the case may be, of such withdrawal and shall run for the 12 succeeding months or part thereof during which the automotive vehicle, truck trailer, semitrailer, or house trailer shall remain the property of the person.

(2) Where any used automotive vehicle or truck trailer, semitrailer, 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.

(3) Sales of automobiles, motorcycles, trucks, truck trailers, or semitrailers, excluding travel trailers or housecars as defined in Section 40-12-240, that will be registered or titled outside Alabama, that are exported or removed from Alabama within 72 hours by the purchaser or his or her agent for first use outside of the State of Alabama are subject to City sales tax in an amount equal to only the City automotive sales tax rate, unless the sales tax laws of the state in which the purchaser will title or register the vehicle allows an Alabama resident to purchase a motor vehicle for first titling and registering in Alabama without the payment of tax to that state. However, in no case shall the amount of Alabama state sales tax due on a motor vehicle that will be registered or titled for use in another state exceed the amount of sales tax that would otherwise have been due in the state where the vehicle will be registered or titled for first use. The tax collected under this export provision shall be City sales tax. Sales of all other vehicles such as mobile homes, motor bikes, all terrain vehicles, and boats do not qualify for the export exemption provision and are taxable unless the dealer can provide factual evidence that the vehicle was delivered outside of Alabama or to a common carrier for transportation outside of Alabama. In order for the sale to be exempt from City tax, the information relative to the exempt sale shall be documented on forms approved by the Revenue Department of the State of Alabama.

(4) Anything in this section to the contrary notwithstanding, the tax provided in Section 4.01(d)(1) on any automotive vehicle, truck trailer, trailer, semitrailer or travel trailer required to be registered or licensed with the Judge of Probate of Jefferson County, Alabama, which is not sold through a licensed Alabama dealer, shall be collected and fees paid in accordance with the provisions of Sections 40-23-104 and 40-23-107, respectively (or any successor provisions of law).

(e) 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 levied a tax equal to one percent (1%) of the cost of the food, food products and beverages sold through the machines, which cost for the purposes of this subsection shall be the gross proceeds of sales of the business.

(f) (1) 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 percent (1%) of the gross proceeds of the sale thereof; provided, the one 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.

(2) 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.

Section 4.02 Levy of Use Taxes

(a) An excise tax is hereby imposed on the storage, use or other consumption in the City of tangible personal property, not including, however, materials and supplies bought for use in fulfilling a contract for the painting, repairing, or reconditioning of vessels, barges, ships, 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 of Alabama Department of Conservation and Natural Resources, purchased at retail on or after the effective date of this Ordinance for storage, use or other consumption in the City at the rate of four percent (4%) of the sales price of such property or the amount of tax collected by the seller, whichever is greater; provided, however, when the seller follows the Alabama Department of Revenue's suggested use tax brackets and his or her records prove that his or her following said brackets resulted in a net undercollection of tax for the month, he or she may report the tax due or tax collected, whichever is less, except as provided in this Section 4.02.

(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 property, purchased at retail on or after the effective date of this Ordinance at the rate equal to one percent (1%) of the sales price of any such machine or the amount of tax collected by the seller, whichever is greater; provided, however, when the seller follows the Alabama Department of Revenue's suggested use tax brackets and his or her records prove that his or her following said brackets resulted in a net undercollection of tax for the month, he or she may report the tax due or tax collected, whichever is less; except as provided in this Section 4.02; 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 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.

(c) (1) An excise tax is hereby imposed on the storage, use or other consumption in the City of any automotive vehicle or truck trailer, semitrailer or house trailer, and 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 this Ordinance for storage, use or other consumption in the City at the rate of one percent (1%) of the sales price of such automotive vehicle, truck trailer, semitrailer or house trailer, or mobile home set-up materials and supplies as specified above, or the amount of tax collected by the seller, whichever is greater; provided, however, when the seller follows the Alabama Department of Revenue's suggested use tax brackets and his or her records prove that his or her following said brackets resulted in a net undercollection of tax for the month, he or she may report the tax due or tax collected, whichever is less, except as provided in this Section 4.02. Where any used automotive vehicle, truck trailer, semitrailer 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.

(2) Anything in this section to the contrary notwithstanding, the tax provided in Section 4.02(c)(1) on any automotive vehicle, truck trailer, semi-trailer or travel trailer required to be registered or licensed with the Judge of Probate of Jefferson County, Alabama, which were sold by dealers that are not licensed in Alabama, or were sold by licensed Alabama dealers who failed to collect municipal sales taxes at the point of sale, shall be collected and fees paid in accordance with the provisions of Sections 40-23-104 and 40-23-107, respectively (or any successor provisions of law).

(d) Every person storing, using or otherwise consuming in the City tangible personal property purchased at retail shall be liable for the tax imposed by this Section, and the liability shall not be extinguished until the tax shall have been paid to the City; provided, that receipt from a retailer maintaining a place of business in the City or a retailer authorized by the Alabama Department of Revenue, under such rules and regulations as it may prescribe, to collect the tax imposed hereby and who shall for the purpose of this Section be regarded as a retailer maintaining a place of business in the City, given to the purchaser in accordance with the provisions of the State Use Tax Statutes, shall be sufficient to relieve the purchaser from further liability for the tax to which such receipt may refer.

(e) An excise tax is hereby imposed on the classes of tangible personal property, and at the rates imposed on such classes, specified in subsections (a), (b), and (c) of this Section, on the storage, use or other consumption in the performance of a contract in the City of any such tangible personal property, new or used, the tax to be measured by the sales price or the fair and reasonable market value of such tangible personal property when put into use in the City, whichever is less; provided, that the tax imposed by this subsection shall not apply where the taxes imposed by subsection (a), (b), or (c) of this Section apply.

(f) An excise tax is hereby 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, or 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 June 1, 2018, for storage, use or other consumption in the City, at the rate of one percent (1%) of the sales price of such property or the amount of tax collected by the seller, whichever is greater; provided, however, when the seller follows the Alabama Department of Revenue's suggested use tax brackets and his records prove that his following said brackets resulted in a net undercollection of tax for the month, he may report the tax due or tax collected whichever is less, regardless of whether the retailer is or is not engaged in business in the City; provided, that the one 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.

Section 4.03 Use of Proceeds of Sales and Use Taxes

(a) **Definitions.** For purposes of this Section the following terms shall have the following meanings:

Available Sales and Use Tax Proceeds means and includes, collectively, (i) the Capital Project and School Allocation and (ii) the General Purpose Allocation.

Capital Project means any property (real, personal or mixed) the cost of which is properly chargeable to capital account under federal income tax principles.

Capital Project and School Allocation shall have the meaning in Section 4.03(b)(2).

General Purpose Allocation shall have the meaning in Section 4.03(b)(3).

Net Sales and Use Tax Proceeds means the proceeds of the Sales and Use Taxes received by the City in each Fiscal Year after deduction or payment therefrom of all costs of collection thereof.

Reserve Allocation shall have the meaning in Section 4.03(b)(1).

Surplus Available Sales and Use Tax Proceeds means the aggregate amount of the Available Sales and Use Tax Proceeds remaining in each Fiscal Year after payment, or provision for payment, shall have been made from any funds or revenues of the City (including without limitation the Available Sales and Use Tax Proceeds) lawfully available therefor of all amounts of principal of, premium (if any) and interest on all of the following Obligations becoming due and payable in such Fiscal Year:

(1) all Obligations which are general obligations of the City payable from and secured by a pledge of the full faith, credit and taxing power of the City, without regard to whether any of such Obligations are, in whole or in part, also payable from, or secured by a pledge of, any other source of funds or revenues of the City; and

(2) all Obligations which are, in whole or in part, payable from and secured by a pledge of the Available Sales and Use Tax Proceeds, without regard to whether any of such Obligations are, in whole or in part, general obligations of the City or also payable from, or secured by a pledge of, any other source of funds or revenues of the City.

(b) Allocations and Uses. The City shall apply the Net Sales and Use Tax Proceeds, when and as received, for the following purposes and in the following order:

(1) 6.250% of the Net Sales and Use Tax Proceeds (the "Reserve Allocation")^[1] shall be allocated and applied by the City as follows:

(i) 1.875% shall be held in reserve for the sole benefit of the City Board of Education of the City of Vestavia Hills, Alabama; and

(ii) 4.375% shall be held in reserve by the City for Capital Projects.

(2) 25.000% of the Net Sales and Use Tax Proceeds (the "Capital Project and School Allocation") shall be allocated and applied as follows:

(i) first, for the payment, or the provision for payment, in each Fiscal Year of all amounts of principal of, premium (if any) and interest on Obligations incurred to finance or refinance Capital Projects becoming due and payable in such Fiscal Year;

(ii) second, for the payment of the costs of Capital Projects in such Fiscal Year; and

(iii) third, for public school purposes or such other lawful purposes as needed, as directed by the City Council, to the extent of the amount, if any, of the Capital Project and School Allocation remaining in such Fiscal Year after application for the foregoing purposes thereof.

(3) 68.750% of the Net Sales and Use Tax Proceeds (the "General Purposes Allocation") shall be allocated and applied for any lawful purpose as directed by the City Council, including without limitation the payment, or the provision for payment, in each Fiscal Year of the principal of, premium (if any) and interest on any Obligations becoming due and payable in such Fiscal Year.

[1] The Reserve Allocation of 6.250% of Net Sales and Use Tax Proceeds equals 1/12th of 3/4ths of the Net Sales and Use Tax Proceeds, being in effect 1/12th of three cents (\$0.03) (the previous sales and use tax rate in effect under Ordinance No. 2317), and is used in the following percentages:

(i) 30% of the Reserve Allocation (being 1.875% of Net Sales and Use Tax Proceeds) for the City Board of Education of the City of Vestavia Hills, Alabama; and

(ii) 70% of the Reserve Allocation (being 4.375% of Net Sales and Use Tax Proceeds) for Capital Projects of the City.

(c) Pledge. The City may, pursuant to the applicable laws of the State of Alabama, pledge all, or any portion, of the Available Sales and Use Tax Proceeds for the benefit of any Obligations, subject to and in accordance with the following:

(1) the City shall not pledge any amount of the Available Sales and Use Tax Proceeds that is allocable to the levy and collection of the Sales and Use Taxes outside the corporate limits of the City; and

(2) the City reserves the right to apply, dedicate and use for any lawful purpose, as directed by the City Council, all Surplus Available Sales and Use Tax Proceeds in any Fiscal Year without regard to any pledge of the Available Sales and Use Tax Proceeds that shall then be in force and effect with respect to any Obligations.

(d) Amendment. The City reserves the right to make such amendments to this Section to provide for (1) a change in the then effective percentage allocation of the use of any of the Net Sales and Use Tax Proceeds or (2) the use of any portion of the Available Sales and Use Tax Proceeds for any particular purpose for which provision is not then made in this Section or in any amendment hereof, provided that prior thereto the City shall obtain an opinion of counsel with experience in the matters to be covered by such opinion that the use of Available Sales and Use Tax Proceeds for such purpose (i) is authorized by the applicable laws of the State of Alabama, (ii) is subject to, and will not adversely affect or impair, any pledge thereof for the benefit of any Obligations, and (iii) will not cause interest on any Obligations to be or become includable in (if then excludable from) the gross income of the owners of such Obligations for purposes of federal income taxation.

ARTICLE 5

Leasing Taxes

Section 5.01 Levy of Leasing Taxes

In addition to all other taxes now imposed by law, there is hereby levied and shall be collected as herein provided a privilege or license tax on each person engaging or continuing within the City in the business of leasing or renting tangible personal property at the rate of four percent (4%) of the gross proceeds derived by the lessor from the lease or rental of tangible personal property; provided, that the said privilege or license tax on each person engaging or continuing within the City in the business of leasing or renting any automotive vehicle or truck trailer, semitrailer or house trailer shall be at the rate of one percent (1%) of the gross proceeds derived by the lessor from the lease or rental of such automotive vehicle or truck trailer, semitrailer or house trailer; provided, further, that the tax levied by this section shall not apply to any leasing or rental, as lessor, by the state, or any municipality or county in the state, or any public corporation organized under the laws of the state; provided further, that the privilege or license tax on each person or firm engaging or continuing within this state in the business of the leasing and rental of linens and garments shall be at the rate of two percent (2%) of the gross proceeds derived by the lessor from the lease or rental of such linens and garments.

Section 5.02 Use of Proceeds of Leasing Tax

(a) **Definitions.** For purposes of this Section the following terms shall have the following meanings:

Net Leasing Tax Proceeds means the proceeds of the Leasing Tax received by the City in each Fiscal Year after deduction or payment therefrom of all costs of collection thereof.

Surplus Net Leasing Tax Proceeds means the aggregate amount of the Net Leasing Tax Proceeds remaining in each Fiscal Year after payment, or provision for payment, shall have been made from any funds or revenues of the City (including without limitation the Net Leasing Tax Proceeds) lawfully available therefor of all amounts of principal of, premium (if any) and interest on all of the following Obligations becoming due and payable in such Fiscal Year:

(1) all Obligations which are general obligations of the City payable from and secured by a pledge of the full faith, credit and taxing power of the City, without regard to whether any of such Obligations are, in whole or in part, also payable from, or secured by a pledge of, any other source of funds or revenues of the City; and

(2) all Obligations which are, in whole or in part, payable from and secured by a pledge of the Net Leasing Tax Proceeds, without regard to whether any of such Obligations are, in whole or in part, general obligations of the City or also payable from, or secured by a pledge of, any other source of funds or revenues of the City.

(b) **Uses.** The Net Leasing Tax Proceeds shall be allocated and applied for any lawful purpose as directed by the City Council, including without limitation the payment, or the provision for payment, in each Fiscal Year of the principal of, premium (if any) and interest on any Obligations becoming due and payable in such Fiscal Year.

(c) **Pledge.** The City may, pursuant to the applicable laws of the State of Alabama, pledge all, or any portion, of the Net Leasing Tax Proceeds for the benefit of any Obligations, subject to and in accordance with the following:

(1) the City shall not pledge any amount of the Net Leasing Tax Proceeds that is allocable to the levy and collection of the Leasing Tax outside the corporate limits of the City; and

(2) the City reserves the right to apply, dedicate and use for any lawful purpose, as directed by the City Council, all Surplus Net Leasing Tax Proceeds in any Fiscal Year without regard to any pledge of the Net Leasing Tax Proceeds that shall then be in force and effect with respect to any Obligations.

(d) **Amendment.** The City reserves the right to make such amendments to this Section to provide for the use of any portion of the Net Leasing Tax Proceeds for any particular purpose for which provision is not then made in this Section or in any amendment hereof, provided that prior thereto the City shall obtain an opinion of counsel with experience in the matters to be covered by such opinion that the use of Net Leasing Tax Proceeds for such purpose (i) is authorized by the applicable laws of the State of Alabama, (ii) is subject to, and will not adversely affect or impair, any pledge thereof for the benefit of any Obligations, and (iii) will not cause interest on any Obligations to be or become includable in (if then excludable from) the gross income of the owners of such Obligations for purposes of federal income taxation.

ARTICLE 6

Lodging Taxes

Section 6.01 Levy of Lodging Taxes

(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, firm, or corporation engaging within the City in the business of renting or furnishing any room or rooms, lodgings or accommodations to transients in any hotel, motel, inn, tourist camp, tourist cabin, or any other place in which rooms, lodgings, or accommodations are regularly furnished to transients for a consideration, in an amount to be determined by the application of the rate of six percent (6%) of the charge for such room, rooms, lodgings, or accommodations, including the charge for use or rental of personal property and services furnished in such room. There is exempted from the tax levied under this section any rentals or services taxed under Section 4.01 of this Ordinance.

(b) The tax levied in Section 6.01(a) shall not apply to rooms, lodgings, or accommodations supplied: (i) for a period of 180 continuous days or more in any place; (ii) by camps, conference centers, or similar facilities operated by nonprofit organizations primarily for the benefit of, and in connection with, recreational or educational programs for children, students, or members or guests of other nonprofit organizations during any calendar year; or (iii) by privately operated camps, conference centers, or similar facilities that provide lodging and recreational or educational programs exclusively for the benefit of children, students or members or guests of nonprofit organizations during any calendar year.

Section 6.02 Use of Proceeds of Lodging Tax

(a) Definitions. For purposes of this Section the following terms shall have the following meanings:

Net Lodging Tax Proceeds means the proceeds of the Lodging Tax received by the City in each Fiscal Year after deduction or payment therefrom of all costs of collection thereof.

Surplus Net Lodging Tax Proceeds means the aggregate amount of the Net Lodging Tax Proceeds remaining in each Fiscal Year after payment, or provision for payment, shall have been made from any funds or revenues of the City (including without limitation the Net Lodging Tax Proceeds) lawfully available therefor of all amounts of principal of, premium (if any) and interest on all of the following Obligations becoming due and payable in such Fiscal Year:

(1) all Obligations which are general obligations of the City payable from and secured by a pledge of the full faith, credit and taxing power of the City, without regard to whether any of such Obligations are, in whole or in part, also payable from, or secured by a pledge of, any other source of funds or revenues of the City; and

(2) all Obligations which are, in whole or in part, payable from and secured by a pledge of the Net Lodging Tax Proceeds, without regard to whether any of such Obligations are, in whole or in part, general obligations of the City or also payable from, or secured by a pledge of, any other source of funds or revenues of the City.

(b) Uses. The Net Lodging Tax Proceeds shall be allocated and applied for any lawful purpose as directed by the City Council, including without limitation the payment, or the provision for payment, in each Fiscal Year of the principal of, premium (if any) and interest on any Obligations becoming due and payable in such Fiscal Year.

(c) Pledge. The City may, pursuant to the applicable laws of the State of Alabama, pledge all, or any portion, of the Net Lodging Tax Proceeds for the benefit of any Obligations, subject to and in accordance with the following:

(1) the City shall not pledge any amount of the Net Lodging Tax Proceeds that is allocable to the levy and collection of the Lodging Tax outside the corporate limits of the City; and

(2) the City reserves the right to apply, dedicate and use for any lawful purpose, as directed by the City Council, all Surplus Net Lodging Tax Proceeds in any Fiscal Year without regard to any pledge of the Net Lodging Tax Proceeds that shall then be in force and effect with respect to any Obligations.

(d) Amendment. The City reserves the right to make such amendments to this Section to provide for the use of any portion of the Net Lodging Tax Proceeds for any particular purpose for which provision is not then made in this Section or in any amendment hereof, provided that prior thereto the City shall obtain an opinion of counsel with experience in the matters to be covered by such opinion that the use of Net Lodging Tax Proceeds for such purpose (i) is authorized by the applicable laws of the State of Alabama, (ii) is subject to, and will not adversely affect or impair, any pledge thereof for the benefit of any Obligations, and (iii) will not cause interest on any Obligations to be or become includable in (if then excludable from) the gross income of the owners of such Obligations for purposes of federal income taxation.

ARTICLE 7

Operation of Ordinance

Section 7.01 Collection of Privilege, License and Excise Taxes

The City may provide, from time to time, by ordinance or resolution, for the collection of the Privilege, License and Excise Taxes, or any one or more thereof, by the City, or by the Alabama Department of Revenue, or by a private auditing and collecting firm (as defined in Section 40-23-3(17) of the Code of Alabama 1975 or any successor provision of law).

Section 7.02 Applicability and Incorporation of State Sales Tax Laws

(a) (1) The City shall administer and enforce the levy and collection of the Sales Taxes in accordance with the applicable provisions of the State Sales Tax Laws for the administration and enforcement of the corresponding state tax levied thereunder, including without limitation all such provisions providing for the assessment, administration, collection, payment, imposition of penalties, record-keeping, reporting and making returns, and enforcement of said corresponding state tax.

(2) Therefore, the Sales Taxes 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, statutes of limitation, penalties, fines, punishments, and deductions as are provided by the State Sales Tax Laws for the corresponding state tax levied thereunder.

(b) In furtherance thereof, the City does hereby incorporate herein and make a part hereof all provisions of the State Sales Tax Laws that are hereby made applicable to the Sales Taxes by this reference thereto as if set out in full herein.

Section 7.03 Applicability and Incorporation of State Use Tax Laws

(a) (1) The City shall administer and enforce the levy and collection of the Use Taxes in accordance with the applicable provisions of the State Use Tax Laws for the administration and enforcement of the corresponding state tax levied thereunder, including without limitation all such provisions providing for the assessment, administration, collection, payment, imposition of penalties, record-keeping, reporting and making returns, and enforcement of said corresponding state tax.

(2) Therefore, the Use Taxes 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, statutes of limitation, penalties, fines, punishments, and deductions as are provided by the State Use Tax Laws for the corresponding state tax levied thereunder.

(b) In furtherance thereof, the City does hereby incorporate herein and make a part hereof all provisions of the State Use Tax Laws that are hereby made applicable to the Use Taxes by this reference thereto as if set out in full herein.

Section 7.04 Applicability and Incorporation of State Leasing Tax Laws

(a) (1) The City shall administer and enforce the levy and collection of the Leasing Tax in accordance with the applicable provisions of the State Leasing Tax Laws for the administration and enforcement of the corresponding state tax levied thereunder, including without limitation all such provisions providing for the assessment, administration, collection, payment, imposition of penalties, record-keeping, reporting and making returns, and enforcement of said corresponding state tax.

(2) Therefore, the Leasing Tax 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, statutes of limitation, penalties, fines, punishments, and deductions as are provided by the State Leasing Tax Laws for the corresponding state tax levied thereunder.

(b) In furtherance thereof, the City does hereby incorporate herein and make a part hereof all provisions of the State Leasing Tax Laws that are hereby made applicable to the Leasing Tax by this reference thereto as if set out in full herein.

Section 7.05 Applicability and Incorporation of State Lodging Tax Laws

(a) (1) The City shall administer and enforce the levy and collection of the Lodging Tax in accordance with the applicable provisions of the State Lodging Tax Laws for the administration and enforcement of the corresponding state tax levied thereunder, including without limitation all such provisions providing for the assessment, administration, collection, payment, imposition of penalties, record-keeping, reporting and making returns, and enforcement of said corresponding state tax.

(2) Therefore, the Lodging Tax 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, statutes of limitation, penalties, fines, punishments, and deductions as are provided by the State Lodging Tax Laws for the corresponding state tax levied thereunder.

(b) In furtherance thereof, the City does hereby incorporate herein and make a part hereof all provisions of the State Lodging Tax Laws that are hereby made applicable to the Lodging Tax by this reference thereto as if set out in full herein.

Section 7.06 Interest on Tax Delinquency; Refund

To the extent permitted by law (including without limitation Section 11-51-208(f) of the Code of Alabama 1975), the City shall:

(a) assess interest on any amount of the Privilege, License and Excise Taxes which shall not be paid when due at the applicable interest rate determined and adjusted from time to time by the Alabama Department of Revenue in accordance with Section 40-1-44 of the Code of Alabama 1975 (or any successor provision of law) from the date such amount became due until paid in full, which assessment of interest shall be made by the City in accordance with Section 40-23-2.1 of the Code of Alabama 1975 (or any successor provision of law) and shall be due and payable in arrears on such dates as shall be determined by the City; and

(b) pay interest, at the same rate charged by the City on tax delinquencies, on any refund of taxes erroneously paid (within the meaning of Section 11-51-208(f) of the Code of Alabama 1975).

Section 7.07 Discount for Prompt Payment

A discount equal to five percent (5%) of the first one hundred dollars (\$100) of each monthly installment of the taxes herein levied and two percent (2%) of that portion of each monthly installment of the said taxes in excess of one hundred dollars (\$100), but not to exceed a maximum discount of four hundred dollars (\$400.00) per month to each taxpayer, shall be allowed to each taxpayer on the filing of the monthly report with respect to such taxes, upon payment of the amount of such monthly installment (minus said discount) at or prior to 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 provided with respect to any monthly installment of the tax herein levied, the taxpayer shall not be entitled to the said discount with respect to that monthly installment but shall pay the full amount of the tax then due, together with the applicable interest provided in Section 7.06 hereof.

ARTICLE 8

Privilege, License and Excise Taxes Cumulative

The Privilege, License and Excise Taxes are cumulative with, and in addition to, any and all licenses and taxes now or hereafter authorized to be levied and collected, or levied and collected, by the City.

ARTICLE 9

Provisions of General Application

Section 9.01 Authorization of Officers

The Mayor, City Manager, Finance Director, and City Clerk of the City are hereby authorized and directed to take all such actions, and execute, deliver, file and record such documents, instruments, notices, and proceedings, as shall be necessary, desirable, or required by applicable law or governmental authority, to carry out and effect the provisions of this Ordinance and provide for the levy and collection of the Privilege, License and Excise Taxes as provided in this Ordinance.

Section 9.02 Severability

If any provision or term of this Ordinance shall be inoperative or unenforceable, in general or as applied in any particular case, such provision or term shall thereupon be ineffective therefor and all other provisions and terms of this Ordinance shall be and remain valid, enforceable, and in full force and effect without regard to such inoperative or unenforceable provision or term.

Section 9.03 Construction with Other Proceedings

In addition to the provisions of Section 3.02(a) hereof, any order, ordinance, resolution, or other proceeding of the City in conflict or inconsistent with any provision of this Ordinance, is hereby, to the extent of such conflict or inconsistency, repealed.

Section 9.04 Effectiveness of Ordinance

This Ordinance shall take effect upon adoption hereof and publication as required by law.

* * * * *

Duly Passed and Adopted this 9th day of April, 2018.

Ashley C. Curry
Mayor

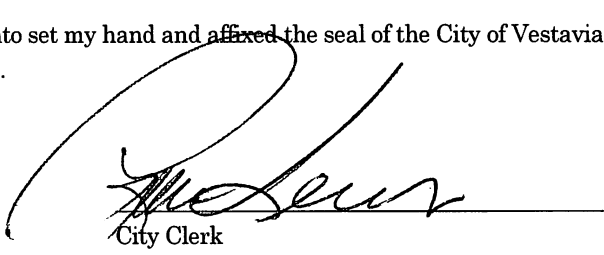
SEAL

[Signature]
City Clerk

CERTIFICATE OF PUBLICATION

The undersigned City Clerk of the City of Vestavia Hills, Alabama, hereby certifies that the above and foregoing Ordinance No. 2747 was published by me in *The Birmingham News*, a newspaper published in Jefferson County, Alabama, and of general circulation in the City of Vestavia Hills, Alabama, in the issue thereof published on _____, 2018.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the City of Vestavia Hills, Alabama, on this 22nd day of April 2018.



City Clerk

SEAL