

**Join us! In an effort to enhance meetings during the COVID-19 shutdown, the City Council invites you to join and/or participate in a variety of ways: Via computer Zoom meetings (no app is necessary), telephone, email and/or text! See details on page 3.**

**Vestavia Hills  
City Council Agenda  
December 28, 2020  
6:00 PM**

1. Call to Order
2. Roll Call
3. Invocation – Tim Cartledge, Vestavia Hills Chaplain
4. Pledge Of Allegiance
5. Approval Of The Agenda
6. Announcements, Candidates and Guest Recognition
7. City Manager’s Report
8. Councilors’ Reports
9. Approval Of Minutes – December 14, 2020 (Work Session) and December 14, 2020 (Regular Meeting)

**Old Business**

1. Ordinance Number 2986 – An Ordinance Appropriating An Additional \$26,750 To The FY2021 Budgeted Funds To Cover Increased Cost Of A New Transport Unit For Vestavia Hills Alberto C. Zaragoza, Jr. Fire Station No. 4 (*public hearing*)
2. Ordinance Number 2987 – An Ordinance Rescinding Ordinance Number 2769 And Amending Chapter 5.5; Article II, Entitled “Erosion And Sediment Control” Of The Vestavia Hills Code Of Ordinances (*public hearing*)
3. Ordinance Number 2988 – An Ordinance Rescinding Ordinance Number 2770 And Amended Section 5.5, Article IV Entitled Stormwater Management Illicit Discharge, Establishing Methods For Controlling The Introduction Of Pollutants Into Municipal Separate Storm Sewer System In Order To Comply With The Requirements Of The National Pollutant Discharge Elimination System (NPDES) Permit Process (*public hearing*)

### **New Business**

4. Resolution Number 5294 – A Resolution Approving An Alcohol License For Magic City Grocery LLC d/b/a The Backyard Market; Jeffrey Benjamin Gentry, Executive (*public hearing*)

### **New Business (Requesting Unanimous Consent)**

### **First Reading (No Action To Be Taken At This Meeting)**

5. Citizens Comments
6. Motion for Adjournment

**CITY OF VESTAVIA HILLS**

**CITY COUNCIL**

**MINUTES**

**WORK SESSION**

**DECEMBER 14, 2020**

The City Council of Vestavia Hills met in special work session on this date at 5:00 PM, following publication and posting pursuant to Alabama law. Due to the COVID-19 pandemic, in coordination with a Proclamation from Governor Ivey and pursuant to Orders from the Alabama State Health Officer, requiring social distancing along with limits of attendees, this meeting was held with a portion of Staff and general public/audience members attending via Zoom.com following publication pursuant to Alabama law. The Mayor called the work session to order and the City Clerk called the roll with the following:

**MEMBERS PRESENT:**

Mayor Ashley C. Curry  
Kimberly Cook, Councilor  
George Pierce, Councilor\*  
Paul Head, Councilor

**MEMBERS ABSENT:**

Rusty Weaver, Mayor Pro-Tem

**OTHER OFFICIALS PRESENT:**

Jeff Downes, City Manager  
Patrick H. Boone, City Attorney  
Rebecca Leavings, City Clerk  
Dan Rary, Police Chief  
Cinnamon McCulley, Communications Specialist\*  
Sandi Wilson, Parks and Recreation Superintendent  
Keith Blanton, Building Official\*  
Brian Davis, Public Services Director\*  
Christopher Brady, City Engineer\*  
Marvin Green, Fire Chief

*\*via Zoom*

The Mayor called the work session to order.

**UPDATE – INFRASTRUCTURE AND COMMUNITY SPACES PLAN**

Mr. Downes stated that Ken Upchurch, TCU, was on-hand to update the Council on the status of the Community Spaces Plan. He stated that, following that update, they needed input from the Council on the future of the development of the tennis portion of Wald Park renovations, or Phase III, Wald Park.

Mr. Upchurch reported that all projects are tracking on budget. He highlighted each project as follows:

- Crosshaven Drive infrastructure project is on-going and is in its messiest phase. He stated that the utilities are relocating and should be done around February 2021. He stated that, after that, the construction should move rapidly.
- New Merkle House has begun construction and is taking shape with the fireplace done. Siding and sidewalks are being worked on, and they hope to have the construction primarily completed in late January/early February timeframe. He stated it is a great little building.
- Community Building demolition is complete, and many of the unknowns are now known. Construction is beginning on the addition, along with interior work being done on the existing building remodeling. HVAC work is beginning in the existing building. He stated one issue arose during demolition phase, because lots of groundwater infiltrated the site. The contractor asked for a delay due to the issue, and TCU is negotiating those terms. There were contingency cost provisions in the contract, which means this should not require any requests for additional funding. This is scheduled to be finished in mid-October 2021.
- Wald Park Phase II is currently in the punch list phase on the pool and the baseball fields. The Grand Lawn, landscaping for the center section of the park, should be complete around mid-February. Final touches are occurring as the weather permits.
- Cahaba Heights Park is currently in the punch list with some final work commencing.
- Wald Park Phase III is beginning to move forward. He stated that grading has occurred for the future tennis courts. Before Wald Park III can move though, there needs to be additional input from the Council prior to commencement of the bid.

Discussion ensued to either build a simple restroom building for the pavilion or provide additional retail space for a small pro shop with an office. Mr. Downes explained that this might involve an agreement with a possible retailer or tennis program professional who would run the pro-shop. He said there is potential for such an agreement to offset the increase costs of the nicer facility. The question is whether the City should go through a design phase for the new proposal before opening the project for bids, or stay the course and proceed as previously planned. Obtaining an alternative design would cost time in the project, and possibly a small amount of money for the design work.

Mr. Upchurch suggested that if the Council wanted to explore the expanded facility option, he recommended concluding the design and putting out to bid the basic design, along with all alternates for the upgraded facility, so the Council could know the cost of the project for both scenarios, before making a decision.

Mayor Curry expressed concern that none of the facility is air-conditioned to allow patrons to cool off and rest. The Mayor stated that there needs to be additional air-conditioned space. Mr. Upchurch pointed out an outdoor lounge which allows people to sit in the shade to watch the tennis play.

Discussion ensued as to control over the courts, if the city were to engage in an agreement with a tennis entity, and that the priority would be for play by the general public, for general recreational purposes, over “pay for play” programs. The Council concurred that delaying the bid was okay if it meant understanding all the opportunities and the cost of design options before a decision is made.

At 5:49 PM, Mr. Pierce made a motion to adjourn. The meeting adjourned at 5:50 PM.

Ashley C. Curry  
Mayor

ATTESTED BY:

Rebecca Leavings  
City Clerk

**CITY OF VESTAVIA HILLS**

**CITY COUNCIL**

**MINUTES**

**DECEMBER 14, 2020**

The City Council of Vestavia Hills met in regular session on this date at 6:00 PM, following publication and posting pursuant to Alabama law. Due to the COVID-19 pandemic, in coordination with a Proclamation from Governor Ivey and pursuant to Orders from the Alabama State Health Officer, requiring social distancing along with limits of attendees, this meeting was held with a portion of Staff and general public/audience members attending via Zoom.com following publication pursuant to Alabama law. The Mayor called the meeting to order. The City Clerk called the roll with the following:

**MEMBERS PRESENT:**

Mayor Ashley C. Curry  
Rusty Weaver, Mayor Pro-Tem\*  
Kimberly Cook, Councilor  
George Pierce, Councilor  
Paul Head, Councilor

**OTHER OFFICIALS PRESENT:**

Jeff Downes, City Manager  
Rebecca Leavings, City Clerk  
Jason Hardin, Police Captain  
Marvin Green, Fire Chief\*  
Melvin Turner, Finance Director  
George Sawaya, Asst. Finance Director  
Christopher Brady, City Engineer  
Ryan Farrell, Asst. Fire Chief\*  
Umang Patel, Court Director\*  
Cinnamon McCulley, Communications Specialist\*  
*\*present via Zoom or telephone*

Mayor Curry led the invocation followed by the Pledge of Allegiance.

**APPROVAL OF THE AGENDA**

The Mayor opened the floor for a motion of approval of the agenda as presented.

**MOTION** Motion to approve the agenda as presented was by Mrs. Cook, seconded by Mr. Pierce. Roll call vote was, as follows:

Mrs. Cook – yes	Mr. Head – yes
Mr. Pierce – yes	Mr. Weaver – yes
Mayor Curry – yes	motion carried.

### **ANNOUNCEMENTS, CANDIDATES, GUEST RECOGNITION**

- Mrs. Cook stated that at the Board of Education there was a report that COVID-19 numbers remained under 1% on a steady basis throughout the school system, which is good news. The second semester will begin January 19, 2021 which is a bit more delayed than typical.
- Mrs. Cook stated that she participated in the parade on Sunday which was great. She complimented Melanie Perry for doing a great job coordinating that parade along with the City staff and other entities.
- Mr. Pierce recognized John Henley, who currently chairs the Board for the Chamber of Commerce. He stated that Mr. Henley hosted the annual Breakfast with Santa this year with some modifications for social distancing. He explained that this year the event was a drive-thru with lots of bags of doughnuts. Mr. Pierce thanked Mr. Henley for his efforts in making this annual event happen once again.
- Mr. Pierce also mentioned that his grandchildren had joined him in the Christmas parade. He stated that his grandchildren threw out a lot of candy and indicated that Councilor Cook actually built a float this year.
- Mr. Head stated that the Parks and Recreation Board canceled a work session last that was scheduled for last Thursday and will pick back up at the beginning of the year.
- Ms. Cook announced she, Councilor Pierce, and Mayor Curry attended the first lighting of a Menorah, in celebration of Hanukkah, at City Hall, which occurred at 4:30 PM, just before the City Council meeting. She commended those who were responsible for coordinating the event.

### **PROCLAMATION – HUMAN TRAFFICKING AWARENESS MONTH**

The Mayor presented a proclamation designating January 2021 as “Human Trafficking Awareness Month.” Mr. Downes read the proclamation and the Mayor presented it to Julia Meyers, Chair, Anti-Human Trafficking Committee and the Junior League of Birmingham. He announced that the January meeting of the Jefferson County Mayors Association will be held here at City Hall and these women will put together a program for the meeting to get all of the Mayors in Jefferson County on board with this issue. Others attending in person and via Zoom also included Lena Kilgore and Denise Morris, Junior League of Birmingham; Pamela Rasberry, Trafficking Hope; Barbara Fowler, Co-Covener of Community Awareness and Engagement for the Child Trafficking Solutions Project; Jan Bell, Children’s Police Council and Child Trafficking Solutions Project; Kristen Osbourne, Junior League of Birmingham; Joannette Clemons, Trafficking Hope; Andrea Martin, UAB Program for Pediatric Trafficking Victims.

### **CITY MANAGER’S REPORT**

- Mr. Downes stated that, at the last meeting, discussions ensued regarding three intersections that were being studied for improvements. He stated they are all multi-jurisdictional. He stated that following that meeting, the City met with County leadership

who indicated support for needed improvements at the same intersections. They will be great bidding partners as these designs progress.

- Conversations ensued about the Blue Lake/Sicard Hollow round-about and how it might be impacted by any development within Liberty Park. Sain and Associates has studied this and will produce information on it soon. He stated that the Council's work session next week will be dedicated to development at Liberty Park. This work session will be available by Zoom and in person for anyone who wishes to attend.
- Mr. Pierce commended the new garbage service which has been trying really hard to service problem calls regarding missed pickups. He stated he has encouraged people to take their complaints to the Action Center, and he appreciates the fact that the garbage service is actually using the resource to track and address problems quickly. Mr. Downes stated that AmWaste uses their camera or "third eye" technology to show a driver did what he was supposed to do and that something happened later that made it appear as if it was the driver's fault, when it wasn't.

### **COUNCILOR REPORTS**

- Mr. Pierce stated that some people still remember the old parades on Montgomery Highway. He stated that he wanted to ensure these people know that the city will continue to discuss possible safe routes for parades in alternate parts of the City. He stated he likes them, but wants them to specifically benefit City merchants.
- Mr. Weaver reported that Planning and Zoning Commission heard a case for rezoning last Thursday, with one request for rezoning that will soon come to Council.

### **FINANCIAL REPORTS**

Mr. Turner presented the finalized financial reports for month ending October 2020. He read and explained the balances.

### **APPROVAL OF MINUTES**

The Mayor opened the floor for approval of the following minutes: November 16, 2020 (Work Session/Interviews); November 16, 2020 (Work Session) and November 23, 2020 (Regular Meeting).

**MOTION** Motion to approve the minutes of November 16, 2020 (Work Session/Interviews); November 16, 2020 (Work Session) and November 23, 2020 (Regular Meeting) was by Mrs. Cook and seconded by Mr. Pierce. Roll call vote as follows:

Mrs. Cook – yes	Mr. Head – yes
Mr. Pierce – yes	Mr. Weaver – yes
Mayor Curry – yes	motion carried.



**OLD BUSINESS**

**RESOLUTION NUMBER 5285**

**Resolution Number 5289 – A Resolution Authorizing The City Manager To Execute And Deliver Proposals For Design Services For Improvements Of Columbiana Road And Highway 31 Intersection (*public hearing*)**

**MOTION** Motion to approve Resolution Number 5289 was by Mr. Pierce, and seconded by Mrs. Cook.

Mr. Downes stated that this was discussed earlier. This proposal is for traffic and civil engineering design work for three segments of improvements to the intersection of Montgomery Highway and Columbiana Road.

Mrs. Cook asked if the County was going to participate in the design costs. Mr. Downes explained that the County asked the City to do the designs and then they will provide substantial construction support.

The Mayor opened the floor for a public hearing. There being no one else to further address the Council, the Mayor closed the public hearing and called for the question. Roll call vote was as follows:

Mrs. Cook – yes	Mr. Head – yes
Mr. Pierce – yes	Mr. Weaver – yes
Mayor Curry – yes	motion carried.

**NEW BUSINESS**

**RESOLUTION NUMBER 5290**

**Resolution Number 5290 – A Resolution Appointing A Member To The Vestavia Hills Library Board**

The Mayor passed the gavel to Councilor Head. Councilor Head opened the floor for a motion.

**MOTION** Motion to approve Resolution Number 5290 was by Mr. Curry, and seconded by Mrs. Cook.

**MOTION** Motion to amend Resolution Number 5290 to appoint Gregory Jones to the Vestavia Hills Library Board was made by Mr. Curry, seconded by Mrs. Cook. Roll call vote as follows:

Mrs. Cook – yes	Mr. Head – yes
Mr. Pierce – yes	Mr. Weaver – yes
Mayor Curry – yes	motion carried.

There being no one else to further address the Council, Councilor Head called for the question. Roll call vote was as follows:

Mrs. Cook – yes	Mr. Head – yes
Mr. Pierce – yes	Mr. Weaver – yes
Mayor Curry – yes	motion carried.

\*Mr. Head passed the gavel back to the Mayor.

### **RESOLUTION NUMBER 5291**

#### **Resolution Number 5291 – A Resolution Appointing A Member To The Vestavia Hills Parks And Recreation Board**

Mr. Pierce recused himself from discussion on this item.

**MOTION** Motion to approve Resolution Number 5291 was by Mrs. Cook, and seconded by Mr. Head.

**MOTION** Motion to amend Resolution Number 5291 to appoint Shelley Gentle to the Vestavia Hills Parks and Recreation Board was made by Mr. Head, seconded by Mrs. Cook. Roll call vote as follows:

Mrs. Cook – yes	Mr. Head – yes
Mr. Pierce – abstain	Mr. Weaver – yes
Mayor Curry – yes	motion carried.

There being no one else to further address the Council, the Mayor called for the question. Roll call vote was as follows:

Mrs. Cook – yes	Mr. Head – yes
Mr. Pierce – abstain	Mr. Weaver – yes
Mayor Curry – yes	motion carried.

### **RESOLUTION NUMBER 5292**

#### **Resolution Number 5292 – A Resolution Declaring Certain Personal Property As Surplus And Authorizing The City Manager To Sell/Dispose Of Said Property**

**MOTION** Motion to approve Resolution Number 5292 was by Mr. Pierce, and seconded by Mr. Head.

Mr. Downes stated that this is a 1996 fire engine which is the oldest in the fleet and set to be replaced in January. Discussion ensued as to the value of an old engine such as this one. Mr. Downes explained that this one is in need of repair constantly and is beyond use.

There being no one else to further address the Council, the Mayor called for the question.  
Roll call vote was as follows:

Mrs. Cook – yes	Mr. Head – yes
Mr. Pierce – yes	Mr. Weaver – yes
Mayor Curry – yes	motion carried.

### **RESOLUTION NUMBER 5293**

**Resolution Number 5293 – A Resolution Accepting A Bid For Sicard Hollow Sports Complex “SHAC” Athletic Field Resurfacing – Phase I And Authorizing The City Manager To Take All Actions Necessary To Secure Said Construction**

**MOTION** Motion to approve Resolution Number 5293 was by Mrs. Cook, and seconded by Mr. Head.

Mr. Downes stated that the Council approved budgeting a replacement of the turf at SHAC along with some remedial drainage work. He indicated that the consultant who wrote the bid specifications has done a few projects with the low bidder and recommended acceptance along with the Public Services Director.

There being no one else to further address the Council, the Mayor called for the question.  
Roll call vote was as follows:

Mrs. Cook – yes	Mr. Head – yes
Mr. Pierce – yes	Mr. Weaver – yes
Mayor Curry – yes	motion carried.

### **ORDINANCE NUMBER 2985**

**Ordinance Number 2985 – An Ordinance Authorizing The Settlement Of The Case Of *James J. Odom, Jr. And Carolyn J. Odom, Plaintiffs V. The City Of Vestavia Hills, Alabama; Stone Building, LLC; Williams Blackstock Architects, P.C.; Caprine Engineering, LLC; Et Al And Fictitious Defendants A, B & C, Defendants, Being Civil Action Number 01-Cv-2020-902589.00 Presently Pending In The Circuit Court For Jefferson County, Alabama; Authorizing And Directing The Mayor And City Manager To Pay The Funds Described Herein And To Take Any Action And Execute And Deliver Any And All Documents Necessary To Effectuate Said Settlement***

**MOTION** Motion to approve Ordinance Number 2985 was by Mrs. Cook, and seconded by Mr. Pierce.

Bent Owens, attorney representing the City in this litigation. He explained the parameters of the litigation and recommended acceptance of this settlement. Mr. Owens indicated that this settlement was divided among five defendants. The litigation arose out of a one-time flood event

next to the Cahaba Heights Park reconstruction project. He indicated that the Board of Education is not participating, as this doesn't involve them. In looking at the public interest, it was found by the attorneys and the Council that it would be best to settle this case according to the negotiated settlement amount of \$25,000 total, with \$6,000 to be paid by the City. To get to the point of a court decision would be another year in the making, and would cost more money in the end because of litigation costs.

Mr. Boone stated that he concurs with Counselor Owens and recommends the settlement as written.

Mr. Pierce asked about the formula for the settlement of each partner. Mr. Owens stated that this was negotiated through the efforts of all parties to get to this settlement, and Caprine Engineering actually stepped up to get this settled.

Mrs. Cook stated that the City has indemnity through the contract. Mr. Owens stated that the City does have indemnity but, in the end, fighting it in court would end up costing more than this settlement would bring. He stated that the remediation and repair costs were much more reasonable than expected.

There being no one else to further address the Council, the Mayor called for the question. Roll call vote was as follows:

Mrs. Cook – yes	Mr. Head – yes
Mr. Pierce – yes	Mr. Weaver – yes
Mayor Curry – yes	motion carried.

#### **ORDINANCE NUMBER 2984**

**Ordinance Number 2984 – An Ordinance To Acknowledge And Authorize The Receipt Of A Charitable Donation Of Real Estate To The City Of Vestavia Hills, Alabama; To Authorize And Direct The Execution And Delivery Of Department Of Treasury, Internal Revenue Service Forms 8283; And To Thank The Donors For Such A Wonderful Gift (*public hearing*)**

**MOTION** Motion to approve Ordinance Number 2984 was by Mrs. Cook, and seconded by Mr. Pierce.

Mr. Downes presented two maps to show the property location in both Shelby and Jefferson County. He stated that the developers originally gave most of the former Altadena Valley Country Club to the City with the exception of this property. The current owners retained this property and eventually wanted to donate it to the City. The property runs along Acton Road and wraps around residential properties located on Alta Vista Circle. He stated this property, if donated to Jefferson County, could be utilized to allow some much-needed straightening and realignment of Acton Road. Mr. Downes added that there is an “orphan” property behind Altadena Ridge that will come to the Council at a later date, which contains some parking for the park. This donation is 12 acres more or less and valued at \$3.7 million.

Mrs. Cook stated she feels this will benefit the County along with all sister cities in the vicinity because of its possible utility for road improvement purposes.

Mr. Pierce asked about maintenance of the lake on the east end of the property.

Mr. Downes stated that the City has maintained the property originally dedicated but this property is not subject to that. He stated that the County has pledged to keep the grass cut along this property.

The Mayor opened the floor for a public hearing.

David Harwell, 1803 Catala Road, asked who will own the property and whether the property is in a floodplain. Mr. Downes stated that ultimately the City will own the property, the Council will help to maintain. Most of the property is not in the floodplain.

There being no one else to further address the Council, the Mayor called for the question. Roll call vote was as follows:

Mrs. Cook – yes	Mr. Head – yes
Mr. Pierce – yes	Mr. Weaver – yes
Mayor Curry – yes	motion carried.

#### **NEW BUSINESS (UNANIMOUS CONSENT REQUESTED)**

#### **FIRST READING (NO ACTION TO BE TAKEN AT THIS MEETING)**

- Ordinance Number 2986 – An Ordinance Appropriating An Additional \$26,750 To The FY2021 Budgeted Funds To Cover Increased Cost Of A New Transport Unit For Vestavia Hills Alberto C. Zaragoza, Jr. Fire Station No. 4 (public hearing)
- Ordinance Number 2987 – An Ordinance Rescinding Ordinance Number 2769 And Amending Chapter 5.5; Article II, Entitled “Erosion And Sediment Control” Of The Vestavia Hills Code Of Ordinances (public hearing)
- Ordinance Number 2988 – An Ordinance Rescinding Ordinance Number 2770 And Amended Section 5.5, Article IV Entitled Stormwater Management Illicit Discharge, Establishing Methods For Controlling The Introduction Of Pollutants Into Municipal Separate Storm Sewer System In Order To Comply With The Requirements Of The National Pollutant Discharge Elimination System (NPDES) Permit Process (public hearing)

#### **CITIZEN COMMENTS**

Donald Harwell, 1357 Willoughby Road, stated that it was mentioned earlier about complaints of the garbage service. He stated that he thinks AmWaste is doing a great job on this

contract and indicated that the City Manager and Mrs. Cook worked hard on the recycling issues we were having. He stated that it seems that the garbage service had some hiccups to begin, but they have worked them out. He stated that he had one small issue which was reported thru the Action Center and resolved within 24 hours.

At 6:59 PM, Mrs. Cook made a motion to adjourn. The meeting adjourned at 7:00 PM.

Ashley C. Curry  
Mayor

ATTESTED BY:

Rebecca Leavings  
City Clerk

## **SPECIAL NOTICE CONCERNING CITY COUNCIL MEETINGS**

**Due to the COVID-19 “Stay at Home” Order issued by Gov. Ivey, the City Council work sessions and meetings are available via video-conference and teleconference. If you chose not to attend in person, you may still participate. Following are instructions for three options to participate remotely.**

### **COMPUTER PARTICIPATION (*view/participate in real time*)**

To participate in by videoconference, click <https://us02web.zoom.us/j/4555343275>. When the Zoom.us window opens in your browser, click “Allow” so that the page may open to a waiting room. The host will open the meeting and bring all into the meeting room at that time. All participants will be automatically muted upon entrance to the meeting. If you wish to speak during time(s) identified for public input, activate the “Raise Hand” feature and unmute yourself by toggling the mute button. When the Mayor recognizes you and gives you the floor, state your name and address for the record and then you may address the Council.

Using the icons on the Zoom screen, you can:

- Mute/unmute your microphone (far left)
- Turn on/off camera (“Start/Stop Video”)
- View Participants – opens a pop-out screen that includes the “Raise Hand” icon that you may use to raise a virtual hand
- Change your screen name displayed in the participant list and video window
- Toggle between “speaker” and “gallery” views – “Speaker view” shows the active speaker; “Gallery view” tiles all of the meeting participants

### **TELEPHONE PARTICIPATION (*view/participate in real time*)**

To participate by telephone, dial 312.626.6799 and enter the meeting ID: 455 534 3275. All participants will be automatically muted upon entrance to the meeting. If you wish to speak during time(s) identified for public input, press \*6 on your phone keypad to unmute yourself. Then state your name and wait for the Mayor to recognize you. When the Mayor recognizes you and gives you the floor, state your name and address for the record and then address the Council.

### **TEXT AND/OR EMAIL (*prior to the meeting or in real time*)**

If you do not wish to join the meeting but would like to ask a question or make a statement regarding an item on the agenda, you may email the City Council directly at [City.Council@vhal.org](mailto:City.Council@vhal.org). You may also text your question/statement to City Council at 205.517.1370. Both of these options are available prior to and during each work session and meeting. Be sure to provide your name and address for the record and your comments will be recited to the City Council as the corresponding item is being addressed. Note: As a matter of record, your name and address are required. If identification is not provided, your comment/question will not be presented.

**ORDINANCE NUMBER 2986**

**AN ORDINANCE APPROPRIATING AN ADDITIONAL \$26,750 TO THE BUDGETED FUNDING FOR A TRANSPORT UNIT FOR VESTAVIA HILLS ALBERTO C. ZARAGOZA, JR., FIRE STATION NO. 4**

**WHEREAS**, the Vestavia Hills Fire Department 2021 Capital Projects budget was requested and approved a smaller, more agile and less expensive transport than the City's current rescue units at purchase price of \$215,000; unit to be housed at Vestavia Hills Alberto C. Zaragoza, Jr., Fire Station No. 4; and

**WHEREAS**, several contributing factors including, but not limited to, changes in the Ford Chassis, trade tariff, COVID uncertainty and manufacturer material shortages resulted in increased costs for the vehicle in the amount of \$26,750; and

**WHEREAS**, the Mayor and City Council feel it is in the best public interest to amend said item budget line to cover the additional cost of the unit.

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

1. The City Manager is hereby authorized to expend an additional \$26,750 for the purchase of the Transport Unit budgeted on line item 20-52-8600-712 to cover the unforeseen price increase of the new transport unit to be housed at Vestavia Hills Alberto C. Zaragoza, Jr., Fire Station No. 4; and
2. This Ordinance Number 2986 shall become effective immediately upon posting/publication as required by Alabama law.

**DONE, ORDERED, ADOPTED and APPROVED** this the 14<sup>th</sup> day of December, 2020.

Ashley C. Curry  
Mayor

ATTESTED BY:

Rebecca Leavings  
City Clerk



**CERTIFICATION OF CITY CLERK**

**STATE OF ALABAMA     )**  
**JEFFERSON COUNTY    )**

I, Rebecca Leavings, City Clerk of the City of Vestavia Hills, Alabama, do hereby certify that the above and foregoing is a true and correct copy of an ordinance duly and legally adopted by the City Council of the City of Vestavia Hills, Alabama, on the 14th day of December, 2020 while in regular session, and the same appears of record in the minute book of said date of said City.

Witness my hand and seal of office this 14th day of December, 2020.

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Rebecca Leavings, City Clerk



**VESTAVIA HILLS FIRE DEPARTMENT**

**MEMORANDUM**

TO: Jeff Downes, City Manager  
FROM: Marvin Green, Fire Chief  
DATE: November 25, 2020  
RE: FY 2021 Budget Appropriation

In June we began the process to map our needs and budget requests. We established the need for a new transport unit for Vestavia Hills Alberto C. Zaragoza, Jr., Fire Station No. 4. We specified a slightly smaller, more agile and less expensive transport than our current rescue units. We originally requested \$215,000 after consulting several ambulance manufacturers with our specifications.

Unfortunately, the market has changed significantly in the last five months. There have been 6-7% increases in apparatus costs across the ambulance industry. There are several contributing factors including changes in the Ford chassis, trade tariffs, COVID uncertainty, and manufacturers unable to stockpile materials.

We are requesting an additional appropriation of \$26,750 for line item 20-52-8600-712 to cover the unforeseen price increase of the new transport unit that will be placed in service in May.

**ORDINANCE NUMBER 2987**

**AN ORDINANCE RESCINDING ORDINANCE NUMBER 2769 AND AMENDING CHAPTER 5.5; ARTICLE II, ENTITLED “EROSION AND SEDIMENT CONTROL” OF THE VESTAVIA HILLS CODE OF ORDINANCES**

**RECITALS**

**WHEREAS**, on June 11, 2018, the City Council approved and adopted Ordinance Number 2769; and

**WHEREAS**, the Mayor and City Council feel it is in the best public interest to rescind Ordinance Number 2769 and further amend Chapter 5.5, Article II, Entitled “Erosion and Sediment Control” of the Vestavia Hills Code of Ordinances in its entirety; and

**“WHEREAS**, the sedimentation of streams, lakes and other waters of this state constitutes a major pollution problem; and

**WHEREAS**, sedimentation occurs from the erosion or depositing of soil and other materials into the waters, and control of erosion and sedimentation is deemed vital to the public interest and is necessary to the public health and welfare, and expenditures of funds for an erosion and sedimentation control program shall be deemed to benefit the public health and welfare; and

**WHEREAS**, the purpose of this ordinance is to provide for the creation, administration, control and enforcement of a program to reduce erosion and sedimentation problems pursuant to the National Pollutant Discharge Elimination System (“NPDES”) permit **ALS000017** from Alabama Department of Environmental Management (“ADEM”) for storm water discharges from the Municipal Separate Storm Sewer System of the City of Vestavia Hills (“MS4”), which will permit the development in the City of Vestavia Hills, (“City”) to continue with the least detrimental effects from pollution by sedimentation: and

**WHEREAS**, ADEM, pursuant to the authority delegated to it under the Clean Water Act, 33 U.S.C. Section 1251, *et seq.*, has required City to obtain a NPDES permit for storm water discharges from the MS4, effective March 1, 1995 and, therefore, City is subject to the federal storm water laws and regulations contained in 33 U.S.C. ¶ 1342 (P) and 40 C.F.R. 122.26, and is required to adopt a local erosion control ordinance. Act No. 95-775 of the Alabama State Legislature (Code of Alabama 1975, § 11-89C 1-14) and other

provisions of the Code of Alabama 1975 grant the authority to adopt such ordinances to the governing bodies of all Class 1 municipalities within the State of Alabama, to the governing bodies of counties in which Class 1 municipalities are located and to the governing bodies of all other municipalities located within such counties, and where any such other municipality is also located partially within an adjoining county, then the governing body of such adjoining county and which governing bodies are specifically designated in 40 C.F.R. part 122, Appendices F, G, H or I or by ADEM pursuant to the authority delegated to it under the Clean Water Act, 33 U.S.C. Section 1251, *et seq.*; and

**WHEREAS**, it is the purpose of this ordinance to protect and maintain the environment of the City and the short-term and long-term public health, safety and general welfare of the citizens of the City by controlling discharges of pollutants to the City's MS4, thereby, maintaining and improving the quality of the community waters into which the storm water outfalls flow, including, without limitation, the lakes, streams, ponds, wetlands, sinkholes and groundwater of the City; and

**WHEREAS**, this ordinance controls the discharge of certain non-storm water to the MS4 from land on which land-disturbing activities are conducted, to the maximum extent practicable, and provides enforcement procedures and penalties to ensure compliance with such controls; and

**WHEREAS**, it is further the purpose of this ordinance to enable the City to comply with the NPDES permit and applicable regulations (40 C.F.R. ¶ 122.26) for storm water discharges; and

**WHEREAS**, the objectives of this ordinance are to:

- a) Control:
  - i. the contribution of pollutants to the MS4 by storm water discharges associated with land-disturbing activities and
  - ii. the quality of storm water discharged to the MS4 from sites of land-disturbing activity;
- b) Prohibit illicit discharges to the MS4;
- c) Control the discharge to the MS4 of any spills, dumping or disposal of materials other than storm water from sites of land-disturbing activity; and
- d) Carry out all inspections, surveillance and monitoring procedures necessary to determine compliance and noncompliance with land-disturbing activity permits (singular, "Permit" and plural, "Permits").

**NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF VESTAVIA HILLS, ALABAMA ("CITY COUNCIL") THAT ORDINANCE NUMBER 2769 HEREBY RESCINDED AND THAT CHAPTER 5.5, ARTICLE II ENTITLED "EROSION AND SEDIMENT CONTROL" IS AMENDED IN ITS ENTIRETY, AS FOLLOWS:**

**Article 1  
DEFINITIONS**

**Section 1.01 Definitions.**

For the purposes of this ordinance, the following words and terms shall have the meaning assigned to them in this section.

*Accidental Discharge* - a discharge prohibited by this Article into the MS4 or community water which occurs by chance and without planning or consideration prior to occurrence.

*Adverse Impact* - any deleterious effect on waters or wetlands, including their quality, quantity, surface area, species composition, aesthetics or usefulness for human or natural uses which are or may potentially be harmful or injurious to human health, welfare, safety or property or to biological productivity, diversity or stability, or which would unreasonably interfere with the enjoyment of life or property.

*Agriculture* - activities undertaken on land for the production of plants, crops, and animals which are useful to man.

*Alabama Department of Environmental Management (herein abbreviated as "ADEM")* - the State of Alabama regulatory agency, created under Code of Alabama 1975, §22-22A-1, et seq., responsible for administering and enforcing the storm water laws of the United States of America and the State of Alabama.

*Applicant* - any person, firm, corporation or governmental agency who executes the necessary forms to procure approval of Best Management Practices Plans from the Official.

*Best Management Practices* (herein abbreviated as "BMP") - activities, prohibitions of practices, maintenance procedures and management practices designed to prevent or reduce the pollution of waters to the MS4. Best Management Practices also include treatment requirements, operating procedures and practices to control facility site runoff, spillage or leaks, sludge or waste disposal or drainage from raw material storage and construction sites.

*Best Management Practices Plan* - (herein abbreviated as "BMP Plan") - a set of drawings and/or other documents submitted by a person as a prerequisite to obtaining a Permit, which contain all of the information and specifications pertaining to BMP.

*Clean Water Act* - (herein abbreviated as "CWA") - the federal act (33 U.S.C. § 1251 through § 1387) which was formerly referred to as the Federal Water Pollution Control Act and Federal Water Pollution Control Act Amendments of 1972, Public

- Law 92-500, as amended by Public Law 95-217, Public Law 95-576, Public Law 6-483 and Public Law 97-117, 33 U.S.C. § 1251-1387.
- Clearing* - the removal of trees and brush from the land, not including the ordinary mowing of grass or the maintenance of previously cleared areas.
- Community Waters* - any or all rivers, streams, creeks, branches, lakes, reservoirs, ponds, drainage systems, springs, wetlands, wells and other bodies of natural or artificial surface or subsurface water into which the MS4 outfalls flow.
- Contour* - a line of equal elevation above a specified datum, usually mean sea level.
- Contour Line* - a line joining points having or representing equal elevations.
- Discharge* - the passing of water or other liquid through an opening or along a pipe, conduit or channel; the rate of flow of water, silt, or other mobile substance which emerges from a pipe, conduit or channel, usually expressed as cubic feet per second, gallons per minute or million gallons per day.
- Drainage* - the removal of surface water from a given area either by gravity or by pumping; commonly applied to surface water and groundwater.
- Drainage Area* - that area contributing runoff to a single point measured in a horizontal plane, which is enclosed by a ridge line; the area of a drainage basin or watershed, expressed in acres, square miles or other unit of area.
- Engineer* - a person currently licensed by the Alabama State Board of Registration for Professional Engineers and Land Surveyors to provide engineering services.
- Erosion* - wearing away of lands by running water.
- Erosion Control* - the application of measures to reduce erosion of land surfaces.
- Grading* - any act by which soil is cleared, stripped, stockpiled, excavated, scarified or filled, or any combination thereof.
- Illicit Connection* - any man-made conveyance connecting an illicit discharge directly to the MS4.
- Illicit Discharge* - any discharge that is not composed entirely of storm water, except discharges pursuant to a NPDES permit (other than NPDES Permit ALS000001) and discharges which are specifically excepted from this ordinance.
- Minor Extension* - an addition to an existing utility pipeline or other utility line in which the land disturbed consists of fewer than 7,500 linear feet.
- Municipal Separate Storm Sewer (herein abbreviated as "MS3")* - a conveyance or conveyances (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, man-made channels and storm drains), owned or operated by a city, town or county or other public body (created by, or pursuant to, State law) having jurisdiction over storm water.
- Municipal Separate Storm Sewer System (herein abbreviated as "MS4")* - a system of municipal separate storm sewers, as defined hereinbefore.
- NPDES* - National Pollutant Discharge Elimination System.
- Outfall* - a point source (meaning any discernible, confined and discrete conveyance, including, but not limited to, any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container rolling stock, concentrated animal feeding operation, landfill leachate collection system, vessel or other floating craft from which pollutants are or may be discharged, but not including return flows from irrigated agriculture or agricultural water runoff) at the point of a discharge to waters of the United States of America.
- Permit* - any permit issued pursuant to this ordinance.

- Permittee* - a person, party, government entity and all others who receive a permit to discharge under the NPDES.
- Pollutant* - includes, but is not limited to, the pollutants specified in Code of Alabama 1975, § 22-22-1(b) (3) and any other effluent characteristics specified in a Permit.
- Pollutant Loading* - the amount of a pollutant entering the MS4.
- Qualified Credentialed Professional* - a Certified Professional in Erosion and Sediment Control ("CPESC") as determined by the Soil and Water Conservation Society ("SWCS") or the International Erosion Control Association ("IECA"). Other registered or certified professionals such as a professional engineer or a landscape architect, registered land surveyor, registered architect, registered geologist, registered forester, Registered Environmental Manager as determined by the National Registry of Environmental Professionals ("NREP"), Certified Professional Soil Scientist ("CPSS") as determined by the American Registry of Certified Professionals in Agronomy, Crops and Soils ("ARCPACS"), who can document the necessary education, training, and professional certification, registration, or credentials acceptable to the Official and can demonstrate proven experience in the field of erosion and sediment control shall be considered a qualified credentialed professional. The qualified credentialed professional must be in good standing with the authority granting the registration. The qualified credentialed professional must be familiar, and have expertise, with current industry standards for erosion and sediment controls and must be able to inspect and assure that nonstructural BMPs or other pollution control devices (silt fences, erosion control fabric, rock check devices, etc.) and erosion control efforts, such as grading, mulching, seeding and growth management, or management strategies have been properly implemented and regularly maintained according to good engineering practices and the requirements of this permit. A professional engineer ("PE") registered in the state of Alabama must certify the design and construction of structural practices such as spill prevention control and counter measures ("SPCC") plan containment structures, dam construction, etc.
- Sediment* - solid material settled from suspension in a liquid that has been transported and deposited from its site of origin by air, water, ice or gravity as a product of erosion and has come to rest on the earth's surface either above or below a water surface, usually, inorganic or organic particles originating from weathering, chemical precipitation, or biological activity.
- Silviculture* - the care and cultivation of forest trees, including site preparation, planting, pruning, thinning and harvesting.
- Site* - any tract, lot or parcel of land or combination of contiguous tracts, lots or parcels of land which are in one ownership, and any combination of tracts, lots and parcels which are contiguous, are owned by two or more parties and are to be developed as a unit, subdivision or project.
- Stabilization* - the prevention of soil movement by any of various vegetative and/or structural means.
- Storm Water* - the excess water running off from the surface of a drainage area during and immediately after a period of rain. It is that portion of the rainfall and resulting surface flow that is in excess of that which can be absorbed through the infiltration capacity of the surface of the basin.
- Storm Water Management* - the incorporation of a variety of activities and equipment

into a plan to address concerns associated with Storm Water for the purpose of preventing pollution, improving water quality, keeping pollutants out of runoff, and the implementation of Best Management Practices.

*Storm Water Management Program* - (herein referred to as "the Management Program" or "the Program") - a program which covers the duration of the permit. It shall include a comprehensive planning process which involves public participation and, where necessary, intergovernmental coordination, to reduce the discharge of pollutants, to the maximum extent practicable, using management practices control techniques and system design and engineering methods and such other provisions which are appropriate.

*Storm Water Permit* - a permit which grants permission to the holder to discharge storm water to the MS4 under the NPDES.

*Stream* - a course of running water usually flowing in a particular direction in a definite channel and discharging into some other course of running water or body of water.

*Structural Controls* - measures incorporated into existing Storm Water drainage systems or newly constructed systems to prevent or minimize the discharge of pollutants for the purpose of maintaining and/or improving water quantity and quality management; quantitative control by a system of vegetative and structural measures that control the increased volume and rate of surface runoff caused by man-made changes to the land; qualitative control by a system of vegetative, structural and other measures that reduce or eliminate pollutants that might otherwise be carried by surface runoff.

*Turbidity* - a condition in water or wastewater caused by the presence of suspended matter, resulting in the scattering and absorption of light rays. A measure of fine suspended matter in liquids.

*Utility* - a business or service which is engaged in regularly supplying the public with some commodity or service which is of public consequence and need, such as electricity, gas, water, telephone service and telegraph service.

*Variance* - the modification of the minimum storm water management requirements in situations in which exceptional circumstances, applicable to the site with respect to which the variance is requested, exist so that strict adherence to the provisions of this ordinance would result in unnecessary hardship and the granting of such modification would not result in a condition contrary to the intent of this ordinance.



**Article 2  
ADMINISTRATION**

**Section 2.01**

The municipal engineer for the City, the municipal official or employee who is a qualified credentialed professional, such other municipal official or municipal employee who has had sufficient experience dealing with BMP design to enable them to enforce the provisions of this ordinance, an individual or agency contracted to provide such service, shall be responsible, on behalf of the City (“Official”), to enforce the provisions of this ordinance (whenever the word "Official" is used in this ordinance, it shall include the authorized agent of the Official).

### **Article 3 APPLICATION AND FEES**

#### **Section 3.01 Application.**

- a. Before the commencement of any land-disturbing activity that is not exempted from obtaining a Permit under this ordinance, the owner of the land on which such activity shall be conducted, or his duly authorized agent, must file with the Department of Building Safety an application for the approval of the owner's BMP Plan. The Official must either approve or disapprove the BMP Plan within fourteen (14) days of the day it is filed with the Official. If the BMP Plan is disapproved, the Official must inform the Applicant, in writing, of the reasons for its disapproval. If the Applicant, on one or more occasions, revises the BMP Plan or submits to the Official additional documents or information in connection with the BMP Plan, the Official must make a written response to the Applicant with respect to whether such revised BMP Plan and/or additional documents and information have been approved or disapproved by the Official. All such additional responses must be made by the Official to the Applicant within fourteen (14) days of the day such revised BMP Plan or additional documents or information are submitted to the Official. The land-disturbing activity may not be commenced prior to the issuance of the Permit by the Official. The issuance of the Permit shall not excuse the owner from the need to obtain other required state and local permits or licenses.
- b. The minimum standards for the issuance of a Permit must meet the requirements of this ordinance
- c. Facilities that are covered under an ADEM NPDES permit for storm water discharge associated with construction activities ("ADEM NPDES permit") shall submit an ADEM Notice of Registration (NOR) with their application. The Notice of Intent (NOI) may be provided until the NOR is received from ADEM. Copies of all monitoring data and reports shall be submitted to the City in the same manner as they are submitted to ADEM and in the frequency specified by the City.

#### **Section 3.02 Permit Application Fee.**

Each application for the issuance of a Permit shall be accompanied by a non-refundable fee of four hundred dollars (\$400), for individual single-family residences and one thousand dollars (\$1000), for all other types of land disturbing activities, to help defray the City's cost of processing and reviewing the application and the inspections associated with the application. Sites that are required to have Post-Construction controls as stated in Ordinance Number 2987 will have an additional fee of two thousand dollars (\$2000) to defray the City's cost of processing and reviewing the structure's design and the associated inspection and maintenance BMPs. The applicant must submit three sets of its BMP Plan with its application and fee to the Official.

When work requiring a Land Disturbance Permit is commenced prior to obtaining the permit, the permit applicant shall be required to pay a penalty of one hundred dollars (\$100.00) plus a double permit fee. The payment of the required fee shall not relieve any person from fully complying with all of the requirements of all applicable regulations and codes, nor shall it provide relief from being subject to any of the penalties therein.

**Section 3.03 Post Construction Annual Issuance Fee.**

An annual issuance fee of \$50.00 will be paid to the City to defray the administrative cost of inspecting Post-Construction controls and maintaining inspection records.

**Section 3.04 Data Required on the Application for a Permit.**

- a. All applications for a Permit must include the following information:
  1. name of Applicant;
  2. telephone number and e-mail address of applicant;
  3. address where Applicant, or other person who can furnish information about the land-disturbing activity can be reached;
  4. name, address, telephone number, and e-mail address of the owner of the project, the owner of the property on which the project is to be located and the ground lessee of the property, if any, on which the land-disturbing activity is to be conducted if the applicant is not the owner of the project and such property;
  5. legal description and address, if any, of the property upon which the land-disturbing activity is to be conducted;
  6. names, addresses, telephone numbers, and e-mail addresses of all contractors and subcontractors who shall implement any BMP Plan; provided, however, that if the contractor and the subcontractors have not been selected when the application for a permit is filed, the Applicant shall furnish such information to the Official within five (5) days of the day or days on which the contractor and/or subcontractors are selected;
  7. name, address, telephone number, and e-mail address of the qualified credentialed professional who has approved the BMP Plan application (this is required for all land-disturbing activities except those related to the construction of individual single-family residences);
  8. each application for a Permit must be accompanied by a map or a plot of the land on which the land-disturbing activity will be conducted and any other information that is required under the provisions of Article 5.
- b. The detail of the BMP Plan must be commensurate with the size of the project, severity of the site condition and potential for off-site damage, as provided in Article 5

**Section 3.05 Maintenance of Records.**

Records of compliance with the provisions of the Permit shall be maintained in the office of the owner or the applicant, shall be available to the Contact Person and shall be made available at any time for review by the Official; provided, that if such records are maintained without the State of Alabama and, because of their size, cannot be transmitted to the Official by email, such records must be delivered to the Official (at no expense to the City or the Official) within forty-eight (48) hours of receipt of request for such records.

**Section 3.06 Amended Application; Transfer of Permit.**

- a. A Permit may be amended, without the payment of an additional fee, upon the filing with the Official of an amended or restated Permit application, containing all

changes from the original application; provided, that the holder of the Permit shows to the reasonable satisfaction of the Official that there are no proposed changes which may affect the quantity and/or quality of storm water runoff. If an amended or restated application is filed with the Official with respect to land-disturbing activities for which a Permit has been issued, such existing Permit shall continue in effect, and the holder of the Permit may continue to operate under it unless and until an amended Permit is issued in response to the amended or restated application ("Amended Permit") at which time the original Permit shall expire and all land-disturbing activities must be conducted in accordance with the Amended Permit.

- b. A Permit may be transferred, without the payment of an additional fee, upon the filing with the Official of an application for transfer; provided, that the holder and proposed transferee of the Permit show to the reasonable satisfaction of the Official that, upon or following the transfer, there will be no proposed changes which may affect the quantity and/or quality of storm water runoff. If there is a request for the transfer of a Permit and there are to be one or more changes in the operation of the project which is the source of the land-disturbing activity which may affect the quantity and/or quality of storm water runoff, the new owner or operator of such project must apply to the City for a new Permit prior to his involvement with the operation of such project.

### **Section 3.07 Signatory Requirements.**

- a) All applications and correspondence required by this ordinance to be submitted to the Official shall be signed as follows:
  1. If an application or correspondence is submitted by a corporation, it must be signed by the president of the corporation or by a vice-president of the corporation who is in charge of a principal business function of the corporation, or any other person who performs similar policy-making or decision-making functions for the corporation, or who has been authorized to sign such applications and/or correspondence by a resolution adopted by the board of directors of the corporation. Proof of the authority of the signatory shall be provided to the Official, upon his request.
  2. If an application or correspondence is submitted by a limited liability company, it must be signed by a manager or other person who serves the same or similar function as the president of a corporation.
  3. If an application or correspondence is submitted by a partnership, it must be signed by a general partner of the partnership.
  4. If an application or correspondence is submitted by a sole proprietorship, it must be signed by the proprietor.
  5. If an application or correspondence is submitted by a municipality, the State or the federal government or by any municipal, state or federal agency, it must be signed by either the chief executive officer or a principal executive officer of any such government or by either the chief executive officer, a principal executive officer or a senior executive officer having responsibility for the overall operations of a principal geographic unit of any such governmental agency.
- b) Any person signing any application or correspondence required by this ordinance shall make the following certification: "I certify, under penalty of law,

that this document and all attachments were prepared under my direction or supervision and that I have personally examined, and I am familiar with, the information in this document and such attachments. Based on my inquiry of those individuals immediately responsible for obtaining the information, I believe the submitted information is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and civil penalty.

## **Article 4 EXCLUSION**

### **Section 4.01**

No person may conduct any land-disturbing activity without having obtained a Permit from the Official.

### **Section 4.02**

Land-disturbing activities shall include any land change which may result in soil erosion from water or wind and the movement of sediment to the MS4, including, but not limited to, the clearing, dredging, grading, excavating, transporting and filling of land, except that the term shall not include the following:

- a) Any land change on property about which the owner of the property has submitted information to the Authority proving, to the satisfaction of the Authority, that such property does not drain to the MS4. Such information may be submitted to the Official, who shall promptly deliver it to the Authority, and the determination as to whether such property drains to the MS4 shall be made by the Authority.
- b) Agriculture.
- c) Silviculture.
- d) Such minor land-disturbing activities as home gardens, landscaping on individual residential lots (excluding landscaping performed by, or on behalf of, a developer or builder, who builds a house on any such lot), home repairs, home maintenance work, minor additions to houses, the construction, maintenance or repair of accessory structures and other related activities which result in minor soil erosion. Minor land-disturbing activities typically are considered to result in soil disturbance less than 500 sf, but, in all cases, are subject to the Official's discretion.
- e) Minor land-disturbing activities such as individual connections for utility services and sewer services for single or two-family residences, minor grading for driveways, yard areas and sidewalks, excluding any grading done by, or on behalf of, a developer or builder in connection with the construction of a house. Minor land-disturbing activities typically are considered to result in soil disturbance less than 500 sf, but, in all cases, are subject to the Official's discretion.
- f) Minor maintenance, minor repair, and the minor extension of any existing underground public utility lines, except sewer lines; provided, that the utility company which owns such lines has received approval of a general BMP Plan from the Authority for such maintenance, repair, and extension; and provided further, that any utility company making a minor extension in connection with which the land disturbed consists of more than 1,000 linear feet must give the Official written notice of such extension prior to the commencement of such minor extension.
- g) The construction, repair or rebuilding of railroad tracks.
- h) Minor subsurface exploratory excavations under the direction of soils engineers or engineering geologists.
- i) The opening of individual burial sites in property which has been approved for such use by all necessary governmental authorities.
- j) Digging of water wells or environmental monitoring wells.

The activities referred to in items (b) through (i) above may be undertaken without a Permit; however, the persons conducting these excluded activities shall remain responsible for otherwise conducting such activities in accordance with the provisions of this ordinance and any other applicable law, including the proper control of sedimentation and runoff to the MS4. This ordinance shall apply to such land-disturbing activities that drain to the MS4 if a storm water pollution problem is shown to be caused by such activity following monitoring procedures and complaints.

## **Article 5**

### **BMP APPROVAL REQUIREMENTS**

#### **Section 5.01 General Requirements.**

No land-disturbing activity shall be conducted within the City until a Permit has been issued by the Official allowing such activity pursuant to the provisions of this ordinance. The following are BMP approval requirements:

- (a) Persons conducting land-disturbing activities shall take all reasonable measures referred to, or provided for, in this ordinance to protect all public and private property from damage caused by such activities and to reduce storm water pollution to the maximum extent practicable.

No land-disturbing activities subject to this ordinance shall be undertaken

- (b) except in accordance with the following requirements:
  - 1. The person(s) proposing to conduct any land-disturbing activity or an agent, contractor or other representative of such person must contact the Official at least five (5) business days before commencement of the land-disturbing activity to advise the Official of the commencement of such land-disturbing activity, unless, for good cause shown, the Official permits such person, contractor, agent or other representative to contact him nearer to the date of the commencement of such land-disturbing activity.
  - 2. Other than land-clearing activities required to install the appropriate BMP in accordance with BMP Plans, any down slope erosion and sediment control measures, on-site stream channel protection and upslope diversion of drainage required by the BMP Plan shall be in place and functional before any clearing or earth- moving operations begin, and shall be constructed and maintained throughout the construction period. Temporary measures may be removed at the beginning of the workday, but shall be replaced at the end of the workday.
  - 3. The angle for graded slopes and fills shall be no greater than the angle, which can be retained by vegetative cover or other adequate erosion control devices or structures. Any slope or fill which has been graded shall, within fourteen (14) days of the completion of such grading or the completion of any phase of grading, be planted or otherwise provided with ground cover, materials, devices or structures sufficient to restrain erosion. The BMPs shall remain in place in accordance with the BMP Plan until the graded slope or fill is stabilized.
  - 4. Adequate protective measures shall be provided for the containment of hazardous substances and any other materials which may pollute the MS4, including petroleum products, lubricants and paint.
  - 5. All control measures shall be checked, and repaired as necessary, monthly in dry periods and within twenty-four (24) hours after any rainfall at the site of 0.75 inch within a twenty-four (24)-hour period. During prolonged rainfalls, daily checking and, if necessary, repairing shall be done. The Permittee shall maintain written records of such checks and repairs, which records shall be subject to the inspection of the Official at any reasonable time.
  - 6. The BMP Plan shall show the size of disturbed area and a schedule of the projected starting and completion dates of the land- disturbing activity.



7. A site plan, accompanied by a written description of BMPs which are shown on the site plan and a schedule of implementation during land-disturbing activities and construction shall be furnished to the Official prior to the commencement of any land-disturbing activities.
8. A description of, and procedures for, proper storage, handling and disposal of construction materials stored on-site which could contribute to the pollutant loading to the MS4, shall be furnished to the Official prior to the commencement of any land-disturbing activities.

### **Section 5.02 Design and Performance Standards.**

The following are required for all land-disturbing activities except those related to the construction of individual single-family residences.

All applications for a Permit must contain, or be accompanied by, the materials and information necessary to satisfy the requirements of Sections 5.01 and 5.02 and must be accompanied by a soil erosion and sediment control plan ("Control Plan"). The Control Plan shall be prepared by a Qualified Credentialed Professional and shall include the following:

- (a) The Control Plan shall be accompanied by a map or plot of the property upon which land-disturbing activities are to be conducted, prepared by a registered land surveyor, showing the present contour lines of such property, and the present contour lines of at least the nearest twenty-five (25) feet of the properties immediately adjacent to such property and the existing grades and elevations of all streets which abut such property. Such map or plot shall show all existing drainage facilities and all natural drainage on such property and on such adjacent property.
- (b) All proposed contours, the proposed temporary and permanent disposition of surface water and the proposed drainage structures; provided, however, the Control Plans for utility projects, except sewer projects, shall not be required to show the proposed contours.
- (c) The proposed contours in the map or plot shall be depicted in contour intervals of two (2) or fewer feet; provided, however, the Control Plans for utility projects, except sewer projects, shall not be required to show the proposed contours. All maps, plots and plans submitted shall be on a sheet of paper at least twenty-four (24) inches by thirty-six (36) inches and drawn to a scale of not less than one inch equals 100 feet. Contour intervals of more than two (2) feet and maps, plots or plans which are smaller than the required size may be approved by the Official, upon written request and for good cause shown.
- (d) The Control Plan shall contain a description of the existing site conditions, a description of adjacent topographical features, the information necessary to determine the erosion qualities of the soil on the site, potential problem areas of soil and erosion and sedimentation, soil stabilization specifications, storm water management considerations, a projected time schedule for the commencement and completion of the land-disturbing activity, specifications for BMP Plan maintenance during the project and after the completion of the project, clearing and grading limits, and all other information needed to depict accurately the solutions to potential soil erosion and sedimentation problems to the MS4. The Control Plan shall include the series of BMPs and shall be reviewed by, and subject to the approval of,

- the Official prior to the issuance of the Permit.
- (e) Where appropriate, in the opinion of the qualified credentialed professional who prepares the Control Plan, to the maximum extent practicable, the Control Plan shall include measures to reduce erosion and other adverse impact to MS4 drainage which would result from an increase in the volume of water and the rate of runoff of water during the conduct of land-disturbing activities.
  - (f) Whenever the Official determines that a Control Plan does not comply with this ordinance, he shall notify the applicant in writing of the ways in which the Control Plan does not comply with this ordinance.
  - (g) To the maximum extent practicable, sediment in runoff water must be minimized by using appropriate BMPs.
  - (h) Structural controls shall be designed and maintained as required to minimize erosion and pollution to the maximum extent practicable. All surface water flowing toward the construction area shall, to the maximum extent practicable, either be passed through the site in a protected channel or diverted by using berms, channels or sediment traps, as necessary. Erosion and sediment control measures shall be designed, according to the size and slope of the disturbed areas or drainage areas, to minimize erosion and to control sediment, to the maximum extent practicable. Discharges from sediment basins and traps must be conducted in a manner consistent with good engineering practices. Sediment-laden, or otherwise polluted, water discharged to MS4 must be addressed in a manner consistent with good engineering practices and the requirements of this ordinance.
  - (i) Control measures shall be maintained as an effective barrier to sedimentation and erosion in accordance with the provisions of this ordinance.
  - (j) There shall be no distinctly visible floating scum, oil or other matter contained in the storm water discharge. The storm water discharge to an MS4 must not cause an unnatural color (except dyes or other substances discharged to an MS4 for the purpose of environmental studies and which do not have a harmful effect on the bodies of water within the MS4) or odor in the community waters. The storm water discharge to the MS4 must result in no materials in concentrations sufficient to be hazardous or otherwise detrimental to humans, livestock, wildlife, plant life or fish and aquatic life in the community waters.
  - (k) When the land-disturbing activity is finished and stable vegetation or other permanent controls have been established on all remaining exposed soil, the owner of the land where the land- disturbing activity was conducted, or his authorized agent, shall notify the Official of these facts, and request a final inspection. The Official shall then inspect the site within five (5) working days after receipt of the notice, and may require additional measures to stabilize the soil and control erosion and sedimentation. If additional measures are required by the Official, written notice of such additional measures shall be delivered to the owner, and the owner shall continue to be covered by the Permit issued with respect to the land-disturbing activity until a final and complete inspection is made and the Official approves the project as having been satisfactorily completed and delivers to the owner, within ten (10) days of the date of such approval, a certification of completion showing that the requirements of the Permit have been fulfilled. At that time the site and/or the project constructed thereon may come under the operation of other ordinances of the City.

- (l) The Control Plan must be accompanied by a letter of credit, a surety bond or a cash bond, with the City having the right to determine which type of security shall be furnished. A letter of credit, a surety bond or a cash bond (a letter of credit, a surety bond and a cash bond shall be herein collectively referred to as "Security") shall be furnished to the City in accordance with the following provisions:
  1. The Official shall require a letter of credit, a surety bond or a cash bond in such amount as specified herein to assure that the work, if not completed or if not in accordance with the permitted plans and specifications will be corrected to eliminate hazardous conditions, erosion and/or drainage problems. In lieu of a letter of credit or a surety bond required by the City, the owner may file a cash bond with the City in an amount equal to that which would be required in the letter of credit or the surety bond.
  2. The Security shall contain, or have attached to it as an exhibit, a legal description of the site. The Security shall remain in effect for such reasonable period of time as may be required by the Official.
  3. The Security for clearing operations only shall be in the amount of \$2,000 per acre for each acre, or fraction of an acre, disturbed or affected by such operations.
  4. The Security for earthwork or clearing and earthwork operations shall be in the amount of \$5,000 per acre for each acre, or fraction of an acre, disturbed or affected by such operations.
  5. The Security for earthwork or clearing and earthwork operations for an individual single-family residence may be reduced to \$3,000 with proof of completion of either the Jefferson County Erosion Workshop or the Qualified Credentialed Inspector (QCI) certification.
  6. Security equal to double the amounts required in subsections (3) and (4) herein, shall be required where clearing or earthwork is performed in areas designated as floodways, floodplains or areas susceptible to landslides.
  7. Each letter of credit must be issued by a bank which has its principal office in Jefferson County, Alabama.
  8. Each letter of credit must be issued by a bank which is reasonably satisfactory to the City and each surety bond must be issued by a surety company which is qualified to do business in Alabama and which is otherwise reasonably satisfactory to the City.

## **Article 6**

### **MONITORING AND INSPECTION**

#### **Section 6.01**

The Official may periodically monitor the quality of storm water and the concentration of pollutants in storm water discharges from land-disturbing activities permitted to the MS4 pursuant to this ordinance.

#### **Section 6.02 Inspections.**

- (a) The Official, bearing proper identification, may enter and inspect all land-disturbing activities for regular periodic inspections, investigations, monitoring, observations, measurements, enforcement, sampling and testing to verify compliance with the provisions of this ordinance and the specific BMP Plans and Control Plans for such land-disturbing activities. The Official shall notify the owner of such property, his Contact Person or his representative on the construction site prior to inspection, and the inspections shall be conducted at reasonable times. The owner or operator of a construction site with respect to which an NPDES permit has been issued shall provide the Official with the information required in Section 3.01(c) prior to the commencement of the work on the construction site. The Official shall inspect the construction site to confirm the implementation and the maintenance of BMP Plans, otherwise, such site shall be inspected when the Official believes, as a result of complaints or monitoring activity, that land-disturbing activities on the site are causing a substantial pollutant loading which threatens the MS4.
- (b) Upon the refusal by any property owner to allow the Official to enter, or to continue an inspection on, a site on which land-disturbing activities or construction work is being done, the Official shall terminate the inspection or confine the inspection to areas to which no objection is raised. If an agent of the Official was making, or attempting to make, such inspection, the agent shall promptly report to the Official the refusal and the reasons for the refusal, if the reasons are known by the agent. The Official may seek appropriate legal remedies to enable him to make or complete such Inspection, including seeking appropriate legal remedies from any court having jurisdiction over the matter. If the court grants a remedy to the Official, the property owner must reimburse the City all of the costs and expenses incurred by the City in obtaining such remedy, including court costs and reasonable attorneys' fees.
- (c) If the Official has reasonable cause to believe that discharges from the land-disturbing activities to the MS4 may cause an imminent threat to human health or the environment, an inspection of the site may take place at any time and without notice to the owner of the property or a representative on site. The Official shall present proper credentials upon request of the owner or his representative.
- (d) At any time during the conduct of an inspection, or at such other times as the Official may request information from an owner or his representative, the owner or representative may identify areas of its business, material or processes which contain a trade secret and an inspection of which might reveal such trade secret. If the Official has no clear and convincing reason to question such assertion of the owner or his representative, the inspection report shall note that trade secret

information has been omitted. To the extent practicable, the Official shall protect all information which is designated as a trade secret by the owner or his representative.

## Article 7 ENFORCEMENT AND ABATEMENT

### **Section 7.01 NPDES Permits for Storm Water Discharge Associated with Construction Activities.**

- a. No enforcement action shall be taken by the City for a violation of the terms of this ordinance if any of the following has occurred:
  1. ADEM has issued a notice of violation with respect to the same alleged violation and is proceeding with an enforcement action with respect to such alleged violation;  
ADEM has issued an administrative order with respect to the same
  2. alleged violation and is proceeding with an enforcement action with respect to such violation; or
  3. ADEM has commenced, and is proceeding with, an enforcement action, or has completed any other type of administrative or civil action, with respect to such alleged violation.
- b. Any determination or resolution made by ADEM with respect to an alleged violation shall be final, and the alleged violation shall not be made the subject of any additional enforcement action by the City; provided, however, that an enforcement action may be pursued by the City for continued or continuing substantial violations, subject to the provisions of Section 7.03(b) and pursuant to the following:
  1. ADEM will provide the Official with access to the ADEM NPDES permits issued with respect to each property within its jurisdiction, including inspections and notification of any enforcement actions taken by ADEM.
  2. The Official will notify ADEM and the permit holder, in writing, when the Official demonstrates that an NPDES permit holder is causing a substantial pollutant loading to the MS4.
  3. The Official may rely on ADEM to regulate, and to take enforcement actions against Permittees until such time as a Permittee is in continuing substantial violation of its NPDES permit and ADEM has failed to respond in a timely manner in accordance with Code of Alabama 1975, § 11-89C-1 et seq. If there is a continuing substantial violation of an ADEM NPDES permit and ADEM fails to respond as stated above, the Permittee shall be subject to this ordinance for that violation.

### **Section 7.02 Immediate Threats to Public Health or Welfare.**

Notwithstanding any other provision in this ordinance to the contrary, in the event of an immediate threat to the public health or welfare, the Official may take all appropriate measures to remove or alleviate such threat.

### **Section 7.03 Notification; Enforcement Remedies.**

- a. Verbal Warning: Whenever the Official finds that any person is in violation of any provision of this ordinance, or any order issued hereunder, the Official or his agent may serve upon such person a verbal warning of violation. This level of warning is intended for minor violations that would not cause significant harm to the environment.
- b. Notification of Violation: Whenever the Official finds that any person is in violation

of any provision of this ordinance, or any order issued hereunder, the Official or his agent may serve upon such person written notice of the violation. Within ten (10) calendar days of the date of such notice, an explanation of the violation and a plan for the satisfactory correction and future prevention thereof, including specific required actions, shall be submitted to the Official. Submission of such plan shall in no way relieve such person in violation of this ordinance of liability for any violations occurring before or after receipt of the notice of violation.

- c. Compliance Order: When the Official finds that any person has violated, or continues to violate, this ordinance, or has not completed remedial measures described in a previously issued Notice of Violation by the date set forth for such completion in the Notice of Violation, he may issue a compliance order to the violator, directing that, within a specified time period, adequate structures and devices be installed, or procedures implemented, and properly operated, or other action be taken, to remedy such violation. Compliance orders may also contain such other requirements as may be reasonably necessary and appropriate to address such violation, including the construction of appropriate structures, installation of devices and self-monitoring and management practices.
- d. Stop Work Order: When the Official finds that any person has violated, or continues to violate, this ordinance or any order issued under this ordinance; the Official may issue a Stop Work Order to such person to cease and desist all operations on the jobsite in violation immediately. The Stop Work Order shall remain in effect until the applicant or other responsible person has taken the remedial measures set forth in the Notice of Violation or Compliance Order issued. Work associated with BMP installation or maintenance may be allowed under Stop Work Order, if specified in the Order. A Stop Work Order can be issued in conjunction with other enforcement actions.
- e. Violation of a Compliance Order or Repeated Unresolved Notices of Violation: The penalty for violation of a Compliance Order or for repeated unresolved Notices of Violation shall be a fine in the amount of \$200 for a single-family residential site and \$400 for all other sites. Said fine shall be paid to the Building Safety Department within 5 working days of issuance. Payment of said fine does not relieve the applicant of obligations to comply with all other provisions of the Ordinance.
- f. Revocation of Permit and Forfeiture of Surety: When the Official finds that any person continues to violate provisions of this Ordinance, even after having been assessed a fine, the Official may officially revoke the Permit. Revocation of the Permit will also result in forfeiture of the associated surety. Said surety will be used to restore the site in such a way to eliminate hazardous conditions, erosion and/or drainage problems.

#### **Section 7.04 Unlawful Acts, Misdemeanor.**

It shall be unlawful for any person to:

- a. violate any provision of this ordinance;
- b. violate the provisions of any Permit issued pursuant to this ordinance; Such person shall be guilty of a misdemeanor; and each day of such violation, failure or refusal to comply with this ordinance shall be deemed a separate offense and punishable accordingly. Any person found to be in violation of any of the provisions of this ordinance shall be punished by a fine of not less than \$100.00 and not more

than \$500.00 and/or up to 180 days in jail.

**Section 7.05 Judicial Proceedings and Relief.**

- a. The Official may initiate proceedings in any court of competent jurisdiction against any person who has, or who, the Official has reason to believe, is about to:
  1. violate any provision of this ordinance;
  2. violate any provision of a Permit;
  3. fail or refuse to comply with any lawful order issued by the Official.
- b. The Official, with the consent of the City Council, may also initiate civil proceedings in any court of competent jurisdiction seeking monetary damages for any damages caused to public storm water facilities by any person, and may seek injunctive or other equitable relief to enforce compliance with the provisions of this ordinance or to force compliance with any lawful orders of the Official or the Board.



**Article 8  
MISCELLANEOUS**

**Section 8.01 Notices.**

Whenever the City is required or permitted to:

- a. give a notice to any party except a Verbal Warning, such notice must be in writing; or
- b. deliver a document to any party; such notice or document may be delivered by personal delivery, certified mail (return receipt requested), registered mail (return receipt requested) or a generally recognized overnight carrier, to the address of such party which is in the records of the City or is otherwise known to the City.

**Section 8.02 References.**

Whenever an Article or Section is referred to in this ordinance, unless the context clearly indicates the contrary, such reference shall be to an article or section of this ordinance.

**Section 8.03 Severability.**

The provisions of this ordinance are severable. If any part of this ordinance is determined by a court of law to be invalid, unenforceable or unconstitutional, such determination shall not affect any other part of this ordinance.

**Section 8.04 Captions.**

The captions of articles and sections are for the purpose of reference only, and such captions shall not affect the meaning of any provision of this ordinance.

**Section 8.05 Effective Date.**

This ordinance shall be published as required by law and shall become effective on the 1st day of January, 2021.

**DONE, ORDERED, ADOPTED and APPROVED** this the 28<sup>th</sup> day of December, 2020.

Ashley C. Curry  
Mayor

ATTESTED BY:

Rebecca Leavings  
City Clerk

**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 Number 2987 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 28<sup>th</sup> day of December, 2020, as same appears in the official records of said City.

Posted at Vestavia Hills Municipal Center, Vestavia Hills Library in the Forest, and Vestavia Hills New Merkle House and Vestavia Hills Recreational Center this the \_\_\_\_\_ day of \_\_\_\_\_, 2020.

Rebecca Leavings  
City Clerk

PATRICK H. BOONE  
ATTORNEY AND COUNSELOR AT LAW  
NEW SOUTH FEDERAL SAVINGS BUILDING, SUITE 705  
215 RICHARD ARRINGTON, JR. BOULEVARD NORTH  
BIRMINGHAM, ALABAMA 35203-3720  

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TELEPHONE (205) 324-2018  
FACSIMILE (205) 324-2295

**E-Mail: [patrickboone@bellsouth.net](mailto:patrickboone@bellsouth.net)**

November 13, 2020

By Electronic Transmission

City Manager Jeffrey D. Downes  
Vestavia Hills Municipal Center  
1032 Montgomery Highway  
Vestavia Hills, Alabama 35216

In Re: Ordinance Number 2769/Controlling and Regulating Erosion and Sedimentation and  
Ordinance Number 2770/Prohibiting the Discharge of Pollutants in the Municipal Storm  
Water System

Dear Mr. Downes:

On October 30, 2020, I submitted to you my written legal opinion regarding the proposed amendments of Ordinance Number 2769 that controls and regulates erosion and sedimentation. A copy of that opinion is attached hereto.

On November 4, 2020, you requested that I review Ordinance Number 2770 that prohibits the discharge of pollutants into the City storm water system. You pointed out that Section 10.2 of Ordinance Number 2770 provides for an appeal at the City level, while Ordinance Number 2769 does not provide such an appeal.

In addition, you requested my assurance, from a legal standpoint, that both ordinances provide due process for violators and that prosecution in the Municipal Court is an appropriate remedy for violations of the two ordinances.

The purpose of this letter is to provide you with my legal opinions. At the outset, it is necessary to review state law that authorizes the enactment of Ordinance Numbers 2769 and 2770 and some of the important provisions of those two ordinances.

November 13, 2020

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**I. STATE LAW**  
**TITLE 11-89C-1, ET SEQ., CODE OF ALABAMA, 1975**

The Alabama Legislature enacted Act 2014-439 entitled “Storm Water Discharges Into Separate Storm Sewers” and said act is codified at Title 11-89C-1, et seq., *Code of Alabama, 1975* (the “law”). Some of the important provisions of that law are set forth below.

**A. DEFINITIONS:** Title 11-89C-2, *Code of Alabama, 1975*, sets for the following definitions:

1. Title 11-89C-2(5), *Code of Alabama, 1975*, defines “illicit discharge” as follows:

“(5) **ILLICIT DISCHARGE.** Any discharge to a municipal separate storm sewer that is not composed entirely of storm water, except discharges pursuant to an NPDES permit (other than the NPDES permit for discharges from the municipal separate storm sewer) and discharges resulting from fire fighting and emergency management activities.”

2. Title 11-89C-2(7), *Code of Alabama, 1975*, defines “municipal separate storm sewer” as follows:

“(7) **MUNICIPAL SEPARATE STORM SEWER.** A conveyance or system of conveyances, including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, manmade channels, or storm drains:

(i) Owned or operated by a city, town, county, association, or other public body;

(ii) Designed or used for collecting or conveying storm water;

(iii) Which is not a combined sewer; and

(iv) Which is not part of a publicly owned treatment works as defined in 40 C.F.R. Section 122.2.”

**B. MUNICIPAL REQUIREMENTS:** The law requires municipalities in Alabama to do the following things:

1. **To Regulate and Control Storm Water Discharges:** Municipalities are required to enact resolutions or ordinances to specifically regulate and control storm water discharges and eliminate the discharge of pollutants to its municipal separate storm sewers (Title 11-89C-9(a), *Code of Alabama, 1975*). In furtherance of these objectives, a municipality may:

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“(2) Prohibit by resolution, ordinance, order, or similar means illicit discharges to its municipal separate storm sewers.

(3) Control by resolution, ordinance, order, or similar means the discharge to its municipal separate storm sewers of spills, dumping, or disposal of materials other than storm water.”

2. **ADEM:** Title 11-89C-9(a), *Code of Alabama, 1975*, reads in pertinent part as follows:

“In establishing these rules and regulations, an individual governing body or public corporation shall, to the fullest extent allowed by applicable storm water laws, primarily rely upon ADEM for the enforcement and permitting of discharges to its municipal separate storm sewers from sites required to have an ADEM NPDES permit, rather than subjecting these sites to double enforcement or permitting.”

3. **Revenue-Raising Measure Powers:** Title 11-89C-9(d), *Code of Alabama, 1975*, reads in pertinent part as follows:

“(d) Any governing body may establish, levy, and impose by resolution or ordinance, any revenue-raising measure within its jurisdiction, including, but not limited to, fees, charges, or assessments, without any referendum unless required by the Constitution of Alabama of 1901, deemed necessary to implement this chapter or to comply with all provisions of storm water law.”

4. **Enforcement:** Title 11-89C-9(e), *Code of Alabama, 1975*, provides as follows:

“(e) Any governing body may establish by resolution or ordinance necessary enforcement measures and procedures for the enforcement of rules, regulations, resolutions, ordinances, or orders through actions before a municipal, district or circuit court of competent jurisdiction, including penalties for violations in accordance with Section 11-45-9.”

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Title 11-45-9, *Code of Alabama, 1975*, sets forth the penalties for ordinance violations and reads in pertinent parts as follows:

“(a) Municipal ordinances may provide penalties of fines, imprisonment, hard labor, or one or more of such penalties for violation of ordinances.

(b) Except as otherwise provided in this section, no fine shall exceed five hundred dollars (\$500), and no sentence of imprisonment or hard labor shall exceed six months.”

5. **Civil Remedies:** Title 11-89C-9(f), *Code of Alabama, 1975*, reads as follows:

“(f) Any governing body may institute a civil suit for damages or injunctive relief, except as limited by Section 11-89C-11 and Section 11-89C-12, in any district or circuit court having jurisdiction for a violation of this chapter. Damages may include all costs, expenses, or other losses resulting directly or indirectly from a violation of any rule, regulation, resolution, ordinance, order, or other provision authorized by this chapter, and may include attorney's fees, court costs, and trial expenses.”

6. **Additional Municipal Authority:** Title 11-89C-9(g), *Code of Alabama, 1975*, reads as follows:

“(g) A governing body may do any and all things, whether or not specifically or expressly authorized in this section or chapter, not otherwise prohibited by law, that are necessary and convenient to do individually, and to aid and cooperate with the public corporation or other entity in carrying out the storm water laws and the purposes and intent of this chapter.”

## **II. ORDINANCE NUMBERS 2769 AND 2770**

- A. PREPARED BY:** Storm Water Management Authority (SWMA).
- B. ATTORNEYS THAT PREPARED ORDINANCE NUMBERS 2769 AND 2770:**
1. David Maxie
  2. Wade Merritt
  3. Alton Parker
- C. ENACTMENT OF BOTH ORDINANCES BY THE CITY OF VESTAVIA HILLS:**
1. **Ordinance Number 2769:** June 11, 2018
  2. **Ordinance Number 2770:** June 11, 2018
- D. EFFECTIVE DATE:**
1. **Ordinance Number 2769:** July 1, 2018
  2. **Ordinance Number 2770:** July 1, 2018
- E. PURPOSE:**
1. **Ordinance Number 2769:** To reduce erosion and sedimentation (caused by land disturbance) into the City storm water system (MS4).
  2. **Ordinance Number 2770:** To prevent discharge of pollutants (non-storm water discharges) into the City storm water system (MS4).
- F. ORDINANCES ADMINISTERED BY:**
1. **Ordinance Number 2769:** City Engineer (Section 2)
  2. **Ordinance Number 2770:** City Engineer (Section 2)
- G. ORDINANCES ENFORCEMENT:**
1. **Ordinance Number 2769:** By City Engineer (Section 2)
  2. **Ordinance Number 2770:** By City Engineer (Section 2)

**H. WARNINGS FOR MINOR VIOLATIONS:**

- 1. **Ordinance Number 2769:** Verbal warning (Section 7.03a)
- 2. **Ordinance Number 2770:** Verbal or written (Section 10.1a)

**I. APPEAL:**

- 1. **Ordinance Number 2769:** None
- 2. **Ordinance Number 2770:** Section 10.2 reads as follows:

**“Section 10.2 Appeal Violation.**

Any person receiving a Notice of Violation or Compliance Order may appeal the determination of the City of Vestavia Hills. The notice of appeal must be received within ten (10) days from the date of the Notice of Violation/Compliance Order. Hearing on the appeal before the appropriate authority or his/her designee shall take place within fifteen (15) days from the date of receipt of the notice of appeal. The decision of the municipal authority or their designee shall be final.”

**J. VIOLATORS MAY BE PROSECUTED IN MUNICIPAL COURT UNDER TITLE 11-45-9, CODE OF ALABAMA, 1975:**

- 1. **Ordinance Number 2769:** Section 10.8
- 2. **Ordinance Number 2770:** Section 7.04

**III. MY RECOMMENDATIONS**

**A. ORDINANCE NUMBER 2769:** I recommend approval of the proposed amendments to Ordinance Number 2769 as submitted to me by redline revision.

**B. ORDINANCE NUMBER 2770:**

1. **Section 10.2:** I recommend that Section 10.2 of Ordinance Number 2770 be amended, so that as amended, said Section 10.2 shall read in words and figures as follows:

**“Section 10.2 Final decision.**

The decision of the City Engineer or their designee shall be final.”



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2. **Section 10.3:** I recommend that the title to Section 10.3 of Ordinance Number 2770 be amended, so that as amended, said title shall read as follows:

**“Section 10.3 Enforcement Measures After Final Decision.”**

**C. BASIS FOR RECOMMENDATIONS:**

1. The two ordinances are very similar. Ordinance Number 2769 prohibits the discharge of “**sedimentation**” into the municipal storm water system, while Ordinance Number 2770 prohibits the discharge of “**pollutants**” (being anything other than storm water) into the said City storm water system.

2. Both ordinances provide that the City Engineer shall administer and enforce the ordinances.

3. In my opinion, our professional civil engineers have the most expertise and knowledge regarding the matters controlled and regulated in the two ordinances.

4. Alabama law at Title 11-89C-9(e), *Code of Alabama, 1975*, provides that municipal courts may be utilized as one of several enforcement measures.

5. The fact that both ordinances provide that violators may receive warning notices gives violators the chance to correct their mistakes before legal action is initiated.

I hope that the above information will satisfy any and all of your concerns. If you have any questions regarding any matters set forth in this legal opinion, please give me a call. In the meantime, I will be prepared to discuss these issues at the Work Session scheduled for next Monday, November 16, 2020.

Sincerely,



Patrick H. Boone  
Vestavia Hills City Attorney

PHB:gp

Attachment

cc: City Clerk Rebecca Leavings (by e-mail)

**PATRICK H. BOONE**  
ATTORNEY AND COUNSELOR AT LAW  
NEW SOUTH FEDERAL SAVINGS BUILDING, SUITE 705  
215 RICHARD ARRINGTON, JR. BOULEVARD NORTH  
BIRMINGHAM, ALABAMA 35203-3720

TELEPHONE (205) 324-2018

FACSIMILE (205) 324-2295

**E-Mail: patrickboone@bellsouth.net**

October 30, 2020

By Electronic Mail

City Manager Jeffrey Downes  
Vestavia Hills Municipal Center  
1032 Montgomery Highway  
Vestavia Hills, Alabama 35216

In Re: Ordinance Number 2769 Controlling Erosion and Sedimentation

Dear Mr. Downes:

On October 27, 2020, you sent to me via electronic mail a copy of proposed Ordinance Number 2769 that controls erosion and sedimentation. You requested that I review the ordinance and provide you with my comments. The purpose of this letter is to comply with your request.

**I. LEGAL OPINION**

It is my legal opinion that the proposed ordinance as written meets the requirements of Alabama law.

**II. BASIS FOR LEGAL OPINION**

I base my legal opinion upon the following Alabama legal authorities:

**A. GENERAL LAW:**

1. **Source of Municipal Authority:** The source of municipal authority is the authority that the Alabama Legislature granted by statute. *Scott v. Coachman, as Mayor of the City of Fairfield*, 73 So.3d 607 (2011), and Title 11-45-1, *Code of Alabama*, 1975.

October 30, 2020  
Page 2

2. **Ordinances and Resolutions:** Title 11-45-1, *Code of Alabama, 1975*, provides as follows:

“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** (*emphasis added*).”

3. **An Ordinance is a Law:** The Supreme Court of Alabama decided the case of *Tutwiler Drug Co., Inc. v. City of Birmingham*, 418 So.2d 102 in 1982, and held that a municipal ordinance constitutes law provided it is not inconsistent with state law.


B. **SPECIFIC ALABAMA LAW:**

1. **Authority:** Title 11-89C-1, et seq., *Code of Alabama, 1975*, authorizes municipalities to enact ordinances regarding storm water discharges into separate storm sewers.

III. **MY RECOMMENDATION**

I do not have any recommendations for additions, deletions, changes and/or corrections. Therefore, from a legal standpoint, I recommend the ordinance in the form written by Lori Beth Kearley. Please call me if you have any questions regarding this matter.

Sincerely,



Patrick H. Boone  
Vestavia Hills City Attorney

PHB:gp

cc: City Clerk Rebecca Leavings (by e-mail)

**ORDINANCE NUMBER 2988**

**AN ORDINANCE RESCINDING ORDINANCE NUMBER 2770 AND AMENDED SECTION 5.5, ARTICLE IV ENTITLED STORMWATER MANAGEMENT ILLICIT DISCHARGE, ESTABLISHING METHODS FOR CONTROLLING THE INTRODUCTION OF POLLUTANTS INTO MUNICIPAL SEPARATE STORM SEWER SYSTEM IN ORDER TO COMPLY WITH THE REQUIREMENTS OF THE NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM (NPDES) PERMIT PROCESS**

**STORM WATER MANAGEMENT ILLICIT DISCHARGE**

**RECITALS**

**WHEREAS**, on June 11, 2018, the City Council of the City of Vestavia Hills adopted and approved Ordinance 2770 to establish methods for controlling the introduction of pollutants into municipal separate storm sewer system; and

**WHEREAS**, the Mayor and City Council feel it is in the best public interest and rescind Ordinance Number 2770; and

**WHEREAS**, the purpose of this ordinance is to provide for the health, safety, and general welfare of the citizens of the City of Vestavia Hills through the regulation of non-storm water discharges to the storm drainage system to the maximum extent practicable as required by federal and state law.

**WHEREAS**, this ordinance establishes methods for controlling the introduction of pollutants into the municipal separate storm sewer system (MS4) in order to comply with requirements of the National Pollutant Discharge Elimination System (NPDES) permit process.

**WHEREAS**, this ordinance provides the minimum content for implementing and enforcing a STORM WATER management consistent with the Alabama Department of Environmental Management (ADEM) permit currently issued to the City of Vestavia Hills.

**WHEREAS**, the objectives of this ordinance are:

1. To regulate the contribution of pollutants to the municipal separate storm sewer system (MS4) by STORM WATER discharges by any user

2. To prohibit Illicit Connections and Discharges to the municipal separate storm sewer system
3. To establish legal authority to carry out all inspection, surveillance and monitoring procedures necessary to ensure compliance with this ordinance.

**NOW, THEREFORE BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF VESTAVIA HILLS, ALABAMA, THAT ORDINANCE NUMBER 2770 IS RESCINDED AND ORDINANCE 2988 IS APPROVED AND ADOPTED AND SECTION 5.5, ARTICLE IV OF THE VESTAVIA HILLS CODE OF ORDINANCES ENTITLED “STORMWATER MANAGEMENT ILLICIT DISCHARGE,” IS AMENDED, AS FOLLOWS:**

**Section 1  
DEFINITIONS**

For the purposes of this ordinance, the following words and terms shall have the meaning assigned to them in this section.

*Authorized enforcement agency* - employees or designees of the director of the municipal agency designated to enforce this ordinance.

*Best Management Practices (BMPs)* - schedules of activities, prohibitions of practices, general good housekeeping practices, pollution prevention and educational practices, maintenance procedures, and other management practices to prevent or reduce the discharge of pollutants directly or indirectly to STORM WATER, receiving waters, or STORM WATER conveyance systems. BMPs also include treatment practices, operating procedures, and practices to control site runoff, spillage or leaks, sludge or water disposal, or drainage from raw materials storage.

*Clean Water Act.* - The federal Water Pollution Control Act (33 U.S.C. § 1251 et seq.), and any subsequent amendments thereto.

*Construction Activity* - Activities subject to NPDES Construction Permits. Currently these include construction projects resulting in land disturbance of 1 acre or more. Such activities include but are not limited to clearing and grubbing, grading, excavating, and demolition.

*Hazardous Materials* - Any material, including any substance, waste, or combination thereof, which because of its quantity, concentration, or physical, chemical, or infectious characteristics may cause, or significantly contribute to, a substantial present or potential hazard to human health, safety, property, or the environment when improperly treated,

stored, transported, disposed of, or otherwise managed.

*Illegal Discharge* - Any direct or indirect non-storm water discharge to the storm drain system, except as exempted in Section X of this ordinance.

*Illicit Connections.* - An illicit connection is defined as either of the following:

1. Any drain or conveyance, whether on the surface or subsurface, which allows an illegal discharge to enter the storm drain system including but not limited to any conveyances which allow any non-storm water discharge including sewage, process wastewater, and wash water to enter the storm drain system and any connections to the storm drain system from indoor drains and sinks, regardless of whether said drain or connection had been previously allowed, permitted, or approved by the City of Vestavia Hills or,
2. Any drain or conveyance connected from a commercial or industrial land use to the storm drain system which has not been documented in plans, maps, or equivalent records and approved by the City of Vestavia Hills.

*Industrial Activity* - Activities subject to NPDES Industrial Permits as defined in 40 CFR, Section 122.26 (b)(14).

*National Pollutant Discharge Elimination System (NPDES) Storm Water Discharge Permit* - means a permit issued by EPA (or by a State under authority delegated pursuant to 33 USC § 1342(b)) that authorizes the discharge of pollutants to waters of the United States, whether the permit is applicable on an individual, group, or general area-wide basis.

*Non-Storm Water Discharge* - Any discharge to the storm drain system that is not composed entirely of storm water.

*Person* - Any individual, association, organization, partnership, firm, corporation or other entity recognized by law and acting as either the owner or as the owner's agent.

*Pollutant* - Anything which causes or contributes to pollution. Pollutants may include, but are not limited to: paints, varnishes, and solvents; oil and other automotive fluids; non-hazardous liquid and solid wastes and yard wastes; refuse, rubbish, garbage, litter, or other discarded or abandoned objects, ordinances, and accumulations, so that same may cause or contribute to pollution; floatables; pesticides, herbicides, and fertilizers; hazardous substances and wastes; sewage, fecal coliform and pathogens; dissolved and particulate metals; animal wastes; wastes and residues that result from constructing a building or structure; and noxious or offensive matter of any kind.

*Premises* Any building, lot, parcel of land, or portion of land whether improved or unimproved including adjacent sidewalks and parking strips.

*Storm Drainage System* - Publicly-owned facilities by which storm water is collected and/or conveyed, including but not limited to any roads with drainage systems, municipal

streets, gutters, curbs, inlets, piped storm drains, pumping facilities, retention and detention basins, natural and human-made or altered drainage channels, reservoirs, and other drainage structures.

*Storm Water* - Any surface flow, runoff, and drainage consisting entirely of water from any form of natural precipitation, and resulting from such precipitation.

*Storm Water Pollution Prevention Plan* - A document which describes the Best Management Practices and activities to be implemented by a person or business to identify sources of pollution or contamination at a site and the actions to eliminate or reduce pollutant discharges to STORM WATER, STORM WATER Conveyance Systems, and/or Receiving Waters to the Maximum Extent Practicable.

*Wastewater* - means any water or other liquid, other than uncontaminated storm water, discharged from a facility.

**Section 2**  
**ADMINISTRATION**

The City of Vestavia Hills shall administer, implement, and enforce the provisions of this ordinance. Any powers granted or duties imposed upon the City of Vestavia Hills may be enforced by the City Engineer or delegated in writing by an official of the City of Vestavia Hills to persons or entities acting in the beneficial interest of or in the employ of the agency.



### Section 3 ILLICIT DISCHARGE PROHIBITIONS

#### Section 3.1 Prohibition of Illegal Discharges.

No person shall discharge or cause to be discharged into the municipal storm drain system or watercourses any materials, including but not limited to pollutants or waters containing any pollutants that cause or contribute to a violation of applicable water quality standards, other than storm water.

#### Section 3.2 Illegal Discharges Exemptions.

The prohibition shall not apply to any non-storm water discharge permitted under an NPDES permit, waiver, or waste discharge order issued to the discharger and administered under the authority of the Federal Environmental Protection Agency, provided that the discharger is in full compliance with all requirements of the permit, waiver, or order and other applicable laws and regulations, and provided that written approval has been granted for any discharge to the storm drain system.

The following discharges are exempt from discharge prohibitions established by this ordinance provided that they have been determined not to be substantial contributor of pollutants by the City or Alabama Department of Environmental Management (ADEM):

- a) Water line flushing;
- b) Landscape irrigation or lawn watering (not consisting or treated, or untreated wastewater unless otherwise authorized);
- c) Diverted stream flows;
- d) Uncontaminated ground water infiltration
- e) Uncontaminated pumped groundwater;
- f) Discharges from potable water sources;
- g) Foundation or footing drains (not including active groundwater dewatering systems);
- h) Air conditioning condensation or drains;
- i) Irrigation water (not consisting or treated, or untreated wastewater unless otherwise authorized);
- j) Rising ground water;
- k) Springs;
- l) Water from crawl space pumps;
- m) Lawn watering runoff;
- n) Individual residential car washing, to include charitable carwashes;
- o) Residential street wash water;
- p) Discharges or flows from firefighting activities (including fire hydrant flushing);
- q) Flows from natural riparian habitat or wetlands;
- r) Dechlorinated swimming pool discharges;
- s) Dye testing is an allowable discharge, but requires a verbal notification to the City of Vestavia Hills prior to the time of the test.

**Section 3.3 Prohibition of Illicit Connections.**

- a) The construction, use, maintenance or continued existence of illicit connections to the storm drain system is prohibited.
- b) This prohibition expressly includes, without limitation, illicit connections made in the past, regardless of whether the connection was permissible under law or practices applicable or prevailing at the time of connection.
- c) A person is considered to be in violation of this ordinance if the person connects a line conveying sewage to the MS4, or allows such a connection to continue.

**Section 4**  
**SUSPENSION OF MS4 ACCESS**

**Section 4.1 Suspension Due to Illicit Discharges in Emergency Situations.**

The City of Vestavia Hills may, without prior notice, suspend MS4 discharge access to a person when such suspension is necessary to stop an actual or threatened discharge which presents or may present imminent and substantial danger to the environment, or to the health or welfare of persons, or to the MS4 or Waters of the United States. If the violator fails to comply with a suspension order issued in an emergency, the City of Vestavia Hills may take such steps as deemed necessary to prevent or minimize damage to the MS4 or Waters of the United States, or to minimize danger to persons.

**Section 4.2 Suspension Due to the Detection of Illicit Discharge.**

Any person discharging to the MS4 in violation of this ordinance may have their MS4 access terminated if such termination would abate or reduce an illicit discharge. The City of Vestavia Hills will notify a violator of the proposed termination of its MS4 access. The violator may petition the City of Vestavia Hills for a reconsideration and hearing.

A person commits an offense if the person reinstates MS4 access to premises terminated pursuant to this Section, without the prior approval of the City of Vestavia Hills.

**Section 5**  
**INDUSTRIAL, COMMERCIAL OR CONSTRUCTION ACTIVITY DISCHARGES**

Any person subject to an industrial, commercial or construction activity NPDES storm water discharge permit shall comply with all provisions of such permit. Proof of compliance with said permit may be required in a form acceptable to the City of Vestavia Hills prior to the allowing of discharges to the MS4.

## **Section 6 MONITORING OF DISCHARGES**

### **Section 6.1 Applicability.**

This section applies to all facilities that have storm water discharges associated with industrial, commercial, and construction activity.

### **Section 6.2 Access to Facilities.**

- a) The City of Vestavia Hills shall be permitted to enter and inspect facilities subject to regulation under this ordinance as often as may be necessary to determine compliance with this ordinance. If a discharger has security measures in force which require proper identification and clearance before entry into its premises, the discharger shall make the necessary arrangements to allow access to representatives of the City of Vestavia Hills.
- b) Facility operators shall allow the City of Vestavia Hills ready access to all parts of the premises for the purposes of inspection, sampling, examination and copying of records that must be kept under the conditions of an NPDES permit to discharge storm water, and the performance of any additional duties as defined by state and federal law.
- c) The City of Vestavia Hills shall have the right to set up on any permitted facility such devices as are necessary in the opinion of the City of Vestavia Hills to conduct monitoring and/or sampling of the facility's storm water discharge.
- d) The City of Vestavia Hills has the right to require the discharger to install monitoring equipment as necessary. The facility's sampling and monitoring equipment shall be maintained at all times in a safe and proper operating condition by the discharger at its own expense. All devices used to measure STORM WATER flow and quality shall be calibrated to ensure their accuracy.
- e) Any temporary or permanent obstruction to safe and easy access to the facility to be inspected and/or sampled shall be promptly removed by the operator at the written or oral request of the City of Vestavia Hills and shall not be replaced. The costs of clearing such access shall be borne by the operator.
- f) Unreasonable delays in allowing the City of Vestavia Hills access to a permitted facility is a violation of a storm water discharge permit and of this ordinance. A person who is the operator of a facility with a NPDES permit to discharge storm water associated with industrial activity commits an offense if the person denies the City of Vestavia Hills reasonable access to the permitted facility for the purpose of conducting any activity authorized or required by this ordinance.
- g) If the City of Vestavia Hills has been refused access to any part of the premises from which STORM WATER is discharged, and he/she is able to demonstrate probable cause to believe that there may be a violation of this ordinance, or that there is a need to inspect and/or sample as part of a routine inspection and sampling program designed to verify compliance with this ordinance or any order issued hereunder, or to protect the overall public health, safety, and welfare of the community, then the City of Vestavia Hills may seek issuance of a search warrant from any court of competent jurisdiction.

**Section 7**  
**REQUIREMENT TO PREVENT, CONTROL, AND REDUCE STORM WATER  
POLLUTANTS BY THE USE OF BEST MANAGEMENT PRACTICES**

The City of Vestavia Hills will adopt requirements identifying Best Management Practices for any activity, operation, or facility which may cause or contribute to pollution or contamination of storm water, the storm drain system, or waters of the U.S. The owner or operator of a commercial or industrial establishment shall provide, at their own expense, reasonable protection from accidental discharge of prohibited materials or other wastes into the municipal storm drain system or watercourses through the use of these structural and non-structural BMPs. Further, any person responsible for a property or premise, which is, or may be, the source of an illicit discharge, may be required to implement, at said person's expense, additional structural and non-structural BMPs to prevent the further discharge of pollutants to the municipal separate storm sewer system. Compliance with all terms and conditions of a valid NPDES permit authorizing the discharge of storm water associated with industrial activity, to the extent practicable, shall be deemed compliance with the provisions of this section. These BMPs shall be part of a STORM WATER pollution prevention plan (SWPP) as necessary for compliance with requirements of the NPDES permit.

**Section 8**  
**WATERCOURSE PROTECTION**

Every person owning property through which a watercourse passes, or such person's lessee, shall keep and maintain that part of the watercourse within the property free of trash, debris, excessive vegetation, and other obstacles that would pollute, contaminate, or significantly retard the flow of water through the watercourse. In addition, the owner or lessee shall maintain existing privately owned structures within or adjacent to a watercourse, so that such structures will not become a hazard to the use, function, or physical integrity of the watercourse.

**Section 9**  
**NOTIFICATION OF SPILLS**

Notwithstanding other requirements of law, as soon as any person responsible for a facility or operation, or responsible for emergency response for a facility or operation has information of any known or suspected release of materials which are resulting or may result in illegal discharges or pollutants discharging into storm water, the storm drain system, or water of the U.S. said person shall take all necessary steps to ensure the discovery, containment, and cleanup of such release. In the event of such a release of hazardous materials said person shall immediately notify emergency response agencies of the occurrence via emergency dispatch services. In the event of a release of non- hazardous materials, said person shall notify the City of Vestavia Hills in person or by phone or facsimile no later than the next business day. Notifications in person or by phone shall be confirmed by written notice addressed and mailed to the City of Vestavia Hills within three business days of the phone notice. If the discharge of prohibited materials emanates from a commercial or industrial establishment, the owner or operator of such establishment shall also retain an on-site written record of the discharge and the actions taken to prevent its recurrence. Such records shall be retained for at least three years.



## **Section 10**

### **ENFORCEMENT AND ABATEMENT**

Whenever the City of Vestavia Hills finds that a person has violated a prohibition or failed to meet a requirement of this Ordinance, the City of Vestavia Hills may enforce the ordinance with escalating procedures.

#### **Section 10.1 Notification; Enforcement Remedies.**

- a) Warning Notice: A warning notice of violation is the lowest level of formal response to a violation. It is a verbal or written response presented to the violator shortly after a violation has been identified and is intended for minor violations that would not cause significant harm to the environment.
- b) Notification of Violation: Whenever the Official finds that any person is in violation of any provision of this ordinance, or any order issued hereunder, the Official or his agent may serve upon such person written notice of the violation requiring the removal of illicit discharges and immediate cessation improper disposal practices within ten (10) calendar days of the date of such notice. Compliance by written notice of violation to the responsible person may require without limitation:
  1. The performance of monitoring, analyses, and reporting;
  2. The abatement or remediation of storm water pollution or contamination hazards and the restoration of any affected property; and
  3. Payment of a fine to cover administrative and remediation costs; and
  4. The implementation of source control or treatment BMPs.
- c) Compliance Order: Whenever abatement of a violation and/or restoration of affected property is not possible within ten (10) days, a compliance order may be issued to the violator. The order shall set forth a deadline within which such remediation or restoration must be completed. Said order shall further advise that, should the violator fail to remediate or restore within the established deadline, the work will be done by a designated governmental agency or a contractor and the expense thereof shall be charged to the violator.

#### **Section 10.2 Final Decision.**

The decision of the City Engineer or their designee shall be final.

#### **Section 10.3 Enforcement Measures After Final Decision.**

If the violation has not been corrected pursuant to the requirements set forth in the Notice of Violation, or, in the event of an appeal, within **thirty (30) days** of the decision of the municipal authority upholding the decision of the City of Vestavia Hills, then representatives of the City of Vestavia Hills shall enter upon the subject private property and are authorized to take any and all measures necessary to abate the violation and/or restore the property. It shall be unlawful for any person, owner, agent or person in possession of any premises to refuse to allow the government agency or designated contractor to enter upon the premises for the purposes set forth above.

#### **Section 10.4 Cost of Abatement of the Violation.**

Within 30 days after abatement of the violation, the owner of the property will be notified of the cost of abatement, including administrative costs. The property owner may file a written protest objecting to the amount of the assessment within 10 days. If the amount due is not paid within a timely manner as determined by the decision of the municipal

authority or by the expiration of the time in which to file an appeal, the charges shall become a special assessment against the property and shall constitute a lien on the property for the amount of the assessment.

Any person violating any of the provisions of this ordinance shall become liable to the city by reason of such violation. The liability shall be paid in not more than 12 equal payments. Interest at the rate of twelve (12) percent per annum shall be assessed on the balance beginning on the 1st day following discovery of the violation.

#### **Section 10.5 Injunctive Relief.**

It shall be unlawful for any person to violate any provision or fail to comply with any of the requirements of this Ordinance. If a person has violated or continues to violate the provisions of this ordinance, the City of Vestavia Hills may petition for a preliminary or permanent injunction restraining the person from activities which would create further violations or compelling the person to perform abatement or remediation of the violation.

#### **Section 10.6 Compensatory Action.**

In lieu of enforcement proceedings, penalties, and remedies authorized by this Ordinance, the City of Vestavia Hills may impose upon a violator alternative compensatory actions, such as storm drain stenciling, attendance at compliance workshops, creek cleanup, etc.

#### **Section 10.7 Violations Deemed a Public Nuisance.**

In addition to the enforcement processes and penalties provided, any condition caused or permitted to exist in violation of any of the provisions of this Ordinance is a threat to public health, safety, and welfare, and is declared and deemed a nuisance, and may be summarily abated or restored at the violator's expense, and/or a civil action to abate, enjoin, or otherwise compel the cessation of such nuisance may be taken.

#### **Section 10.8 Criminal Prosecution.**

Any person that has violated or continues to violate this ordinance shall be liable to criminal prosecution to the fullest extent of the law, and shall be subject to a criminal penalty of \$500 dollars per violation per day and/or imprisonment for a period of time not to exceed one hundred and eighty (180) days.

The City of Vestavia Hills may recover all attorney's fees court costs and other expenses associated with enforcement of this ordinance, including sampling and monitoring expenses.

#### **Section 10.9 Remedies Not Exclusive.**

The remedies listed in this ordinance are not exclusive of any other remedies available under any applicable federal, state or local law and it is within the discretion of the City of Vestavia Hills to seek cumulative remedies.

**Section 11**  
**MISCELLANEOUS**

**Section 11.1 Applicability.**

This ordinance shall apply to all water entering the storm drain system generated on any developed and undeveloped lands unless explicitly exempted by the City of Vestavia Hills.

**Section 11.2 Severability.**

The provisions of this ordinance are hereby declared to be severable. If any provision, clause, sentence, or paragraph of this Ordinance or the application thereof to any person, establishment, or circumstances shall be held invalid, such invalidity shall not affect the other provisions or application of this Ordinance.

**Section 11.3 Ultimate Responsibility.**

The standards set forth herein and promulgated pursuant to this ordinance are minimum standards; therefore, this ordinance does not intend nor imply that compliance by any person will ensure that there will be no contamination, pollution, nor unauthorized discharge of pollutants.

**Section 11.4 Effective Date.**

This ordinance shall be published as required by law and shall become effective the 1<sup>st</sup> day of January, 2021.

**DONE, ORDERED, ADOPTED and APPROVED** this the \_\_\_\_\_ day of  
December, 2020.

Ashley C. Curry  
Mayor

ATTESTED BY:

Rebecca Leavings  
City Clerk

**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 Number 2988 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 \_\_\_\_\_ day of December, 2020, as same appears in the official records of said City.

Posted at Vestavia Hills Municipal Center, Vestavia Hills Library in the Forest, and Vestavia Hills New Merkle House and Vestavia Hills Recreational Center this the \_\_\_\_\_ day of \_\_\_\_\_, 2020.

Rebecca Leavings  
City Clerk

**RESOLUTION NUMBER 5294**

**A RESOLUTION APPROVING ALCOHOL LICENSE  
FOR MAGIC CITY GROCERY LLC D/B/A THE  
BACKYARD MARKET; JEFFREY BENJAMIN  
GENTRY, EXECUTIVE**

**WHEREAS**, the City Council of the City of Vestavia Hills, Alabama, approves the alcohol license for Magic City Grocery LLC d/b/a The Backyard Market, located at 633 Montgomery Hwy, Vestavia Hills, Alabama, for the sale of 040 - Retail Beer (on or off premises) and 060 - Retail Table Wine (on or off premises); Jeffrey Benjamin Gentry, executive.

**APPROVED and ADOPTED** this the 28th day of December, 2020.

Ashley C. Curry  
Mayor

ATTESTED BY:

Rebecca Leavings  
City Clerk

# INTEROFFICE MEMORANDUM

**DATE:** December 21, 2020

**TO:** Dan Rary, Police Chief

**FROM:** Rebecca Leavings, City Clerk

**RE: Alcohol License Request – 040 - Retail Beer (on or off premises) and 060 - Retail Table Wind (on or off premises)**

Please find attached information submitted by Jeffrey Benjamin Gentry who request an alcohol license to sell 040 - Retail Beer (on or off premises) and 060 - Retail Table Wind (on or off premises) at the Magic City Grocery LLC d/b/a The Backyard Market, 633 Montgomery Hwy, Vestavia Hills, Alabama.

I am scheduling this case to be heard by the City Council on 28th day of December, 2020 at 6:00 PM (Monday). Please advise me of your recommendation for this license. If you have any questions, please contact me.

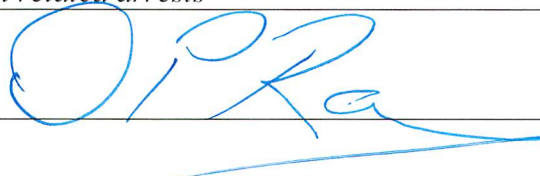
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## Reply

I have reviewed the available background information on the above referenced applicant and submit the following to the City Council:

	<i><b>Application cleared by P.D.</b> This indicates that there are <b>NO</b> convictions for drug trafficking, convictions regarding arrest involving danger to children, weapon charges, violent felony crimes against persons, felony sexual offenses or habitual alcohol related arrests</i>
✓	<i><b>Needs further review.</b> This indicates that the Police Chief has found records of some convictions of alcohol related arrests</i>
	<i><b>Does not recommend.</b> This indicates that the Police Chief has found records of convictions for drug trafficking, convictions regarding arrest involving danger to children, weapon charges, violent felony crimes against persons, felony sexual offenses or habitual alcohol related arrests</i>

Reviewed: \_\_\_\_\_





# STATE OF ALABAMA ALCOHOLIC BEVERAGE CONTROL BOARD ALCOHOL LICENSE APPLICATION

**Confirmation Number: 20201215085820498**

Type License: 040 - RETAIL BEER (ON OR OFF PREMISES) State: \$150.00 County: \$75.00

Type License: 060 - RETAIL TABLE WINE (ON OR OFF PREMISES) State: \$150.00 County: \$75.00

Trade Name: **THE BACKYARD MARKET** Filing Fee: \$100.00

Applicant: **MAGIC CITY GROCERY LLC** Transfer Fee:

Location Address: 633 MONTGOMERY HWY VESTAVIA HILLS, AL 35216

Mailing Address: 312 GRANADA DRIVE VESTAVIA HILLS, AL 35216

County: JEFFERSON Tobacco sales: NO Tobacco Vending Machines:

Product Type: Type Ownership: LLC

Book, Page, or Document info: 2020041842

Do you sell Draft Beer?:

Date Incorporated: 05/1/2020 State incorporated: AL County Incorporated: JEFFERSON

Date of Authority: 05/01/2020

Federal Tax ID: 85-1687433 Alabama State Sales Tax ID: R010842298

Name:	Title:	Date and Place of Birth:	Residence Address:
JEFFREY BENJAMIN GENTRY 6338201 - AL	MEMBER	10/06/1978 BIRMINGHAM, AL	312 GRANADA DRIVE VESTAVIA HILLS, AL 35216

Has applicant complied with financial responsibility ABC RR 20-X-5-.14? YES

Does ABC have any actions pending against the current licensee? NO

Has anyone, including manager or applicant, had a Federal/State permit or license suspended or revoked? NO

Has a liquor, wine, malt or brewed license for these premises ever been denied, suspended, or revoked? NO

Are the applicant(s) named above, the only person(s), in any manner interested in the business sought to be licensed? YES

Are any of the applicants, whether individual, member of a partnership or association, or officers and directors of a corporation itself, in any manner monetarily interested, either directly or indirectly, in the profits of any other class of business regulated under authority of this act? NO

Does applicant own or control, directly or indirectly, hold lien against any real or personal property which is rented, leased or used in the conduct of business by the holder of any vinous, malt or brewed beverage, or distilled liquors permit or license issued under authority of this act? NO

Is applicant receiving, either directly or indirectly, any loan, credit, money, or the equivalent thereof from or through a subsidiary or affiliate or other licensee, or from any firm, association or corporation operating under or regulated by the authority of this act? NO

Contact Person: JEFF GENTRY

Business Phone: 205-365-7762

Fax:

Home Phone: 205-365-7762

Cell Phone: 205-365-7762

E-mail: JGENTRY@BAMAWISE.COM

PREVIOUS LICENSE INFORMATION:

Trade Name:

Applicant:

Previous License Number(s)

License 1:

License 2:



**STATE OF ALABAMA**  
**ALCOHOLIC BEVERAGE CONTROL BOARD**  
 ALCOHOL LICENSE APPLICATION



**Confirmation Number: 20201215085820498**

If applicant is leasing the property, is a copy of the lease agreement attached? YES  
 Name of Property owner/lessor and phone number: W.B. CROW INVESTMENT COMPANY 205-936-3263  
 What is lessors primary business? REAL ESTATE  
 Is lessor involved in any way with the alcoholic beverage business? NO  
 Is there any further interest, or connection with, the licensee's business by the lessor? NO

Does the premise have a fully equipped kitchen? YES  
 Is the business used to habitually and principally provide food to the public? YES  
 Does the establishment have restroom facilities? YES  
 Is the premise equipped with services and facilities for on premises consumption of alcoholic beverages? YES

Will the business be operated primarily as a package store? NO  
 Building Dimensions Square Footage: 3000 Display Square Footage:  
 Building seating capacity: 45 Does Licensed premises include a patio area? YES  
 License Structure: SHOPPING CENTER License covers: PORTION OF  
 Number of licenses in the vicinity: 0 Nearest: 0  
 Nearest school: 0 blocks Nearest church: 0 blocks Nearest residence: 0 blocks  
 Location is within: CITY LIMITS Police protection: CITY

Has any person(s) with any interest, including manager, whether as sole applicant, officer, member, or partner been charged (whether convicted or not) of any law violation(s)?

<b>Name:</b>	<b>Violation &amp; Date:</b>	<b>Arresting Agency:</b>	<b>Disposition:</b>
JEFFREY BENJAMIN GENTRY	DUI 06/22/2007	HOMEWOOD PD	FINE
JEFFREY BENJAMIN GENTRY	DUI 06/01/2002	HOOVER POLICE DEPT	FINE
JEFFREY BENJAMIN GENTRY	DUI 11/17/2001	AUBRUN POLICE DEPT	CONVICTED 05/17/2002 PAID FINE 500.00





STATE OF ALABAMA
ALCOHOLIC BEVERAGE CONTROL BOARD
ALCOHOL LICENSE APPLICATION

Confirmation Number: 20201215085820498

Initial each

Signature page

JG
JG

In reference to law violations, I attest to the truthfulness of the responses given within the application.

In reference to the Lease/property ownership, I attest to the truthfulness of the responses given within the application.

JG

In reference to ACT No. 80-529, I understand that if my application is denied or discontinued, I will not be refunded the filing fee required by this application.

N/A

In reference to Special Retail or Special Events retail license, I agree to comply with all applicable laws and regulations concerning this class of license, and to observe the special terms and conditions as indicated within the application.

N/A

In reference to the Club Application information, I attest to the truthfulness of the responses given within the application.

N/A

In reference to the transfer of license/location, I attest to the truthfulness of the information listed on the attached transfer agreement.

JG

In accordance with Alabama Rules & Regulations 20-X-5-.01(4), any social security number disclosed under this regulation shall be used for the purpose of investigation or verification by the ABC Board and shall not be a matter of public record.

JG

The undersigned agree, if a license is issued as herein applied for, to comply at all times with and to fully observe all the provisions of the Alabama Alcoholic Beverage Control Act, as appears in Code of Alabama, Title 28, and all laws of the State of Alabama relative to the handling of alcoholic beverages.

The undersigned, if issued a license as herein requested, further agrees to obey all rules and regulations promulgated by the board relative to all alcoholic beverages received in this State. The undersigned, if issued a license as herein requested, also agrees to allow and hereby invites duly authorized agents of the Alabama Alcoholic Beverage Control Board and any duly commissioned law enforcement officer of the State, County or Municipality in which the license premises are located to enter and search without a warrant the licensed premises or any building owned or occupied by him or her in connection with said licensed premises. The undersigned hereby understands that he or she violate any provisions of the aforementioned laws his or her license shall be subject to revocation and no license can be again issued to said licensee for a period of one year. The undersigned further understands and agrees that no changes in the manner of operation and no deletion or discontinuance of any services or facilities as described in this application will be allowed without written approval of the proper governing body and the Alabama Alcoholic Beverage Control Board.

JG

I hereby swear and affirm that I have read the application and all statements therein and facts set forth are true and correct, and that the applicant is the only person interested in the business for which the license is required.

Applicant Name (print): Jeffrey Gentry

Signature of Applicant: [Handwritten Signature]

Notary Name (print): Valencia Johnson

Notary Signature: [Handwritten Signature] Commission expires: 4/22/22

Application Taken: App. Inv. Completed: Forwarded to District Office:
Submitted to Local Government: Received from Local Government:
Received in District Office: Reviewed by Supervisor: Forwarded to Central Office: