

STATE OF ALABAMA            )  
   :  
 COUNTY OF BALDWIN         )(

The City Council, City of Fairhope, met in regular session at 6:00 PM  
 Fairhope Municipal Complex Council Chambers, 161 N. Section Street, Fairhope,  
 Alabama, on Monday, July 13, 2009.

Present: Council President Debbie Quinn, Councilmembers: Daniel Stankoski,  
 Lonnie Mixon, Michael Ford, and Rick Kingrea, Mayor Timothy M. Kant, City  
 Attorney Marion Wynne, and Acting City Clerk, Betty Rivenbark

There being a quorum present, Council President Quinn called the meeting to  
 order. The invocation was given by Deacon George Yeend of St. Lawrence Catholic  
 Church and the Pledge of Allegiance was recited. A motion was made by  
 Councilmember Mixon, seconded by Councilmember Kingrea to approve the  
 following minutes, June 19, 2009 work session, June 20, 2009 Work Session  
 (Interviews), June 22, 2009, Work Session, June 22, 2009 Regular City Council  
 minutes with one addition being made to resolution discussion on Thompson  
 Engineering in the last sentence Councilmember Ford asked does the City owe this  
 money and was answered by Mayor Kant, yes, insert – I hope by turning this down  
 and not paying our bills this doesn't hurt our credit.

Sherry Sullivan made the following announcements:

She said that a group of Middle School students were planning a run/walk on  
 Saturday, July 18, 2009, in memory of Emily Dunnam, the student who was  
 tragically killed in an ATV accident last weekend, and

The sundown celebration planned at the municipal pier July 28, 2009 starting  
 at 7:15 PM. There is a short program planned.

Also, on the 28<sup>th</sup> at 6:00 PM at the Nix Center a program is planned by the  
 Fairhope Police Department on the dangers of social networking.

On July 29<sup>th</sup>, at 10:00 AM – 12:00 noon at the Nix Center a program for  
 seniors on how to recognize and protect yourself from scams.

The next item was the Mayor's Veto of Ordinance amending Ordinance  
 No.1378, City Administrator Ordinance. At this time Mayor Kant read his veto letter:

\*

\*

13 July 2009



June 29, 2009

Lisa Hanks, City Clerk  
City Hall  
Fairhope, AL.

Dear Lisa:

I hereby veto Ordinance No 1391 passed June 22, 2009, which amended an earlier ordinance on the City Administrator so as to remove the words that the City Administrator would work "under the direction of the Mayor." As required by law, I hereby state my objections.

It is unfortunate that the council members did not have the benefit of my comments and a full discussion before voting on the ordinance. The printed agenda distributed at the beginning of the meeting showed that the Mayor would speak to the council early in the meeting, before the voting occurred. However, Chairman Dabbie Quinn stated at the beginning of the meeting that she was changing the agenda so that instead the Mayor would not give his comments until the very end of the meeting, well after the time for voting on the ordinance. When Councilman Ford objected and said the Mayor should speak before the voting occurred, Councilmen Mixon, Kingrea and Stankoski voted with the Chairman to move the Mayor's comments to the end of the meeting, even after an executive (secret) session when the council left the chambers to meet with an attorney on an unrelated matter. This was a spiteful attempt to prevent not only the council but also the citizens in attendance from hearing the Mayor's comments.

When the council discussed the ordinance immediately before passage (without hearing the Mayor's comments), Councilman Mixon assured Councilman Ford that removal of the words "under the direction of the Mayor" was just cleaning up the verbiage and that the words were unnecessary and a "duplication" because under the law the City Administrator would already be working under the Mayor's direction. A few days earlier the attorney for the Alabama League of Municipalities had advised the city council that state law required the City Administrator to work under the Mayor's direction. Councilman Kingrea remained silent and did not express his contrary opinion and his disagreement with Mr. Mixon's assurance to Councilman Ford. It became obvious at the end of the meeting that Mr. Kingrea disagreed with Mr. Mixon's assurance. Just before the ordinance was voted upon, Councilman Ford accepted Councilman

Mixon's assurance, and he and the other council members unanimously voted for the ordinance.

Later, at the end of the meeting, after the Mayor was finally allowed to make his comments, a vigorous discussion occurred among the council members. Councilman Ford expressed surprise at the points the Mayor had made. Councilman Kingrea for the first time stated that he disagreed with the advice given to the city council by the attorney for the Alabama League of Municipalities (which was that the City Administrator would have to work under the Mayor's direction) and that he (Mr. Kingrea) thought the council could have a City Administrator who did not work under the Mayor's direction. In expressing his obviously pre-planned thoughts, Mr. Kingrea used papers he had brought to the meeting. Mr. Kingrea, referring to the Alabama League of Municipalities attorney, said that if the League attorney wanted to fight that battle, then the city council would fight it. Councilman Ford stated he felt that he had been deceived and that he would not have voted for the ordinance if Councilman Mixon's assurance was wrong. The City Attorney, Marion "Tut" Wynne, who was appointed by the council, said he thought there was a consensus, based on the recent meeting between the City council and the lawyer for the Alabama League of Municipalities, that the City Administrator would answer to the Mayor.

It is obvious that, since the Mayor was not allowed to speak beforehand, the ordinance was passed after only a brief discussion by the council that was unenlightening and, in one councilman's opinion deceitful. I believe that Councilman Ford will change his vote on reconsideration and vote against the ordinance. Perhaps Councilman Mixon will do likewise if he stands by his statement that he made at the meeting. After all, if the law already requires the City administrator to work under the Mayor's direction (as said), then why not leave the words in the ordinance so that it will conform to the law? Maybe even others will also change their vote because, if they were satisfied with their original ordinance which said the City Administrator will work under the Mayor's direction, then they still should be satisfied with this, unless they have ulterior motives.

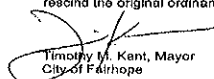
I further object to the ordinance for the following five reasons. First, we do not need a City Administrator because the duties the council is giving him will make him a virtual mayor and I can do the job of Mayor and chief executive officer without any administrator to help me, as I have for over eight years. Second, the city council is attempting to continue its micromanagement of the city by using the newly created City Administrator position. Third, making the employees be responsive to the Mayor and an independent City Administrator will create confusion and conflicts on the part of the employees because no employee should receive orders and instructions from two masters. Fourth, the City Administrator position, with a sterling salary of up to \$110,000 and likely indirect and direct costs of at

City of Fairhope  
1000 1st Street South  
PO Box 929  
Fairhope, AL 36533  
904-928-3126  
904-928-3128  
www.fairhope.com

13 July 2009

least \$300,000, is a gross waste of city money that could be better spent on city services for the citizens. Fifth, and of fundamental importance, the city council should follow, and not fight against, the advice from the impartial attorney for the Alabama League of Municipalities, particularly when the city council has been so willing to recognize statements from this organization about the "strong council, weak mayor" nature of Fairhope, and particularly when the city attorney, appointed by the city council, said he thought there was a consensus that the City Administrator would answer to the Mayor. The last thing Fairhope needs is a city council that fights against advice from an impartial authority just because the advice runs contrary to the city council's attempt to supplant the elected Mayor with a City Administrator of its choice.

For these reasons, I request that the city council sustain this veto and also rescind the original ordinance which created the City Administrator position.



Timothy M. Kent, Mayor  
City of Fairhope

3

After the letter was read Councilmember Kingrea moved to override the Mayor's veto, Councilmember Mixon seconded the motion, Councilmember Ford stated that he does not believe that Councilmember Mixon tried to deceive him, they talked it out, and he said there is a way of getting back here. Council President Quinn called for the question and the vote passed with one vote in opposition by Councilmember Ford, who said we do not need an Administrator.

#### Report of Standing Committees

Utility Committee – New sewer lines. Councilmember Stankoski moved to get full cost accounting for all the new sewer lines being built (manpower/pipe/boring permits/engineering/etc). Councilmember Mixon seconded the motion and it carried unanimously. Councilmember Ford asked Dan McCrory if he could report. Dan addressed the council saying that they had spent probably \$23,500 to Gaineswood, at this point, with labor costs being \$10,000 and total project being \$ 50,000-\$55,000. Probably finish within two weeks. He said they have not started running lines to Key Allego yet.

Finance Committee – Councilmember Mixon said he had conferred with the Mayor and at this time wished to establish a Financial Advisory Committee whose mission would be to investigate and analyze the city finances and the future potential of the finances. He named Mayor Kant, John Brown, Stan Grubin, Dick Kwapil, Mac McCawley, Marvin Wilder, Chuck Zunk as committee members with the City Council being ex-officio. He moved to establish the committee as proposed. Councilmember Stankoski seconded the motion and it passed unanimously.

13 July 2009

Reports of Special Board and Commissions - The minutes of the Historic Preservation Committee meeting May 7, 2009; and minutes of the Personnel Board meeting June 22, 2009 were accepted as presented. Nancy Wilson addressed the council on the donation to the Recreation Department saying that the Fairhope swim team, FAST, made a donation in the amount of \$11,000 to the Recreation Department for the purchase of a specialized time/scoreboard clock for the pool. She said further that the clock will be purchased by the city and will be installed by the city and city property. Councilmember Kingrea moved to accept the donation, Councilmember Mixon seconded the motion and it carried unanimously.

City Attorney Tut Wynne addressed the council and gave a handout on the Noise Ordinance and issues we are having. He said that it has been proven in court that all noise ordinances on the books are unconstitutional. He said there is a case pending in city court now but would not discuss further. He said we need to review or amend these ordinances, and that he had looked into Daphne ordinance. He said again, the last four or five cases have been overturned because ours does not refer to decibel levels, time frames or time constraints. He also referred to Section 4.2 Hours of sale which applies to businesses in Fairhope operating within 200 feet of a residentially-zoned area, and the part of the code referring to alcohol sales whose closing hours shall be between the hour of midnight and 6:00 am of the following day on week days, and between midnight Saturday and 6:00 am Monday following. He said there is a clause where it is possible to receive a dispensation for this Sunday closing from the City Council.

Gregg Mims addressed the council saying that his department had looked at the twenty-five businesses in the city core that this ordinance affects, and said that to his knowledge this has not been enforced. He is aware that certain people are asking for enforcement and if it is enforced it will have to be enforced across the board. He said the Comprehensive Plan encourages mixed use he agrees either enforce or put a moratorium on. Further discussion led to Rick Kingrea making a motion to put a moratorium on for 60 days beginning July 14, 2009, on the Noise Ordinance including Sec. 4.2 of the Code of Ordinances to study the issues. Councilmember Mixon seconded the motion and motion carried with one abstention by Dan Stankoski. Mike Ford asked if this would affect the enforcement of the noise ordinance and Tut said no. Chief Press was asked if this would hinder his department and he said no, he is glad it is being brought to the forefront and have the city council make a decision, he is fine either way. Council President Quinn said she would chair the committee with Rick Kingrea, Gregg Mims, Jonathan Smith, Bill Press and Sherry Sullivan.

13 July 2009

Councilmember Mixon moved to promote Gregg Mims to the City Administrator Position effective July 14, 2009. Councilmember Kingrea seconded the motion and it passed with one no vote by Councilmember Ford. Council President Quinn said that this position was advertised in-house and two applicants applied and one later withdrew his application. Councilmember Ford said that he has nothing against Gregg Mims, that we do not need an administrator, that the position was created for other reasons.

Councilmember Mixon moved to set the pay for the City Administrator at \$110,000 a year. Councilmember Kingrea seconded the motion, and it passed with one no vote by Councilmember Ford.

Police Chief Bill Press addressed the City Council. He said he has had a great two weeks. He went on to give the following report:

Concerns and issues that have also come to my attention include the following:

1. State of Alabama Department of Corrections identified eight (8) areas of concern:

- Paint is needed throughout the interior
- Standard operating procedures should be accessible to all staff
- The intercom and security cameras need repair
- Precautionary fire drills should be conducted on a monthly basis
- The need for the meal plan to be reviewed by a dietician
- Recreation fence needs to be extended
- A law library
- In-service training

Resolve: Captain Mike Comalander has been placed in charge of overseeing the Corrections Department. Corporal Danny Beaver is taking the lead corrections officer role to assist him.

2. There is no regulation to speak of regarding off-duty work

- Payments are made directly to those participating
- No taxes, social security, or FICA are taken out
- There is no assurance that everyone has an equal opportunity to work all available jobs
- The city is paying for insurance, uniforms, fuel, vehicle usage etc. and getting nothing in terms of finance, in return
- There is no penalty for missing an off-duty job where one has already committed to it

13 July 2009

Resolve: Look at standardizing:

- the amount paid to the employee and the city
- payment through the city's payroll vs. direct payment to the employee
- rotational assignments and standardized postings through a coordinator

3. Parking in spots downtown over the two hour limit

Resolve: The parking statutes exist and, therefore, I have no option but enforcement unless the council recommends a grace period to evaluate this issue further. Options include, but are not limited to, increasing the parking time, removing the parking restrictions altogether, or endorsing an enforcement effort. In regard to the latter, my approach would be three fold: a grace period of 2-3 weeks to educate through flyers, newspaper, verbal warnings, etc., empowering the public by providing a number to call when they witness violators, and finally enforcement efforts. A recommendation in regard to enforcement includes a study to hire a meter maid, a small vehicle such as a Cushman that does not take the space of a full vehicle, an increase in fines that will cover all expenses, and a penalty such as towing when numerous fines have not been paid.

4. Internal Affairs Investigations: how they are investigate, conducted, and resolved.

Resolve: We are currently drafting policy that will allow complaints to come in, be investigated, issue discipline recommendations for sustained complaints, as well as prosecution of individuals discussing open-pending cases and committing perjury. Sergeant Craig Sawyer is permanently assigned as the Internal Affairs Investigator and he now reports directly to me. His role is solely to investigate all allegations concerning criminal violations, internal complaints (serious offenses of policy and procedure) and personnel complaints (lesser offenses such as rudeness and discourtesy).

Supervisors will be involved in the recommendation process, which will ultimately come across my desk. I will then approve or disapprove the recommendation, which will then proceed through the existing administrative process- unless future recommended changes are approved by the council.

5. There are no set assignments for patrol, therefore, no accountability of time. The same holds true for reserve officers.

Resolve: Emplace Community Oriented Patrol throughout the City of Fairhope that encompasses every patrol and investigative entity by assigning areas of responsibility.

All officers and investigators will be issued an area they are responsible for, and this will be posted so that everyone on every shift will know who works that particular area. Officers not handling a specific assignment, such as a call for service, will be responsible for any issues and concerns in their area and will be evaluated accordingly.

13 July 2009

This means that we will adopt daily work sheets and conduct monthly reviews of our personnel. Collectively, monthly evaluations can be used to prepare the annual review. Training regarding rating procedures and ensuring continuity of evaluations will be conducted from the top-down so that everyone is on the same page. Reserve officers will be held to work 24 hours a month, actually working shift assignments vs. off-duty jobs unless it involves a special event.

6. He said of immediate concern is to have someone assist him and this organization. He recommended the hiring of Terry Sanders as Assistant Chief.

Lonnie Mixon said he had talked with the Chief and that the Assistant Chief will take the place of the Captain slot vacated by the resignation of Captain Griffis.

A motion was made by Councilmember Mixon to hire Terry Sanders as Assistant Chief, Dan Stankoski seconded the motion and it carried with one no vote by Mike Ford. A motion was then made by Councilmember Mixon to set the Assistant Police Chief salary at \$83,097. Motion was seconded by Councilmember Kingrea and passed with one abstention by Councilmember Ford.

A discussion followed on Parking Enforcement. Mayor Kant said that we had held off writing parking tickets until the parking deck was completed and now it is completed. Further discussion led to a motion by Councilmember Mixon to give a grace period of 30 days and have the Chief come back with a recommendation. Councilmember Stankoski seconded the motion and it carried unanimously.

Councilmember Ford commented that every time we talk about enforcing the two hour law we tackle the merchants. They complain they are having to compete with the big centers that have huge parking lots and we should not penalize people that come to Fairhope to shop they need the business. Mike said he would be glad to work with the Chief on this. The corrections fund was talked about and the idea of hiring a Meter Maid. Chief Press was told to work with Councilmember Stankoski, Nancy Wilson, and Gregg Mims on the Corrections Fund.

Councilmember Ford introduced in writing and moved for the adoption of the following resolution, a resolution adopting and setting fees for seniors for the Fairhope Recreation Center. Liz Chandler, Director of the Recreation Center said that when the fees were adopted in 2007 that a rate for seniors was not set and she wanted to include a senior rate in the fee schedule. A correction was noted in resolution presented that a senior was a person 60 years of age and over. The intent was to have same senior age shown as that of the pool fees. Seconded by Councilmember Mixon motion passed unanimously.

13 July 2009

**RESOLUTION NO. 1543-09**

**WHEREAS**, The Governing Body of the City of Fairhope adopted on September 24, 2007, a resolution approving and adopting fees for the Fairhope Recreation Center, which is Resolution No. 1412-07; and

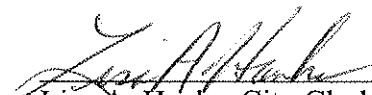
**WHEREAS**, The City of Fairhope hereby proposes to add the following fees for Senior Couples:

Monthly		
Senior Single (60 and over)		\$ 35.00
Senior Couple (60 and over)		\$ 45.00
Quarterly "Taste of The Club"		
Senior Single (60 and over)		\$100.00
Senior Couple (60 and over)		\$130.00

**BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF FAIRHOPE, ALABAMA**, that the proposed fees shall take effect August 1, 2009.

ADOPTED THIS 13TH DAY OF JULY, 2009

ATTEST:

  
 Lisa A. Hanks, City Clerk

  
 Timothy M. Kant, Mayor

Councilmember Ford introduced in writing and moved for the adoption of the following resolution, a resolution setting forth the rules and regulations for the operation of the Fairhope Museum of History located at 24 N. Section Street. Sherry Sullivan said that the museum just wanted to adopt a policy, set guidelines for museum usage, that they have one room that can be booked without cost. Seconded by Councilmember Kingrea motion passed unanimously.



13 July 2009

**RESOLUTION NO. 1544-09**

**A RESOLUTION SETTING FORTH THE RULES AND REGULATIONS FOR THE OPERATION OF THE FAIRHOPE MUSEUM OF HISTORY LOCATED AT 24 N. SECTION STREET, FAIRHOPE, ALABAMA.**

**WHEREAS**, The Fairhope Museum of History is an educational institution dedicated to the collection, preservation, interpretation, and exhibition of historical artifacts. The Museum's comprehensive collections represent the historical achievements of local cultures and highlight the history of Fairhope. The Museum promotes the understanding and enjoyment of history by presenting a wide range of exhibitions, programs, and events for the Fairhope Museum of History and the public.

**WHEREAS**, While the Fairhope Museum of History encourages and supports the use of its facility for limited events and activities, all are subject to the following policies and procedures to ensure the safety and integrity of the Museum, its collections, and its visitors. We ask all who use the Museum to respect and comply with the policies and procedures. The general policies listed below should be consulted before requesting use of the Fairhope Museum of History for events. The event sponsor is responsible for knowing and observing the guidelines set forth by the City of Fairhope and the Fairhope Museum of History. To arrange to use the Museum for an event/activity, please contact the Museum's Director, Donnie Barrett at 251-929-1474.

**BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF FAIRHOPE, ALABAMA**, as follows:

**I. CRITERIA FOR SCHEDULING EVENTS IN THE MUSEUM**

**THE ONLY ROOM AVAILABLE FOR USE IS THE TOWN COUNCIL CHAMBERS LOCATED ON THE 2ND FLOOR OF THE MUSEUM.**

1. Consideration of each request is determined by the timing of the event in relation to Museum activities/events, the ability of the Museum staff to accommodate the intended use, and the suitability of the event with regard to the safety and security of the facility, and its contents.
2. *Please note that the Museum may not be used for weddings or wedding receptions. The Museum reserves the right to deny requests and cannot guarantee availability for any specific events.*

**II. OTHER POLICIES**

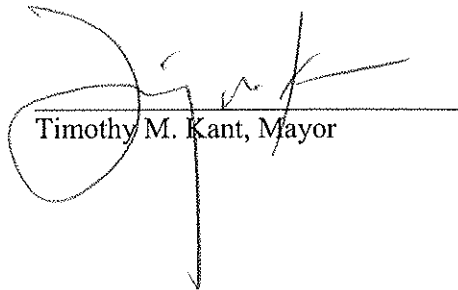
1. Use and request of the Museum is limited to **Fairhope based organizations only.**
2. No organization may use the room on a weekly or monthly basis.
3. The room is only available during normal operational hours of the museum.
4. Capacity limited to 40 people.

13 July 2009

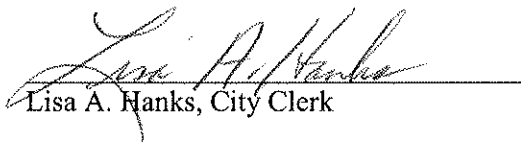
5. Refreshments are only allowed in town council chambers.
6. All set-up and clean up is the responsible of the user. Failure to clean-up may result in fee.
7. All debris/trash must be removed and furniture put back in original location.
8. No museum displays may be tampered with. Damage may result in fee.
9. Noise must be kept to a minimum.
10. Events cannot interfere with museum visitors and the door to town chambers must remain open at all times.
11. Pets are not allowed in any areas of the building with the exception of Seeing Eye dogs.
12. Alcoholic beverages strictly prohibited
13. Smoking is not permitted in any part of the building.

The Council reserves the right to amend, delete, adjust, or waive any and all stipulations set out herein.

ADOPTED this 13th day of July, 2009

  
\_\_\_\_\_  
Timothy M. Kant, Mayor

Attest:

  
\_\_\_\_\_  
Lisa A. Hanks, City Clerk

Councilmember Mixon introduced in writing and moved for the amendment to Resolution No. 1539-09 adopted June 22, 2009, a resolution authorizing Mayor Kant and Gen. Supt. Gregg Mims to work with County officials to create an intergovernmental funding agreement for the funding of a County transit hub in Fairhope in accordance with the letter from Eastern Shore Shopping Center, LLC. Seconded by Councilmember Kingrea motion passed unanimously.

13 July 2009

**RESOLUTION NO. 1545-09**

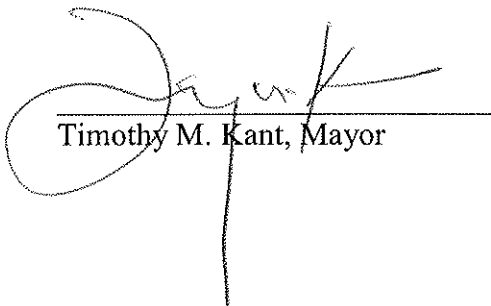
**WHEREAS**, The Governing Body of the City of Fairhope adopted on June 22, 2009, Resolution No. 1539-09, authorizing Mayor Tim Kant and General Superintendent Gregg Mims to work with County officials to create an intergovernmental funding agreement for the funding of a County transit hub in Fairhope in accordance with the April 28, 2009 letter from Eastern Shore Shopping Center, LLC regarding the proposed ground lease for 1.61 +/- acres Fairhope Avenue; and

**WHEREAS**, The basic terms of the agreement were listed in said Resolution and Item Number one should have read:

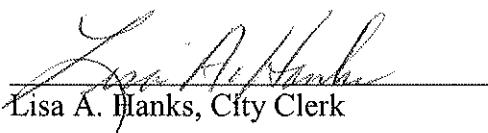
1. The City would reimburse the County the monthly lease payment for the property in question based on the amount reflected in the 20-year lease between the County and Mr. Randy Delchamps (i.e. \$2,000.00 per month with a maximum 15% increase every five years). The funding would begin following the execution of the County's lease.

**BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF FAIRHOPE, ALABAMA**, that the City of Fairhope hereby authorizes the change in the basic terms of the agreement to be in accordance with the April 28, 2009 letter from Eastern Shore Shopping Center, LLC.

Adopted on this 13th day of July, 2009

  
\_\_\_\_\_  
Timothy M. Kant, Mayor

Attest:

  
\_\_\_\_\_  
Lisa A. Blanks, City Clerk

Councilmember Stankoski introduced in writing and moved for the adoption of the following Resolution, wherein Maddie's Fund and the Haven, the City of Fairhope Animal Control entered into an agreement to support the collection and adoption of homeless animals. Nancy Wilson, the City Treasurer, said we will receive \$20,000 for this and have to report in a timely manner its annual shelter statistics for calendar year 2010 and 2011. Seconded by Councilmember Ford motion passed unanimously.

13 July 2009

**RESOLUTION NO. 1546-09**

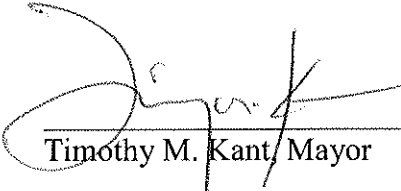
**WHEREAS**, The City of Fairhope Animal Control (“CFAC”) and Maddie’s Fund entered into an agreement to support the collection and adoption of homeless animals. The CFAC will fully, accurately, and in a timely manner, report its annual shelter statistics for each of the calendar years 2010 and 2011, and;

Project Objectives:

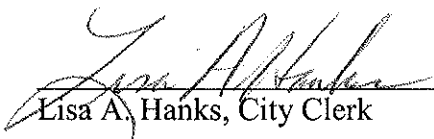
- To support the collection and publication of CFAC’s animal shelter statistics.
- To support other activities on behalf of lost, stray, or homeless dogs and cats.

**BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF FAIRHOPE**, that Mayor Timothy M. Kant is hereby authorized to accept the Grant from Maddie’s Fund to The Haven in the amount of \$20,000.

Adopted This 13th Day of July 2009

  
\_\_\_\_\_  
Timothy M. Kant, Mayor

Attest:

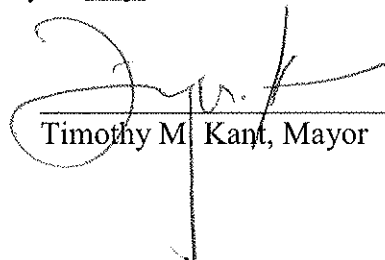
  
\_\_\_\_\_  
Lisa A. Hanks, City Clerk

Councilmember Mixon introduced in writing and moved for the adoption of the following Resolution a request that Mayor Timothy M. Kant submit a recommended budget for the City of Fairhope for FY2010 to the City Council by September 1, 2009. Seconded by Councilmember Kingrea, motion passed unanimously.

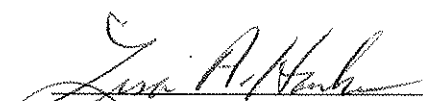
13 July 2009

## RESOLUTION NO. 1547-09

**BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF FAIRHOPE, ALABAMA**, requests that Mayor Timothy M. Kant submit a recommended budget for the City of Fairhope for the FY2010 to the City Council by September 1, 2009.

Adopted on this 13th day of July, 2009  
\_\_\_\_\_  
Timothy M. Kant, Mayor

Attest:

  
\_\_\_\_\_  
Lisa A. Hanks, City Clerk

Councilmember Ford introduced in writing Ordinance No. 1392, an Ordinance to authorize the issuance of the City's General Obligation Warrant in the principal amount of \$2,000,000 (in evidence of a revolving one-year line of credit with Compass Bank for current operating expenses and unanticipated, or emergency, capital improvements related to the City's Utilities Systems). In order to take immediate action, Councilmember Stankoski moved for immediate consideration. Seconded by Councilmember Kingrea, motion for immediate consideration passed unanimously by the following votes: AYE – Quinn, Stankoski, Mixon, Ford and Kingrea. NAY - None. Councilmember Mixon then moved for final adoption of Ordinance No. 1392. Seconded by, councilmember Stankoski, motion for final adoption passed unanimously by the following votes: AYE – Quinn, Stankoski, Mixon, Ford and Kingrea. NAY - None.

Councilmember Mixon introduced in writing Ordinance No. 1393, an Ordinance authorizing and granting to the Utilities Board of the City of Foley d/b/a Riviera Utilities ("Riviera") the right to use the rights-of-way of the City of Fairhope, Alabama ("the city") to provide electrical services to the citizens of the city under the terms of a franchise agreement. City Attorney Wynne said he had reviewed the agreement and signed off on it. In order to take immediate action, Councilmember Mixon moved for immediate consideration. Councilmember Stankoski seconded the motion and motion carried by the following votes: AYE – Quinn, Stankoski, Mixon, Ford and Kingrea. NAY - None.

13 July 2009

Councilmember Mixon moved for final adoption of Ordinance No. 1393, Councilmember Kingrea seconded the motion, and it carried unanimously by the following votes: AYE – Quinn, Stankoski, Mixon, Ford and Kingrea. NAY - None.

The City Council reviewed an application for a Beer/Wine Off Premises License by Jeffery Burkhead, as General Manager, for Southern Family Markets of Fairhope, LLC d/b/a Brunos #304 located at 903 Fairhope Avenue, Fairhope, AL. Councilmember Mixon moved to approve the issuance of the license. Seconded by Councilmember Ford, motion passed unanimously by voice vote.

Discussion was held on the Franchise Agreement for use of City parks, right-of-ways, buildings, etc. Attorney Wynne said he had amended the first agreement and changed things as requested. He was asking that the Council review it and the pending requests for use will be on the agenda for the next meeting. Councilmember Mixon moved for acceptance of revised agreement, Councilmember Kingrea seconded the motion and it carried unanimously.

Electric Superintendent, Scott Sligh, addressed the Council asking permission to repair the transformer that burned at the Morphy/Church Street substation to be used as a back up transformer. He was asked the cost and said \$25,000 and asked the cost of securing a new one and said \$250,000. Councilmember Mixon asked if we had funds and was told yes. Councilmember Mixon moved to approve repair as requested, Councilmember Ford seconded the motion and it carried unanimously.

Having presented a letter (in file) a spokesman said the FSTC would make a \$24,000 contribution to the Fairhope Museum of History (to be paid in \$2,000 monthly increments over the next year). They requested that the funds be used at the discretion of Fairhope Museum Director, Donnie Barrett, for exhibits and archiving and not for utilities, salaries, maintenance or any other operating expense.

Councilmember Kingrea expressed that the only problem he had with this is naming a person to be in charge of the funds, why not just say the Director, and he said he did not mean to infer any distrust of Mr. Barrett. Councilmember Ford said that Mr. Barrett had been in charge of the museum funds and projects even before the current museum was built and he had every confidence in him. Councilmember Mixon moved to accept this contribution with Mr. Barrett being in charge of funds to be used for archiving and exhibits. Councilmember Ford seconded the motion and it carried with one no vote by Rick Kingrea.

Council President Quinn asked for information on the ADECA boat that is stored at Fly Creek. Mayor Kant stated that in seeking information to report he has learned that the boat will soon be sold at auction. He said it was just a place for them to store it and that there is no liability involved to the City. Councilmember Stankoski asked if we had a time frame and was told probably within two months.

13 July 2009

Council President Quinn read the Accounts Payable/Cash Disbursements for June 2009 shown below and asked for a motion to approve. Councilmember Mixon moved to approve, Councilmember Kingrea seconded the motion and it passed unanimously.

#### Public Participation --

Mark Polon addressed the City Council on the Noise Ordinance saying he has been working on this for the last four months and appreciates the help he has gotten from employees. For a point of clarification he asked Chief Press if he got a call at 1:00 AM complaining of noise would he respond and Chief Press said yes, he responds to all complaints. He also referred to Sec. 4.2 Code of Ordinances which had been brought up by Attorney Wynne. Mr. Polon said he would be glad to offer his services for the study proposed. His main complaint is outdoor noises, he said he complained about outdoor music and it has moved indoors but now patio noises are just as bad even though he has talked to the two establishments and they have tried to control their patrons.

Casi Callaway of Mobile Baykeeper and Jackie Wavrunek, President, Fly Creek Preservation Association, addressed the City Council, first thanking them for the success of the Grandman Triathlon held in Fairhope recently and secondly, through a letter they had presented thanked the Planning Department and staff for making sure that all regulations had been enforced at the Shoppes at Fairhope Village project/Publix/Regency Centers and then asked that the City Council to hire an independent engineer to look at the perceived problems still existing.

Jonathan Smith said he appreciated the kind words, that he has been enforcing laws. He said Volkert & Associates had certified that the pond meets City requirements and it was built accordingly. Casi asked again that we hire an independent engineer that violations are occurring on site, Councilmember Kingrea asked if they were willing to pay for it; he said if they are going to make allegations they need to step up to the plate and pay. Councilmember Mixon said we have staff and have to go by the recommendations, that they make recommendations and have papers saying it was built to code. Casi said they feel strongly enough to file suit and will continue to go forward. Jonathan Smith said that a court summons was issued and that they have corrected the rip rap in the wetlands but everything has been certified and built to code and regulations.

Kevin Boone spoke to the City Council first saying he was a long time resident of Fairhope and his family had been here for many years. He said it has become a joke to say that he lives in Fairhope, the Mayor/Council feud is an embarrassment, Nobody here gets along and that they seem to have their own personal agendas. As far as the City Administrator position, you don't need one. He doesn't care what people care or think it is getting embarrassing, and they need to resolve it.

Nancy Straughan spoke saying Kevin had said most of what she wished to say. She brought up the incident at the Sales Tax Forum where they were disrespectful to Mayor Kant, and it embarrassed everyone.

13 July 2009

Randy Weaver spoke saying that what the City Council does pervades all of the City of Fairhope, that the buffoonery carried on needs to stop and that they all need to get along and carry on the business of the city.

John Parker spoke saying he is a forty-two resident of Fairhope. He read a statement and asked that his comments be included in the minutes:

The following were not on the agenda but given permission to speak:

Lee Turner who said he owns the business at 101 Bancroft Street. He said he supports the noise ordinance, and noted that they are actually 230 ft. from a residential district and mentioned the building that was built by Charlie Bassett and the new apartments on Bancroft Street saying the Comprehensive Plan had been amended to actually encourage mixed use dwellings downtown and that when we first developed it the main issue brought out was to protect the downtown, city core.

Ron Allen spoke questioning the City Administrator position and statement Rick Kingrea had made about him not having to report to the Mayor.

Councilmember Kingrea stated that he had since learned that his statement was wrong, he had talked to Ken Smith and that the City Administrator would report to the Mayor on a day to day basis.

Paul Ripp spoke mentioning that there are allegations of four lawsuits possibly pending on Publix/Regency Centers.

Dick Bensman, 116 Wedge Loop, said he is conflicted, that what he sees is part of growing pains, working through what has to be done.

Judy Culbreath a resident of Fly Creek, need to reconsider not hiring an independent engineer, expressed concern for runoff from Publix shopping center into Mobile Bay.

Clyde Panneton, 19265 Quail Creek Drive, said change is difficult, painful, appreciate what council does.

Mayor Kant spoke thanked everyone for speaking and said it is time to heal. He introduced David Whetsone a longtime resident, who he had talked to Friday and suggested he come share his comments with the council.


David Whetstone spoke, saying he came in peace, brought out his concern for the city what he is hearing, need to work together, his love for the community. He mentioned the change in government where the Mayor no longer has a vote after the city population went over 12,000 and brought out and talked about the dangers of confusing executive and legislative roles when a council takes over hiring and authority. He said a Mayor is covered by a municipality's insurance but council members only have power as a voting body, not as individuals. So a council member acting alone can be sued without the protection of the city's insurance in time of emergency. He said the Mayor is still the chief executive officer and used the example, in time of emergency, what impact will the City Administrator have, that



13 July 2009

an impetus of power be followed – Mayor be manager, acting official. He offered to be a mediator, and is available to talk to anyone anytime they wanted to contact him.

Council President Quinn entered the following memorandum to go into an Executive Session for approximately 20 minutes:



July 13, 2009

Timothy M. Kari, A.C.M.C.  
 Mayor  
 Joe A. Hunt  
 City Clerk  
 Nancy E. Wood, CPA  
 City Treasurer  
 Councilmember  
 MICHAEL Paul A. King  
 City Engineer  
 Keith L. Moore  
 Director of Public Works  
 Patrick R. Nixon, C.M.A.  
 City Manager

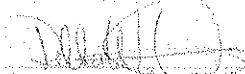
Council President Quinn  
 City Councilmembers

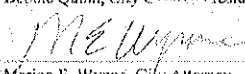
As City Attorney Marion E. Wynne, I hereby request the Fairhope City Council go into executive session based on Section 36-25A-7(a)(3) to discuss the legal ramifications of and legal options for pending litigation; and controversies not yet being litigated but imminently likely to be litigated or imminently likely to be litigated if the governmental body pursues a proposed course of action.

City Attorney Wynne does hereby declare that the City Council of the City of Fairhope rise from a Regular City Council meeting, on Monday, July 13, 2009, to go into Executive Session.

The City Council shall be in Executive Session for approximately 20 minutes minutes/hour(s). At the end of the Executive Session the City Council shall return to the City Council Chambers to resume the Regular City Council meeting.

The time is 8:05 PM City Council exits the dais to go into Executive Session.

  
 Debbie Quinn, City Council President

  
 Marion E. Wynne, City Attorney

18 North State Street  
 PO Box 929  
 Fairhope, Alabama 36533  
 251 994 2136  
 251 994 2216 fax  
 www.fairhope.org

Councilmember Mixon moved to go into Executive Session. Seconded by Councilmember Kingrea, motion passed unanimously by voice vote.

Exited the dais at 8:05 PM. Returned at 8:25 PM.

13 July 2009

Councilmember Kingrea introduced in writing Ordinance No. 1394, an Ordinance authorizing and granting to Mediacom Southeast, LLC (Mediacom) the right to use the Rights-of-way of the City of Fairhope, Alabama (The City) to provide cable services to the citizens of the city under the terms of a cable television system franchise agreement subject to the addition of a mediation clause and moved for immediate consideration. Councilmember Stankoski seconded the motion and it carried unanimously by the following voice votes: AYE – Quinn, Stankoski, Mixon, Ford and Kingrea. NAY - None. Councilmember Mixon moved for final adoption of Ordinance No. 1394. Seconded by Councilmember Kingrea, motion passed unanimously by the following voice votes: AYE – Quinn, Stankoski, Mixon, Ford and Kingrea. NAY - None.

There was no Mayor's Report.

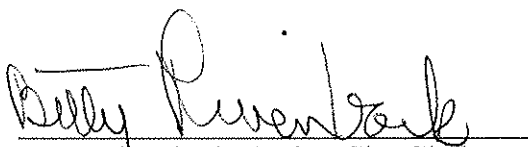
Council comments – Councilmember Ford said what needed had been taken care of.

Council President Quinn asked to be heard on an item not on the agenda. Councilmember Ford moved to have her speak, Councilmember Mixon seconded the motion and it carried unanimously. Council President Quinn said she would like for the City Council to do something to help Police Chief Press with a relocation fee. She is proposing that we grant him a relocation fee not to exceed \$7500. Councilmember Mixon moved to give him a relocation fee of up to \$7500. Councilmember Kingrea seconded and motion carried unanimously.

Gregg Mims addressed the City Council and thanked them for appointing him as Administrator and pledged to work with the Mayor and Council. He also said he and his staff had for months heard accusations about Publix/Regency Centers and that they had kept quiet but that for the record everything had been done by the letter of Fairhope's law all rules and regulations followed and certifications have been signed off on and are in order.

There being no further business to come before the City Council, the meeting was duly adjourned at 8:40 p.m.

  
Debbie W. Quinn, Council President

  
Betty Rivenbark, Acting City Clerk