

STATE OF ALABAMA)
 :
 COUNTY OF BALDWIN)

The City Council, City of Fairhope, met in regular session at 5:30 p.m., Fairhope Municipal Complex Council Chamber, 161 North Section Street, Fairhope, Alabama 36532, on Monday, 10 November 2008.

Present were Council President Debbie W. Quinn, Councilmembers: Daniel Stankoski, Lonnie L. Mixon, Michael A. Ford, and Rick Kingrea, Mayor Timothy M. Kant, City Attorney Marion E. Wynne, and City Clerk Lisa A. Hanks.

There being a quorum present, Council President Quinn called the meeting to order. The invocation was given by Arthur Bosarge and the Pledge of Allegiance was recited. Council President Quinn explained that the City Council is an ongoing governmental body and they would approve the minutes in two parts. Councilmember Stankoski moved to approve minutes of the October 27, 2008, regular meeting. Seconded by Councilmember Mixon, motion passed unanimously by voice vote. Councilmember Mixon moved to approve minutes of the November 3, 2008, organizational meeting as amended by Council President Quinn. Seconded by Councilmember Stankoski, motion passed unanimously by voice vote.

Sherry Sullivan made the following announcements:

- Flu Shots will be given on Thursday, November 13, 2008 from 10:00 a.m. to 6:00 p.m. at the James P. Nix Center - Open to the Public. The cost is \$15 per shot or bring your Medicare Card.
- City of Fairhope Annual Tree Lighting Celebration will be on Thursday, November 20, 2008 at 5:30 p.m., The Lights on at 6:00 p.m. - Downtown Fairhope.
- November 15, 2008 is Electronic Amnesty Day from 10:00 a.m. to 2:00 p.m. Bring your electronics.
- November 15, 2008 will also be Round-up Day in Fairhope at the Fairhope Museum from 6:00 p.m. to 9:00 p.m. Celebrate Fairhope's Founders and enjoy entertainment, refreshments, and fun.

Mayor Kant presented and Jennifer Fidler, Public Works Director, read the following Proclamation declaring November 15, 2008 as Electronic Amnesty Day:

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PROCLAMATION

WHEREAS, to focus the nation's attention on the importance of recycling and closing the loop, businesses, industries, government agencies, nonprofit organizations, and individuals have joined together to celebrate America Recycles Day and are encouraging their employers, staff, customers, and citizens to pledge to recycle more products starting November 15th; and

WHEREAS, participating in America Recycles 2008 is one way citizens can help raise awareness about the need to reduce waste by reusing, recycling, and buying recycled products; and

WHEREAS, state and community leaders need to spread the word about the excellent recycling programs they have established, the growth of markets for recyclable materials, and the importance of buying recycled products.

NOW THEREFORE, I, Timothy M. Kant, as Mayor of the City of Fairhope by virtue of the authority vested in me do hereby proclaim November 15, 2008, America Recycles Day, in Fairhope, with the celebration including an Armistice Day being held on November 15th from 10-2 at the City of Fairhope Museum. This is a chance for citizens to recycle obsolete electronic equipment, making it a perfect time to dispose of old televisions before the digital transition in February.

Timothy M. Kant, Mayor

Jennifer Fidler, Public Works Director, addressed the City Council and gave an update on the grease recycling program. Ms. Fidler mentioned you can pick up a jug at the Fairhope Public Library, City Hall, the Nix Center, or at the Public Works building.

Mayor Kant presented and Donnie Barrett, Museum Director read the following Proclamation declaring November 15, 2008 as Round Up Day:

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Mayor's Comments and Staff Reports:

- Mayor Kant addressed the City Council and suggested that Paulette Fedor and John Meyer be considered for the Strategic Planning Committee. He said that the Finance Committee needed to look at the Mediacom franchise. He mentioned that Teddy Faust said that the appraisals for downtown Fairhope were undervalued and taxes will likely go up. However, if you live in the Historic District, you can call the tax assessor and your taxes could be lowered significantly. Council President Quinn stated that the Historic Preservation Committee would look into the tax breaks. Mayor Kant continued with asking if the City Council wants the Golf Course moved into the General Fund or not. He thanked Council President Quinn and Councilmember Mixon

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for pulling off the resolution putting a \$500.00 limit on purchase orders. He said this would have probably shut down the City of Fairhope. Mayor Kant said he was concerned about who was in charge. The City Treasurer was told not to write a check for cleaning a ditch in Quail Creek. If you look back 20 years, we have paid for surveys, appraisals, etc. The City agreed to a lot of improvements. Most of these improvements were toward developments so the developers did not charge us. Parklands were to be used for the property and I authorized the cleaning. The \$1,500.00 bill to Mr. Dial was being held up. The Mayor and Council have separate duties. The Executive Branch and Legislative Branch are separate. There are some gray issues. Mayor Kant said to hold this bill up is a mistake.

- Rose Fogarty, Finance Director, presented the following PowerPoint presentation no action was taken by City Council.

**CITY OF FAIRHOPE
CITY COUNCIL MEETING
NOVEMBER 10, 2008**

**SUMMARY
FINANCIAL REPORTS
TWELVE MONTHS ENDED
9/30/2008**

General Fund					
	Sept. 2008	Sept. 2007	12 months Ended 9/30/2008	12 months Ended 9/30/2007	YTD Increase (Decrease)
Revenues	3,584,869	2,027,349	21,250,343	21,285,479	(35,136)
Expenses	1,859,064	1,597,013	20,918,430	20,669,503	248,927
Excess Revenues Over (Under) Expenses	1,725,205	430,336	331,913	615,976	

Slide 1

Gas Fund					
	Sept. 2008	Sept. 2007	12 months Ended 9/30/2008	12 months Ended 9/30/2007	YTD Increase (Decrease)
Revenues	503,121	357,873	7,851,431	7,416,713	434,718
Cost of Energy	209,864	122,945	4,162,256	3,519,969	642,287
Expenses	210,826	273,262	3,374,541	3,253,004	121,537
Excess Revenues Over (Under) Expenses	82,431	(38,334)	314,634	643,740	

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Slide 2

Electric Fund					
	Sept. 2008	Sept. 2007	12 months Ended 9/30/2008	12 months Ended 9/30/2007	YTD Increase (Decrease)
Revenues	1,952,768	1,986,469	17,859,547	16,745,190	1,114,357
Cost of Energy	1,273,280	1,011,215	11,484,321	9,800,259	1,684,062
Expenses	262,673	676,720	5,746,985	5,747,705	(720)
Excess Revenues Over (Under) Expenses	416,815	298,554	628,241	1,197,226	

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Water Fund					
	Sept. 2008	Sept. 2007	12 months Ended 9/30/2008	12 months Ended 9/30/2007	YTD Increase (Decrease)
Revenues	722,870	945,966	8,244,119	8,847,146	(603,027)
Cost of Energy	52,495	59,920	654,972	643,695	11,277
Expenses	574,779	502,651	7,547,813	7,451,270	96,543
Excess Revenues Over (Under) Expenses	95,596	383,415	41,334	752,161	

Golf Fund					
	Sept. 2008	Sept. 2007	12 months Ended 9/30/2008	12 months Ended 9/30/2007	YTD Increase (Decrease)
Revenues	137,335	136,454	1,490,593	1,509,800	(19,207)
Expenses	228,067	165,074	1,701,890	1,544,527	157,363
Excess Revenues Over (Under) Expenses	(90,732)	(28,620)	(211,297)	(34,727)	

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All Funds					
	Sept. 2008	Sept. 2007	12 months Ended 9/30/2008	12 months Ended 9/30/2007	YTD Increase (Decrease)
Revenues	6,900,963	5,454,151	56,696,033	55,804,328	891,705
Expenses	4,671,648	4,408,800	55,591,208	52,629,932	2,961,276
Excess Revenues Over (Under) Expenses	2,229,315	1,045,351	1,104,825	3,174,396	

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Slide 7

Council President Quinn asked Ms. Fogarty when she thought we would receive the property taxes. Nancy Wilson, City Treasurer, replied the bills will go out in December and we should receive the bulk of the taxes in March and April.

- Councilmember Mixon addressed the City Council and stated it was great to have this many people here tonight. He said six months ago he began reading handouts. He passed out the following document which is just a skeleton outline of as strong council/weak mayor type of government. He mentioned that an attorney for the Alabama League of Municipalities looked over the document and agreed with the interpretations.

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Fundamentals of Municipal Government

COPY

In Alabama, all municipalities operate under what is known as the Dillon rule. The Dillon rule is a concept that dates back to 1868 and means that all municipalities function at the pleasure of the state legislature. Alabama Code states that in cities of 12,000 or more population which have a mayor-council form of government, the legislative functions of the city must be exercised by a council while the executive functions are exercised by the mayor, who is not a member of the council.

The Alabama state legislature in its wisdom has left to the council the discretion to take the responsibility to be a "strong council" or "not." This means that the grants of power are not effective until the council takes legislative action to set them in motion. Thus, if the council chooses to exercise its powers, it must pass ordinances, resolutions or motions to do so.

Some of the powers entrusted to a municipal council, which is the legislative branch of city government, include:

- Has authority over all legislative aspects of municipal government;
- Determine what sort of services the municipality will offer;
- Has authority over finance and all property of the city;
- Establishes policies that will be followed in the administration of the city;
- Sets tax levels;
- Passes ordinances to provide: Safety, preserves health, promotes prosperity, improve morals, comfort and convenience for the citizens;
- Make appointments of department heads (by ordinance);
- Establish all salaries;
- Specify the duties to be performed;
- Designate who shall be authorized to sign checks;
- Appoints: City Clerk, City Attorney, Police Chief, and Treasurer;
- Appoint committees to study the needs of the various departments and make recommendations to the Council; and,
- Appoint investigative committees to see if the Council wishes are being carried out;
- Keep in mind that neither the Council nor any Council member may direct or supervise in any way the daily task of city employees. Also, remember, individual Council members have no authority other than regular citizens of the municipality. The City Council functions as a body; not as individuals.

Legislative Powers of the Council

The council as a body establishes municipal policy, and the mayor is charged with the duty of implementing that policy. For instance, in Attorney General's Opinion 89-00243, the issue was whether the mayor or the council had authority to establish the working conditions of a police dispatcher. The attorney general concluded that the mayor could require the dispatcher to work at city hall unless the council provided otherwise.

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The question of where the dispatcher performed her duties was a matter of policy, a decision for the council to resolve. Until the council acted, it was the mayor's decision. However, once the council acted, the mayor was required to implement that policy.

Another example of the legislative power of the council is found in Attorney General's Opinion 92-00289. It concluded that the council is responsible for establishing policies which will be followed by municipal departments. Department heads may not set policies unless the council has delegated the authority to them. A council may delegate authority to set policy to the mayor, who may authorize department heads to determine policies which their departments will follow. Where the council has not acted, department heads may set informal procedures to follow until the council acts.

The Attorney General has ruled that if a city council exercises its powers to appoint officers of the city or town, the appointment would be as "otherwise provided by law." This bill would specify that a mayor would appoint officers unless otherwise provided by state law. **Thus, if the council wants to appoint officers, department heads, and/or employees, it must enact a properly drafted ordinance stating such.** If the council does not enact ordinances, the mayor has the power to appoint all officers, whose appointment is not otherwise provided for by law. (Section 11-43-81, Code of Alabama, 1975).

Mayoral Duties and Authority

Some of the responsibilities of the Mayor, who is the executive branch of city government, include:

- Acts as figurehead for the City
- Oversees day to day operations of the City;
- Oversees the municipal employees;
- Sees that bills are paid on time;
- Makes recommendations to the Council;
- Ensures that an annual audit is conducted;
- Presents a budget to the council if required;
- Has responsibility to see that the officers and employees of the City faithfully execute the laws and policies established by the Council;
- Execute municipal contracts;
- Appoint members to the Planning Board;
- Has veto power over ordinances and resolutions, however, the veto can be overturned by a 2/3 vote of the Council.

According to the Handbook for Mayors and Council Members, it is imperative that a harmonious working relationship develops between mayor and the council. It is recommended that the mayor take the initiative to establish a working relationship between the council and the office of the mayor.

Councilmember Kingrea stated that he needed to reiterate what Mixon read and my pledge to you is to work for you and move this City forward. We are going to do what we need to do as a Council and the Mayor is going to do what he needs to do.

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Councilmember Stankoski stated he didn't want what is going to happen in the next few months to hinder the City. The day to day business of the City is run by the Mayor.

Councilmember Stankoski moved to approve the amendments on The Council Procedures Ordinance which were made at the November 3, 2008, organizational meeting and also made at the November 10, 2008, regular meeting. Seconded by Councilmember Kingrea, motion passed by the following voice votes: AYE – Quinn, Stankoski, Mixon, and Kingrea. NAY – Ford.

Councilmember Mixon moved for final adoption of Ordinance No. 1371, an ordinance adopting the rules of procedures in all instances for meetings of the City Council as amended. (Introduced at the November 3, 2008, organizational meeting). Councilmember Ford said the City Council is cutting the Mayor out of everything. Council President Quinn replied this should have happened four years ago. Seconded by Councilmember Stankoski, motion for final adoption passed by the following votes: AYE - Quinn, Stankoski, Mixon, and Kingrea. NAY – Ford.

Councilmember Stankoski introduced in writing Ordinance No. 1372, an ordinance repealing Sections 21-1, 21-2, and 21-3 of the City of Fairhope Code of Ordinances. Councilmember Ford stated this ordinance is saying the Mayor can't be the Utility Superintendent. Councilmember Kingrea agreed with Councilmember Ford. City Attorney Wynne commented that the ordinance is not saying the Mayor cannot be the Utility Superintendent; the City Council is only repealing the ordinance. In order to take immediate action, Councilmember Mixon moved for immediate consideration. Seconded by Councilmember Stankoski, motion for immediate consideration passed unanimously by the following votes: AYE – Quinn, Stankoski, Mixon, Ford, and Kingrea. NAY - None. Councilmember Stankoski then moved for final adoption of Ordinance No. 1372. Seconded by Councilmember Mixon, motion for final adoption passed unanimously by the following votes: AYE – Quinn, Stankoski, Mixon, Ford, and Kingrea. NAY - None.

Councilmember Mixon introduced in writing an ordinance for election and appointment of City Officers and City Council as appointing authority. Councilmember Ford stated we are taking on an awful lot with this ordinance. City Attorney Wynne said that employees have the right to due process and if violated, the persons in charge can be sued as a Body and individually. Councilmember Mixon stated this is adding one more layer of insulation for termination. Councilmember Ford said he would rather have one boss instead of six and the Mayor is over the employees, but can't hire and fire them. Councilmember Kingrea told Councilmember Ford he understood what the concern is, but didn't understand Ford's take on the issue at hand. Councilmember Kingrea continued, an employee will go to the Personnel Board, have due process, and then go to court. There will be no other boss, but Tim Kant for the next four years. The City Council can hold informational

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meetings with employees only. Councilmember Stankoski stated we only have power as a unit. Council President Quinn asked if there was any need to motion for immediate consideration with knowing one vote would be no. This ordinance will layover for final adoption at the next regular City Council meeting.

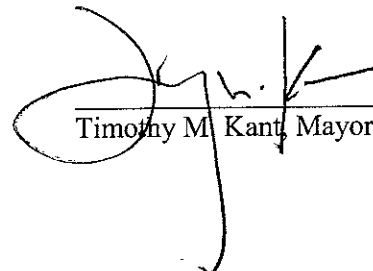
Councilmember Stankoski introduced in writing, and moved for the adoption of the following resolution, a resolution setting certain 2008 – 2009 Holidays. Seconded by Councilmember Ford, motion passed unanimously by voice vote.

RESOLUTION NO. 1470-08

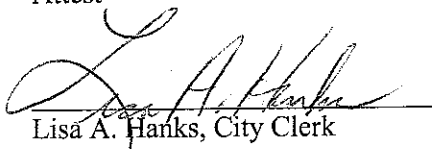
BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF FAIRHOPE, ALABAMA, THAT THE FOLLOWING 2008 - 2009 HOLIDAYS WILL BE OBSERVED BY ALL CITY PERSONNEL EXCEPT EMERGENCY EMPLOYEES:

<i>Veterans Day</i>	-	<i>Tuesday, November 11, 2008</i>
<i>Thanksgiving</i>	-	<i>Thursday & Friday November 27 & 28</i>
<i>Christmas</i>	-	<i>Thursday & Friday, December 25 & 26</i>
<i>New Years Day</i>	-	<i>Thursday, January 1, 2009</i>
<i>Martin Luther King, Jr.</i>	-	<i>Monday, January 19, 2009</i>
<i>Memorial Day</i>	-	<i>Monday, May 25, 2009</i>
<i>Independence Day</i>	-	<i>Friday, July 3, 2009</i>
<i>Labor Day</i>	-	<i>Monday, September 7, 2009</i>

DULY ADOPTED THIS 10TH DAY OF NOVEMBER, 2008.


 Timothy M. Kant, Mayor

Attest


 Lisa A. Hanks, City Clerk

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Councilmember Ford introduced in writing, and moved for the adoption of the following resolution, a resolution of the City of Fairhope expressing support for Act 2008-391 of the 2008 Regular Session. Seconded by Councilmember Mixon, motion passed unanimously by voice vote.

RESOLUTION NO. 1471-08

**RESOLUTION OF THE CITY OF FAIRHOPE, ALABAMA,
EXPRESSING SUPPORT FOR ACT 2008-391 OF THE 2008 REGULAR SESSION**

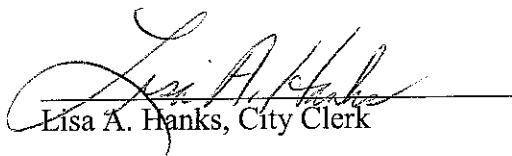
WHEREAS, In the 2008 Regular Session, the Alabama Legislature enacted Act 2008-391, the Alabama Coastal Captive Insurance Company Act, which amended Section 27-31B-3, Code of Alabama 1975, and added Chapter 31C to Title 27, Code of Alabama 1975, to allow captive insurance companies to provide homeowners insurance coverage, which was previously prohibited by Section 27-31B-3; now therefore,

BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF FAIRHOPE, ALABAMA, That we hereby express our approval and support for Act 2008-391, and we urge the prompt formation of Alabama Coastal Captive Insurance Companies to provide homeowners insurance coverage in gulf front, beach, seacoast areas of Alabama.

Adopted unanimously on the 10th day of November, 2008


Timothy M. Kant, Mayor

Attest:


Lisa A. Hanks, City Clerk

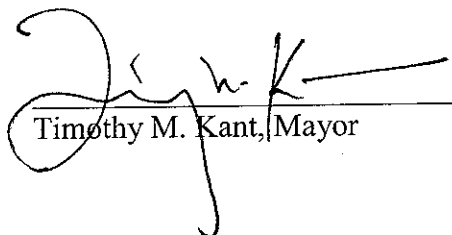
Councilmember Mixon introduced in writing, and moved for the adoption of the following resolution, a resolution requesting that any hiring of Professional Services such as Engineers, Attorneys, Architects, etc., which includes any contracts, pending contracts, and agreements, must be submitted to the City Council for approval. Seconded by Councilmember Kingrea, motion passed unanimously by voice vote.

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RESOLUTION NO. 1472-08

BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF FAIRHOPE, ALABAMA, that any hiring of Professional Services such as Engineers, Attorneys, Architects, etc., which includes any Contracts, Pending Contracts, and Agreements, must be submitted to the City Council for approval.

Adopted on this 10th day of November, 2008



Timothy M. Kant, Mayor

Attest:



Lisa A. Hanks, City Clerk

Council President Quinn reminded the City Council that the Strategic Planning Committee vacancies needed to be filled. Councilmember Ford said he pulled Jim Nix from the list, so he wouldn't be embarrassed. Council President Quinn read the names to be considered Louis Zadnichek, Phil Dyson, Betsy Hunter, Bob Mannich, Harvey Joanning, John Brown, Pam Caudill, Paulette Fedor, John Meyer, and Dianne Thomas. Councilmember Mixon moved for the appointment of Harvey Joanning. Seconded by Kingrea, motion passed by the following votes: AYE – Quinn, Stankoski, Mixon, and Kingrea. NAY – None. ABSTAIN – Ford.

Councilmember Stankoski moved to table the remaining three appointments until the next City Council meeting. Seconded by Councilmember Ford, motion passed unanimously by voice vote.

Council President Quinn announced that Councilmember Kingrea will look into the appointments for City Attorney, City Judge, and City Prosecutor, Councilmember Stankoski will look into the appointment for Chief of Police, Councilmember Mixon will look into the appointment for City Treasurer, and she will look into the appointment for City Clerk, and all will report back to the City Council on November 24, 2008.

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Council President Quinn reported that she had picked the members of the Growth and Sustainability Group: Jean Wilson, Randy Branch, Pete Gleszer, Alan Hall, Jim Horner, Chuck Zunk, and Gregg Mims. Councilmember Mixon moved to approve the committee members selected by Council President Quinn. Seconded by Stankoski, motion passed unanimously by voice vote.

Councilmember Mixon moved to grant the request of the Gas Department requesting permission to replace the defective gas odorizer equipment and installation. Dan Ames, Purchasing Manager, stated that this equipment is required by the Alabama Department of Transportation. Seconded by Councilmember Ford, motion passed unanimously by voice vote.

Councilmember Ford moved to grant the request of the City of Fairhope requesting permission to install the electric lines necessary to provide proper service at Barnwell Field; these are aid-to-construction costs for Baldwin County EMC for Barnwell Field power upgrades. Councilmember Mixon stated he was concerned with all of the money going into the Recreation Board. He said this is a luxury we cannot afford. Councilmember Ford said I am all for the kids. City Treasurer Nancy Wilson told the City Council that this is a budget item from the GOW and allocated for that project. After further discussion, Councilmember Kingrea seconded the motion to grant the request for aid-to-construction costs for Barnwell Field, motion passed unanimously by voice vote.

Councilmember Mixon addressed the City Council and reported on the Finance Committee meeting held on November 5, 2008. He stated that most City department heads and the Mayor attended the meeting. Each department head gave an overview of his or her area of responsibility and discussed the estimated revenue that would be generated by their department for FY 2009. It was stressed that all departments seek ways to reduce spending as much as possible. For example:

- 1) Bobby Hall, the head of Golf operations, brought up the fact that the use of credit cards cost the City of Fairhope over \$23,000.00 last year. We are looking into installing an ATM machine at no cost to the City or to have a surcharge for each use of a credit card.
- 2) Scott Sligh, head of the electrical department, saved over \$20,000.00 by requiring Mediacom and AT&T to install their own lines. There is a lot of overtime putting up Christmas lights. When possible, he gives compensatory time off rather than pay overtime.

Councilmember Mixon stated that the next Finance Committee meeting will be held the first week of December. The time and date will be announced later.

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Councilmember Mixon moved to put a temporary freeze on hiring and promotions for all City positions for 60 days unless approved by the City Council. Councilmember Ford stated this would cripple the City and hinder departments. Seconded by Councilmember Stankoski, motion passed by the following votes: AYE – Quinn, Stankoski, Mixon, and Kingrea. NAY – Ford.

Councilmember Stankoski moved to pay bills as presented. Seconded by Councilmember Mixon, motion passed unanimously by voice vote.

City Attorney Marion E. Wynne read the following memorandum to enter into an Executive Session for approximately 30 minutes:



November 10, 2008

Timothy M. Kant, C.M.O.
Mayor

Gene W. Johnson, C.M.C.
City Clerk

Nancy K. Wilson, CPA
Treasurer

Council Members

Geoff Christenberry

Michael A. Ford, A.C.M.O.

Robert C. Gentle, C.M.O.

Debbie W. Quinn, A.C.M.O.

Daniel R. Stankoski

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 a controversy not yet being litigated but 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, November 10, 2008, to go into Executive Session.

The City Council shall be in Executive Session for approximately 30 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 6:58 - City Council exits the dais to go into Executive Session.


Debbie Quinn, City Council President


Marion E. Wynne, City Attorney

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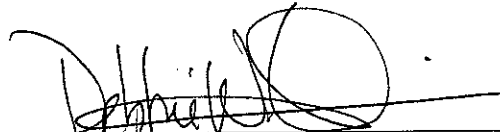

Councilmember Kingrea moved to go in to Executive Session. Seconded by Councilmember Mixon, motion passed unanimously by voice vote.

At 6:58 p.m. All Councilmembers and the City Attorney exited the dais.

At 7:28 p.m. All Councilmembers and the City Attorney returned to the dais.

Councilmember Stankoski moved to authorize payment of the \$1,540.00 bill. Seconded by Kingrea, motion passed unanimously by voice vote.

There being no further business to come before the City Council, the meeting was duly adjourned at 7:29 p.m.


Debbie W. Quinn, Council President
Lisa A. Hanks, City Clerk