

CITY OF DAPHNE
CITY COUNCIL MEETING AGENDA
1705 MAIN STREET, DAPHNE, ALABAMA
DECEMBER 1, 2014
6:30 P.M.

1. **CALL TO ORDER**

2. **ROLL CALL**
INVOCATION: Pastor Johnny Hunt of Celebration Church
PLEDGE OF ALLEGIANCE

3. **APPROVE MINUTES:** Council Meeting Minutes November 17, 2014..... **1**

- PRESENTATION:** Certificate of Recognition to Battalion Chief Kenny Hanak **9**

4. **REPORTS OF STANDING COMMITTEES:**
 - A. **FINANCE COMMITTEE** – Fry
 - B. **BUILDINGS & PROPERTY COMMITTEE** - Davis
 - C. **PUBLIC SAFETY** - Rudicell
Review minutes / November 12, 2014 **10**
 - D. **CODE ENFORCEMENT/ORDINANCE COMMITTEE** - Scott
 - E. **PUBLIC WORKS COMMITTEE / SOLID WASTE AUTHORITY** – LeJeune

5. **REPORTS OF SPECIAL BOARDS & COMMISSIONS:**
 - A. **Board of Zoning Adjustments** – Adrienne Jones
 - B. **Downtown Redevelopment Authority** – Conaway
 - C. **Industrial Development Board** – Davis
Review minutes / November 24, 2014..... **15**
 - D. **Library Board** - Lake
 - E. **Planning Commission** – Scott
 - a. Review minutes / October 30, 2014.....**17**
 - b. Staff report / November 20th meeting**25**
 - F. **Recreation Board** – LeJeune
 - G. **Utility Board** – Fry

6. **Mayor’s Report**
Donation of Real and Personal Property

7. **City Attorney’s Report**

8. **Department Heads Comments**

9. **City Clerk’s Report**
 - a) **ABC License:** Top of the Bay / 010 Lounge Retail Liquor – Class I **27**
 - b) **MOTION:** To authorize the Mayor to enter into an agreement with
EnCompass360 for the management of the Hazard Mitigation Grant Program

Grant for the City of Daphne 33

10. PUBLIC PARTICIPATION

11. RESOLUTIONS & ORDINANCES:

RESOLUTIONS:

a) **Resolution 2014-57:** Declaring Certain Property Surplus: 1998 Ford F-150 42

b) **Resolution 2014-58:** Supporting the Alabama Department of Transportation to Conduct a Signal Warrant Study at the Intersection of Bellaton Avenue, Austin Road and State Route 181 43

c) **Resolution 2014-59:** Donation of Real Property to City of Daphne..... 44

d) **Resolution 2014-60:** Donation of Real and Personal Property to City of Daphne 46

ORDINANCES:

2ND READ

a) **Ordinance 2014-53:** Appropriating Funds: Part-Time Events Assistant OR Additional Overtime and Temporary Services..... 48

b) **Ordinance 2014-54:** To Contribute to the Twenty Percent (20%) Local Match Requirement Funding a Traffic Signal System Technology Enhancements Study for Corridors Servicing the Eastern Shore..... 49

c) **Ordinance 2014-55:** Recreational Trails Program Project: Village Point Park Preserve Boardwalk/Trails Extension / Project #14-RT-54-08 51

d) **Ordinance 2014-56:** Appropriation of Funds: Appraisal, Survey and Associated Fees For Marino Property Located Near D'Olive Creek..... 52

e) **Ordinance 2014-57:** Repeal Ordinance 2011-08 and Establishing Rules, Regulation, Rates and A Lease Agreement for the Rental of the Daphne Civic Center 53

f) **Ordinance 2014-58:** Repeal Ordinance 2011-09 and Establishing Rules, Regulation, Rates and A Lease Agreement for the Rental of the Bayfront Pavilion 91

12. COUNCIL COMMENTS

13. ADJOURN

**CITY OF DAPHNE
CITY COUNCIL**

ROLL CALL

CITY COUNCIL:

COUNCILMAN RUDICELL	PRESENT ____	ABSENT ____
COUNCILMAN LAKE	PRESENT ____	ABSENT ____
COUNCILMAN SCOTT	PRESENT ____	ABSENT ____
COUNCILMAN FRY	PRESENT ____	ABSENT ____
COUNCILMAN SCOTT	PRESENT ____	ABSENT ____
COUNCILMAN LEJEUNE	PRESENT ____	ABSENT ____
COUNCILMAN DAVIS	PRESENT ____	ABSENT ____
COUNCIL PRESIDENT CONAWAY	PRESENT ____	ABSENT ____

MAYOR:

MAYOR HAYGOOD	PRESENT ____	ABSENT ____
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CITY CLERK:

REBECCA HAYES	PRESENT ____	ABSENT ____
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CITY ATTORNEY:

JAY ROSS	PRESENT ____	ABSENT ____
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**NOVEMBER 17, 2014
CITY COUNCIL MEETING
REGULAR BUSINESS MEETING
1705 MAIN STREET
DAPHNE, AL
6:30 P.M.**

1. CALL TO ORDER:

There being a quorum present Council President Fry called the meeting to order at 6:30 p.m.

2. ROLL CALL/INVOCATION/PLEDGE OF ALLEGIANCE:

Pastor Jonathan Spuler with Bay Community Church gave the invocation.

COUNCIL MEMBERS PRESENT:

Tommie Conaway; Pat Rudicell; John Lake; Randy Fry; Ron Scott; Robin LeJeune; Joe Davis.

Also present: Mayor Haygood; Rebecca Hayes, City Clerk; Sarah Toulson, Assistant City Clerk; Jay Ross, City Attorney; Vickie Hinman, HR Director; Richard Johnson, Public Works Director; David Carpenter, Police Chief; James White, Fire Chief; David McKelroy, Recreation Director; Richard Merchant, Building Official; Tonja Young, Library Director; Margaret Thigpen, Civic Center Director; Adrienne Jones, Planning Director; Suzanne Henson, Senior Account/Treasurer; Dorothy Morrison, Beautification Committee and DRA; Larry Cooke, BZA; Don Ouellette, BZA; Heiko Einfeld, ES Chamber of Commerce.

Absent: Michael Hoyt, Municipal Judge.

3. APPROVE MINUTES:

November 3, 2014 Council Meeting Minutes

There were no corrections to the November 3, 2014 council meeting minutes and the minutes stand approved as written.

November 10, 2014 Council Work Session Minutes

There were no corrections to the November 10, 2014 council work session minutes and the minutes stand approved as written.

PRESENTATION: Mrs. Ruth Seawell / Daphne Strike Club

Mrs. Seawell gave a presentation with slides on how large participation in soccer and lacrosse is in the City of Daphne, and how important it is to create new fields for these sports with the new recreation facilities.

4. REPORT OF STANDING COMMITTEES:

A. FINANCE COMMITTEE – Conaway

The November 10th minutes are in the packet.

Treasurer's Report / October 2014

- Total Unrestricted Funds - \$9,200,469
- Decrease from Last Year's Unrestricted Funds - \$(393,084)

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- # of months of Unrestricted cash to cover monthly operating Expenses & Debt Service – 4.2 months compared to the previous year - 4.3 months

Sales and Use Tax Collection / September 2014

- YTD Variance over Budget - \$59,330.57 + 5.1 %
- Percent change from last year's collections + 5.5 %

Lodging Tax Collections / September, 2014

The collections for September 2014 were \$71,7910.24 which is up \$26,641.89 from September's 2013's collections of \$45,148.35.

- YTD Variance over Budget \$247,597
- Percentage change from last year's collections: + 37.1 %

Lodging Tax Fund : Statement of Rev over Exp, October 30, 2014 *(draft/Unreconciled)*

The unreserved balance for Bayfront property related expenditures is \$1,921,723 an increase of \$9,978 from the previous month's balance. Reserve for Recreation total is \$269,998 an increase of \$35,895 from the previous month's balance.

Councilman Lake made a statement disagreeing with the process of appointing the new chairman of the Finance Committee. He said they did not follow the Council Rules of Procedure so he resigned from the Finance Committee.

Councilman Scott said that they will review the Council Rules of Procedure at the next Ordinance Committee meeting.

B. BUILDINGS & PROPERTY COMMITTEE - Davis

The November 3rd minutes are in the packet, and the next meeting will be December 1st.

C. PUBLIC SAFETY COMMITTEE – Rudicell

No report. The next meeting will be December 10th at 4:30 p.m.

D. CODE ENFORCEMENT/ORDINANCE COMMITTEE – Scott

No report. The next meeting will be December 10th after the Public Safety meeting.

E. PUBLIC WORKS COMMITTEE – LeJeune

The committee met before the council meeting, and the next meeting will be December 15th.

The Lake Forest road improvements are moving quickly, and will be complete before Christmas.

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5. REPORTS OF SPECIAL BOARDS & COMMISSIONS:

A. *Board of Zoning Adjustments* – Adrienne Jones

No report.

B. *Downtown Redevelopment Authority* – Conaway

The next meeting will be December 3rd at 5:30 p.m.

C. *Industrial Development Board* – Davis

The next meeting will be November 24th at 6:00 p.m. in the Executive Conference room.

D. *Library Board* – Lake

The board met November 13th, and the minutes will be in the next packet. The next meeting will be January 8, 2015.

E. *Planning Commission* – Scott

The October 23rd meeting minutes and the staff report for the October 30th meeting are in the packet.

MOTION BY Councilman Scott to set Public Hearing dates for December 15, 2014 and approve advertising to consider:

- | | |
|-----------------------|---|
| 1. Pre-zoning: | George Kalasountas |
| Property Located: | On the south side of U.S. Highway 90 at Renaissance Boulevard |
| Present Zoning: | RSF-1, Single Family Residential District, Baldwin County District 15 |
| Requested Zoning: | B-2, General Business / R-7(T), Townhouse / R-1, Low Density Single Family Residential District, City of Daphne |
| Recommendation: | A unanimous favorable recommendation for appropriate zoning as determined by City Council |
|
 | |
| 2. Annexation: | George Kalasountas |
| Property Located: | On the south side of U.S. Highway 90 Renaissance Boulevard |
| Recommendation: | Unanimous favorable |
|
 | |
| 3. Annexation: | Provision Investment, LLC |
| Property Located: | West of the Estates of Tiawasee Subdivision and Southeast of the Intersection of Park Drive and Pollard Road |
| Present Zoning: | RSF-2, Single Family Residential District, Baldwin County District 15 |
| Requested Zoning: | R-1, Low Density Single Family Residential, District, City of Daphne |
| Recommendation: | Unanimous favorable |

Secoded by Councilman Fry.

MOTION CARRIED UNANIMOUSLY

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F. Recreation Board – LeJeune

No report. The deadline for letters of intent is Friday.

G. Utility Board – Fry

No report. The next November meeting will be December 3rd.

6. REPORTS OF OFFICERS:

A. Mayor’s Report

Mayor Haygood mentioned that the Daphne Museum received a \$2,000 grant. He also updated council on three parcels of donated property on Park Drive which was collectively appraised at \$100,000. This property was donated with no strings attached, but the closing has to be by the end of the year. There are two other real properties and three personal properties, which are sculptures, being donated by an anonymous donor. This also needs to be done by the end of the year. There were excess funds from the Park Drive appraisal that can be used for this appraisal, but Mayor Haygood wants to make sure that council wants to move ahead with the acceptance of this donation of real property and personal property. He said that one parcel that is to be donated has already been submitted to be subdivided so it has to go before the Planning Commission first to be subdivided before it can be conveyed. These donations will be on the December 1st agenda.

MOTION BY Councilman Lake to use the remainder of the previously allocated funds for the Park Drive property appraisal and closing costs, \$4,500, for the appraisal and closing costs of the anonymously donated real property and personal property on U.S. Highway 98 and U.S. Highway 98 and Santa Rosa.

ROLL CALL VOTE

Rudicell	Aye	LeJeune	Aye
Lake	Aye	Davis	Aye
Fry	Aye	Conaway	Aye
Scott	Aye		

MOTION CARRIED UNANIMOUSLY

B. City Attorney’s Report

No report.

C. Department Head Comments

David McKelroy – Recreation Director – reported on the different sports and tournaments going on at Trione Sports Complex.

Adrienne Jones – Planning Director - reported that the Planning Commission meets Thursday, and the maps are on the wall for the Public Hearings, and two project that will be considered.

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NOTE: Councilman Davis returned to the dais at 7:35 p.m.

9. COUNCIL COMMENTS

Councilman Lake wished everyone a Happy Thanksgiving. He said that he was leaving tomorrow for the NLC conference in Austin, Texas. He also said that he may not be at the December 1st council meeting due to another meeting. He said that the city was not under OSHA.

Councilman Rudicell wished everyone a safe holiday. He thanked those that came out to the Veterans Day celebration.

Councilman Davis wished everyone a Happy Thanksgiving.

Mayor Haygood referenced the discussion a few months back about committees where Councilman Rudicell had brought up an idea of eliminating some committees and, potentially, utilizing additional work sessions from the council. There is a high degree of involvement by this council, and maybe this will spearhead another opportunity to revisit that suggestion. He wished Mrs. Gibbs had remained, because he knows that Ashley Campbell does a great job of representing the city in making sure that they are addressing stormwater issues, and he knows that Richard Johnson deals with his fair share as well. There was another round of National Fish and Wildlife Foundation funding that was announced today. There was not anything that impacts the city directly, but they had a \$6.7 million award that will be administered by the MNEP that will be affecting primarily the D'Olive Creek watershed. That is not enough money to fund all the fixes, but it is enough to help stop some of the issues at the head waters, and there will be some relief on the way in no small part thanks to Ashley and others that have really worked hard to protect the City of Daphne, and correct some of the issue that have been happening with stormwater. He will not be attending the NLC because his budget will not allow him to attend any more events. He is trying to stay within his budget. He gave kudos to the Public Works staff that were out in the cold weather putting up the Christmas decorations. Mayor Haygood wished everyone a Happy Thanksgiving.

Council President Conaway thanked the ladies of the Daphne Book Club for the invitation to the meeting. She said it was a learning experience to hear all about the Daphne Museum.

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10. ADJOURN:

MOTION BY Councilman Rudicell to adjourn. *Seconded by Councilman LeJeune.*

MOTION CARRIED UNANIMOUSLY

THERE BEING NO FURTHER BUSINESS TO DISCUSS, THE MEETING ADJOURNED AT 7:45 P.M.

Respectfully submitted by,

Certification of Presiding Officer

Rebecca A. Hayes,
City Clerk

Tommie Conaway,
Council President

CERTIFICATE OF RECOGNITION

“BATTALION CHIEF KENNY HANAK”

WHEREAS, Kenny Hanak joined the Daphne Fire Department on September 14, 1998 as a firefighter, and through his hard work and dedication he has achieved the rank of Battalion Chief; and

WHEREAS, during his sixteen years with the Fire Department he has earned a Master's Degree in Public Administration; and,

WHEREAS, Kenny has secured \$1.7 million in federal grants for the Daphne Fire Department; and

WHEREAS, he has successfully completed the Executive Fire Officer Program which provides senior officers with a broad perspective on various facets of fire and emergency services administration, and enhances professional development through a unique series of four graduate and upper-division baccalaureate equivalent courses taken over a four year period; and

WHEREAS, Kenny completed an Applied Research Project that related to the Daphne Fire Department within six months after completion of the four courses, his reports have been very instrumental in the upgrading of operating procedures for the Daphne Fire Department.

NOW THEREFORE, the Mayor and City Council of the City of Daphne, Alabama hereby proclaim their appreciation to Battalion Chief Kenny Hanak for his efforts and dedication toward making Daphne a safer place to live.




Dane Haygood, Mayor

ATTEST:


Rebecca A. Hayes, City Clerk

Public Safety Committee

Wednesday, November 12, 2014

Councilman Pat Rudicell
Councilman Randy Fry
Councilman Robin LeJeune
Councilman Ron Scott
Fire Chief James White
Public Works, Melvin McCarley

Police Chief David Carpenter
Captain Scott Taylor

Tracy Bishop - Secretary

Committee Members Attending:

Councilman Pat Rudicell, Councilman Robin LeJeune, Councilman Ron Scott, Lt. Jud Beedy, Chief James White, Richard Johnson and Melvin McCarley.

CALL TO ORDER

Councilman Rudicell **convened** the meeting at 4:30 p.m.

PUBLIC PARTICIPATION – Lisa Musselman, Mindy Bowman and Andrea Lomax were in attendance asking for a traffic light at Hwy 181/Bellaton/ Austin Road. Development plans show that Bellaton will eventually connect to County Rd 13. Lanes on Hwy 18 narrow down to two lanes right in front of Bellaton making it impossible to get out of the neighborhood. Musselman mentioned that they were told a few years ago that a light would be installed when Hwy 181 was widened and wanted to know when to expect that? Councilman Scott mentioned that since he has been on the council, he's never more been in agreement with her concern. Richard Johnson stated that he had an earlier meeting with the Metropolitan Planning Project on improving traffic signals on Hwy 98 and Hwy 181. The engineering firm asked if they should consider putting new signals where there are none (they had discussed Bellaton/Austin Rd/Hwy 181). Johnson stated that they are adding a signal there in the feasibility study. Also the state representative stated that if the city and county are in agreement that this is a project that needs to move forward that he would be willing to put his portion of the cost toward putting the signal in. The county representative felt like he could justify his ¼ share and Richard Johnson felt like the council would fund the city's ¼ share. If they have already acquired the right of way on Hwy 181 they can outfit the signals to be changed to four lane signals once the road widening project is complete.

Musselman asked if there were any current plans to extend Bellaton Avenue to County Road 13? Johnson said we have a visionary dream of eventually taking Johnson Road all the way to County Road 13 and on to Hwy 181. We don't want through streets in a neighborhood. She asked what the process will be from this point. Johnson will internally request that ALDOT thinks it would cost to signalize that intersection. Ask county engineer for his support. Johnson said he is in support of it because it is needed. After we get the cost of the project, then the county will have to take it to their commissioners and Johnson will have to take it through his process to get the endorsement of the city council. The state will then put together an MOU stating how the cost will be split up between the county, city, etc. It takes about six months to be honest with you from start to finish. Musselman asked would it help to attend the council meetings, and Johnson explained that the state will do all of the leg work in this project. Musselman will stay in touch with Richard Johnson to keep up with the project.

Richard Johnson also had another item on the agenda. He is trying to be proactive in solving an issue. As you know the YMCA has two entrances. There is a blind curve at the southeast quadrant. Cars want to stop at the west entrance to turn left into the YMCA and its causing a stacking and queuing. There is no parking on that side of the building; all of the parking is on the east side of the building. One of the

solutions would be to do a couple of minor things. One would be to convert that entrance/exit to a right exit only/right entrance only. All other traffic would have to go to the east entrance/exit. We could first do it with traffic markings only, no physical barrier and see if that fixes the majority of the problem. If not, we can always come back with delineators which will get hit a few times until people get used to them being there. It's just something we have been considering due to close calls. Councilman Scott made a motion for a revised traffic flow at the YMCA exit/entrance (west). Councilman Lejeune seconded the motion. Motion passed. No discussion.

Councilman Lejeune asked if Mr. Johnson has had the chance to look at the sidewalk situation on Magnolia Avenue. No. LeJeune stated that we need to know if there is enough right of way on that street to install one from at least Main Street to Sixth St. Johnson said he has not but will have PSC a report at the next meeting in December.

APPROVAL OF MINUTES FROM PREVIOUS MEETING

Minutes from October 2014 were reviewed. Motion was made by Councilman Scott and seconded by Councilman LeJeune to approve the minutes. Motion passed as amended.

POLICE DEPARTMENT

- A. New Business** – Lt. Beedy went over the stats and D-Runs. Tahoe's purchased last year are being outfitted and striped along with the extra one. Chief bought Code Enforcement a truck out of his drug forfeiture money and it also is in and ready for markings. We have been inundated with sexual nature calls. Rudicell mentioned wanting to educate the council members with the jurisdiction and code enforcement officer. Our current officer is planning on retiring in the next 8 to 12 months. Beedy said he'd love to have someone on board to learn the ropes from our current Code Enforcement Officer. Scott, the city can fund a temp position for training purposes. Make the decision in 2016 whether to keep two in this position or not. Scott made a motion to bring this back up and act on it. Councilman LeJeune seconded the motion. Scott said that the mayor hasn't advertised any of those positions. Beedy advised that since they are now bringing in the electronic billboards, if we don't get someone in there to learn the process we will be set back 12 months or more depending on how long it takes the new officer to grasp the codes.
- B.** Councilman LeJeune asked about the jail meals. Beedy stated that the jail kitchen is up and running. LeJeune would like to know in six months or so how much money we are saving vs. serving TV dinners. Beedy stated that his understanding is that the meals have gone from \$4.50 per meal to \$1.50 per meal. Just a verbal report each meeting would be great.

FIRE DEPARTMENT

- A: New Business** – Councilman Rudicell: In reference to Fire station #3, I'm getting phone calls regarding the status of Fire Station #3. I don't know the full story. What is the perceived tie up in getting the Fire Station up and running? Richard Johnson stated that February 5, 2014 was the first report of mold received. Hired a company to do an evaluation and the report was in hand and it was dated February 24, 2014. There was a time when they were trying to see if they could fix the problem without it reoccurring. That building was originally just a shell of a

building and over time the inside was built to be manned. The shell allowed the intrusion of water as well as the way the building was built on the inside. It was going to cost more to fix what was damaged than to completely rebuild the interior to meet the current needs as well as future needs plus the exterior façade. If you're going to be rebuilding the rest, you might as well redo the front. We brought in an architect and Chief and I had a division of labor. I took on the role of working with the architect (HVAC, plumbing, electrical, etc.), Chief took on the floor plan...how that building would be used. The mayor requested the right and was given the right to handle the façade issues. We had a meeting on October 28, 2014 because there seemed to be reoccurring delays. Chief and I had our issues addressed but were still waiting on the façade issues to be resolved. On October 28th, the Chief, myself, the architect and the mayor met to finalize the building. Everyone in the meeting said they were good with the plans and the facade. The first week of November was to be the advertisement by public bid law, on the 14th we were to have the mandatory pre-bid meeting, and on the 21st of November open up bids in order to have in front of the Finance committee by the first meeting in December. For whatever reason, the mayor did not authorize the advertisement and when asked about it he states he still has issues with the façade. That surprised Chief and I because in the October 28th meeting he said he was good with the façade. So now we are behind again. I put this on the architect to get with the mayor and resolve this issue. He has sent correspondence but has received no response. We could have salvaged this month but we have quickly run out of time. Rudicell-no more development. Just decision making? Scott, for safety reasons we cannot jeopardize the safety of our citizens. I will call the mayor. LeJeune – mayor retracted later after the meeting that he was not pleased with the four renderings from the architect. He picked a façade. The architect drew up (black and white) drawing at the Oct 28th meeting and everything was good. He then retracted after the fact. Said he had an issue with how many windows there were.

Rudicell – this is already funded. Just waiting on façade? Johnson stated Yes. This is not a cost issue. It's a failure to act. I tried three times today to try and get him to come to this meeting but every time I went in his door was closed and he was on phone calls. I will try to get a face to face with the mayor.

Councilman Rudicell told Chief White that the overtime issues with his department have not been dropped. Will have him an answer as soon as he finds a solution they can afford and will work.

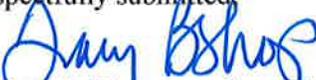
Old Business -

OTHER BUSINESS:

ADJOURN

There being no further business to discuss, Councilman LeJeune made a motion to adjourn the meeting at 5:25 p.m. Councilman Scott seconded. The next meeting will be Wednesday, December 10, 2014 at 4:30 p.m. at City Hall Council Chambers.

Respectfully submitted,


Daphne Public Safety Committee

Patrol Division	Detective Division: (Capt. Bell/Lt. Beedy)		JAIL: (Capt. Taylor/Lt. Yelding)		Animal Control (Capt. Taylor/Lt. Yelding)		Crimes Reported This Month:
(Capt. Bell/Lt. Hempfleng)							
# Complaints	1,112	# New Cases Received: 68	Total Arrestees Received & Processed: 199	YTD			
Accidents, Private Property	21	# Previous Unsolved Cases: 73	Arrestees by Agency:	2,270			Arson 0
Accidents, Roadway	62	# Cases Solved: 32	Daphne PD 138	1,432	#Complaints 80		Burglary - Commercial 3
Accidents, Traffic Homicide	0	Resulting in Total Arrests: 2	BCSO 16	160	#Follow-ups 100		Burglary - Residence 1
Arrest, Controlled Substance	1	Felonies: 2	Spanish Fort PD 31	513	# Citations 2		Burglary - Vehicle 8
Arrest, Drug Paraphernalia	6	Misdemeanors: 0	Silverhill PD 8	124	# Warnings 8		Criminal Mischief 4
Arrest, Felony Marijuana	0	Houses Searched 0	Troopers 6	40	# Felines Captured 18		Disorderly Conduct 2
Arrest, Misdemeanor Marijuana	4		Other Agencies 0	1	# Canines Captured 19		Domestic Disturbance 3
Arrest, Alias Warrant	64				# Other Captured 11		False Info to Police 1
Arrest, DUI	9	Warrants:			# Returned to Owner 5		Felony Assault 1
Arrest, Felony	8	Served 43			# Adopted Out 10		Felony Theft 12
Arrest, Misdemeanor	71	Agency Assists 4			# Euthanized - Adoptable 0		Harassment 4
Assists, Motorist / Citizen	148	Recalls (Pd Fines) 7	Highest 40		# Euthanized - Unadoptable 39		Identity Theft 1
Citations	405	Total Warrants Served 54	Lowest 25				Indecent Exposure 0
Drug Report	10						Kidnapping 0
Routine Patrol/Special OPS	0	Sex Offender:	Meals Served 2,833	29,455			Menacing 0
Searches, Vehicle	55	New Registration: 1	Medical Cost \$1,795.00	\$23,622.00			Misdemeanor Assault 1
Security Checks	43	Contact Verification 5	Worker Inmate Hours 288	2,339			Misdemeanor Theft 13
Warnings	272	Total # registered in Daphne 7					Murder 0
		DARE:					Other Death Investigations 0
		# Hours Report Writing: 1					Public Intoxication 1
		# Students Instructed SRO 225					Public Lewdness 0
Drugs Seized:	7	# Students Instructed DARE 500					Receiving Stolen Property 0
Money Seized:	0	# Police Reports by SRO 1					Reckless Endangerment 1
Vehicles Seized:	0	# Arrest by SRO 1					Resisting Arrest 0
							Robbery 0
							Sex Crime Investigations 0
							Suicide 0
CMV Inspections / CMV OOS	31	CODE ENFORCEMENT:					Suicide, attempted 0
		Warnings: 4					Theft of Services 0
		Citations 2					Unauthorized Use of Services 3
		Warning Compliance 18					Weapon Offenses 0
		Follow - Up 25					White Collar Crimes 6

David Caputo

CITY OF DAPHNE
FIRE DEPARTMENT MONTHLY REPORT
Report Period September 2014

	Current:	FY to Date:
Suppression:		
1-Fire/Explosion:	-	-
10-Fire, Other	1	11
11-Structure Fire/Commercial	0	5
11-Structure Fire/Residential	2	22
12-Fire in Mobile Property used as fixed structure	0	4
13-Mobile Property (vehicle) Fire	1	12
14-Natural Vegetation Fire	0	15
15-Outside Rubbish Fire	2	16
16-Special Outside Fire	0	5
17-Cultivated Vegetable Crop Fire	0	0
2-Overpressure Rupture:	0	0
3-Rescue Call and Emergency Medical Service Incidents:	180	1502
4-Hazardous Conditions (No fire):	1	25
5-Service Call:	9	143
6-Good Intent Call:	20	110
7-False Alarm & False Call:	10	156
8-Severe Weather & Natural Disaster:	0	0
9-Other Situation:	0	2
Total Emergency Calls:	220	2112
Monthly Total Calls:	226	2137
Highest:		
	18:00	18:00
Lowest:		
	<1:00	<1:00
Average (Minutes/Seconds) :		
	5:08	5:08
Miscellaneous Reports:		
Training Hours	322.75	3046.01
Property Loss - \$	\$1600.00	\$507,200.00
Fire Personnel Injuries by Fire/Civilian Injuries by Fire	0	0
Advance Life Support Rescues	134	1077
Number of Patients Treated	180	1467
Child Passenger Safety Seat Inspections/Installations	19	92
Pre-Plans	7	229
Classes		
	4	43
Persons Attending	26	553
Plan Reviews		
	3	17
Final/Certificate of Occupancy	0	4
General/Annual Inspections	128	363
General/Re-Inspections (Violation Follow-up - Annual)	68	140
Business Licenses	8	67
All Other/Misc. Activities	26	121
Total Activities:	233	712

Authorized by:

James White

**CITY OF DAPHNE, AL
INDUSTRIAL DEVELOPMENT BOARD MEETING
1705 MAIN STREET, DAPHNE, AL
NOVEMBER 24, 2014
6:00 P.M.**

1. CALL TO ORDER/ROLL CALL

There being a quorum present the chairman called the meeting to order at 6:05 p.m.

MEMBERS PRESENT – Toni Fassbender; Dennis Kearney, III; Pokey Miller; Doug Bailey; John Cox; Jeffrey Ramsland.

ABSENT: Dan Romanchuk.

Also present – Rebecca Hayes, Recording Secretary; Councilman Joe Davis, Council Liaison; jOHNSON, BCEDA; Mayor Haygood.

2. APPROVE MINUTES / August 25, 2014

**MOTION BY John Cox to approve the August 25, 2014 meeting minutes. *Secoded by Denis Kearney.*
MOTION CARRIED UNANIMOUSLY**

3. OLD BUSINESS

No old business to discuss.

4. TREASURERS REPORT

MOTION BY John Cox to postpone the Treasurers for October 2014 until the discrepancy is in totals is found. *Secoded by Denis Kearney.*

MOTION CARRIED UNANIMOUSLY

5. UPDATE BY MAYOR HAYGOOD ON PROPERTY

MOTION BY Doug Bailey to enter into Executive Session to discuss the purchase of real property. *Secoded by John Cox.*

MOTION CARRIED UNANIMOUSLY

The board entered into Executive Session at 6:10 p.m.

The board returned from Executive Session at 7:50 p.m.

6. NEW BUSINESS

No new business to discuss

7. NEXT MEETING

The next meeting will be January 26, 2015

**CITY OF DAPHNE, AL
INDUSTRIAL DEVELOPMENT BOARD MEETING
1705 MAIN STREET, DAPHNE, AL
NOVEMBER 24, 2014
6:00 P.M.**

8. ADJOURN

MOTION BY Jeffrey Ramsland to adjourn. *Seconded by Doug Bailey.*

MOTION CARRIED UNANIMOUSLY

**THERE BEING NO FURTHER BUSINESS TO DISCUSS THE MEETING ADJOUNED AT
7:51 P.M.**

Submitted by:

Certification of Presiding Officer:

Rebecca Hayes, Secretary

Toni Fassbender, Chairman

The City of Daphne
Planning Commission Minutes
Special Meeting of October 30, 2014
Council Chamber, City Hall - 5:00 P.M.

Call to Order:

The special meeting of the City of Daphne Planning Commission was called to order at 5:03 p.m. The number of members present constitutes a quorum.

Call of Roll:

Members Present:

Monty Montgomery, Secretary
Dwayne Smith
Larry Chason, Chairman
Ron Scott, Councilman
Hudson Sandefur
Chief White

Staff Present:

Adrienne Jones, Director of Community Development
Jan Vallecillo, Planning Coordinator
Kevin Boucher, Attorney

The first order of business is the approval of the minutes.

Chairman asked for questions, comments or corrections to the minutes of **the regular meeting of October 23, 2014. There being none, the minutes are approved as submitted.**

The next order of business is a preliminary/final plat review for Lot 1 & 2, Resubdivision of Lot 1, TimberCreek Business Park, Unit 2.

An introductory presentation was given by Mr. Trey Jinright, representative of Jade Consulting, of a two-lot subdivision consisting of approximately one point one acres located southwest of the intersection of Mill Lane and McSara Court for the development of two general office buildings.

Chairman asked if the plan included sidewalks.

Ms. Jones stated one of which the site plan will be presented next month. Sidewalks will be added at that time.

Chairman asked for Commission questions or comments and a motion for approval.

**The City of Daphne
Planning Commission Minutes
Special Meeting of October 30, 2014
Council Chamber, City Hall - 5:00 P.M.**

A Motion was made by Mr. Scott and **Seconded** by Mr. Sandefur to **grant preliminary/final approval for Lot 1 & 2, Resubdivision of Lot 1, TimberCreek Business Park, Unit 2. There was no discussion on the motion. The Motion carried unanimously.**

The next order of business is a preliminary/final plat review for Brookins Subdivision.

An introductory presentation was given by Mr. David Shumer, representative of Barton & Shumer Engineering, of a six-lot subdivision consisting of approximately twenty point five nine acres located at the intersection of County Road 54 and River Road with no improvements.

Chairman asked if the County's deficiencies had been addressed. Mr. Shumer stated we are waiting on final acceptance. Ms. Jones stated a copy of an email from the Health Department was presented in the special packet. Baldwin County is waiting on confirmation of approval. Chairman commented on correspondence from Ms. Sirmon regarding the issue of the effect of drainage on the adjacent property and also what type of housing will be allowed. Mr. Shumer commented that the effect will be minimal, and a majority of the lots will drain to the north. When I spoke to Baldwin County, they were not aware of a situation in which water crossed the road.

Chairman asked for Commission questions or comments and opened the floor to public participation.

Cynthia Sirmon, 23612 River Road North, stated we contacted Baldwin County to ask them to address the drainage in that area and asked if there is an issue, who would I need to contact.

Chairman stated the maintenance of the street and drainage is Baldwin County.

Mr. Shumer addressed the question regarding the type of housing. Mr. Scott stated Baldwin County does not have the ability to restrict mobile homes because that is civil in nature and would have to be addressed in the covenants. Mr. Shumer stated the owner's covenants will restrict mobile homes.

Chairman asked for Commission questions or comments. None were presented. He closed public participation and asked for a motion for approval.

A Motion was made by Mr. Scott and **Seconded** by Mr. Smith to **grant preliminary/final approval for Brookins Subdivision. There was no discussion on the motion. The Motion carried unanimously.**

The City of Daphne
Planning Commission Minutes
Special Meeting of October 30, 2014
Council Chamber, City Hall - 5:00 P.M.

The next order of business is a preliminary/final plat review for the Preserve of Tiawasee Subdivision.

An introductory presentation was given by Mr. Steve Pumphrey, representative of Preble-Rish, of a three-lot subdivision consisting of fifty-one point three-three acres located west of the Estates of Tiawasee Subdivision and southeast of Park Drive and Pollard Road.

Mr. Pumphrey stated access for the lots is an ingress/egress easement through Lot 24 of the Estates of Tiawasee Subdivision for Lot 1 & 2, and 3 to access Pollard Road. He explained that the owner is willing to provide deed restrictions as follows: no further subdivision of the land, allow no cross easements, and access for Lot 3 to access Pollard Road.

Chairman asked for Commission questions or comments and opened the floor to public participation.

Mr. Robert Stankoski, attorney for Tiawasee Trace Property Owners Association, spoke in opposition to the development. He advised that he would withdraw an objection to the subdivision and annexation conditioned upon certain deed restrictions being imposed and recorded on the plat: no further subdivision of the land, allow no cross easements, and access for Lot 3 is Pollard Road. Mr. Boucher, City Attorney, asked if the ingress/easement had been drafted. Mr. Richard Davis, attorney for Provision Investment, L.L.C., stated we have the right to impose the easement of which will be prepared and transferred at the time of conveyance of the lots. Mr. Boucher asked if Mr. Davis is proposing the conditions. Mr. Davis stated the application will include those conditions.

Chairman asked for Commission questions or comments. None were presented. He closed public participation and asked for a motion for approval.

A Motion was made by Mr. Scott and Seconded by Mr. White to grant preliminary/final approval for the Preserve of Tiawasee Subdivision, predicated upon the addition of the deed restrictions. There was no discussion on the motion. The Motion carried unanimously.

The next order of business is a petition for annexation review for Provision Investments, L.L.C.

Chairman asked for Commission questions or comments and a motion for a recommendation for annexation.

The City of Daphne
Planning Commission Minutes
Special Meeting of October 30, 2014
Council Chamber, City Hall - 5:00 P.M.

A Motion was made by Mr. Scott and **Seconded** by Mr. Sandefur *of an affirmative recommendation by the Planning Commission to the City Council of the annexation of a fifty-one point three-three acre parcel into the City of Daphne located west of the Estates of Tiawasee Subdivision and southeast of the intersection of Park Drive and Pollard Road with R-1, Low Density Single Family, zoning, for Provision Investments, L.L.C. There was no discussion on the motion. The Motion carried unanimously.*

The next order of business is a pre-zoning amendment for George Kalasountas.

An introductory presentation was given by Mr. Daryl Russell, representative of Coleman Engineering Group of McCrory & Williams.

Chairman stated we acted on the replat of the interior property lot lines at the last meeting and asked for Commission questions or comments.

Mr. Sandefur asked for the purpose of the business zone. Mr. Russell stated there is not a specific use. Mr. Scott stated he did not believe in speculative zoning without a plan and he would prefer that the zoning requested is business zone of less intensity.

Chief White asked what safeguards have been put in place to protect the church and the cemetery. Mr. Russell stated there will be a buffer between the development and the church.

Mr. Montgomery asked has this applicant applied for rezoning in the County. Mr. Russell stated no. Ms. Jones stated his application was for conditional use of the property, but it was denied.

Chairman opened the floor to public participation.

Mrs. Felicia McAllister, 9595 Malbis Lane, spoke in opposition and asked for the denial of the request. She commented on the removal of trees which served as a buffer, a sound barrier, and provided privacy; flooding, and the use of his property for soccer practice which is prohibited by Baldwin County.

Ms. Gertrude Malbis, 9655 Malbis Lane, mentioned that the neighborhood now consists of elderly residents and the transients in the proposed development would not be safe.

Ms. Leeann Lanham, 29240 Vlahos Lane, spoke in opposition and stated that she strongly opposed the request. She mentioned: the congestion of low density development, the adverse effect on the adjacent property, and preservation of the historic value of the property. The request is premature without a development plan.

**The City of Daphne
Planning Commission Minutes
Special Meeting of October 30, 2014
Council Chamber, City Hall - 5:00 P.M.**

Chairman asked Ms. Jones if an R-7 (T), Townhome, district exists in the City. Ms. Jones stated this will be the first one, but all other townhome developments are zoned R-4, for example: Summer Oaks.

Dimitrios Mathews, 29289 State Highway 181, spoke in opposition and asked for the denial of the request. Although the applicant has the right to develop his property, this is a bold maneuver in that the development of the right-of-way by the lake will impact the quality of life for the residents of Malbis and Vlahos Lane.

Mr. Norman McAllister, 9595 Malbis Lane, stated this is a residential and agricultural zoned area with a one hundred and thirty year old church. Thirteen families are in unanimous disagreement with the request.

Mr. John Lawler, 804 Commerce Building, attorney for the homeowners' association of Malbis and Vlahos Lane, stated this is a planning opportunity. Lessen the blow and allow this property to remain single family until the applicant has submitted a plan.

Mr. George Kalasountas, 9563 Malbis Lane, asked for support of the development.

Mr. William Scully, attorney for Mr. George Kalasountas, stated Malbis Lane, if the property is developed, the ingress/egress easement adjacent to the lake will not access Malbis Lane. The proposed B-2 zone is not speculative and is consistent with B-2 on U.S. Highway 90, and with a shortness of townhomes, R-7 would be good for Daphne. Also, in response to the comment regarding the soccer practice, it is on an occasional basis. Mr. Kalasountas is not scofflaw with regard to Baldwin County's order. He follows the law as it exists.

Mr. Norman McAllister stated if the property is ever developed, it could access the ingress/egress easement to Malbis Lane. It is also my understanding that the soccer team leases the property from Mr. Kalasountas. Mr. Scully stated I am not aware of the lease.

Mr. Kevin Spriggs, owner of Malbis Shell 29640 State Highway 181, stated the real question is one of planning. The Commission must establish where the residential and commercial boundary will be south of U.S. Highway 90.

Chairman asked for Commission questions or comments. None were presented. He closed public participation.

Chief White asked if anyone had contacted the church regarding the rezoning.

Mr. George Kalasountas commented that the church is in support of the request.

**The City of Daphne
Planning Commission Minutes
Special Meeting of October 30, 2014
Council Chamber, City Hall - 5:00 P.M.**

Chairman commented on the consideration of the appropriateness of the rezoning and expressed his appreciation for the public interest. The Commission can send forward a favorable or unfavorable recommendation or amend the request.

Mr. Sandefur stated he should be able to develop his property and transition from B-2 to the R-7 (T), but asked if the Commission can ask him to provide a plan which provides additional buffers in order to protect the homeowners.

Commissioners discussed the fifty-foot setback, parking, landscaping and buffer requirements of an R-7 (T) zone. Ms. Jones stated the buffer would be planted, not just grass to meet the minimum standards.

Chairman asked for Commission questions or comments and a motion for a recommendation for pre-zoning.

A Motion was made by Mr. Scott and Seconded by Mr. Montgomery of a negative recommendation by the Planning Commission to the City Council of the pre-zoning of seventeen point eight two acre parcel into the City of Daphne located on the south side of U.S. Highway 90 at Renaissance Boulevard with B-2, General Business, R-7 (T) Townhouse and R-1, Low Density Single Family Residential for George Kalasountas.

The Motion failed. Two members voted in the affirmative and four dissented (Mr. Smith, Mr. Montgomery, Mr. Chason and Mr. Sandefur).

An Amended Motion was made by Mr. Scott and Seconded by Mr. White of an affirmative recommendation by the Planning Commission to the City Council of the pre-zoning of seventeen point eight two acre parcel into the City of Daphne located on the south side of U.S. Highway 90 at Renaissance Boulevard with B-1, Local Business, R-7 (T) Townhouse and R-1, Low Density Single Family Residential for George Kalasountas. The Motion failed. Three members voted in the affirmative and three dissented (Mr. Montgomery, Mr. Chason and Mr. Sandefur).

During discussion on the motion, Commissioners note that B-2 may be appropriate with a site plan and R-7 (T) may be appropriate with a good buffer. If B-1 were approved, the property owner could re-apply for B-2 zoning in the future.

A Motion was made by Mr. Montgomery and Seconded by Mr. Sandefur of an affirmative recommendation by the Planning Commission to the City Council of the pre-zoning of seventeen point eight two acre parcel into the City of Daphne located on the south side of U.S. Highway 90 at Renaissance Boulevard with R-1, Low Density Single Family Residential for George Kalasountas. There was no discussion on the motion.

**The City of Daphne
Planning Commission Minutes
Special Meeting of October 30, 2014
Council Chamber, City Hall - 5:00 P.M.**

The Motion failed. Four members voted in the affirmative and two dissented (Chief White and Mr. Scott).

The next order of business is a petition for annexation review for George Kalasountas.

Chairman asked for Commission questions or comments and a motion for a recommendation for annexation.

A Motion was made by Mr. Scott and Seconded by Mr. Sandefur of an affirmative recommendation by the Planning Commission to the City Council of the annexation of seventeen point eight two acre parcel into the City of Daphne located on the south side of U.S. Highway 90 at Renaissance Boulevard with the appropriate zoning as determined by the City Council.

Commission discussed the pending motion and Mr. Scott explained that pre-zoning gives the applicant the opportunity to accept the zoning of the property prior to acceptance of annexation into the City.

Mr. Montgomery stated from my standpoint, the motion for annexation should not be construed as a favorable recommendation with regard to zoning because it should be zoned R-1.

The Motion carried unanimously.

The next order of business is Planning Commission discussion.

No discussion.

The next order of business is public participation.

Chairman asked for public participation.

Mr. Spriggs commented that businesses south of U.S. Highway 98 and Interstate 10 are suffering because of a traveler's visibility issue caused by the trees along the corridor.

Chairman closed public participation.

The next order of business is the attorney's report.

Mr. Boucher stated no report.

The next order of business is commissioner's comments.

Mr. Sandefur stated although the regular meeting of October 23, 2014 was his last meeting, he expressed appreciation for what Mr. Kirby brought to the Commission and the City.

The City of Daphne
Planning Commission Minutes
Special Meeting of October 30, 2014
Council Chamber, City Hall - 5:00 P.M.

Chairman expressed appreciation for the Commission's consideration of the agenda items and expressing their opinions.
The next order of business is director's comments.

Ms. Jones presented the following:

The upcoming meeting dates are site preview, November 12, and regular meeting, November 20, 2014.

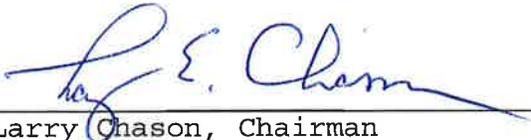
There being no further business, the meeting was adjourned at 6:16 p.m.

Respectfully submitted by:



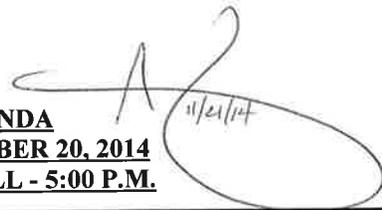
Jan Vallecillo, Planning Coordinator

Approved: November 20, 2014



Larry Chason, Chairman

**CITY OF DAPHNE
PLANNING COMMISSION AGENDA
REGULAR MEETING OF NOVEMBER 20, 2014
COUNCIL CHAMBERS, CITY HALL - 5:00 P.M.**



1. **CALL TO ORDER** **DATE OF REPORT: NOVEMBER 24, 2014**

2. **CALL OF ROLL** **LARRY CHASON, RON SCOTT, MONTY MONTGOMERY, DON TERRY, HUDSON SANDEFUR, DWAYNE SMITH, CHARLES SMITH, AND TYRONE FENDERSON, JR.**

3. **APPROVAL OF MINUTES:**

Review of minutes for the special meeting of October 30, 2014. (**APPROVED AS SUBMITTED**)

4. **SPECIAL PRESENTATION:** **National Fish & Wildlife Federation (NFWF) Grant update by Mobile Bay National Estuary Program -Presentation given by Christian Miller, Mobile Bay NEP**

5. **NEW BUSINESS:**
 - A. **SITE PLAN REVIEW:**
 1. **File SP14-14: (APPROVAL, CONTINGENT UPON THE INSTALLATION OF THE LANDSCAPING AND SIDEWALKS IN ACCORDANCE TO THE ORDINANCE)**

Site: **Strickland Orthodontics**

Zoning(s): **B-3, Professional Business**

Location: **South of the right-of-way of Millwood Circle, west of Alabama Highway 181**
Area: **0.6 ± Acres**
Owner: **Strickland Family Limited Partnership - H.L. Strickland, Jr.**
Engineer: **Barton & Shumer Engineering - David Shumer**

 - B. **PRELIMINARY PLAT REVIEW:**
 1. **File SDP14-01: PUBLIC HEARING (TABLED UNTIL DECEMBER 18, 2014 MEETING)**

Subdivision: **Canaan Place, Phase Two**

Zoning(s): **RSF-3, Residential Single Family, Baldwin County District 15, in the Extraterritorial Planning Jurisdiction of Daphne**

Location: **Northwest of the intersection of County Road 54 and County Road 54 East**
Area: **23.35 Acres ±, (60) lots**
Owner(s): **Breland Homes, L.L.C. - Louis W. Breland**
Engineer: **Preble - Rish - Steve Pumphrey**

 - C. **PLANNING COMMISSION DISCUSSION: PLANNED UNIT DEVELOPMENT (NO ACTION TAKEN)**

CITY OF DAPHNE
PLANNING COMMISSION AGENDA
REGULAR MEETING OF NOVEMBER 20, 2014
COUNCIL CHAMBERS, CITY HALL - 5:00 P.M.

6. **PUBLIC PARTICIPATION**
7. **ATTORNEY'S REPORT**
8. **COMMISSIONER'S COMMENTS**
9. **DIRECTOR'S COMMENTS:**
 - a. Meeting dates: Site preview, December 10, and regular meeting, December 18, 2014
10. **ADJOURNMENT**

621-3094

CASE NO. 2014-7

ABC LICENSE ROUTING

DATE RECEIVED BY REVENUE DIV. 11-25-14 (initial) aa
 DATE FORWARDED TO POLICE DEPT. 11-25-14 aa
 DATE RECEIVED BY POLICE DEPT. 11-25-14 JA

DATE: APPROVED _____ DISAPPROVED _____

POLICE DEPT SIGNATURE Juan V...

DATE RETURNED TO REVENUE DIV. 11-26-14 aa
 DATE FORWARDED TO CITY CLERK 11-26-14 aa

DATE RECEIVED BY CITY CLERK _____
 SCHEDULED DATE ON AGENDA _____

Council Action: _____ APPROVED _____ DISAPPROVED _____ TABLED

COMMENTS: _____

Rescheduled for Council Agenda Date: _____

Council Action: _____ APPROVED _____ DISAPPROVED _____ TABLED

COMMENTS: _____

DATE RETURNED TO REVENUE DIV.: _____

DATE RETURNED TO TAXPAYER _____ OR TO ABC FIELD OFFICE _____ (per taxpayer request)

*New location for Top of the Bay
 they have a current license - Thank you - please
 fax back to - 621-6904*



STATE OF ALABAMA
ALCOHOLIC BEVERAGE CONTROL BOARD
 ALCOHOL LICENSE APPLICATION
 Confirmation Number: 20141125083656576

Type License: 010 - LOUNGE RETAIL LIQUOR - CLASS I

State: County:

Type License:

State: County:

Trade Name: TOP OF THE BAY BAR AND MUSIC HALL

Filing Fee:

Applicant: TOTB LLC

Transfer Fee: \$50.00

Location Address: 28971 HWY 98 DAPHNE, AL 36526

Mailing Address: 28971 HWY 98 DAPHNE, AL 36526

County: BALDWIN Tobacco sales: YES Tobacco Vending Machines: 0

Type Ownership: LLC

Book, Page, or Document Info: BOOK LR7063 PG 491

Date Incorporated: 07/23/2013 State Incorporated: AL County Incorporated: MOBILE

Date of Authority: 07/23/2013 Alabama State Sales Tax ID: R009075539

Name:	Title:	Date and Place of Birth:	Residence Address:
BAMUEL MATTHEW TURNER 6966225 - AL	MEMBER	08/24/1983 FAIRHOPE, AL	108 LEIGH CIRCLE DAPHNE, AL 36526
GEORGE EDWARD DUFFY 6202330 - AL	MEMBER	10/07/1966 JACKSONVILLE, FLORIDA	126 MICHAEL LOOP DAPHNE, AL 36526

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 cooperation 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: GEORGE DUFFY
 Business Phone: 251-621-1177
 Fax:

Home Phone: 251-604-4378
 Cell Phone: 251-604-4378
 E-mail: DUFFYG@BELLSOUTH.NET

PREVIOUS LICENSE INFORMATION:
 Trade Name: TOP OF THE BAY
 Applicant: TOP OF THE BAY LLC

Previous License Number(s)
 License 1: 010-002060602-470
 License 2:



**STATE OF ALABAMA
ALCOHOLIC BEVERAGE CONTROL BOARD
ALCOHOL LIENSE APPLICATION
Confirmation Number: 20141125083656576**



If applicant is leasing the property, is a copy of the lease agreement attached?
 Name of Property owner/lessor and phone number: TOTB LLC 251-604-4378
 What is lessors primary business? REAL ESTATE
 Is lessor involved in any way with the alcoholic beverage business? YES
 Is there any further interest, or connection with, the licensee's business by the lessor? NO

Does the premise have a fully equipped kitchen? NO
 Is the business used to habitually and principally provide food to the public? NO
 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: 4890 Display Square Footage:
 Building seating capacity: 99 Does Licensed premises include a patio area? YES
 License Structure: ONE STORY License covers: ENTIRE STRUCTURE
 Number of licenses in the vicinity: 6 Nearest: .01
 Nearest school: 5 miles Nearest church: 1.5 miles Nearest residence: .5 miles
 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)?

Name:	Violation & Date:	Arresting Agency:	Disposition:
SAMUEL MATTHEW TURNER	DUI - 11/2008	DAPHNE POLICE DEPARTMENT	PAID FINE



STATE OF ALABAMA ALCOHOLIC BEVERAGE CONTROL BOARD ALCOHOL LICENSE APPLICATION Confirmation Number: 20141125083656576



Initial each

GP
GP

GP

GP

GP

GP

GP

GP

GP

Signature page

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.

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.

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.

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

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

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.

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 26, 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.

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): George E Duffy
 Signature of Applicant: *George E Duffy*

Notary Name (print): Betty G. Dean
 Notary Signature: *Betty G. Dean*

Commission expires: 01/10/2015

Application Taken: 11/25/2014 App. Inv. Completed:
 Submitted to Local Government:
 Received in District Office: Reviewed by Supervisor:

Forwarded to District Office:
 Received from Local Government:
 Forwarded to Central Office:



**STATE OF ALABAMA
ALCOHOLIC BEVERAGE CONTROL BOARD
ALCOHOL LICENSE APPLICATION
Confirmation Number: 20141125083656578**



Private Clubs / Special Retail / or Special Events licenses ONLY

Private Club

Does the club charge and collect dues from elected members?

Number of paid up members:

Are meetings regularly held?

How often?

Is business conducted through officers regularly elected?

Are members admitted by written application, investigation, and ballot?

Has Agent verified membership applications for each member listed?

Has at least 10% of members listed been confirmed and highlighted?

For what purpose is the club organized?

Does the property used, as well as the advantages, belong to all the members?

Do the operations of the club benefit any individual member(s), officer(s), director(s), agent(s), or employee(s) of the club rather than to benefit of the entire membership?

Agent's Initials:

Special Retail

Is it for 30 days or less?

More than 30 days?

Franchise or Concessionaire of above?

Other valid responsible organization:

Explanation:

Special Events / Special Retail (7 days or less)

Starting Date: Ending Date:

Special terms and conditions for special event/special retail:

Other Explanations

Is the lessor involved in any way with the alcohol beverage business?: THE APPLICANT



STATE OF ALABAMA
ALCOHOLIC BEVERAGE CONTROL BOARD
Confirmation Number: 20141125083656576



NOTICE OF TRANSFER OF ABC LICENSED BUSINESS

NOTE: A Copy of Operating Agreement Must be Attached To Application

CURRENT LICENSEE:
TOP OF THE BAY LLC
Address: 29049 HWY 98
DAPHNE, AL 36526
Telephone: 251-621-1177

NEW APPLICANT:
TOTB LLC
Address: 28971 HWY 98
DAPHNE, AL 36526
Telephone: 251-621-1177

Current License No: 010-002060602-470

LICENSED PREMISES ADDRESS: 28971 HWY 98 DAPHNE, AL 36526

THE AFORENAMED HEREBY SERVE NOTICE TO THE ABC BOARD OF THE ATTACHED CONTRACTUAL AGREEMENT GOVERNING THE CONTINUATION OF SALES OF ALCOHOLIC BEVERAGES ON THE LICENSED PREMISES.

The Parties to this agreement hereby acknowledge and affirm that the New (Applicant) Licensee will, at all times, act as the AGENT for the Current (Named) Licensee, and the Current Licensee shall act as PRINCIPAL for the purposes of the attached Agreement. The Principal shall be bound by all acts and/or omissions of the Agent in the operation of the licensed premises.

The Current Licensee is now and shall remain liable for any violations of ABC Rules and Regulations or other Alabama Law for the duration of the attached Agreement; and, further, that the Current Licensee has the right and authority, under Alabama Law, to surrender the ABC License to the ABC Board at any time.

The parties acknowledge that the operation of the licensed premises shall remain subject to inspection by ABC Enforcement, and must comply with all State and Local regulations and Laws, and that the local ABC Enforcement District Office must be immediately notified of any change in the attached Agreement.

THE CURRENT LICENSE WILL NOT BE RENEWED.

WITNESS our hands and seals on this the 25 th day of November, 2014.

CURRENT LICENSEE (NAMED ON LICENSE)

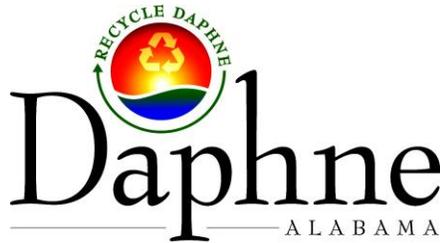
NEW LICENSEE (APPLICANT)

Print Name: George E. Duffy
Title: Member

Print Name: George E. Duffy
Title: Member

WITNESS: (By ABC Enforcement)
Revised 6/08

Dane Haygood
Mayor



Richard D. Johnson, PE
Public Works Director

The Jubilee City

Memorandum

To: Councilwoman Tommie Conaway, President
From: Richard D. Johnson, P.E.; Public Works Director
CC: Honorable Dane Haygood, Mayor; Chip Martin, EM Coordinator; Rebecca Hayes, City Clerk; File
Date: November 25, 2014
Re: Hazard Mitigation Grant Program (HMGP) – Safe Room for Public Works – Authorize the Mayor to enter into an agreement with EnCompass360

Council President Conaway:

The Hazard Mitigation Grant Program (HMGP) provides grants to states and local governments to implement long-term hazard mitigation measures after a major disaster declaration. The purpose of the HMGP is to reduce the loss of life and property due to natural disasters and to enable mitigation measures to be implemented during the immediate recovery from a disaster. The HMGP is authorized under Section 404 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act.

Daphne has been selected for Grant Funding for a safe room at Public Works to house the City's First Responders during hurricanes. Currently Public Works First Responders are housed in a non-fortified structure during hurricanes. HMGP Grants are a 75%/25% cost share arrangement. The City's match of 25% can be cash and/or in-kind services. The expected cost of the safe room is \$300K - \$350K. The City's match will be around \$75K-\$90K and the land and any worked done by Public Works will count towards that match.

I am requesting a Motion on the December 1, 2014 agenda authorizing the Mayor to enter into attached agreement with EnCompass360 who would manage the HMGP Grant for the City. The cost of Phase 1 - Pre-Award HMGP Application Costs is reimbursable and the match will be funded out of Public Works Professional Service budgeted monies. EnCompass360 has teamed with the City through DEMA on past Emergency Management endeavors and has the expertise to manage the grant project. Once the full grant is awarded it will be present Finance and the full Council approval and appropriation.

Please contact me should you have any questions regarding this grant agreement.

Thanks,

RDJ

From: Ashley Campbell
Sent: Thursday, October 23, 2014 9:42 AM
To: Denise Penry
Subject: FW: LOI Prioritization Results

fyi

From: Danon Hoagland [<mailto:DHOAGLAND@baldwincountyal.gov>]
Sent: Wednesday, October 22, 2014 6:34 PM
To: Landon Smith; Mike Howell; Tiffany Lynn; Bruce Renkert; Brandan Franklin; Erik Cortinas; Ashley Campbell; Ashley Campbell; Joe Bouzan; Rachel Keith; Chad Christian
Cc: Mitchell L. Sims; Reggie Chitwood; Teresa.Porter@adph.state.al.us; B.Taylor Rider; Kaylan Driskell
Subject: LOI Prioritization Results

Good Evening,

Here are the results from the LOI Prioritization that took place at the HMPC meeting this afternoon. I will send this out to all HMPC members once the Master LOI has been executed and is being sent to AEMA. Please contact me **AS SOON AS POSSIBLE TOMORROW to sign the Master LOI** if you have not already made arrangements with me to do so.

Baldwin County LOI Prioritization List (LOIs are attached)

1. Baldwin County – BRATS Generator
2. Spanish Fort – First Responder (Hurricane) Safe Room
3. Fairhope – Acquisition
4. Baldwin County – Structure Elevation (6 residences)
5. Daphne – Safe Room
6. Orange Beach – Acquisition
7. Gulf Shores – Drainage
8. Foley – First Responder (Hurricane) Safe Room
9. Orange Beach – Drainage
10. Gulf Shores – Generator
11. Daphne – Acquisition
12. Baldwin County – Magnolia Springs First Responder (Hurricane) Safe Room
13. Orange Beach – Safe Room (Tornado)
14. Baldwin County – Subsidence (4 residences)

Thank you,

Danon

Danon L. Hoagland, ALEM, CFM
Planning/Grants Coordinator
Baldwin County Emergency Management Agency
23100 McAuliffe Dr
Robertsdale, AL 36567
Office: 251-972-6807
Fax: 251-580-1616
Email: dhoagland@baldwincountyal.gov

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|| Ashley Campbell

**PROFESSIONAL CONSULTING AND PROJECT SERVICES
AGREEMENT**

**For
AEMA/FEMA HMGP Application Development – Phase 1
City of Daphne Safe Room**

(Agreement)

EnCompass360, Inc. will provide professional consulting and application development services related to preparing The City of Daphne, Alabama’s HMGP Application for Submission, Review and Approval by AEMA and FEMA – Phase 1.

Between
EnCompass360, Inc.
And
City of Daphne, Alabama

This Agreement, effective as of November 24, 2014, is entered into between **EnCompass360, Inc.** (hereinafter called “**EC360**”), and **The City of Daphne, Alabama.** (hereinafter called “**Daphne**”), for the purpose of providing AEMA/FEMA HMGP professional consulting and application development services related to the submission, review, and approval by AEMA and FEMA – Phase 1.

This agreement for professional services does not have a contingency clause and the scope of work and activities will be carried out consistent with FEMA laws, regulations, and eligibility guidelines. Therefore, this agreement is not contingent upon the issuance of a Presidential declaration or FEMA’s approval or obligation of funds.

EC360 is not employed by FEMA or Alabama Emergency Management Agency (AEMA).

1. EnCompass360 - Phase 1 Tasks

Project Tasks related to professional consulting and HMGP application development services for the submission, review, and approval by AEMA and FEMA – Phase 1.

- Professional Consulting and HMGP Application Development - Phase 1
 - Provide multiple safe room solutions, options, and costs to be considered by client.
 - Prepare initial safe room design drawings and specs for FEMA review.
 - Perform Peer Review of Safe Room Design and Specs by Architect

- Determine best location for safe room and the value of land for In-Kind contribution.
 - Determine any other In-Kind Services and Contributions to project
 - Prepare detailed cost estimate for safe room
 - Prepare Multiple Maps (Population Totals, FIRM, TOPO, QUAD, Street)
 - Prepare Site Photos
 - Run Benefit Costs Analysis
 - Prepare Environmental and Historical Data and Letter for Approval
 - Include County Mitigation Plan and assure clients inclusion in that plan
 - Prepare and Include Area Damage, Risk Assessment, and Historical Event Data
 - Prepare Maintenance Agreement for Signatures
 - Prepare Safe Room Operations Plan and Agreement Signatures
 - Input all data into AEMA Automated HMGP application system for client's signature and submission to AEMA and FEMA for review.
- Project and Grant Management Tasks related to the approved AEMA/FEMA HMGP project which includes Phase 2 - Detailed Design/Specs, Bidding, Construction, and Phase 3 - Project Closeout will be a separate agreement that has to be executed after FEMA's approval to comply with FEMA Contingency clauses and contracts.

2 EC360 Project Fee Payment for Phase 1

Pre-Award HMGP Application Costs

Costs incurred after the HMA application period has opened, but prior to the date of the grant award or final approval, are identified as pre-award costs. For HMGP, the opening of the application period is the date when HMGP is authorized from a presidential declaration.

Pre-award costs are directly related to development and submission of the HMGP application and are funded through the HMGP Grant.

The pre-award costs must be identified as separate line items in the cost estimate of the application. Applicants may identify pre-award costs as part of their non-Federal cost share.

EnCompass360 Professional Services Fee Pre-Award HMGP Application Development Costs

- Pre-Award Application Development Fee includes all tasks identified in Phase 1 (See above tasks descriptions)
- Pre-Award Application Development Fee will be included in the Client Application for AEMA/FEMA reimbursement
- Pre-Award Application Development Fee will be based on 5% of estimated project costs
- Pre-Award Application Development Fee is not contingent on FEMA approval or Obligation of funds.
- Pre-Award Application Development Fee can be paid as a lump sum or as a mutually agreed fee schedule.
- Pre-Award Application Development Fee must be paid before FEMA HMGP Grant Approval
- Payment(s) shall be made to EnCompass360, Inc., P.O. Box 11275, Birmingham, Alabama, 35202
- Delinquent payments shall bear interest at the rate of 18% annually.

3 Proprietary Information

During the term of this Agreement, **EC360 and Daphne** shall exchange such proprietary technical and other information as is reasonably required for each to perform its obligations hereunder. **EC360 and Daphne** each agree to keep in confidence and prevent the disclosure to any person(s) outside their respective organizations or any person(s) within their organizations not having a need to know, all information received from the other which is designated in writing or by appropriate stamp or legend to be of a proprietary nature and to use such information only in connection with their obligations under this Agreement provided, however, that neither party shall be liable for disclosure or use of such data if the same is:

- 3.1 In the public domain at the time of disclosure, or is subsequently made available to the general public without restriction by the disclosing party;
- 3.2 Known to the receiving party at the time of disclosure without restrictions on its use or independently developed by the receiving party, and there is adequate documentation to demonstrate either condition;
- 3.3 Used or disclosed inadvertently despite the exercise of the same degree of care that each party takes to preserve or safeguard its own proprietary information;

- 3.4 Used or disclosed with the prior written approval of the disclosing party;
- 3.5 Furnished by the disclosing party to the Client with “unlimited rights”;
- 3.6 Disclosed without restriction to the receiving party from a source other than the disclosing party; or
- 3.7 Used or disclosed after a period of three (3) years after the date of receipt;

4. Inventions and Patents

Inventions conceived solely by employees of **EC360** shall belong exclusively to **EC360**. Inventions conceived solely by employees of **Daphne** shall belong exclusively to **Daphne**. Inventions conceived jointly by the parties hereto in the course of work called for by this Agreement shall be subject to further agreement of the parties. This understanding is subject to modification as may be required by applicable regulations, or the terms of the prime contractor resultant subcontract between the parties. Except as stated in the preceding paragraph, nothing contained in this Agreement shall be deemed, by implication to grant any right or license in respect of any patents, inventions or technical information at any time owned by the other party.

5. Relationship

Nothing in this Agreement shall be deemed to constitute, create, give effect to, or otherwise recognize a joint venture, partnership, or formal business entity of any kind, and the rights and obligations of the parties shall be limited to those expressly set forth herein.

Nothing herein shall be construed as providing for the sharing of profits or losses arising out of the efforts of either or both of the parties, except as may be provided for in any resultant subcontract agreed to between the parties. The cooperation of the parties is for the purpose of complementing their respective capabilities to submit the highest quality product as possible.

6. Publicity and News Release

No releases shall be made to the news media or the general public relating to participation on the opportunity by either party without the prior written approval of the other party, which approval shall not be unreasonably withheld. The parties further agree that news releases made by either of them shall recognize the participation and contributions of the other party.

7. Indemnity

The employees of **EC360 and Daphne** shall obey all pertinent rules and regulations of the other party while on the premises of the other party, including those relating to the safeguarding of classified information. Each party agrees to indemnify and save harmless the other party from and against all claims for:

7.1 Damage to, or loss of use of, the other party's property; and

7.2 Injury or death of any of the other party's employees or agents, to the extent any such damage, injury or death is caused by any act or omission to act, including negligence, of the indemnifying party's employees or agents in connection with performance under this Agreement.

8. Assignment

Neither this Agreement nor any interest herein may be assigned, in whole or in part, by either party without the prior written consent of the other party, except that, without securing such prior consent, either party shall have the right to assign this Agreement to any successor of such party by way of merger or consolidation or the acquisition of substantially all of the assets of such party relating to the subject matter of this Agreement; provided, however, that such successor shall expressly assume all of the obligations of such party/ under this Agreement.

9. Entire Agreement

This Agreement constitutes the entire understanding and agreement of and between the parties with respect to the subject matter hereof, and supersedes all prior representations and agreements, verbal or written. It shall not be varied, except by an instrument in writing of subsequent date and duly executed by an authorized representative of each party. Paragraph headings herein are for convenience only and shall not limit in any way the scope or interpretation of any provision of this Agreement. The validity, construction, scope and performance of this Agreement shall be governed by the laws of the State of Alabama.

10. Limitation of Liability

AEMA and FEMA HMGP projects are grant awards and **EC360** shall not be held liable for the decisions of AEMA or FEMA on eligible or ineligible items or disapproval of the entire project.

Neither party shall be liable to the other for any indirect, incidental, special or consequential damages, however caused, whether as a consequence of the negligence of the one party or otherwise.

11. Conduction and Obligations

11.1 There shall be no litigation or proceeding pending or threatened against the party or any of its officers or employees (i) which is for the purpose of enjoining or otherwise restricting the activities contemplated by this Agreement, or otherwise claiming that any such activity is improper, (ii) which would adversely affect the rights and/or capabilities of the party in respect of such activities, or (iii) which, in the judgment of the Officers of either party, would make the continuation of such activities inadvisable.

11.2 During the period that this Agreement is in force and throughout the period of performance of any resultant contract or subcontract arrangements, including extensions or modifications thereto, the parties hereto agree that neither shall directly solicit for employment, any technical or professional employees of the other assigned to work on the contract/subcontract, without the prior written approval of the party whose employee is being considered for employment

12. Scope of Agreement

This Agreement shall relate only to the opportunity specified herein, and nothing herein shall be deemed to:

12.1 Confer any right or impose any obligation or restriction on either party with respect to any other program effort or marketing activity at any time undertaken by either party hereto, jointly or separately: or

12.2 Nothing herein shall constrain either party from engaging in its standard business practices.

13. Compliance with Laws

The parties, in the performance of this Agreement, shall comply with all applicable federal, state and local laws and ordinances, including all regulations thereof.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed as of the day and year first above written.

City of Daphne
By: _____
Name: _____
Title: _____

EnCompass360, Inc.
By: _____
Name: William E. Culpepper Jr.
Title: EnCompass360 - President

Notary of Public

**CITY OF DAPHNE
RESOLUTION 2014 – 57**

**A RESOLUTION DECLARING CERTAIN PERSONAL PROPERTY SURPLUS AND
AUTHORIZING THE MAYOR TO DISPOSE OF SUCH PROPERTY**

WHEREAS, the Department Heads of the City of Daphne have determined that the items listed below are no longer required for public or municipal purposes; and

WHEREAS, the items listed below are recommended for disposal.

NOW, THEREFORE, BE IT RESOLVED, by the Mayor and City Council of the City of Daphne that

1. The property listed below is hereby declared to be surplus property, and

DEPT	EQ/VEH#	DESCRIPTION	VIN
Street	107	1998 FORD F150 PU	1FTZF17WXWNB38596

2. The Mayor is authorized to advertise and accept bids through Govdeals.com as contracted for the sale of such personal property, and
3. The Mayor is authorized to sell said property to the highest bidder and deposit any and all proceeds to the General Fund. The Mayor is further authorized to direct the disposition of any property which is not claimed by any bidder and sign all necessary documents.

**ADOPTED AND APPROVED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF
DAPHNE, ALABAMA, this 1st day of December, 2014.**

Dane Haygood, Mayor

ATTEST:

Rebecca A. Hayes, City Clerk

RESOLUTION 2014-58

RESOLUTION SUPPORTING THE ALABAMA DEPARTMENT OF TRANSPORTATION (ALDOT) TO CONDUCT A SIGNAL WARRANT STUDY AT THE INTERSECTION OF BELLATON AVENUE, AUSTIN ROAD AND STATE ROUTE 181

WHERE AS, many citizens of Daphne have described in detail to the Public Safety Committee the difficulty of traversing the intersection of Bellaton Avenue, Austin Road and State Route 181 during times of heavy traffic; and

WHERE AS, citizens and Public Safety Officials have reported the occurrences of multiple accidents and near-misses at the intersection of Bellaton Avenue, Austin Road and State Route 181; and

WHERE AS, Bellaton Avenue is a City of Daphne Maintained public road; Austin Road is a Baldwin County Maintained public road; State Route 181 is a State of Alabama Maintained public road; and

WHERE AS, the Alabama Department of Transportation (ALDOT) Southwest Region is willing to conduct a Signal Warrant Study of the intersection of Bellaton Avenue, Austin Road and State Route 181 if both the City of Daphne and Baldwin County issues Resolutions of Support; and

WHERE AS, if the Signal Warrant Study determines signalization of the intersection is required, the City of Daphne, Baldwin County and the Alabama Department of Transportation will share the cost of signal improvements on a 25%/25%/50% basis; and

WHERE AS, such proposed intersection signal improvements would come back to the Daphne City Council for approval and funding appropriations;

NOW THEREFORE BE IT RESOLVED by the City Council of the City of Daphne that:

- 1.) Request and Support that the Alabama Department of Transportation (ALDOT) Southwest Region conduct a Signal Warrant Study at intersection of Bellaton Avenue, Austin Road and State Route 181; and
- 2.) If signals for the intersection of Bellaton Avenue, Austin Road and State Route 181 are warranted, the City will appropriate funds equal to 25% of the construction; and
- 3.) Authorize the Mayor to execute any agreements and/or documents between all involved parties associated with the Signal Warrant Study.

APPROVED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF DAPHNE, ALABAMA, THIS _____ DAY OF _____, 2014.

**CITY OF DAPHNE, ALABAMA
AN ALABAMA MUNICIPAL CORPORATION**

ATTEST:

REBECCA HAYE, CITY CLERK

DANE HAYGOOD, MAYOR

CITY OF DAPHNE

RESOLUTION NO.: 2014-59

DONATION OF REAL PROPERTY TO CITY OF DAPHNE

WHEREAS, Henry Aaron and Billye S. Aaron, have expressed a desire to convey and donate three (3) parcels of real property to the City of Daphne, an Alabama municipal corporation, and;

WHEREAS, the City of Daphne has investigated, reviewed and determined that the three (3) parcels of real property would be of benefit to the City of Daphne, and;

WHEREAS, the City of Daphne recognizes that the appraised value of the said parcels of real property pursuant to an appraisal performed by Courtney & Morris Appraisals, Inc. dated November 7, 2014 has determined that the parcels of real property specifically known as Parcel No. 43-03-71-0-006-072.000 is valued at \$45,000.00, that Parcel No. 43-03-71-0-006-072.002 is valued at \$25,000.00, and that Parcel No. 43-03-71-0-006-072.003 is valued at \$30,000.00, and;

WHEREAS, said real property is located within the corporate limits of the City of Daphne, Alabama and each parcel of real property is more particularly described as follows:

PARCEL NO.: 43-03-71-0-006-072.000 (2.92 ACRES)
350' x 315' IRR BEG AT THE INT OF W LINE OF PHILLIPS ST EXT & N LINE OF YANCEY RD RN W 315' GR SEC 7.01-5-2 DB378 P269 AS RECORDED IN THE PROBATE COURT OF BALDWIN COUNTY, ALABAMA.

PARCEL NO.: 43-03-71-0-006-072.002(.85 ACRES)
210(S) X 185'(S) IRR FM THE INT OF E/L OF PHILLIPS ST EXT AN D S LINE OF LOT 2 D'OLIVE GRANT RUN E 55'(S) TO THE POB CONT TH E 210'(S), TH S 180'(S) TH W 210'(S) POB GR SEC 7.01 T5S R2E AS RECORDED IN REAL PROPERTY BOOK 350 PAGE 160 OF THE PROBATE COURT OF BALDWIN COUNTY, ALABAMA.

PARCEL NO.: 43-03-71-0-006-072.003 - (1.05 ACRES)
105'(S) X 250'(S) IRR FM INT OF E/L OF PHILLIPS ST EXT AND S/L OF LOT 2 D'OLIVE GRANT RUN SE 213'(S) TO POB TH E 250'(S), TH S 195'(S), TH W 213', TH NW 80'(s), TH NW 110'(S) TO POB GR SEC 7.01 T5S R2E AS RECORDED IN REAL PROPERTY BOOK 350 PAGE 160 OF THE PROBATE COURT OF BALDWIN COUNTY, ALABAMA.

WHEREAS, the City of Daphne does hereby accept the gratuitous donation and transfer of the above parcels of real property to the City of Daphne and the City agrees to complete and execute those provisions of appropriate IRS forms acknowledging these conveyances and the City of Daphne further acknowledges that it has not provided any goods or services or any other inducements in return for the acceptance of these donated parcels of real property.

NOW THEREFORE BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF DAPHNE, ALABAMA that the above described three (3) separate parcels of real property be and are hereby accepted by the City of Daphne and that the Mayor of the City of Daphne be and is further authorized to execute such documents related to the closing and acceptance of the parcels as a charitable contribution for Grantors income tax purposes.

ADOPTED AND APPROVED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF DAPHNE, ALABAMA ON THIS THE 1st DAY OF DECEMBER, 2014.

CITY OF DAPHNE

DANE HAYGOOD, MAYOR

ATTEST:

REBECCA A. HAYES, CITY CLERK

CITY OF DAPHNE

RESOLUTION NO.: 2014-60

DONATION OF REAL AND PERSONAL PROPERTY TO THE CITY OF DAPHNE

WHEREAS, Barry Booth has expressed a desire to convey and donate to the City of Daphne, an Alabama municipal corporation, two (2) parcels of real property and (3) artistic sculptures located at three (3) different locations on City property, and;

WHEREAS, the City of Daphne has investigated, reviewed and determined that the two (2) parcels of real property and the three (3) artistic sculptures would be of benefit to the City of Daphne, and;

WHEREAS, the City of Daphne recognizes the appraised value of the two (2) parcels of real property, one (1) parcel being located on a triangular parcel of real property being located North East of the intersection of Santa Rosa and U. S. Highway 98 with acreage of approximately .11 acres, with approximately 99.79 feet of frontage on Highway 98, approximately 24.9 feet on Santa Rosa Avenue, and approximately 100 feet of frontage on Old Spanish Trail; and one (1) parcel being located North West of the intersection of Santa Rosa and U. S. Highway 98 with acreage of approximately .488 acres, with approximately 265.1 feet of frontage on U.S. Highway 98, approximately 56.7 feet on Santa Rosa Avenue, and approximately 266.8 feet of frontage on Main Street (Scenic Highway 98), and;

WHEREAS, the City of Daphne recognizes that the appraisals were performed by Courtney & Morris Appraisals, Inc. and dated November 25, 2014 and have determined that the parcel of real property specifically known as the triangular parcel located North East of the intersection of Santa Rosa and U. S. Highway 98 is valued at \$30,000.00, and the parcel of real property specifically known as “Autobahn Park” located North West of the intersection of Santa Rosa and U. S. Highway 98 is valued at \$75,000.00, and;

WHEREAS, the City of Daphne recognizes that the appraised value of the three (3) artistic sculptures performed by Lars Britt of Koch Galleries and dated November 25, 2014 are valued as follows: Sculpture 1 titled “Millennial Piece” is located at the Daphne Civic Center and valued at \$30,000.00, Sculpture 2 titled “Wind Sail” is placed at the real property located North West of the intersection of Santa Rosa and U. S. Highway 98 and valued at \$35,000.00 and Sculpture 3 titled “Veterans Memorial” is placed at the real property located North East of the intersection of Santa Rosa and U. S. Highway 98 and valued at \$35,000.00, and;

WHEREAS, said real property and sculptures are located within the corporate limits of the City of Daphne, Alabama, and;

WHEREAS, the City of Daphne does hereby accept the gratuitous donation and transfer of the above two (2) parcels of real property and the three (3) sculptures to the City of Daphne and agrees to complete and execute those provisions of appropriate IRS forms acknowledging these conveyances and acknowledges that the City of Daphne has not provided any goods or services or any other inducements in return for the acceptance of these gifts.

NOW THEREFORE BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF DAPHNE, ALABAMA that the above-described two (2) separate parcels of real property and three (3) sculptures be and are hereby accepted by the City of Daphne and that the Mayor of the City of Daphne be and is further authorized to execute such documents related to the closing and acceptance of the parcels as a charitable contribution for Grantors income tax purposes.

ADOPTED AND APPROVED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF DAPHNE, ALABAMA ON THIS THE 1st DAY OF DECEMBER, 2014.

CITY OF DAPHNE

DANE HAYGOOD, MAYOR

ATTEST:

REBECCA A. HAYES, CITY CLERK

ORDINANCE 2014-53

**Appropriating Funds: Part-Time Events Assistant
OR
Additional Overtime and Temporary Services**

OPTION 1 - Part-Time Civic Center Events Assistant

OPTION 2 – (only if Option 1 is not approved) Additional Overtime and Temporary Services appropriation

WHEREAS, Ordinance 2014-44 approved and adopted the Fiscal Year 2015 Budget on September 23, 2014 which funded the position of the Civic Center Director; and

WHEREAS, Ordinance 2014-50 reclassified the Civic Center Director to the Convention/Visitor’s Bureau Civic Center Director on November 3, 2014; and

WHEREAS, the Convention/Visitor’s Bureau Civic Center Director has additional responsibilities related to tourism and will be traveling to conventions as a result creating the need to have additional help at the Civic Center in the Director’s absence; and

WHEREAS, the Convention/Visitor’s Bureau Civic Center Director has presented two options to the City Council that will meet those additional needs; and

- **OPTION 1** – to approve the position of a Part-Time Event Assistant (25 hours per week) for the Civic Center and appropriate \$18,463 (\$15,845 wages & \$2,618 benefits) from the general fund

OR

- **OPTION 2 (only if Option 1 is not approved)** – to approve and appropriate \$13,000 from the general fund in Overtime (\$1,000) and Temporary Services (\$12,000) to the Civic Center

NOW, THEREFORE BE IT ORDAINED by the City Council of the City of Daphne, Alabama:

- **OPTION _____**

APPROVED AND ADOPTED by the City Council of the City of Daphne, Alabama, this _____ day of _____, 2014.

Dane Haygood, Mayor

ATTEST:

Rebecca A. Hayes, City Clerk

ORDINANCE 2014-54

A ORDINANCE OF THE DAPHNE CITY COUNCIL TO CONTRIBUTE TO THE TWENTY PERCENT (20%) LOCAL MATCH REQUIREMENT FUNDING A TRAFFIC SIGNAL SYSTEM TECHNOLOGY ENHANCEMENTS STUDY FOR CORRIDORS SERVICING THE EASTERN SHORE

WHEREAS, Ordinance 2014-44 approved and adopted the Fiscal Year 2015 Budget on September 23, 2014; and

WHEREAS, subsequent to the adoption of the Fiscal Year 2015 budget, the City Council has determined that certain appropriations are required and should be approved and made a part of the Fiscal Year 2015 budget; and

WHEREAS, the City of Daphne is a member of the Eastern Shore Metropolitan Planning Organization (MPO); and

WHEREAS, population projections compiled by the MPO indicate that the population on the Eastern Shore is expected to increase approximately 21% by the year 2020 and approximately 67% by the year 2040; and

WHEREAS, US Highway 98 and State Route 181, as the primary north-south corridors servicing the Eastern Shore, are frequently congested with heavy traffic; and

WHEREAS, the Eastern Shore MPO Policy Board has authorized the Baldwin County Commission, as administrator of the Eastern Shore MPO, to hire a consultant to conduct a Traffic Signal System Technology Improvements study to determine whether adaptive or responsive traffic signal technology can be used to enhance the efficiency of the corridors along the Eastern Shore (see Exhibit A – ESMPO Resolution); and

WHEREAS, Sain Associates Consulting Engineers has prepared a fee and scope to perform the signal study within MPO Smoothed Urban Area with said fee totaling \$35,822 (see Exhibit B – Fee and Scope); and

WHEREAS, eighty percent (80%) or \$28,658 of the total fee will be paid with left over FY13 MPO Planning Funds and the remaining twenty percent (20%) or \$7,164 must be paid with contributions from the local MPO member governments; and

WHEREAS, the MPO Policy Board agreed (see Exhibit A) to equitable contribution amounts from each member government to cover the cost of the required local match (\$7,164) and said amounts have since been reduced to the following due to a negotiation reduction in the total fee:

- Two-sevenths (2/7) or \$2,047 from Baldwin County
- Two-sevenths (2/7) or \$2,047 from the City of Daphne
- Two-sevenths (2/7) or \$2,047 from the City of Fairhope

- One-seventh (1/7) or \$1,023 from the City of Spanish Fort; and

WHEREAS, the Baldwin County Highway Department will manage the project and invoice each member government in an amount not to exceed the amounts noted above; now

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Daphne, Alabama, that funds from the Four Cent Gas Tax Fund are hereby appropriated and made a part of the Fiscal Year 2015 budget in the amount of \$2,047 for required local match for the Traffic Signal System Technology Improvements study, as set forth above, and will pay said contribution upon receipt of invoice for same from the Baldwin County Highway Department.

APPROVED AND ADOPTED by the City Council of the City of Daphne, Alabama, this ____ day of _____, 2014.

DANE HAYGOOD, MAYOR

ATTEST:

REBECCA A. HAYES, CITY CLERK

ORDINANCE 2014-55

**Alabama Dept of Economic & Community Affairs
Recreational Trails Program Project: Village Point Park Preserve Boardwalk/Trails
Extension – Project #14-RT-54-08**

WHEREAS, Ordinance 2014-44 approved and adopted the Fiscal Year 2015 Budget on September 23, 2014; and

WHEREAS, subsequent to the adoption of the Fiscal Year 2015 budget, the City Council has determined that certain appropriations are required and should be approved and made a part of the Fiscal Year 2015 budget; and

WHEREAS, the City of Daphne did heretofore make application to the Alabama Department of Economic & Community Affairs (ADECA) for the funding of the following improvements at the Daphne Village Point Park : 1270 LF of new Boardwalk/Trails (2014 PW-031):

- Construction of 800' of ADA compliant wooden Boardwalk
- Construction of 470' of hard surface trail to connect the existing trail system in Village Point Park; and

WHEREAS, such improvements will facilitate the recreational, environmental, and historical use of the Park by the citizens of Daphne; and

WHEREAS, an appropriation is needed for matching funds for the grant in the amount of \$ 30,214 in the Fiscal 2015 budget; and

WHEREAS, the City of Daphne has received notification that the grant application has been approved.

NOW, THEREFORE BE IT RESOLVED by the Mayor and City Council of the City of Daphne that:

- 1) The City of Daphne hereby accepts the offer of financial assistance from ADECA in the amount of \$88,624 for the improvements (as herein stated) to the Daphne Village Point Park Preserve; AND
- 2) Funds in the amount of \$30,214 from the Lodging Tax Fund are hereby appropriated and made a part of the Fiscal Year 2015 budget for the construction of 1200 LF of Boardwalk/Trails at Village Point Park Preserve; AND
- 3) The Mayor and City Clerk are hereby authorized to go out to bid for the project and execute the grant agreement and any other documents required for the acceptance of the ADECA Village Point Park Trail RTP Project# 14-RT-54-08 on behalf of the City of Daphne.

APPROVED AND ADOPTED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF DAPHNE, ALABAMA, this _____ day of _____, 2014.

Dane Haygood, Mayor

ATTEST:

Rebecca A. Hayes, City Clerk

ORDINANCE 2014-56

Appropriation for Appraisal, Survey and Associated Fees for Marino Property Located near D'Olive Creek

WHEREAS, Ordinance 2014-44 approved and adopted the Fiscal Year 2015 Budget on September 23, 2014; and

WHEREAS, subsequent to the adoption of the Fiscal Year 2015 budget, the City Council has determined that certain appropriations are required and should be approved and made a part of the Fiscal Year 2015 budget; and

WHEREAS, an appraisal and survey for the (Meilyn Marino) Marino family property located near D'Olive Creek for a potential purchase is needed to evaluate the property for the possibility of further extending the Village Point Park Preserve.

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Daphne, Alabama, that funds from the Lodging Tax Fund are hereby appropriated and made a part of the Fiscal Year 2015 budget in the amount of \$2,500 for the appraisal, survey, and associated fees for the Marino property located D'Olive Creek:

- PPIN#027259 - 764' x 251.7' Acres

APPROVED AND ADOPTED by the Mayor and City Council of the City of Daphne, Alabama, this _____ day of _____, 2014.

Dane Haygood, Mayor

ATTEST:

Rebecca A. Hayes, City Clerk

**CITY OF DAPHNE
ORDINANCE NO. 2014-57**

**AN ORDINANCE TO REPEAL ORDINANCE NOS. 2011-08
AND ESTABLISHING RULES, REGULATIONS, RATES AND
A LEASE AGREEMENT FOR THE RENTAL OF THE
DAPHNE CIVIC CENTER**

WHEREAS, the City Council of the City of Daphne desires that all citizens of the City of Daphne and guests thereof be able to peaceably use and enjoy the Daphne Civic Center; and,

WHEREAS, the City Council of the City of Daphne desires to promote the health and safety of the citizens of the City of Daphne by providing rental schedules, rules, regulations and a lease agreement for the rental of the Daphne Civic Center; and,

WHEREAS, the mission statement of the City of Daphne, Daphne Civic Center, as established by the Mayor and City Council is as follows:

"The Daphne Civic Center will strive to promote a high quality of life, to enhance the spiritual, social, and moral well being of each citizen and visitor, to promote community awareness and serve as a vehicle for total community enjoyment"; and,

WHEREAS, changes in policy have mandated the repealing of the preceding Ordinance establishing rules, regulations, rates, and a lease agreement for the rental of the Daphne Civic Center,

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

SECTION I. DEFINITIONS

A. For the purpose of this Ordinance the following terms, phrases, words and their derivations shall have the meaning given herein. When not inconsistent with the context, words used in the present tense include the future tense, words in the plural number include the singular number and words in the singular number include the plural number. The word "shall" is always mandatory and not merely derived.

1. Lessor: The City of Daphne and Daphne Civic Center.
2. Lessee: Signer of City of Daphne Civic Center Lease Agreement.

3. Facility: Daphne Civic Center.
4. Event: The purpose for which facility is leased.

SECTION II: RULES AND REGULATIONS-GENERAL

A. The Director is authorized to execute on behalf of the City of Daphne, the City of Daphne Civic Center lease agreement as approved by the City Council. The following rules apply.

1. Governmental functions will take precedence over all other functions. All other reservations are on a first come first serve basis.
2. The Lease agreement must be executed by persons 21 years of age or older and the lessee must be in attendance at the event.
3. Dates will not be considered "booked" prior to the completion of a City of Daphne, Daphne Civic Center Lease Agreement and payment of applicable fees.
4. The performance of this Agreement shall terminate without liability upon the occurrence of any circumstance beyond the control of Lessor – such as acts of God, fire, storm, pestilence, war, terrorism, disaster, Federal regulations, strikes, civil disorder, criminal acts, curtailment of transportation facilities or any other casualty or unforeseen occurrence – to the extent that such circumstances make it illegal or impossible to provide or use of the facilities. Notice may be provided by Lessor at the earliest practicable time however is not required to absolve Lessor of liability under this paragraph Lessee shall pay rental for said premises only up to the time of such termination, at the rate specified on the Lease Agreement and the said Lessee waives any claim for damages or compensation should the lease be so terminated. Should termination due to unforeseen events as described above occur prior to any actual use of the facility, Lessee shall be refunded all reservation fees that have not been obligated by Lessor.
5. City personnel will inspect the facility after each event. If damage is found, lessee will be notified of charges to be deducted from damage deposit or of additional charges beyond damage deposit.
6. Garbage cans, trash bags, rest room supplies, and outside trash receptacles will be supplied for Lessee use with the exception of Mardi Gras groups, or other large groups as determined by the Director. Additional garbage fees may apply.
7. City functions must portray the City of Daphne in the best light for the good and benefit of the citizens of Daphne.

8. Additional services and/or equipment (other than those specified at the time of lease) which may be requested and utilized will be additionally charged based on Daphne Civic Center prevailing rates.
9. Security, firefighters and other personnel will be charged at the prevailing rates per hour. Lessee is responsible for making necessary arrangements.
10. Arrangements must be confirmed at least fourteen (14) days in advance of an event so as to schedule the personnel, equipment and services required.
11. The Lessor requires that only trained city personnel use and handle Civic Center equipment during events and set-ups.
12. The Lessee is charged with the responsibility of paying all applicable City, County, and State sales tax on admissions and sales at the Civic Center as well as applicable license fees.
13. All fees shall be paid 14 (fourteen) days prior to the event. Exceptions may be made for State, County, and those approved by the Director.
14. Lessee agrees to pay for all fees in lawful money of the United States of America, cashiers check, personal checks, or company checks at the Sales Office of the Daphne Civic Center. Lessee further agrees to pay said Lessor on demand any sum which may be due to said Lessor for additional services and/or accommodation for material furnished or provided to said Lessee.
15. The Lessee will comply with all laws of the United States, and of the State of Alabama, all ordinances of the City of Daphne, Alabama and all rules and requirements of the Police and Fire Departments, or other municipal authorities of the City of Daphne, and will obtain and pay for all necessary permits and licenses, and will not do nor suffer to be done, anything on said premises during the term of the lease in violation of any such laws, ordinances, rules or requirements, and if Lessor calls any such violation to the attention of the Lessee, or any person employed by or admitted to the said premises by said Lessee, such Lessee will immediately desist from and correct such violation. Lessee will provide Lessor with a copy of all applicable permits and licenses 14 days in advance of start of event.
16. No performance, exhibition or entertainment shall be given or held on said demised premises, which shall be objected to by the Lessor.
17. The City of Daphne, Daphne Civic Center, employees, or agents shall not be responsible for any misrepresentation of or failure to perform by any promoter, agent, group, or act that is not booked by the City of Daphne or Daphne Civic Center.
18. LESSEE, IN CONSIDERATION OF THE EXECUTION BY LESSOR OF THE LEASE AGREEMENT REPRESENTS AND GUARANTEES TO LESSOR THAT PERFORMERS BY THEIR SPEECH, SONG, MUSIC, CONDUCT, OR MANNER WILL NOT VIOLATE

OR INCITE OTHERS TO VIOLATE ANY STATUTE, LAW, ORDINANCE, RULE, REGULATION OR ORDER OF ANY FEDERAL, STATE, MUNICIPAL OR OTHER GOVERNMENTAL AUTHORITY.

a) If performers speak, sing, play, perform or otherwise act in any manner which shall cause Lessor or any person, organization, or authority whose duty it is to enforce any such statute, law, ordinance, rule, regulation, or order to maintain public safety on the premises, think that performers have violated or incited others to violate any such statute, law, ordinance, rule, regulation, or order, the Lessor shall have the absolute right in its sole discretion to terminate the performance in progress and, regardless of whether the performance is terminated, to delay and withhold payment and settlement of all accounts and funds related to money collected or received by Lessor under this agreement until completion of an investigation relating to any incident thought to be such a violation. Lessee agrees to hold Lessor harmless from any and all damages suffered or sustained by reason of the termination of any performance and will defend any suit instituted against Lessor arising out of such termination at Lessee's expense, all in addition to the remedies otherwise given Lessor herein.

b) If upon completion of the investigation Lessor concludes that performers have violated and/or incited others to violate any such statute, law, ordinance, rule, regulation or order, then Lessee shall be deemed to have committed material breach of the Lease Agreement, for which breach Lessee shall be liable to the Lessor. The Lessee and the Lessor hereto acknowledge and agree that it will be impossible to measure actual damages to premises as the result of a breach of this agreement arising out of a violation or incitement of others to violate any statute, law, ordinance, rule, regulation or order as aforesaid, and therefore, the parties have agreed to the sum of \$5,000.00 as liquidated damages and not as a penalty, which amount Lessee hereby authorizes Lessor to deduct from any accounts or funds held or received by Lessor prior to any payment to Lessee if monies are due or Lessee agrees to pay Lessor the agreed sum of \$5,000.00 as stated above or pay the actual damage amount which will be determined after inspection and or repair of damage.

19. The Lessee shall not admit to said premises a larger number of persons than the seating capacity thereof will accommodate, or can safely or freely move about in said rented areas, and the decision of the Fire Marshal in this respect shall be final. The Daphne Civic Center Director and their agents shall maintain an updated occupancy table with limits pursuant to City of Daphne Fire Marshal's regulations which is to be treated as part of this Ordinance.

20. In rendering said space to the Lessee; the Lessor does not relinquish the right to control the management thereof or to enforce all the necessary and proper rules for the management and operation of the same. The City of Daphne and the Daphne Civic Center, their agents, and their employees may enter said building and all the demised premises, at any time and on any occasion in performance of their duties and responsibilities.

21. The Lessee agrees to pay reasonable attorney's fees on any part of said rental or service charge that may be collected by suit or by attorney after said rental or service charge is past due.
22. The Lessee shall not permit the demised premises to be used for lodging rooms, or for any improper, immoral or objectionable purpose.
23. The Lessee shall not assign the lease, nor suffer any use of said premises, other than specified, nor subject the same premises or any part thereof, without the written consent of the Lessor.
24. The Lessee waives all right under the Constitution and laws of the State of Alabama or any other state to claim personal property exempt as against any liability, debt or obligation arising under the contract.
25. Lessee shall make all necessary arrangements with the union business agents of all trades involved in their presentation of their event.
26. The Civic Center and the keys thereto shall be at all times under the charge and control of the Civic Center Personnel. All exceptions must be approved by the Director.
27. That Lessee shall agree that if any default is made in the payment of the rent or any part thereof or if any default is made in the covenant or agreement the letting and the relation of landlord and tenant at the option of Lessor, shall cease and terminate and the relation of the parties shall be the same in all respect as if said term had fully expired, and the said Lessor may re-enter the said premises and hold the same as of its former estate therein, remove all persons therefrom and resort to any legal proceedings to obtain such possession and the said Lessee shall notwithstanding such reenter and must pay the full amount of said lease for the facility, services, and any usage fees as herein agreed to be paid.
28. The Lessor shall not be responsible for any damage or injury that may happen to the lessee, or the Lessee's agent, employees, property, guests from any cause whatsoever, prior, during or subsequent to the period covered by the lease and the said Lessee will release said Lessor from, and agrees to indemnify it against any and all claims for such loss, damage or injury.
29. That in the handling, control, custody and keeping of receipts and funds, whether the same are received through the box office or otherwise, the Lessor is acting for the accommodations and sole benefit of the Lessee, and that as to such receipts, and funds the Lessor shall be responsible only for gross neglect or bad faith.
30. Any matters not expressly provided for shall be in the discretion of the City of Daphne Mayor, City Council and/or Civic Center Director.
31. That all terms and conditions of the written lease shall be binding upon the parties, their heirs and assigns, and cannot be varied or waived by any oral representations or promise of any agent or other person of the parties hereto unless the same be in writing and mutual

signed by the duly authorized agent or agents who executed the lease. See attached Lease Agreement and information sheet which is incorporated by reference as if fully set forth herein.

32. The signed Lease Agreement will hold the City of Daphne and the Civic Center harmless and indemnify them against any claims or liability for compensation under the Alabama Workmen's Compensation law or similar laws arising out of injuries sustained by any employees of Lessee or of any contractor or subcontractor under Lessee.

33. Renters shall adhere to all signs posted at location.

34. The Mayor and/or his designee are authorized to promulgate and post rules and regulations at the facility which provide for proper operation and protect the health, safety, and welfare of persons attending events at the facility.

35. Lessee, Lessee's agent, employees, guests, or anyone entering the building that are under the supervision of the Lessee may not move or remove any City owned decorations or property in the facility. Doing so will be in violation of said ordinance and may incur additional damage fees.

36. Lessor reserves the right to refuse to lease to any person, group or organization known to willfully violate any provisions of this ordinance.

SECTION III: ADVERTISING

A. All advertising will be straight forward, accurate, true and when admission is charged, must state the total admission prices. Advertising of any event or the appearance of any performer, selling of tickets, acquiring sponsorships, selling of tradeshow booths or the like is prohibited until all contracts between all parties involved have been properly executed and exhibited to the Director.

B. All advertising with reference to the Daphne Civic Center and use of the City of Daphne Civic Center logo(s) by city departments or otherwise must be approved by the Director of the Daphne Civic Center prior to usage.

SECTION IV: COPYRIGHT

Lessee/Artist/Promoter warrants at the signing of the Lease Agreement that all copyrighted material to be performed has been duly licensed or authorized by the copyright owners or their representatives and agrees to indemnify and hold the City of Daphne and the Daphne Civic Center harmless from any and all claims, losses or expenses incurred with regard thereto.

SECTION V: CONCESSION

The Lessor relinquishes all food and beverage concession rights to the Lessee. All City, County, and State taxes and fees apply.

SECTION VI: DECORATIONS

A. The Lessor requires that all decorations, signs, and posters must be coordinated with Civic Center personnel prior to placing or erecting in the Civic Center building or on facility grounds.

B. All decorations must be free standing. No nails, tacks, brackets, glue or self-adhesive tape or any other similar items will be allowed on or in the walls, ceilings, floors or any material that will deface, mar, or damage a finish. ANY SUCH DAMAGE MAY RESULT IN AN EXTRA CHARGE FOR DAMAGES AND WILL BE THE RESPONSIBILITY OF THE LESSEE. No shaving cream, toilet paper, silly string, rice, birdseed, sparklers, glitter, confetti (including decorative jewels) or the like will be thrown or used for decoration inside or outside the facility. All candles must be self-contained. If any of these items are found on the floor, additional clean-up/damage fees will be imposed on Lessee.

C. Combustible decorative materials such as, but not limited to, cotton batting, paper, foam plastics, cloth, vegetation, moss straw, hay, vines, split bamboo, leaves and similar material shall not be used in the facility unless materials are flame resistant or have been treated with a fire retardant coating. The classification of fire retardant coatings shall apply only when the coating is applied at the rates of coverage and to the type or kind of surfaces indicated on the test report when the coating is applied in accordance with the manufacturer's directions supplied with the container. These coatings shall be applied in accordance with the manufacturer's direction. The applications shall be, certified by the applicator as being in conformance with the manufacturer's direction for application. A flame test will be done on the material before being approved by the Fire Official. **WARNING!!!!** You are advised to contact the Daphne Fire Marshal for approval of decorations at least fourteen (14) days prior to your event. Decorations not meeting the Fire Marshal's approval will not be allowed in the facility. Lessee must present in writing to Lessor the approval from the Fire Marshal which will be kept on file.

SECTION VII: FLOOR PLANS

The Lessee shall file with the Sales Assistant or Event Assistant at least fourteen (14) days prior to the occurrence of the event for which this agreement is issued, a full and detailed outline of all facilities required, stage, sound, and electrical requirements, table and chair set-up, and such other information as may be required by the Director for planning, staging and preparation for such event. The number of attendees is to be included on the Daphne Civic Center Lease Agreement.

SECTION VIII: INSURANCE

A. By the acceptance of the lease agreement the Lessee covenants to indemnify, save and keep free and harmless the City of Daphne, its officers and employees, from and against any and all claims, demands, loss, liability, cost or expense of any kind or nature whatsoever which the City, its officers or employees, or any of them, may sustain or incur, or that may be imposed upon them, or any damages to property arising out of, connected with or attributable to the use and occupancy of the facility by Lessee. Lessee agrees to pay for any damage to the facility and for any damage to or loss of any City property resulting from the occupancy of said facility by Lessee or resulting from the conduct or actions of Lessee, its agents or employees, or any person, or person's

participation in or attending the event during Lessee's occupancy.

B. Simultaneously with the acceptance of this lease and as a condition precedent to the effectiveness hereof, Lessee shall procure and maintain, in full force, and effect during Lessee's occupancy of the facility, and during the term of this permit, a policy of public liability and property damage insurance from a reliable insurance company authorized to transact business in the State of Alabama. The insurance company must have a minimum rating of A- in the current issue of the A. M. Best Manual. The Lessee, the City, and its officers and employees shall be named co-insured in said policy and the policy shall cover the insured's against whom claim is or may be, in the same manner as if separate policies had been issued to each. Said policy shall contain not less than the following limits of liability:

\$1,000,000.00 combined single limit per occurrence. (Bodily injury and property damage)

C. If the proposed use or occupancy by Lessee is such as to present a high degree of exposure to bodily injury or property damage, the Director may, in his/her discretion require higher limits of bodily injury and/or damage insurance.

D. The policy shall provide that the same shall not be cancelled prior to the termination of this lease until the Director shall have received a ten-day written notice of such proposed cancellation. Said policy shall provide that the insurance afforded thereby shall be primary insurance to the full limits of liability stated in the declarations, and if the City, its officers and employees have other insurance against a loss covered by said policy, that such other insurance shall be excess insurance only.

E. Lessee shall, coincidentally with the acceptance of this lease, deliver said policy of insurance, or certified photo static copy thereof, to the Director. Said policy shall be approved by the Director as to sufficiency.

F. The signed Lease Agreement shall hold the City of Daphne and the Daphne Civic Center harmless and indemnify them against any claims or liability arising or resulting from any injury to any visitor, spectator or participant in any activity in any part or portion of the Civic Center, regardless of entrance gained to said Civic Center whether by paid admissions, by pass issued by Lessee or Lessor or by any unlawful admission gained without knowledge of Lessor or Lessee. To indemnify Lessor as herein provided, Lessee shall carry public liability insurance with the coverage and the amount thereof to be specified and approved by the Director of the Civic Center with Lessee to furnish Lessor with a certificate of insurance or other satisfactory evidence of compliance with this requirement prior to commencement of Lessee's event. This insurance requirement may be waived depending on circumstances.

G. Upon approval of said policy, the same shall be filed with the Director or designee. After said policy has been so approved the Lessee shall file with the City a certificate of insurance issued by an insurance carrier certifying that the aforesaid insurance is in full force and effect and that all operations of the insured under the permit are covered thereby. In lieu of the presentation of the original policy, or of a certified photo static copy thereof, the Lessee may file a certificate of insurance to which is attached an endorsement in a form approved by the City Attorney. The endorsement shall provide that liability assumed by Lessee under this permit is covered by the

policy, that the City, its officers, and employees, are named insured under said policy, and that in event of anyone of the insured's incurring liability to any other of the insured's, the policy shall cover the insured against whom claim is or may be made in the same manner as if separate policies have been issued to each, and that said insurance is primary insurance as set forth hereinabove. The endorsement shall also provide that the policy shall not be cancelled prior to the termination of the permit or until the Director shall have received a ten-day notice~ in writing of such proposed cancellation and that such endorsement controls over all other provisions of the policy, or endorsements thereto, which are inconsistent therewith. Lessee shall be responsible for all insurance deductibles.

H. Liquor Liability Insurance must be obtained in an amount not less than \$1,000,000 and the City of Daphne, Daphne Civic Center must be listed as additional insured on the policy. Proof of this policy must be presented to the sales office not less than fourteen (14) days prior of the event.

I. Proof of all policies applicable must be presented to the Daphne Civic Center Sales Assistant not less than 14 days prior to event.

SECTION IX: INVENTORY

Facility inventory will not be loaned or permitted to be removed from the premises. These items include but are not limited to chairs, tables, podiums, audiovisual equipment, kitchen equipment, plants, decorations, or displays. The City of Daphne shall impose a fine of three hundred dollars (\$300.00) for each violation in addition to a charge for damage.

SECTION X: DEFACING OF PROPERTY

A. The Lessee will not injure, nor mar, nor in any manner deface said premises, and shall not cause or permit anything to be done whereby the said premises shall be in any manner injured, marred or defaced, and will not drive or permit to be driven nails, hooks, tacks or screws into any part of said building, and will not make, or allow to be made, any alterations of any kind therein. Glue hooks or tacky putty will not be permitted (contact Civic Center Sales Assistant for suggestions).

B. No decorations shall be placed in or on the building, nor shall any devices or signs be supported by any means on wall or woodwork without the consent of the Sales Agent. Sets, scenery, exhibit material, et cetera, shall be of flameproof material and conform to the Fire Prevention code of the City of Daphne.

C. If said premises, or any portion of said building, during the term of the lease, shall be damaged by the act, default or negligence of the Lessee's agents, employees, patrons, guests, or any person admitted to said premises by Lessee, or unlawful admission gained, LESSEE WILL PAY TO THE LESSOR UPON DEMAND SUCH SUM AS SHALL BE NECESSARY TO RESTORE SAID PREMISES TO THEIR ORIGINAL CONDITION. The Lessee hereby assumes full responsibility for the character, acts and conduct of all persons admitted to said premises, or to any portion of said building by the consent of the said Lessee, or by or with the consent of any person acting for or on behalf of said Lessee, and said Lessee agrees to have on hand at all times sufficient

Police and Fire Personnel to maintain order and protect persons and property. Daphne Police and Fire Personnel will be provided at the expense of the Lessee. In addition, the City of Daphne's fine of three hundred dollars (\$300.00) for Damage/Defacing City Property will be imposed.

SECTION XI: TICKET OUTLET SALES/BOX OFFICE

A. All ticketed events will be handled through the Daphne Civic Center Sales office unless otherwise stated by the Director. The basic Box Office charge will be 5% of all Gross Ticket Sales. Civic Center Box Office sales and services are the exclusive right of the City of Daphne Civic Center.

B. The Civic Center Ticket Office hours shall be 8:00 a.m. - 5:00 p.m., Monday through Friday.

C. All tickets must be sold at advertised prices and any deviation must be approved in writing by the Director.

D. All Moneys' collected for advance ticket sales must be paid in cash and are not be subject to 'draw' by the promoter until such time show time occurs, all specifications of the Civic Center Lease Agreement have been met and all funds have been collected which exceed Civic Center expenses therefore.

E. Final show settlement payment will not be made until the final act has been on the stage at least 20 minutes and all box office transactions have been completed as well as all contractual agreements.

F. All tickets purchased must be paid for in cash. The Director shall notify the Lessee if other payment plans are permissible.

G. Back stage passes will only be accepted for admission of entertainers, stage crews and business associates, and must be dated with the day and date of performance. These passes will be honored at the back stage door only and will not be admitted through regular ticket gates.

H. Civic Center management will deal only with the individual who negotiated the contract or their duly authorized representative's with regards to box office transactions, show settlement, and facility usage.

I. In the event of show cancellation, the Civic Center Director reserves the right to determine the ticket refund procedures. Refunds will be made at the outlet location of purchase only.

J. Any deviation or changes to the stated regulations must be approved by the Civic Center Director.

SECTION XII: POSTING BILLS

A. The Lessee will not post or exhibit, nor allow to be posted or exhibited, signs

advertisements, show bills, lithographs, posters or cards of any description, inside or in front of, or on any part of said building except upon the regular billboards provided by the Lessor therefore and will use, post or exhibit only such signs, advertisements, show bills, lithographs, posters or cards upon said billboards as relate to the performance or exhibit to be given in the demised premises. Amounts and contents of Lessee's display advertising materials at the Civic Center shall be at the discretion of the Director.

B. The Lessee shall take down and remove forthwith all signs, advertisements, show bills, lithographs, posters or cards of any description objected to by said Lessor, or its representatives.

SECTION XIII: PASSAGEWAYS

A. The Lessee will permit no chair or movable seat to be or remain in the passageways, and will keep said passageways clear at all times.

B. No portion of the sidewalks, entries, passage, vestibules, halls, stairways, or access to public utilities or said building shall be obstructed by the Lessee, or used for any purpose other than for ingress to and from the demised premises. The doors, stairways, or openings that reflect or admit light into any place in the building, including hallways, corridors, passages, also house-lighting attachments, shall not be covered or obstructed by the Lessee. The water closets or other water apparatus shall not be used for any purpose other than for which they were constructed, and no sweepings, rubbish, rags, papers or other substance shall be thrown therein. Any damage resulting to them from misuse of any nature or character whatever shall be paid for by the Lessee.

SECTION XIV: REMOVAL OF PROPERTY

A. All personal property, including rental items, brought into the Civic Center for any event must be dismantled and removed immediately following the event unless pre-approved by the Civic Center Director. Any personal property not removed shall become the property of the City of Daphne. The City of Daphne will hold all lost and found items for seven (7) days following the event. Thereafter, the City reserves the right to dispose of all unclaimed items. City of Daphne, Daphne Civic Center employees will be held harmless for any property approved by the Director to be left in the building or on Civic Center property. Approval must be made at least ten (10) working days prior to start of event. No exceptions will be made.

B. Civic Center employees, workers, volunteers, or any representative of the Civic Center cannot assist in the load-in, event set-up and/or load-out of any personal event or handle any personal property.

C. The Lessor shall have the sole right to collect and have the custody of articles left in the building by persons attending any performance, exhibition or entertainment given or held in the demised premises, and the Lessee, or any person in Lessee's employ shall not collect nor interfere with the collection or custody of such article.

D. The Lessor reserves the right to remove from the building all effects remaining in building after time specified at the expense of the Lessee or to charge the daily rental as shown on

the current Civic Center rate sheet for the area in which the effects have been left or stored.

SECTION XV: BUILDING DEPARTURE

Lessee shall agree that the music would be stopped, all bars must be closed and the building must be cleared at the ending time stated on the contract. If the Lessee goes over stated time on contract the Lessee will be charged with additional rental that must be paid at the time that the function goes over the ending time as is stated on the contract.

SECTION XVI: WAIVED FEES

All requests for waived fees must be sent in writing and addressed to the Civic Center Director. The Director will forward all requests to the Mayor, who shall have the final decision.

SECTION XVII: RENTAL FEES

A. Daphne Civic Center Minimum Rental Fees and hourly rates shall start as listed below:

Entire Facility:	\$1,250.00+\$375.00 cleaning fee
Exhibit Hall w/ Stage:	\$565.00 + \$250.00 cleaning fee
(Exhibit Hall w/ Stage 2 Dressing Rooms):	\$690.00 + \$250.00 cleaning fee
The Wisteria Reception Hall & North Gallery:	\$345.00 + \$250.00 cleaning fee
North Gallery:	\$65.00 + \$65.00 cleaning fee
South Gallery:	\$65.00 + \$65.00 cleaning fee
The Willow:	\$190.00 + \$65.00 cleaning fee
Kitchen:	\$220.00 + \$100.00 cleaning fee
Greenroom:	\$250.00 + \$65.00 cleaning fee
Greenroom/Dressing Room 2:	\$300.00 + \$125.00 cleaning fee
Greenroom/Dressing Room 2 & Stage:	\$375.00 + \$250.00 cleaning fee
Greenroom/Dressing Room 1, 2 & Stage:	\$425.00 + \$250.00 cleaning fee
Parking Lot	\$25.00 per displayed vehicle

B. In addition to the base rental fees the following hourly rates shall apply: \$20.00 per hour for each hour of usage with a minimum of 4 hours required and \$50.00 per hour of usage for all holidays. The Director shall maintain an updated list of rental items which is to be treated as part of this Ordinance's fee schedule.

C. Lease rates for the Daphne Civic Center are based on the prevailing rates as set forth in this Ordinance. In addition to the base rental fees, depending on each events setup and needs to have a successful event, an additional labor fee may be required. This fee is at the discretion of the Civic Center Director and will be presented to lessee prior to the execution of Civic Center contract.

D. The City shall apply rental proceeds to the operating requirements of the facility.

E. Lessee shall not split rental hours.

F. Lessee shall pay a \$300.00 refundable damage deposit. The damage deposit will be refunded after the facility is inspected by Civic Center personnel and no damage is found. Any additional damage charges over \$300.00 will be charged to the lessee.

G. If children are present during event, they must be supervised at all times and for safety/security reasons, should remain with parents or guardians. Children will not be allowed in any non-rental or off-limit areas. Any damaged or broken items caused from lack of supervision will be the Lessee's responsibility.

H. Any event having 500+ attendees will be required to pay an additional cleaning fee of \$300.00.

SECTION XVIII: CANCELLATIONS

Cancellations must be in writing, dated and signed by the Lessee. Reimbursements for cancelled events will be refunded as follows: 75% refund for cancellations received at least 9 months prior to the day of start of event; 50% refund for cancellations received at least 6 months prior to the day of start of event; no refunds will be made for cancellations received under 6 months prior to the day of start of event. Any exceptions to this rule must be approved by the Buildings and Property committee. **Should Daphne Civic Center be able to book another event of equal or greater economic value, then 100% refund will be issued. Refunds will be issued by check.

SECTION XIX: CLEANING FEES

Cleaning fees are mandatory and are based on the prevailing rates as prescribed in this ordinance. Any event having 500+ attendees will be required to pay an additional cleaning fee of \$300.00.

SECTION XX: SECURITY (FIRE/POLICE)

A. The City of Daphne Police Department and Fire Department reserve the right to determine the appropriate amount of security and fire protection needed for any and all events held at the Daphne Civic Center. The Lessee shall provide security and/or fire protection if it is determined necessary for any event. If security and/or fire protection is required, it must be obtained through the City of Daphne Police Department and the City of Daphne Fire Department no later than fourteen (14) days prior to an event. If the Lessee fails to provide the required security or fire protection, a fine of \$300.00 shall be imposed and the relation of the landlord and tenant at the option of Lessor shall cease and terminate and the relation of the parties shall be the same in all respects as if said term had fully expired. The Lessor may re-enter the said premises and hold the same as of its former estate, remove all persons therefrom, and resort to any legal proceedings to obtain such possession.

B. The Lessor reserves the right through its Director or his/her representatives to eject any

objectionable person or persons from said building, and upon the exercise of this authority through its Director, agents or policemen, the Lessee hereby waives any rights and all claims for damages against the Management.

C. The Lessee shall not, without written consent of the Lessor, put up or operate any engine or motor machinery on the demised premises, or use oils, burning fluids, camphene, kerosene, naphtha, or gasoline for either mechanical or other purposes or any other agent than natural gas or electricity for illuminating the demised premises.

D. Should an event require security, then Lessee shall comply with Ala. Code § 6-5-338 (1975) by the purchasing of general liability insurance in the amount of \$100,000.00 per off-duty officer.

SECTION XXI: ALCOHOL/BEVERAGE

A. Consumption of alcohol will be allowed inside the facility only during the time of function. No Alcohol/beverages shall be allowed on the dance floor at any time. Consumption of alcohol is not allowed in the parking lot or on the grounds of the facility. The City of Daphne is not liable for accidents, deaths, or injuries that may occur as a result of the consumption of alcohol.

B. The Lessee shall be fined three hundred dollars (\$300.00) by the City of Daphne for violation by Lessee, Lessee's agents, employees, patrons, guests, or any person admitted to said premises by Lessee per occurrence.

C. No Alcohol shall be "SOLD" on the grounds or inside of the Daphne Civic Center without proper permits or license.

D. Distribution of alcohol is to be made in one of the following forms:

- a. Alcohol and/or all mixers may be brought by attendees and checked at the door where a bartender (hired by Lessee) will distribute alcohol for the duration of the event. Said bartender must be 21 years of age or older and must possess any and all then applicable licensing pursuant to local, state, and federal law.
- b. An event may contract with a licensed caterer for said event to set up cash bar or distribute alcohol. A licensed caterer is one that has purchased the requisite host liquor liability insurance, a City of Daphne business license, and attained all requisite alcohol licensing.

E. Should an event have alcohol, host liquor liability insurance in a minimum amount of \$1,000,000.00 must be purchased. All insurance certificates and proof of requisite licensing must be on file at least 14 days prior to the event.

F. Alcohol shall not be served or sold to anyone under 21 years of age.

G. Appropriate police action will be taken against any person deemed to be intoxicated and posing a danger to himself or others.

H. A list of bartenders and/or caterers possessing additional voluntary certifications(s), provided through alcoholic beverage distributors for the serving of alcoholic beverages, may be provided by the Civic Center upon request.

SECTION XXII: SMOKING

ALL CITY OF DAPHNE BUILDINGS ARE SMOKE FREE 20 FEET FROM ANY AND ALL ENTRANCES. There will be no smoking in the Daphne Civic Center. A fine of three hundred dollars (\$300.00) shall be imposed per occurrence by the City of Daphne. A three hundred dollar (\$300.00) cleaning fine shall be imposed on the Lessee if smoking has occurred in the Daphne Civic Center.

SECTION XXIII: PETS

No pets allowed inside the facility other than those for the express use by disabled persons, or by permission of the Civic Center Director.

SECTION XXIV: BUILDING ACCESS

The City will provide reasonable access according to the Americans with Disabilities Act.

SECTION XXV: THEFT

The City of Daphne is not responsible for theft of property on the grounds of the Daphne Civic Center, in automobiles, in the facility or any other structure on the property.

SECTION XXVI: HEAVY METAL/RAP/ALTERNATIVE CONCERTS

A. The City of Daphne has set forth the following guidelines to establish rules and regulations for Heavy Metal, Rap, and Alternative concerts in effort to provide a safe and enjoyable concert experience for attendees.

B. The Daphne City Council must approve all heavy metal, rap, and alternative concerts prior to the concert booking. The Buildings and Property Committee will determine if a concert is Alternative. The following are necessary:

- 1 . Names of all artists to appear must be provided to the Civic Center Director.
2. Date of the event and ticket information must be provided to the Civic Center Director.
3. A letter stating that approved security and fire arrangements have been made for the concert from the Daphne Police Department and Daphne Fire Department must be presented to the Civic Center Director. All special effects must be approved by the Fire Marshal and a letter stating this information must be provided to the Director.
4. A letter of approval must be obtained from the Civic Center Director and presented to the Buildings and Property Committee along with the above listed documentation. The Buil67gs

and Property Committee will make recommendation to the full City Council. The Civic Center Director shall provide the Council's approval or disapproval to the proposed Lessee.

5. A security bond or deposit may be required for potential damages. If required, the bond or deposit must be presented to the Director no later than thirty (30) days prior to the event.

6. A five hundred-dollar cleaning fee may be required.

7. The promoter must obtain a public liability and property damage policy in an amount not less than \$3,000,000. The policy must be written by an insurance company licensed to do business in the State of Alabama and having a minimum rating of A- in the current issue of the A. M. Best Manual. The policy must name the City of Daphne and the Daphne Civic Center as additional insured. This certificate must be presented to the Director at least thirty (30) days prior to the scheduled concert.

8. If required by the State of Alabama, a promoter must obtain Liquor Liability Insurance in an amount not less than \$1,000,000 and must list the City of Daphne, Daphne Civic Center as additional insured on the policy. Proof of this policy must be presented to the sales office not less than one week prior of the event.

9. House lights are not allowed to go dark. A minimum of 20% of house lights must be on at all times.

10. An addendum may be required to the contract if any of the performing acts have a history of performing songs or making statements that are considered by the Daphne City Council to incite or provoke violence by the audience.

11. Other rules and regulations as deemed necessary by the Director, Buildings and Property Committee, or Daphne City Council may apply.

SECTION XXVII: SOUND EQUIPMENT

A. The Lessor shall not be responsible for any damage or injury that may occur from the result of sound, lighting, or electrical equipment being utilized by the Lessee, Lessee's agent, employees, or, guests from any cause whatsoever, prior, during or subsequent to the period covered by the lease and the said Lessee will release said Lessor from, and agrees to indemnify it against any and all claims for such loss, damage or injury.

B. Any damage to the City of Daphne, Civic Center sound, lighting, or electrical equipment shall be at the expense of the Lessee when Lessee utilizes said equipment or services. Civic Center personnel, The City of Daphne Police Department, or any authorized city employee can request that the Lessee or their agents desist from utilizing city property at any time.

C. The Civic Center must be notified of all sound and lighting requirements at least fourteen (14) days prior to the event.

SECTION XXVIII: FEE WAIVERS

A. The City of Daphne shall provide the following fee waivers with no others to be considered in Committee meetings or City Council meetings. All bookings are on a first come first serve basis.

1. DAPHNE CIVIC CENTER REDUCED RATE PROGRAM MONDAY, TUESDAY & WEDNESDAY

(a) This program will apply to all with the following exceptions. This program excludes paid concerts, all for profit events, Mardi Gras balls/meetings and fund raising events. These events will pay full fare.

All rental items remain the same. The reduced rate will consist of half rate for the base rental fee. The cleaning fee will remain the same. The booking includes four (4) hours of usage and must be between the hours of 7:00 a.m. - 5:00 p.m. Any usage over four (4) hours and any hours used after 5:00 p.m. will be charged an additional \$20.00 per hour. If requested, the City of Daphne, Daphne Civic Center shall be listed as a Sponsor of the event. Any Monday, Tuesday, or Wednesday that is a holiday or city holiday will be charged all regular holiday rates.

All bookings remain on a first come first serve basis. This program is not to be used for continued bookings. The City of Daphne reserves: the right to deny any group or organization usage of these provisions.

2. DAPHNE CIVIC CENTER REDUCED RATE PROGRAM (CIVIC GROUPS AND NOT FOR PROFITS - 501-C3 MONDAY, TUESDAY & WEDNESDAY)

(b) This program will apply to all civic groups that are not for profit and have a 501-C3 status. Proof of this status is required. This program excludes paid concerts, all for profit events, and fund raising events. These events will pay full fare ~ All rental items remain the same. The reduced rate will consist of a waived base fee, full rate on cleaning fees, and a \$20.00 per hour charge. Any Monday, Tuesday, or Wednesday booking that is a holiday or city holiday will be charged all regular holiday rates. If requested, the City of Daphne, Daphne Civic Center shall be listed as a Sponsor of the event. All bookings remain on a first come first serve basis. This program is not to be used for continued bookings. The City of Daphne reserves the right to deny any group or organization usage of these provisions. All groups utilizing this reduced rate program must use the facility between 8:00 am to 10:00 p.m. All groups that have not left the facility by 10:00 p.m. will be charged all regular rates.

3. CITY OF DAPHNE DEPARTMENTS FOR CONDUCTING CITY BUSINESS.

(a) The City of Daphne encourages all City Departments to utilize the Daphne Civic Center for your entire department booking needs. For tracking purposes all City departments must estimate their projected bookings for the Civic Center and budget all fees, rental items, cleaning fees, and per hour charges needed at regular rates for their facility functions. The department may submit in writing to the Director a request to wave base rental fees only. The decision will be based on the criteria f69

event, time of day and year and day of week. The approval of this request will be at the discretion of the Director and/or Mayor. Invoices will be routed from the Civic Center to the Finance Department for journal entry after each event. The Finance Department will notify the Civic Center sales office when the journal entry is complete and make report to the Buildings and Property Committee at the monthly meeting.

4. CITY EMPLOYEES FOR PERSONAL BUSINESS

(a) Current City of Daphne employees will be entitled to a 20% discount off of base rental rates only for events that the employee is hosting. This discount is not applicable for family or friends, only the employee him/herself. All rules, guidelines and all other fees of this ordinance apply. The employee must make a request in writing which should include type of event, day and time. The approval of this request will be at the discretion of the Director and/or Mayor. Should for any reason the employee violate the guidelines mentioned above, said employee will not be entitled to this benefit in the future and will be responsible for full base rental rate which will be deducted from damage fee or billed with additional damage fee.

SECTION XXIX: BOOKING POLICY - ALL OTHER GROUPS

If an organization or group desires to book the same date continually, year after year, such organizations must submit a letter to the Director making such request listing the exact dates and years that the organization is requesting and all facility needs. All base fees must be paid in advance for the first two consecutive years. At the end of the second year a new request must be made in writing and delivered to the sales department of the Civic Center no later than 7 days after the second year event for the following two years, along with the fees for the next two years. Future bookings will also be secured using the same guidelines. All bookings are on a first come first serve basis.

SECTION XXX: PENALTY

A. Any person found guilty of violating any provision of this Ordinance shall be punished by a fine of not less than fifty dollars (\$50.00) no more than five hundred dollars (\$500.00), or by imprisonment for a period not exceeding six (6) months, or both, at the discretion of the Municipal Judge.

B. This Ordinance shall also be subject to enforcement by the issuance of a summons and complaint.

SECTION XXXI: REPEALER

Ordinance Nos. 2004-20 and 2010-49 are hereby repealed in their entirety. All other City Ordinances or parts thereof in conflict with the provision of this Ordinance, in so far as they conflict, are hereby repealed.

SECTION XXXII: SEVERABILITY

The provisions of this Ordinance are severable. If any provision, section, paragraph, sentence or part thereof shall be held unconstitutional or invalid, such decision shall not affect or impair the remainder of the Ordinance, it being the legislative intent to ordain and enact each provision, section, paragraph, sentence : and part thereof separately and independently of each other.

SECTION XXXII: EFFECTIVE DATE

This Ordinance shall become effective and be in force from and after the date of its approval and adoption by the City Council of Daphne and publication as required by law.

ADOPTED AND APPROVED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF DAPHNE, ALABAMA, this the ____ day of ____, 2014.

Dane Haygood,
Mayor

ATTEST:

Rebecca A. Hayes, City Clerk

CITY OF DAPHNE
ORDINANCE NO. 20114-08

AN ORDINANCE TO REPEAL ORDINANCE NOS. ~~201104-0820 & 2010-49~~ AND ESTABLISHING RULES, REGULATIONS, RATES AND A LEASE AGREEMENT FOR THE RENTAL OF THE DAPHNE CIVIC CENTER

WHEREAS, the City Council of the City of Daphne desires that all citizens of the City of Daphne and guests thereof be able to peaceably use and enjoy the Daphne Civic Center; and,

WHEREAS, the City Council of the City of Daphne desires to promote the health and safety of the citizens of the City of Daphne by providing rental schedules, rules, regulations and a lease agreement for the rental of the Daphne Civic Center; and,

WHEREAS, the mission statement of the City of Daphne, Daphne Civic Center, as established by the Mayor and City Council is as follows:

"The Daphne Civic Center will strive to promote a high quality of life, to enhance the spiritual, social, and moral well being of each citizen and visitor, to promote community awareness and serve as a vehicle for total community enjoyment"; and,

WHEREAS, changes in policy have mandated the repealing of the preceding Ordinance establishing rules, regulations, rates, and a lease agreement for the rental of the Daphne Civic Center,

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

SECTION I. DEFINITIONS

A. For the purpose of this Ordinance the following terms, phrases, words and their derivations shall have the meaning given herein. When not inconsistent with the context, words used in the present tense include the future tense, words in the plural number include the singular number and words in the singular number include the plural number. The word "shall" is always mandatory and not merely derived.

1. Lessor: The City of Daphne and Daphne Civic Center.
2. Lessee: Signer of City of Daphne Civic Center Lease Agreement.

3. Facility: Daphne Civic Center.
4. Event: The purpose for which facility is leased.

SECTION II: RULES AND REGULATIONS-GENERAL

A. The Director is authorized to execute on behalf of the City of Daphne, the City of Daphne Civic Center lease agreement as approved by the City Council. The following rules apply.

1. Governmental functions will take precedence over all other functions. All other reservations are on a first come first serve basis.
2. The Lease agreement must be executed by persons 21 years of age or older and the lessee must be in attendance at the event.
3. Dates will not be considered "booked" prior to the completion of a City of Daphne, Daphne Civic Center Lease Agreement and payment of applicable fees.
4. The performance of this Agreement shall terminate without liability upon the occurrence of any circumstance beyond the control of Lessor – such as acts of God, fire, storm, pestilence, war, terrorism, disaster, Federal regulations, strikes, civil disorder, criminal acts, curtailment of transportation facilities or any other casualty or unforeseen occurrence – to the extent that such circumstances make it illegal or impossible to provide or use of the facilities. Notice may be provided by Lessor at the earliest practicable time however is not required to absolve Lessor of liability under this paragraph. ~~In case the facility, or any part thereof, shall be destroyed or damaged by fire, or any other cause, or if any other casualty or unforeseen occurrence shall render the fulfillment of the lease by the Lessor impossible, then and thereupon the lease shall terminate, and the~~ Lessee shall pay rental for said premises only up to the time of such termination, at the rate specified on the Lease Agreement and the said Lessee waives any claim for damages or compensation should the lease be so terminated. Should termination due to unforeseen events as described above occur prior to any actual use of the facility, Lessee shall be refunded all reservation fees that have not been obligated by Lessor.
5. City personnel will inspect the facility after each event. If damage is found, lessee will be notified of charges to be deducted from damage deposit or of additional charges beyond damage deposit.
6. Garbage cans, trash bags, rest room supplies, and outside trash receptacles will be supplied for Lessee use with the exception of Mardi Gras groups, or other large groups as determined by the Director. Additional garbage fees may apply.
7. City functions must portray the City of Daphne in the best light for the good and benefit of the citizens of Daphne.

8. Additional services and/or equipment (other than those specified at the time of lease) which may be requested and utilized will be additionally charged based on Daphne Civic Center prevailing rates.

9. Security, firefighters and other personnel will be charged at the prevailing rates per hour. Lessee is responsible for making necessary arrangements.

10. Arrangements must be confirmed at least fourteen (14) days in advance of an event so as to schedule the personnel, equipment and services required.

11. The Lessor requires that only trained city personnel use and handle Civic Center equipment during events and set-ups.

12. The Lessee is charged with the responsibility of paying all applicable City, County, and State sales tax on admissions and sales at the Civic Center as well as applicable license fees.

13. All fees shall be paid 14 (fourteen) days prior to the event. Exceptions may be made for State, County, and those approved by the Director.

14. Lessee agrees to pay for all fees in lawful money of the United States of America, cashiers check, personal checks, or company checks at the Sales Office of the Daphne Civic Center. Lessee further agrees to pay said Lessor on demand any sum which may be due to said Lessor for additional services and/or accommodation for material furnished or provided to said Lessee.

15. The Lessee will comply with all laws of the United States, and of the State of Alabama, all ordinances of the City of Daphne, Alabama and all rules and requirements of the Police and Fire Departments, or other municipal authorities of the City of Daphne, and will obtain and pay for all necessary permits and licenses, and will not do nor suffer to be done, anything on said premises during the term of the lease in violation of any such laws, ordinances, rules or requirements, and if Lessor calls any such violation to the attention of the Lessee, or any person employed by or admitted to the said premises by said Lessee, such Lessee will immediately desist from and correct such violation. Lessee will provide Lessor with a copy of all applicable permits and licenses 14 days in advance of start of event.

16. No performance, exhibition or entertainment shall be given or held on said demised premises, which shall be objected to by the Lessor.

17. The City of Daphne, Daphne Civic Center, employees, or agents shall not be responsible for any misrepresentation of or failure to perform by any promoter, agent, group, or act that is not booked by the City of Daphne or Daphne Civic Center.

18. LESSEE, IN CONSIDERATION OF THE EXECUTION BY LESSOR OF THE LEASE AGREEMENT REPRESENTS AND GUARANTEES TO LESSOR THAT PERFORMERS BY THEIR SPEECH, SONG, MUSIC, CONDUCT, OR MANNER WILL NOT VIOLATE OR INCITE OTHERS TO VIOLATE ANY STATUTE, LAW, ORDINANCE, RULE, REGULATION OR ORDER OF ANY FEDERAL, STATE, MUNICIPAL OR OTHER GOVERNMENTAL AUTHORITY.

a) If performers speak, sing, play, perform or otherwise act in any manner which shall cause Lessor or any person, organization, or authority whose duty it is to enforce any such statute, law, ordinance, rule, regulation, or order to maintain public safety on the premises, think that performers have violated or incited others to violate any such statute, law, ordinance, rule, regulation, or order, the Lessor shall have the absolute right in its sole discretion to terminate the performance in progress and, regardless of whether the performance is terminated, to delay and withhold payment and settlement of all accounts and funds related to money collected or received by Lessor under this agreement until completion of an investigation relating to any incident thought to be such a violation. Lessee agrees to hold Lessor harmless from any and all damages suffered or sustained by reason of the termination of any performance and will defend any suit instituted against Lessor arising out of such termination at Lessee's expense, all in addition to the remedies otherwise given Lessor herein.

b) If upon completion of the investigation Lessor concludes that performers have violated and/or incited others to violate any such statute, law, ordinance, rule, regulation or order, then Lessee shall be deemed to have committed material breach of the Lease Agreement, for which breach Lessee shall be liable to the Lessor. The Lessee and the Lessor hereto acknowledge and agree that it will be impossible to measure actual damages to premises as the result of a breach of this agreement arising out of a violation or incitement of others to violate any statute, law, ordinance, rule, regulation or order as aforesaid, and therefore, the parties have agreed to the sum of \$5,000.00 as liquidated damages and not as a penalty, which amount Lessee hereby authorizes Lessor to deduct from any accounts or funds held or received by Lessor prior to any payment to Lessee if monies are due or Lessee agrees to pay Lessor the agreed sum of \$5,000.00 as stated above or pay the actual damage amount which will be determined after inspection and or repair of damage.

19. The Lessee shall not admit to said premises a larger number of persons than the seating capacity thereof will accommodate, or can safely or freely move about in said rented areas, and the decision of the Fire Marshal in this respect shall be final. The Daphne Civic Center Director and their agents shall maintain an updated occupancy table with limits pursuant to City of Daphne Fire Marshal's regulations which is to be treated as part of this Ordinance.

20. In rendering said space to the Lessee; the Lessor does not relinquish the right to control the management thereof or to enforce all the necessary and proper rules for the management and operation of the same. The City of Daphne and the Daphne Civic Center, their agents, and their employees may enter said building and all the demised premises, at any time and on any occasion in performance of their duties and responsibilities.

21. The Lessee agrees to pay reasonable attorney's fees on any part of said rental or service charge that may be collected by suit or by attorney after said rental or service charge is past due.

22. The Lessee shall not permit the demised premises to be used for lodging rooms, or for any improper, immoral or objectionable purpose.

23. The Lessee shall not assign the lease, nor suffer any use of said premises, other than specified, nor subject the same premises or any part thereof, without the written consent of the Lessor.

24. The Lessee waives all right under the Constitution and laws of the State of Alabama or any other state to claim personal property exempt as against any liability, debt or obligation arising under the contract.

25. Lessee shall make all necessary arrangements with the union business agents of all trades involved in their presentation of their event.

26. The Civic Center and the keys thereto shall be at all times under the charge and control of the Civic Center Personnel. All exceptions must be approved by the Director.

27. That Lessee shall agree that if any default is made in the payment of the rent or any part thereof or if any default is made in the covenant or agreement the letting and the relation of landlord and tenant at the option of Lessor, shall cease and terminate and the relation of the parties shall be the same in all respect as if said term had fully expired, and the said Lessor may re-enter the said premises and hold the same as of its former estate therein, remove all persons therefrom and resort to any legal proceedings to obtain such possession and the said Lessee shall notwithstanding such reenter and must pay the full amount of said lease for the facility, services, and any usage fees as herein agreed to be paid.

28. The Lessor shall not be responsible for any damage or injury that may happen to the lessee, or the Lessee's agent, employees, property, guests from any cause whatsoever, prior, during or subsequent to the period covered by the lease and the said Lessee will release said Lessor from, and agrees to indemnify it against any and all claims for such loss, damage or injury.

29. That in the handling, control, custody and keeping of receipts and funds, whether the same are received through the box office or otherwise, the Lessor is acting for the accommodations and sole benefit of the Lessee, and that as to such receipts, and funds the Lessor shall be responsible only for gross neglect or bad faith.

30. Any matters not expressly provided for shall be in the discretion of the City of Daphne Mayor, City Council and/or Civic Center Director.

31. That all terms and conditions of the written lease shall be binding upon the parties, their heirs and assigns, and cannot be varied or waived by any oral representations or promise of any agent or other person of the parties hereto unless the same be in writing and mutually

signed by the duly authorized agent or agents who executed the lease. See attached Lease Agreement and information sheet which is incorporated by reference as if fully set forth herein.

32. The signed Lease Agreement will hold the City of Daphne and the Civic Center harmless and indemnify them against any claims or liability for compensation under the Alabama Workmen's Compensation law or similar laws arising out of injuries sustained by any employees of Lessee or of any contractor or subcontractor under Lessee.

33. Renters shall adhere to all signs posted at location.

34. The Mayor and/or his designee are authorized to promulgate and post rules and regulations at the facility which provide for proper operation and protect the health, safety, and welfare of persons attending events at the facility.

35. Lessee, Lessee's agent, employees, guests, or anyone entering the building that are under the supervision of the Lessee may not move or remove any City owned decorations or property in the facility. Doing so will be in violation of said ordinance and may incur additional damage fees.

36. Lessor reserves the right to refuse to lease to any person, group or organization known to willfully violate any provisions of this ordinance.

SECTION III: ADVERTISING

A. All advertising will be straight forward, accurate, true and when admission is charged, must state the total admission prices. Advertising of any event or the appearance of any performer, selling of tickets, acquiring sponsorships, selling of tradeshow booths or the like is prohibited until all contracts between all parties involved have been properly executed and exhibited to the Director.

B. All advertising with reference to the Daphne Civic Center and use of the City of Daphne Civic Center logo(s) by city departments or otherwise must be approved by the Director of the Daphne Civic Center prior to usage.

SECTION IV: COPYRIGHT

Lessee/Artist/Promoter warrants at the signing of the Lease Agreement that all copyrighted material to be performed has been duly licensed or authorized by the copyright owners or their representatives and agrees to indemnify and hold the City of Daphne and the Daphne Civic Center harmless from any and all claims, losses or expenses incurred with regard thereto.

SECTION V: CONCESSION

The Lessor relinquishes all food and beverage concession rights to the Lessee. All City, County, and State taxes and fees apply.

SECTION VI: DECORATIONS

A. The Lessor requires that all decorations, signs, and posters must be coordinated with Civic Center personnel prior to placing or erecting in the Civic Center building or on facility grounds.

B. All decorations must be free standing. No nails, tacks, brackets, glue or self-adhesive tape or any other similar items will be allowed on or in the walls, ceilings, floors or any material that will deface, mar, or damage a finish. ANY SUCH DAMAGE MAY RESULT IN AN EXTRA CHARGE FOR DAMAGES AND WILL BE THE RESPONSIBILITY OF THE LESSEE. No shaving cream, toilet paper, silly string, rice, birdseed, sparklers, glitter, confetti (including decorative jewels) or the like will be thrown or used for decoration inside or outside the facility. All candles must be self-contained. If any of these items are found on the floor, additional clean-up/damage fees will be imposed on Lessee.

C. Combustible decorative materials such as, but not limited to, cotton batting, paper, foam plastics, cloth, vegetation, moss straw, hay, vines, split bamboo, leaves and similar material shall not be used in the facility unless materials are flame resistant or have been treated with a fire retardant coating. The classification of fire retardant coatings shall apply only when the coating is applied at the rates of coverage and to the type or kind of surfaces indicated on the test report when the coating is applied in accordance with the manufacturer's directions supplied with the container. These coatings shall be applied in accordance with the manufacturer's direction. The applications shall be certified by the applicator as being in conformance with the manufacturer's direction for application. A flame test will be done on the material before being approved by the Fire Official. **WARNING!!!!** You are advised to contact the Daphne Fire Marshal for approval of decorations at least fourteen (14) days prior to your event. Decorations not meeting the Fire Marshal's approval will not be allowed in the facility. Lessee must present in writing to Lessor the approval from the Fire Marshal which will be kept on file.

SECTION VII: FLOOR PLANS

The Lessee shall file with the Sales Assistant or Event Assistant at least fourteen (14) days prior to the occurrence of the event for which this agreement is issued, a full and detailed outline of all facilities required, stage, sound, and electrical requirements, table and chair set-up, and such other information as may be required by the Director for planning, staging and preparation for such event. The number of attendees is to be included on the Daphne Civic Center Lease Agreement.

SECTION VIII: INSURANCE

A. By the acceptance of the lease agreement the Lessee covenants to indemnify, save and keep free and harmless the City of Daphne, its officers and employees, from and against any and all claims, demands, loss, liability, cost or expense of any kind or nature whatsoever which the City, its officers or employees, or any of them, may sustain or incur, or that may be imposed upon them, or any damages to property arising out of, connected with or attributable to the use and occupancy of the facility by Lessee. Lessee agrees to pay for any damage to the facility and for any damage to or loss of any City property resulting from the occupancy of said facility by Lessee or resulting from the conduct or actions of Lessee, its agents or employees, or any person, or person's participation in or attending the event during Lessee's occupancy.

B. Simultaneously with the acceptance of this lease and as a condition precedent to the effectiveness hereof, Lessee shall procure and maintain, in full force, and effect during Lessee's occupancy of the facility, and during the term of this permit, a policy of public liability and property damage insurance from a reliable insurance company authorized to transact business in the State of Alabama. The insurance company must have a minimum rating of A- in the current issue of the A. M. Best Manual. The Lessee, the City, and its officers and employees shall be named co-insured in said policy and the policy shall cover the insured's against whom claim is or may be, in the same manner as if separate policies had been issued to each. Said policy shall contain not less than the following limits of liability:

\$1,000,000.00 combined single limit per occurrence. (Bodily injury and property damage)

C. If the proposed use or occupancy by Lessee is such as to present a high degree of exposure to bodily injury or property damage, the Director may, in his/her discretion require higher limits of bodily injury and/or damage insurance.

D. The policy shall provide that the same shall not be cancelled prior to the termination of this lease until the Director shall have received a ten-day written notice of such proposed cancellation. Said policy shall provide that the insurance afforded thereby shall be primary insurance to the full limits of liability stated in the declarations, and if the City, its officers and employees have other insurance against a loss covered by said policy, that such other insurance shall be excess insurance only.

E. Lessee shall, coincidentally with the acceptance of this lease, deliver said policy of insurance, or certified photo static copy thereof, to the Director. Said policy shall be approved by the Director as to sufficiency.

F. The signed Lease Agreement shall hold the City of Daphne and the Daphne Civic Center harmless and indemnify them against any claims or liability arising or resulting from any injury to any visitor, spectator or participant in any activity in any part or portion of the Civic Center, regardless of entrance gained to said Civic Center whether by paid admissions, by pass issued by Lessee or Lessor or by any unlawful admission gained without knowledge of Lessor or Lessee. To indemnify Lessor as herein provided, Lessee shall carry public liability insurance with the coverage and the amount thereof to be specified and approved by the Director of the Civic Center with Lessee to furnish Lessor with a certificate of insurance or other satisfactory evidence of compliance with this requirement prior to commencement of Lessee's event. This insurance requirement may be waived depending on circumstances.

G. Upon approval of said policy, the same shall be filed with the Director or designee. After said policy has been so approved the Lessee shall file with the City a certificate of insurance issued by an insurance carrier certifying that the aforesaid insurance is in full force and effect and that all operations of the insured under the permit are covered thereby. In lieu of the presentation of the original policy, or of a certified photo static copy thereof, the Lessee may file a certificate of insurance to which is attached an endorsement in a form approved by the City Attorney. The endorsement shall provide that liability assumed by Lessee under this permit is covered by the policy, that the City, its officers, and employees, are named insured under said policy, and that in event of anyone of the insured's incurring liability to any other of the insured's, the policy shall cover the insured against whom claim is or may be made in the same manner as if separate policies have been issued to each, and that said insurance is primary insurance as set forth hereinabove. The endorsement shall also provide that the policy shall not be cancelled prior to the termination of the permit or until the Director shall have received a ten-day notice~ in writing of such proposed cancellation and that such endorsement controls over all other provisions of the policy, or endorsements thereto, which are inconsistent therewith. Lessee shall be responsible for all insurance deductibles.

H. Liquor Liability Insurance must be obtained in an amount not less than \$1,000,000 and the City of Daphne, Daphne Civic Center must be listed as additional insured on the policy. Proof of this policy must be presented to the sales office not less than fourteen (14) days prior of the event.

I. Proof of all policies applicable must be presented to the Daphne Civic Center Sales Assistant not less than 14 days prior to event.

SECTION IX: INVENTORY

Facility inventory will not be loaned or permitted to be removed from the premises. These items include but are not limited to chairs, tables, podiums, audiovisual equipment, kitchen equipment, plants, decorations, or displays. The City of Daphne shall impose a fine of three hundred dollars (\$300.00) for each violation in addition to a charge for damage.

SECTION X: DEFACING OF PROPERTY

A. The Lessee will not injure, nor mar, nor in any manner deface said premises, and shall not cause or permit anything to be done whereby the said premises shall be in any manner injured,

marred or defaced, and will not drive or permit to be driven nails, hooks, tacks or screws into any part of said building, and will not make, or allow to be made, any alterations of any kind therein. Glue hooks or tacky putty will not be permitted (contact Civic Center Sales Assistant for suggestions).

B. No decorations shall be placed in or on the building, nor shall any devices or signs be supported by any means on wall or woodwork without the consent of the Sales Agent. Sets, scenery, exhibit material, et cetera, shall be of flameproof material and conform to the Fire Prevention code of the City of Daphne.

C. If said premises, or any portion of said building, during the term of the lease, shall be damaged by the act, default or negligence of the Lessee's agents, employees, patrons, guests, or any person admitted to said premises by Lessee, or unlawful admission gained, LESSEE WILL PAY TO THE LESSOR UPON DEMAND SUCH SUM AS SHALL BE NECESSARY TO RESTORE SAID PREMISES TO THEIR ORIGINAL CONDITION. The Lessee hereby assumes full responsibility for the character, acts and conduct of all persons admitted to said premises, or to any portion of said building by the consent of the said Lessee, or by or with the consent of any person acting for or on behalf of said Lessee, and said Lessee agrees to have on hand at all times sufficient Police and Fire Personnel to maintain order and protect persons and property. Daphne Police and Fire Personnel will be provided at the expense of the Lessee. In addition, the City of Daphne's fine of three hundred dollars (\$300.00) for Damage/Defacing City Property will be imposed.

SECTION XI: TICKET OUTLET SALES/BOX OFFICE

A. All ticketed events will be handled through the Daphne Civic Center Sales office unless otherwise stated by the Director. The basic Box Office charge will be 5% of all Gross Ticket Sales. Civic Center Box Office sales and services are the exclusive right of the City of Daphne Civic Center.

B. The Civic Center Ticket Office hours shall be 8:00 a.m. - 5:00 p.m., Monday through Friday.

C. All tickets must be sold at advertised prices and any deviation must be approved in writing by the Director.

D. All Moneys' collected for advance ticket sales must be paid in cash and are not be subject to 'draw' by the promoter until such time show time occurs, all specifications of the Civic Center Lease Agreement have been met and all funds have been collected which exceed Civic Center expenses therefore.

E. Final show settlement payment will not be made until the final act has been on the stage at least 20 minutes and all box office transactions have been completed as well as all contractual agreements.

F. All tickets purchased must be paid for in cash. The Director shall notify the Lessee if other payment plans are permissible.

G. Back stage passes will only be accepted for admission of entertainers, stage crews ~~811~~

business associates, and must be dated with the day and date of performance. These passes will be honored at the back stage door only and will not be admitted through regular ticket gates.

H. Civic Center management will deal only with the individual who negotiated the contract or their duly authorized representative's with regards to box office transactions, show settlement, and facility usage.

I. In the event of show cancellation, the Civic Center Director reserves the right to determine the ticket refund procedures. Refunds will be made at the outlet location of purchase only.

J. Any deviation or changes to the stated regulations must be approved by the Civic Center Director.

SECTION XII: POSTING BILLS

A. The Lessee will not post or exhibit, nor allow to be posted or exhibited, signs, advertisements, show bills, lithographs, posters or cards of any description, inside or in front of, or on any part of said building except upon the regular billboards provided by the Lessor therefore and will use, post or exhibit only such signs, advertisements, show bills, lithographs, posters or cards upon said billboards as relate to the performance or exhibit to be given in the demised premises. Amounts and contents of Lessee's display advertising materials at the Civic Center shall be at the discretion of the Director.

B. The Lessee shall take down and remove forthwith all signs, advertisements, show bills, lithographs, posters or cards of any description objected to by said Lessor, or its representatives.

SECTION XIII: PASSAGEWAYS

A. The Lessee will permit no chair or movable seat to be or remain in the passageways, and will keep said passageways clear at all times.

B. No portion of the sidewalks, entries, passage, vestibules, halls, stairways, or access to public utilities or said building shall be obstructed by the Lessee, or used for any purpose other than for ingress to and from the demised premises. The doors, stairways, or openings that reflect or admit light into any place in the building, including hallways, corridors, passages, also house-lighting attachments, shall not be covered or obstructed by the Lessee. The water closets or other water apparatus shall not be used for any purpose other than for which they were constructed, and no sweepings, rubbish, rags, papers or other substance shall be thrown therein. Any damage resulting to them from misuse of any nature or character whatever shall be paid for by the Lessee.

SECTION XIV: REMOVAL OF PROPERTY

A. All personal property, including rental items, brought into the Civic Center for any event must be dismantled and removed immediately following the event unless pre-approved by the Civic Center Director. Any personal property not removed shall become the property of the City of Daphne. The City of Daphne will hold all lost and found items for seven (7) days following

the event. Thereafter, the City reserves the right to dispose of all unclaimed items. City of Daphne, Daphne Civic Center employees will be held harmless for any property approved by the Director to be left in the building or on Civic Center property. Approval must be made at least ten (10) working days prior to start of event. No exceptions will be made.

B. Civic Center employees, workers, volunteers, or any representative of the Civic Center cannot assist in the load-in, event set-up and/or load-out of any personal event or handle any personal property.

C. The Lessor shall have the sole right to collect and have the custody of articles left in the building by persons attending any performance, exhibition or entertainment given or held in the demised premises, and the Lessee, or any person in Lessee's employ shall not collect nor interfere with the collection or custody of such article.

D. The Lessor reserves the right to remove from the building all effects remaining in building after time specified at the expense of the Lessee or to charge the daily rental as shown on the current Civic Center rate sheet for the area in which the effects have been left or stored.

SECTION XV: BUILDING DEPARTURE

Lessee shall agree that the music would be stopped, all bars must be closed and the building must be cleared at the ending time stated on the contract. If the Lessee goes over stated time on contract the Lessee will be charged with additional rental that must be paid at the time that the function goes over the ending time as is stated on the contract.

SECTION XVI: WAIVED FEES

All requests for waived fees must be sent in writing and addressed to the Civic Center Director. The Director will forward all requests to the Mayor, who shall have the final decision.

SECTION XVII: RENTAL FEES

A. Daphne Civic Center Minimum Rental Fees and hourly rates shall start as listed below:

Entire Facility:	\$1,250.00+\$375.00 cleaning fee
Exhibit Hall	
w/ Stage:	\$565.00 + \$250.00 cleaning fee
(Exhibit Hall	
w/ Stage 2 Dressing Rooms):	\$690.00 + \$250.00 cleaning fee
The Wisteria Reception Hall	
& North Gallery:	\$345.00 + \$250.00 cleaning fee
North Gallery:	\$65.00 + \$65.00 cleaning fee
South Gallery:	\$65.00 + \$65.00 cleaning fee
The Willow:	\$190.00 + \$65.00 cleaning fee
Kitchen:	\$220.00 + \$100.00 cleaning fee
Greenroom:	\$250.00 + \$65.00 cleaning fee
Greenroom/Dressing Room 2:	\$300.00 + \$125.00 cleaning fee

Greenroom/Dressing Room 2 & Stage:	\$375.00 + \$250.00 cleaning fee
Greenroom/Dressing Room 1, 2 & Stage:	\$425.00 + \$250.00 cleaning fee
Parking Lot	\$25.00 per displayed vehicle

B. In addition to the base rental fees the following hourly rates shall apply: \$20.00 per hour for each hour of usage with a minimum of 4 hours required and \$50.00 per hour of usage for all holidays. The Director shall maintain an updated list of rental items which is to be treated as part of this Ordinance's fee schedule.

C. Lease rates for the Daphne Civic Center are based on the prevailing rates as set forth in this Ordinance. In addition to the base rental fees, depending on each events setup and needs to have a successful event, an additional labor fee may be required. This fee is at the discretion of the Civic Center Director and will be presented to lessee prior to the execution of Civic Center contract.

D. The City shall apply rental proceeds to the operating requirements of the facility.

E. Lessee shall not split rental hours.

F. Lessee shall pay a \$300.00 refundable damage deposit. The damage deposit will be refunded after the facility is inspected by Civic Center personnel and no damage is found. Any additional damage charges over \$300.00 will be charged to the lessee.

G. If children are present during event, they must be supervised at all times and for safety/security reasons, should remain with parents or guardians. Children will not be allowed in any non-rental or off-limit areas. Any damaged or broken items caused from lack of supervision will be the Lessee's responsibility.

H. Any event having 500+ attendees will be required to pay an additional cleaning fee of \$300.00.

SECTION XVIII: CANCELLATIONS

Cancellations must be in writing, dated and signed by the Lessee. Reimbursements for cancelled events will be refunded as follows: 75% refund for cancellations received at least 9 months prior to the day of start of event; 50% refund for cancellations received at least 6 months prior to the day of start of event; no refunds will be made for cancellations received under 6 months prior to the day of start of event. Any exceptions to this rule must be approved by the Buildings and Property committee. **Should Daphne Civic Center be able to book another event of equal or greater economic value, then 100% refund will be issued. Refunds will be issued by check.

SECTION XIX: CLEANING FEES

Cleaning fees are mandatory and are based on the prevailing rates as prescribed in this

ordinance. Any event having 500+ attendees will be required to pay an additional cleaning fee of \$300.00.

SECTION XX: SECURITY (FIRE/POLICE)

A. The City of Daphne Police Department and Fire Department reserve the right to determine the appropriate amount of security and fire protection needed for any and all events held at the Daphne Civic Center. The Lessee shall provide security and/or fire protection if it is determined necessary for any event. If security and/or fire protection is required, it must be obtained through the City of Daphne Police Department and the City of Daphne Fire Department no later than fourteen (14) days prior to an event. If the Lessee fails to provide the required security or fire protection, a fine of \$300.00 shall be imposed and the relation of the landlord and tenant at the option of Lessor shall cease and terminate and the relation of the parties shall be the same in all respects as if said term had fully expired. The Lessor may re-enter the said premises and hold the same as of its former estate, remove all persons therefrom, and resort to any legal proceedings to obtain such possession.

B. The Lessor reserves the right through its Director or his/her representatives to eject any objectionable person or persons from said building, and upon the exercise of this authority through its Director, agents or policemen, the Lessee hereby waives any rights and all claims for damages against the Management.

C. The Lessee shall not, without written consent of the Lessor, put up or operate any engine or motor machinery on the demised premises, or use oils, burning fluids, camphene, kerosene, naphtha, or gasoline for either mechanical or other purposes or any other agent than natural gas or electricity for illuminating the demised premises.

D. Should an event require security, then Lessee shall comply with Ala. Code § 6-5-338 (1975) by the purchasing of general liability insurance in the amount of \$100,000.00 per off-duty officer.

SECTION XXI: ALCOHOL/BEVERAGE

A. Consumption of alcohol will be allowed inside the facility only during the time of function. No Alcohol/beverages shall be allowed on the dance floor at any time. Consumption of alcohol is not allowed in the parking lot or on the grounds of the facility. The City of Daphne is not liable for accidents, deaths, or injuries that may occur as a result of the consumption of alcohol.

B. The Lessee shall be fined three hundred dollars (\$300.00) by the City of Daphne for violation by Lessee, Lessee's agents, employees, patrons, guests, or any person admitted to said premises by Lessee per occurrence.

C. No Alcohol shall be "SOLD" on the grounds or inside of the Daphne Civic Center without proper permits or license.

D. Distribution of alcohol is to be made in one of the following forms:

- a. Alcohol and/or all mixers may be brought by attendees and checked at the door where a bartender (hired by Lessee) will distribute alcohol for the duration of the event. Said bartender must be 21 years of age or older and

must possess any and all then applicable licensing pursuant to local, state, and federal law.

- b. An event may contract with a licensed caterer for said event to set up cash bar or distribute alcohol. A licensed caterer is one that has purchased the requisite host liquor liability insurance, a City of Daphne business license, and attained all requisite alcohol licensing.

E. Should an event have alcohol, host liquor liability insurance in a minimum amount of \$1,000,000.00 must be purchased. All insurance certificates and proof of requisite licensing must be on file at least 14 days prior to the event.

F. Alcohol shall not be served or sold to anyone under 21 years of age.

G. Appropriate police action will be taken against any person deemed to be intoxicated and posing a danger to himself or others.

H. A list of bartenders and/or caterers possessing additional voluntary certifications(s), provided through alcoholic beverage distributors for the serving of alcoholic beverages, may be provided by the Civic Center upon request.

SECTION XXII: SMOKING

ALL CITY OF DAPHNE BUILDINGS ARE SMOKE FREE 20 FEET FROM ANY AND ALL ENTRANCES. There will be no smoking in the Daphne Civic Center. A fine of three hundred dollars (\$300.00) shall be imposed per occurrence by the City of Daphne. A three hundred dollar (\$300.00) cleaning fine shall be imposed on the Lessee if smoking has occurred in the Daphne Civic Center.

SECTION XXIII: PETS

No pets allowed inside the facility other than those for the express use by disabled persons, or by permission of the Civic Center Director.

SECTION XXIV: BUILDING ACCESS

The City will provide reasonable access according to the Americans with Disabilities Act.

SECTION XXV: THEFT

The City of Daphne is not responsible for theft of property on the grounds of the Daphne Civic Center, in automobiles, in the facility or any other structure on the property.

SECTION XXVI: HEAVY METAL/RAP/ALTERNATIVE CONCERTS

A. The City of Daphne has set forth the following guidelines to establish rules and regulations for Heavy Metal, Rap, and Alternative concerts in effort to provide a safe and enjoyable concert experience for attendees.

B. The Daphne City Council must approve all heavy metal, rap, and alternative concerts prior to the concert booking. The Buildings and Property Committee will determine if a concert is Alternative. The following are necessary:

- 1 . Names of all artists to appear must be provided to the Civic Center Director.
2. Date of the event and ticket information must be provided to the Civic Center Director.
3. A letter stating that approved security and fire arrangements have been made for the concert from the Daphne Police Department and Daphne Fire Department must be presented to the Civic Center Director. All special effects must be approved by the Fire Marshal and a letter stating this information must be provided to the Director.
4. A letter of approval must be obtained from the Civic Center Director and presented to the Buildings and Property Committee along with the above listed documentation. The Buildings and Property Committee will make recommendation to the full City Council. The Civic Center Director shall provide the Council's approval or disapproval to the proposed Lessee.
5. A security bond or deposit may be required for potential damages. If required, the bond or deposit must be presented to the Director no later than thirty (30) days prior to the event.
6. A five hundred-dollar cleaning fee may be required.
7. The promoter must obtain a public liability and property damage policy in an amount not less than \$3,000,000. The policy must be written by an insurance company licensed to do business in the State of Alabama and having a minimum rating of A- in the current issue of the A. M. Best Manual. The policy must name the City of Daphne and the Daphne Civic Center as additional insured. This certificate must be presented to the Director at least thirty (30) days prior to the scheduled concert.
8. If required by the State of Alabama, a promoter must obtain Liquor Liability Insurance in an amount not less than \$1,000,000 and must list the City of Daphne, Daphne Civic Center as additional insured on the policy. Proof of this policy must be presented to the sales office not less than one week prior of the event.
9. House lights are not allowed to go dark. A minimum of 20% of house lights must be on at all times.
10. An addendum may be required to the contract if any of the performing acts have a history of performing songs or making statements that are considered by the Daphne City Council to incite or provoke violence by the audience.
11. Other rules and regulations as deemed necessary by the Director, Buildings and Property Committee, or Daphne City Council may apply.

SECTION XXVII: SOUND EQUIPMENT

A. The Lessor shall not be responsible for any damage or injury that may occur from the result of sound, lighting, or electrical equipment being utilized by the Lessee, Lessee's agent, employees, or, guests from any cause whatsoever, prior, during or subsequent to the period covered by the lease and the said Lessee will release said Lessor from, and agrees to indemnify it against any and all claims for such loss, damage or injury.

B. Any damage to the City of Daphne, Civic Center sound, lighting, or electrical equipment shall be at the expense of the Lessee when Lessee utilizes said equipment or services. Civic Center personnel, The City of Daphne Police Department, or any authorized city employee can request that the Lessee or their agents desist from utilizing city property at any time.

C. The Civic Center must be notified of all sound and lighting requirements at least fourteen (14) days prior to the event.

SECTION XXVIII: FEE WAIVERS

A. The City of Daphne shall provide the following fee waivers with no others to be considered in Committee meetings or City Council meetings. All bookings are on a first come first serve basis.

1. DAPHNE CIVIC CENTER REDUCED RATE PROGRAM MONDAY, TUESDAY & WEDNESDAY

(a) This program will apply to all with the following exceptions. This program excludes paid concerts, all for profit events, Mardi Gras balls/meetings and fund raising events. These events will pay full fare.

All rental items remain the same. The reduced rate will consist of half rate for the base rental fee. The cleaning fee will remain the same. The booking includes four (4) hours of usage and must be between the hours of 7:00 a.m. - 5:00 p.m. Any usage over four (4) hours and any hours used after 5:00 p.m. will be charged an additional \$20.00 per hour. If requested, the City of Daphne, Daphne Civic Center shall be listed as a Sponsor of the event. Any Monday, Tuesday, or Wednesday that is a holiday or city holiday will be charged all regular holiday rates.

All bookings remain on a first come first serve basis. This program is not to be used for continued bookings. The City of Daphne reserves: the right to deny any group or organization usage of these provisions.

2. DAPHNE CIVIC CENTER REDUCED RATE PROGRAM (CIVIC GROUPS AND NOT FOR PROFITS - 501-C3 MONDAY, TUESDAY & WEDNESDAY)

(b) This program will apply to all civic groups that are not for profit and have a 501-C3 status. Proof of this status is required. This program excludes paid concerts, all for profit events, and fund raising events. These events will pay full fare ~ All rental items remain the same. The reduced rate will consist of a waived base fee, full rate on cleaning fees, and a \$20.00 per hour charge. Any Monday, Tuesday, or Wednesday booking that is a

holiday or city holiday will be charged all regular holiday rates. If requested, the City of Daphne, Daphne Civic Center shall be listed as a Sponsor of the event. All bookings remain on a first come first serve basis. This program is not to be used for continued bookings. The City of Daphne reserves the right to deny any group or organization usage of these provisions. All groups utilizing this reduced rate program must use the facility between 8:00 am to 10:00 p.m. All groups that have not left the facility by 10:00 p.m. will be charged all regular rates.

3. CITY OF DAPHNE DEPARTMENTS FOR CONDUCTING CITY BUSINESS.

- (a) The City of Daphne encourages all City Departments to utilize the Daphne Civic Center for your entire department booking needs. For tracking purposes all City departments must estimate their projected bookings for the Civic Center and budget all fees, rental items, cleaning fees, and per hour charges needed at regular rates for their facility functions. The department may submit in writing to the Director a request to wave base rental fees only. The decision will be based on the criteria for event, time of day and year and day of week. The approval of this request will be at the discretion of the Director and/or Mayor. Invoices will be routed from the Civic Center to the Finance Department for journal entry after each event. The Finance Department will notify the Civic Center sales office when the journal entry is complete and make report to the Buildings and Property Committee at the monthly meeting.

4. CITY EMPLOYEES FOR PERSONAL BUSINESS

- (a) Current City of Daphne employees will be entitled to a 20% discount off of base rental rates only for events that the employee is hosting. This discount is not applicable for family or friends, only the employee him/herself. All rules, guidelines and all other fees of this ordinance apply. The employee must make a request in writing which should include type of event, day and time. The approval of this request will be at the discretion of the Director and/or Mayor. Should for any reason the employee violate the guidelines mentioned above, said employee will not be entitled to this benefit in the future and will be responsible for full base rental rate which will be deducted from damage fee or billed with additional damage fee.

SECTION XXIX: BOOKING POLICY - ALL OTHER GROUPS

If an organization or group desires to book the same date continually, year after year, such organizations must submit a letter to the Director making such request listing the exact dates and years that the organization is requesting and all facility needs. All base fees must be paid in advance for the first two consecutive years. At the end of the second year a new request must be made in writing and delivered to the sales department of the Civic Center no later than 7 days after the second year event for the following two years, along with the fees for the next two years. Future bookings will also be secured using the same guidelines. All bookings are on a first come first serve basis.

SECTION XXX: PENALTY

A. Any person found guilty of violating any provision of this Ordinance shall be punished by a fine of not less than fifty dollars (\$50.00) no more than five hundred dollars (\$500.00), or by imprisonment for a period not exceeding six (6) months, or both, at the discretion of the Municipal Judge.

B. This Ordinance shall also be subject to enforcement by the issuance of a summons and complaint.

SECTION XXXI: REPEALER

Ordinance Nos. 2004-20 and 2010-49 are hereby repealed in their entirety. All other City Ordinances or parts thereof in conflict with the provision of this Ordinance, in so far as they conflict, are hereby repealed.

SECTION XXXII: SEVERABILITY

The provisions of this Ordinance are severable. If any provision, section, paragraph, sentence or part thereof shall be held unconstitutional or invalid, such decision shall not affect or impair the remainder of the Ordinance, it being the legislative intent to ordain and enact each provision, section, paragraph, sentence : and part thereof separately and independently of each other.

SECTION XXXII: EFFECTIVE DATE

This Ordinance shall become effective and be in force from and after the date of its approval and adoption by the City Council of Daphne and publication as required by law.

ADOPTED AND APPROVED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF DAPHNE, ALABAMA, this the 7th day of February, 2011.

**Cathy S. Barnette,
Council President**

**Fred Small,
Mayor**

ATTEST:

David Cohen, City Clerk, MMC

**CITY OF DAPHNE
ORDINANCE NO. 2014-58**

**AN ORDINANCE TO REPEAL ORDINANCE NOS. 2011-09 AND ESTABLISHING
RULES, REGULATIONS, RATES AND A LEASE AGREEMENT FOR THE RENTAL
OF THE BAYFRONT PARK PAVILION**

WHEREAS, the City Council of the City of Daphne desires that all citizens of the City of Daphne and guests thereof be able to peaceably use and enjoy the Bayfront Park Pavilion; and,

WHEREAS, the City Council of the City of Daphne desires to promote the health and safety of the citizens of the City of Daphne by providing rental schedules, rules, regulations and a lease agreement for the rental of the Bayfront Park Pavilion, and,

WHEREAS, changes in policy have mandated the repealing of the preceding Ordinance establishing rules, regulations, rates, and a lease agreement for the rental of the Bayfront Park Pavilion,

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

SECTION I: DEFINITIONS

For the purpose of this Ordinance the following terms, phrases, words and their derivations shall have the meaning given herein. When not inconsistent with the context, words used in the present tense include the future tense, words in the plural number include the singular number and words in the singular number include the plural number. The word "shall" is always mandatory and not merely directive.

1. Lessor: The City of Daphne and Bayfront Park Pavilion.
2. Lessee: Signer of City of Daphne Bayfront Park Pavilion Lease Agreement.
3. Facility: Bayfront Park Pavilion.
4. Event: The purpose for which facility is leased.

SECTION II: RULES AND REGULATIONS—GENERAL

The Director is authorized to execute on behalf of the City of Daphne, the Bayfront Park Pavilion lease agreement as approved by the City Council. The following rules apply:

1. Governmental functions will take precedence over all other functions. All other reservations are on a first come first served basis.

2. The Lease agreement must be executed by persons 21 years of age or older and the executor of said lessee agreement must be in attendance at the event.
3. Dates will not be considered "booked" prior to the completion of a City of Daphne Bayfront Park Pavilion Lease Agreement and payment of applicable fees.
4. The performance of this Agreement shall terminate without liability upon the occurrence of any circumstance beyond the control of Lessor – such as emergency use of the facility as a distribution or dispensing center, acts of God, fire, storm, pestilence, war, terrorism, disaster, Federal regulations, strikes, civil disorder, criminal acts, curtailment of transportation facilities or any other casualty or unforeseen occurrence – to the extent that such circumstances make it illegal or impossible to provide or use of the facilities. Notice may be provided by Lessor at the earliest practicable time however is not required to absolve Lessor of liability under this paragraph. Lessee shall pay rental for said premises only up to the time of such termination, at the rate specified on the Lease Agreement and the said Lessee waives any claim for damages or compensation should the lease be so terminated. Should termination due to unforeseen events as described above occur prior to any actual use of the facility, Lessee shall be refunded all reservation fees that have not been obligated by Lessor.
5. City personnel will inspect the facility after each event. If damage is found, lessee will be notified of charges to be deducted from damage deposit or of additional charges beyond damage deposit.
6. Garbage cans, trash bags, rest room supplies, and outside trash receptacles will be supplied for Lessee use with the exception of Mardi Gras groups, or other large groups as determined by the Director. Additional charges may apply.
7. City functions must portray the City of Daphne in the best light for the good and benefit of the citizens of Daphne.
8. Additional services, personnel and/or equipment (other than those specified at the time of lease) which may be requested and utilized will be additionally charged based on Bayfront Park Pavilion prevailing rates.
9. Security, firefighters and other personnel will be charged at the prevailing rates per hour. Lessee must make necessary arrangements.
10. Arrangements must be confirmed at least fourteen (14) days in advance of an event so as to schedule the personnel, equipment and services required.
11. The Lessor requires that only trained city personnel use and handle facility equipment during events and set-ups.

12. The Lessee is charged with the responsibility of paying all applicable City, County, and State sales tax on admissions and sales at the Bayfront Pavilion as well as applicable license fees.
13. All fees shall be paid 14 (fourteen) days prior to the event. Exceptions may be made for State, County, and those approved by the Director.
14. The Lessor will bill any final charges that cannot be determined prior to, during, or after the event by Bayfront Park personnel. These fees must be paid no later than 7 days after the event date. All accounts that are not paid within the 7 days will be turned in for collection. In accordance with paragraph 22 of this Agreement any cost, including but not limited to attorney fees, incurred by attempts to recover said fees, Lessee shall pay such costs.
15. Lessee agrees to pay for all fees in lawful money of the United States of America, cashier's check, personal checks, or company checks at the Sales Office of the Bayfront Park Pavilion. Lessee further agrees to pay said Lessor on demand any sum which may be due to said Lessor for additional services and/or accommodation for material furnished or provided to said Lessee.
16. The Lessee will comply with all laws of the United States, and of the State of Alabama, all ordinances of the City of Daphne, Alabama and all rules and requirements of the Police and Fire Departments, or other municipal authorities of the City of Daphne, and will obtain and pay for all necessary permits and licenses, and will not do nor suffer to be done, anything on said premises during the term of the lease in violation of any such laws, ordinances, rules or requirements, and if Lessor calls any such violation to the attention of the Lessee, or any person employed by or admitted to the said premises by said Lessee, such Lessee will immediately desist from and correct such violation. Lessee will provide Lessor with a copy of all necessary permits and licenses fourteen (14) days in advance from start of event.
17. No performance, exhibition or entertainment shall be given or held on said demised premises, which shall be objected to by the Lessor.
18. The City of Daphne, Bayfront Park Pavilion, employees, or agents shall not be responsible for any misrepresentation of or failure to perform by any promoter, agent, group, or act that is not booked by the City of Daphne or Bayfront Park Pavilion.
19. LESSEE, IN CONSIDERATION OF THE EXECUTION BY LESSOR OF THE LEASE AGREEMENT REPRESENTS AND GUARANTEES TO LESSOR THAT PERFORMERS BY THEIR SPEECH, SONG, MUSIC, CONDUCT, OR MANNER WILL NOT VIOLATE OR INCITE OTHERS TO VIOLATE ANY STATUTE, LAW, ORDINANCE, RULE, REGULATION OR ORDER OF ANY FEDERAL, STATE, MUNICIPAL OR OTHER GOVERNMENTAL AUTHORITY.

- a. If performers speak, sing, play, perform or otherwise act in any manner which shall cause Lessor or any person, organization, or authority whose duty it is to enforce any such statute, law, ordinance, rule, regulation, or order to maintain public safety on the premises, think that performers have violated or incited others to violate any such statute, law, ordinance, rule, regulation, or order, the Lessor shall have the absolute right in its sole discretion to terminate the performance in progress and, regardless of whether the performance is terminated, to delay and withhold payment and settlement of all accounts and funds related to money collected or received by Lessor under this agreement until completion of an investigation relating to any incident thought to be such a violation. Lessee agrees to hold Lessor harmless from any and all damages suffered or sustained by reason of the termination of any performance and will defend any suit instituted against Lessor arising out of such termination at Lessee's expense, all in addition to the remedies otherwise given Lessor herein.
 - b. If upon completion of the investigation Lessor concludes that performers have violated and/or incited others to violate any such statute, law, ordinance, rule, regulation or order, then Lessee shall be deemed to have committed material breach of the Lease Agreement, for which breach Lessee shall be liable to the Lessor. The Lessee and the Lessor hereto acknowledge and agree that it will be impossible to measure actual damages to premises as the result of a breach of this agreement arising out of a violation or incitement of others to violate any statute, law, ordinance, rule, regulation or order as aforesaid, and therefore, the parties have agreed to the sum of \$5,000.00 as liquidated damages and not as a penalty, which amount Lessee hereby authorizes Lessor to deduct from any accounts or funds held or received by Lessor prior to any payment to Lessee if monies are due or Lessee agrees to pay Lessor the agreed sum of \$5,000.00 as stated above or pay the actual damage amount which will be determined after inspection and or repair of damage.
20. The Lessee shall not admit to said premises a larger number of persons than the seating capacity thereof will accommodate, or can safely or freely move about in said rented areas, and the decision of the Fire Marshal in this respect shall be final. The Bayfront Pavilion Director and their agents shall maintain an updated occupancy table with limits pursuant to City of Daphne Fire Marshal's regulations which is to be treated as part of this Ordinance.
 21. In rendering said space to the Lessee; the Lessor does not relinquish the right to control the management thereof or to enforce all the necessary and proper rules for the management and operation of the same. The City of Daphne and the Bayfront Park Pavilion, their agents, and their employees may enter said building and all the demised premises, at any time and on any occasion in performance of their duties and responsibilities.
 22. The Lessee agrees to pay reasonable attorney's fees on any part of said rental or service charge that may be collected by suit or by attorney after said rental or service charge is past due.

23. The Lessee shall not permit the demised premises to be used for lodging rooms, or for any improper, immoral or objectionable purpose.
24. The Lessee shall not assign the lease, nor suffer any use of said premises, other than specified, nor subject the same premises or any part thereof, without the written consent of the Lessor.
25. The Lessee waives all right under the Constitution and laws of the State of Alabama or any other state to claim personal property exempt as against any liability, debt or obligation arising under the contract.
26. Lessee shall make all necessary arrangements with the union business agents of all trades involved in their presentation of their event.
27. The Bayfront Park Pavilion and the keys thereto shall be at all times under the charge and control of the Bayfront Park Pavilion personnel. All exceptions must be approved by the Director.
28. That Lessee shall agree that if any default is made in the payment of the rent or any part thereof or if any default is made in the covenant or agreement the letting and the relation of landlord and tenant at the option of Lessor, shall cease and terminate and the relation of the parties shall be the same in all respect as if said term had fully expired, and the said Lessor may re-enter the said premises and hold the same as of its former estate therein, remove all persons there from and resort to any legal proceedings to obtain such possession and the said Lessee shall notwithstanding such re-enter and must pay the full amount of said lease for the facility, services, and any usage fees as herein agreed to be paid.
29. The Lessor shall not be responsible for any damage or injury that may happen to the lessee, or the Lessee's agent, employees, property, guests from any cause whatsoever, prior, during or subsequent to the period covered by the lease and the said Lessee will release said Lessor from, and agrees to indemnify it against any and all claims for such loss, damage or injury.
30. That in the handling, control, custody and keeping of receipts and funds, whether the same are received through the box office or otherwise, the Lessor is acting for the accommodations and sole benefit of the Lessee, and that as to such receipts, and funds the Lessor shall be responsible only for gross neglect or bad faith.
31. Any matters not expressly provided for shall be in the discretion of the City of Daphne Mayor, City Council and/or Bayfront Director.
32. That all terms and conditions of the written lease shall be binding upon the parties, their heirs and assigns, and cannot be varied or waived by any oral representations or promise of any agent or other person of the parties hereto unless the same be in writing and mutually signed by the duly authorized agent or agents who executed the lease. See

attached Lease Agreement and information sheet which is incorporated by reference as if fully set forth herein.

33. The signed Lease Agreement will hold the City of Daphne and the Bayfront Park Pavilion harmless and indemnify them against any claims or liability for compensation under the Alabama Workmen's Compensation law or similar laws arising out of injuries sustained by any employees of Lessee or of any contractor or subcontractor under Lessee.
34. Renters shall adhere to all signs posted at location.
35. The Mayor and/or his designee are authorized to promulgate and post rules and regulations at the facility which provide for proper operation and protect the health, safety, and welfare of persons attending events at the facility.
36. Lessee, Lessee's agent, employees, guests, or anyone entering the building that are under the supervision of the Lessee may not move or remove any City owned decorations or property in the facility. Doing so will be in violation of said ordinance and may incur additional damage fees.
37. Lessor reserves the right to refuse to lease to any person, group or organization known to willfully violate any provisions of this ordinance

SECTION III: ADVERTISING

- A. All advertising will be straightforward, accurate, and true and when admission is charged, must state the total admission prices. Advertising of any event or the appearance of any performer, selling of tickets, acquiring sponsorships, selling of tradeshow booths or the like is prohibited until all contracts between all parties involved have been properly executed and exhibited to the Director is prohibited.
- B. All advertising with reference to the Bayfront Park Pavilion and use of Bayfront Park Pavilion by city departments or otherwise must be approved by the Director of the Bayfront Park Pavilion prior to usage.

SECTION IV: COPYRIGHT

Lessee/Artist/Promoter warrants at the signing of the Lease Agreement that all copyrighted material to be performed has been duly licensed or authorized by the copyright owners or their representatives and agrees to indemnify and hold the City of Daphne and the Bayfront Park Pavilion harmless from any and all claims, losses, or expenses incurred with regard thereto.

SECTION V: CONCESSION

The Lessor relinquishes all food and beverage concession rights to the Lessee. All City, County, and State taxes and fees apply.

SECTION VI: DECORATIONS

- A. The Lessor requires that all decorations, signs, and posters must be coordinated with Bayfront Park Pavilion personnel prior to placing or erecting in the Bayfront Park Pavilion building or on facility grounds.

- B. All decorations must be free standing. No nails, tacks, brackets, glue or self-adhesive tape or any other similar items will be allowed on or in the walls, ceilings, floors or any material that will deface, mar, or damage a finish. ANY SUCH DAMAGE MAY RESULT IN AN EXTRA CHARGE FOR DAMAGES AND WILL BE THE RESPONSIBILITY OF THE LESSEE. No shaving cream, toilet paper, silly string, rice, birdseed, sparklers, glitter, confetti (including decorative jewels) or the like will be thrown or used for decoration inside or outside the facility. ALL FIRE MUST BE 30 FEET FROM THE BUILDING; ABSOLUTLEY NO FIRE INSIDE OR ON DECK. If any of these items are found on the floor, additional clean-up/damage fees will be imposed on Lessee.

- C. Combustible decorative materials such as, but not limited to, cotton batting, paper, foam plastics, cloth, vegetation, moss straw, hay, vines, split bamboo, leaves and similar material shall not be used in the facility unless materials are flame resistant or have been treated with a fire retardant coating. The classification of fire retardant coatings shall apply only when the coating is applied at the rates of coverage and to the type or kind of surfaces indicated on the test report when the coating is applied in accordance with the manufacturer's directions supplied with the container. These coatings shall be applied in accordance with the manufacturer's direction. The applications shall be certified by the applicator as being in conformance with the manufacturer's direction for application. A flame test will be done on the material before being approved by the Fire Official. **WARNING!!! You are advised to contact the Daphne Fire Marshal for approval of decorations at least 2 weeks prior to your event. Decorations not meeting the Fire Marshal's approval will not be allowed in the facility.** Lessee must present in writing to Lessor the approval from the Fire Marshal which will be kept on file.

SECTION VII: FLOOR PLANS

- A. The Lessee shall file with the Sales Office or Event Office at least fourteen (14) days prior to the occurrence of the event for which this agreement is issued, a full and detailed outline of all facilities required, stage requirements, table and chair set-up, and such other information as may be required by the Director for planning, staging and preparation for such event. The number of attendees is to be included on the Bayfront Park Pavilion Lease Agreement.

- B. Occupancy Limits. Pursuant to City of Daphne Fire Department regulations:

Room	Square Ft.	Chairs/people	Chairs/Tables
Sunset	4,500	290	210/21

SECTION VIII: INSURANCE

- A. By the acceptance of the lease agreement the Lessee covenants to indemnify, save and keep free and harmless the City of Daphne, its officers and employees, from and against any and all claims, demands, loss, liability, cost or expense of any kind or nature whatsoever which the City, its officers or employees, or any of them, may sustain or incur, or that may be imposed upon them, or any damages to property arising out of, connected with or attributable to the use and occupancy of the facility by Lessee. Lessee agrees to pay for any damage to the facility and for any damage to or loss of any City property resulting from the occupancy of said facility by Lessee or resulting from the conduct or actions of Lessee, its agents or employees, or any person, or person's participation in or attending the event during Lessee's occupancy.
- B. Simultaneously with the acceptance of this lease and as a condition precedent to the effectiveness hereof, Lessee shall procure and maintain, in full force, and effect during Lessee's occupancy of the facility, and during the term of this permit, a policy of public liability and property damage insurance from a reliable insurance company authorized to transact business in the State of Alabama. The insurance company must have a minimum rating of A- in the current issue of the A. M. Best Manual. The Lessee, the City, and its officers and employees shall be named co-insured in said policy and the policy shall cover the insured's against whom claim is or may be, in the same manner as if separate policies had been issued to each. Said policy shall contain not less than the following limits of liability:
- \$1,000,000.00 combined single limit per occurrence. (Bodily injury and property damage)
- C. If the proposed use or occupancy by Lessee is such as to present a high degree of exposure to bodily injury or property damage, the Director may, in his/her discretion require higher limits of bodily injury and/or damage insurance.
- D. The policy shall provide that the same shall not be cancelled prior to the termination of this lease until the Director shall have received a ten-day written notice of such proposed cancellation. Said policy shall provide that the insurance afforded thereby shall be primary insurance to the full limits of liability stated in the declarations, and if the City I its officers and employees have other insurance against a loss covered by said policy, that such other insurance shall be excess insurance only.
- E. Lessee shall, coincidentally with the acceptance of this lease, deliver said policy of insurance, or certified photo static copy thereof, to the Director. Said policy shall be approved by the Director as to sufficiency.
- F. The signed lease Agreement shall hold the City of Daphne and the Bayfront Park Pavilion harmless and indemnify them against any claims or liability arising or resulting from any injury to any visitor, spectator or participant in any activity in any part or portion of the Bayfront Park, regardless of entrance gained to said Bayfront Park Pavilion whether by paid

admissions, by pass- issued by Lessee or Lessor or by any unlawful admission gained without knowledge of Lessor or Lessee. To indemnify Lessor as herein provided, Lessee shall carry public liability insurance with the coverage and the amount thereof to be specified and approved by the Director of the Bayfront Park Pavilion with Lessee to furnish Lessor with a certificate of insurance or other satisfactory evidence of compliance with this requirement prior to commencement of Leasees event. This insurance requirement may be waived depending on circumstances.

- G. Upon approval of said policy, the same shall be filed with the Director or designee. After said policy has been so approved the Lessee shall file with the City a certificate of insurance issued by an insurance carrier certifying that the aforesaid insurance is in full force and effect and that all operations of the insured under the permit are covered thereby. In lieu of the presentation of the original policy, or of a certified photo static copy thereof, the Lessee may file a certificate of insurance to which is attached an endorsement in a form approved by the City Attorney. The endorsement shall provide that liability assumed by Lessee under this permit is covered by the policy, that the City, its officers, and employees, are named insured under said policy, and that in event of anyone of the insured's incurring liability to any other of the insured's, the policy shall cover the insured against whom claim is or may be made in the same manner as if separate policies have been issued to each, and that said insurance is primary insurance as set forth hereinabove. The endorsement shall also provide that the policy shall not be cancelled prior to the termination of the permit or until the Director shall have received a ten-day notice in writing of such proposed cancellation and that such endorsement controls over all other provisions of the policy, or endorsements thereto, which are inconsistent therewith. Lessee shall be responsible for all insurance deductibles.
- H. Host Liquor Liability Insurance must be obtained in an amount not less than \$1,000,000 and the City of Daphne, Bayfront Park Pavilion must be listed as additionally insured on the policy. Proof of this policy must be presented to the sales office not less than fourteen (14) days prior of the event.
- I. Proof of all policies applicable must be presented to the Bayfront Pavilion Sales Office not less than fourteen (14) days prior to event.

SECTION IX: INVENTORY

Facility inventory will not be loaned or permitted to be removed from the premises. These items include but are not limited to chairs, tables, podiums, audiovisual equipment, kitchen equipment, plants, decorations, or displays. The City of Daphne shall impose a fine of three hundred dollars (\$300.00) for each violation in addition to a charge for damage.

SECTION X: DEFACING OF PROPERTY

- A. The Lessee will not injure, nor mar, nor in any manner deface said premises, and shall not cause or permit anything to be done whereby the said premises shall be in any manner injured, marred or defaced; and will not drive or permit to be driven nails, hooks, tacks or screws into any part of said building, and will not make, or allow to be made, any alterations

of any kind therein. Glue hooks or tacky putty will not be permitted (contact Bayfront Pavilion Sales Assistant for suggestions).

- B. No decorations shall be placed in or on the building, nor shall any devices or signs be supported by any means on wall or woodwork without the consent of the Sales Agent. Sets, scenery, exhibit material, et cetera, shall be of flameproof material and conform to the Fire Prevention code of the City of Daphne.
- C. If said premises, or any portion of said building, during the term of the lease, shall be damaged by the act, default or negligence of the Lessee's agents, employees, patrons, guests or any person admitted to said premises by Lessee, or unlawful admission gained, LESSEE WILL PAY TO THE LESSOR UPON DEMAND SUCH SUM AS SHALL BE NECESSARY TO RESTORE SAID PREMISES TO THEIR ORIGINAL CONDITION. The Lessee hereby assumes full responsibility for the character, acts and conduct of all persons admitted to said premises, or to any portion of said building by the consent of the said Lessee, or by or with the consent of any person acting for or on behalf of said Lessee, and said Lessee agrees to have on hand at all times sufficient Police and Fire Personnel to maintain order and protect persons and property. Daphne Police and Fire Personnel will be provided at the expense of the Lessee. Fire Personnel to maintain order and protect persons and property. Daphne Police and fire Personnel will be provided at the expense of the Lessee. In addition, the City of Daphne's fine of three hundred dollars (\$300.00) for Damage/Defacing City Property will be imposed.

SECTION XI: TICKET OUTLET SALES/BOX OFFICE

- A. The City of Daphne stipulates that all ticketed events will be handled through the Bayfront Park Pavilion Sales office unless otherwise stated by the Director. The basic Box Office charge will be 5% of all Gross Ticket Sales. Bayfront Park Pavilion Box Office sales and services are the exclusive right of Bayfront Park Pavilion.
- B. The Bayfront Park Pavilion Ticket Office hours shall be 8:00 a.m. - 5:00 p.m., Monday through Friday.
- C. All tickets must be sold at advertised prices and any deviation must be approved in writing by the Director.
- D. All Moneys' collected for advance ticket sales must be paid in cash and are not be subject to 'draw' by the promoter until such time show time occurs, all specifications of the Bayfront Park Pavilion Lease Agreement have been met and all funds have been collected which exceed Bayfront Park Pavilion expenses therefore.
- E. All tickets purchased must be paid for in cash. The Director shall notify the Lessee if other payment plans are permissible.

- F. The Bayfront Park Pavilion management will deal only with the individual who negotiated the contract or their duly authorized representative's with regards to box office transactions, show settlement, and facility usage.
- G. In the event of show cancellation, the Bayfront Park Pavilion Director reserves the right to determine the ticket refund procedures. Refunds will be made at the outlet location of purchase only.
- H. Any deviation or changes to the stated regulations must be approved by the Director.

SECTION XII: POSTING BILLS

- A. The Lessee will not post or exhibit, nor allow to be posted or exhibited, signs, advertisements, show bills, lithographs, posters or cards of any description, inside or in front of, or on any part of said building except upon the regular billboards provided by the Lessor therefore and will use, post or exhibit only such signs, advertisements, show bills, lithographs, posters or cards upon said billboards as relate to the performance or exhibit to be given in the demised premises. Amounts and contents of Lessee's display advertising materials at the Bayfront Park shall be at the discretion of the Director.
- B. The Lessee shall take down and remove forthwith all signs, advertisements, show bills, lithographs, posters or cards of any description objected to by said Lessor, or its representatives.

SECTION XIII: PASSAGEWAYS

- A. The Lessee will permit no chair or movable seat to be or remain in the passageways, and will keep said passageways clear at all times.
- B. No portion of the sidewalks, entries, passage, vestibules, halls, stairways, or access to public utilities or said building shall be obstructed by the Lessee, or used for any purpose other than for ingress to and from the demised premises. The doors, stairways, or openings that reflect or admit light into any place in the building, including hallways, corridors, passages, also house-lighting attachments, shall not be covered or obstructed by the Lessee. The water closets or other water apparatus shall not be used for any purpose other than for which they were constructed, and no sweepings, rubbish, rags, papers or other substance shall be thrown therein. Any damage resulting to them from misuse of any nature or character whatever shall be paid for by the Lessee.

SECTION XIV: REMOVAL OF PROPERTY

- A. All personal property, including rental items, brought into the Bayfront Pavilion for any event must be dismantled and removed immediately following the event unless pre-approved by the Director. Any personal property not removed shall become the property of the City of Daphne. The City of Daphne will hold all lost and found items for seven (7) days following the event. Thereafter, the City reserves the right to dispose of all unclaimed items. City of

Daphne, Bayfront Pavilion employees will be held harmless for any property approved by the Director to be left in the building or in Bayfront Park Pavilion. Approval must be made at least fourteen (14) working days prior to start of event. No exceptions will be made.

- B. Bayfront Park Pavilion employees, workers, volunteers, or any representative of the Bayfront Park Pavilion cannot assist in the load-in, event set-up and/or load-out of any personal event or handle any personal property.
- C. The Lessor shall have the sole right to collect and have the custody of articles left in the building by persons attending any performance, exhibition or entertainment given or held in the demised premises, and the Lessee, or any person in Lessee's employ shall not collect nor interfere with the collection or custody of such article.
- D. The Lessor reserves the right to remove from the building all effects remaining in building after time specified at the expense of the Lessee or to charge the daily rental as shown on the current Bayfront Park rate sheet for the area in which the effects have been left or stored.

SECTION XV: BUILDING DEPARTURE

Lessee shall agree that the music would be stopped, all bars must be closed and the building must be cleared at the ending time stated on the contract. If the Lessee goes over stated time on contract the Lessee will be charged with additional rental that must be paid at the time that the function goes over the ending time as is stated on the contract.

SECTION XVI: WAIVED FEES

All requests for waived fees must be sent in writing and addressed to the Director. The Director will forward all requests to the Mayor.

SECTION XVII: RENTAL FEES

A. Bayfront Park Rental Fees and hourly rates shall start as listed below:

Entire Facility:	\$475.00 (This reserves sections of the parking area)
The Sunset	\$300.00
The Jubilee	\$150.00
The Kitchen	\$40.00
Cleaning	\$200.00 (Optional)

B. In addition to the base rental fees the following hourly rates shall apply: \$20.00 per hour for each hour of usage with a minimum of 4 hours required and \$50.00 per hour of usage for all holidays and City holidays. The Director shall maintain an updated list of rental items which is to be treated as part of this Ordinance's fee schedule.

C. Lease rates for the Bayfront Park Pavilion are based on the prevailing rates as set forth in this Ordinance. In addition to the base rental fees, depending on each events setup and needs to have a successful event, an additional labor fee may be required. This fee is at the discretion of the Bayfront Pavilion Director and will be presented to lessee prior to the execution of Bayfront Pavilion contract.

D. The City shall apply rental proceeds to the operating requirements of the facility.

E. Lessee shall not split rental hours.

F. Lessee shall pay a \$150.00 refundable damage deposit. The damage deposit will be refunded after the facility is inspected by Bayfront Park Pavilion personnel and no damage is found. Any additional damage charges over \$150.00 will be charged to the lessee.

G. If children are present during event, they must be supervised at all times and for safety/security reasons, should remain with parents or guardians. Children will not be allowed in any non-rental or off-limit areas. Any damaged or broken items caused from lack of supervision will be the Lessee's responsibility.

SECTION XVIII: CANCELLATIONS

Cancellations must be in writing, dated and signed by the Lessee. Reimbursements for cancelled events will be refunded as follows: 75% refund for cancellations received at least 9 months prior to the day of start of event; 50% refund for cancellations received at least 6 months prior to the day of start of event; no refunds will be made for cancellations received under 6 months prior to the day of start of event. Any exceptions to this rule must be approved by the Buildings and Property committee. **Should Bayfront Pavilion be able to book another event of equal or greater economic value, then 100% refund will be issued. Refunds will be issued by check.

SECTION XIX: CLEANING FEES

In addition to any and all fees, costs and deposits, a mandatory cleaning fee of \$200 shall be payable at the time of reservation.

SECTION XX: SECURITY (FIRE/POLICE)

- A. The City of Daphne Police Department and Fire Department reserve the right to determine the appropriate amount of security and fire protection needed for any and all events held at the Bayfront Park. The Lessee shall provide security and/or fire protection if it is determined necessary for any event. If security and/or fire protection is required, it must be obtained through the City of Daphne Police Department and the City of Daphne Fire Department no later than fourteen (14) days prior to an event. If the Lessee fails to provide the required security or fire protection if required, a fine of \$300.00 shall be imposed and the relation of the landlord and tenant at the option of Lessor, shall cease and terminate and the relation of the parties shall be the same in all respects as if said term had fully expired, and the said Lessor may re-enter the said premises and hold the same as of its former estate therein, remove all persons there from and resort to any legal proceedings to obtain such possession.
- B. The Lessor reserves the right through its Director or his/her representatives to eject any objectionable person or persons from said building, and upon the exercise of this authority through its Director, agents or policemen, the Lessee hereby waives any rights and all claims for damages against the Management.
- C. The Lessee shall not, without written consent of the Lessor, put up or operate any engine or motor machinery on the demised premises, or use oils, burning fluids, camphene, kerosene, naphtha, or gasoline for either mechanical or other purposes or any other agent than natural gas or electricity for illuminating the demised premises.
- D. Should an event require security, then Lessee shall comply with Ala. Code § 6-5-338 (1975) by the purchasing of general liability insurance in the amount of \$100,000.00 per off-duty officer.

SECTION XXI: ALCOHOL/BEVERAGE

- A. Consumption of alcohol will be allowed inside the facility only during the time of function. No Alcohol/beverages shall be allowed on the dance floor. Consumption of alcohol is not allowed in the parking lot or on the grounds of the facility. **The City of Daphne is not liable for accidents, deaths, or injuries that may occur as a result of the consumption of alcohol.**
- B. The Lessee shall be fined three hundred dollars (\$300.00) by the City of Daphne for violation by Lessee, Lessee's agents, employees, patrons, guests, or any person admitted to said premises by Lessee per occurrence.
- C. No Alcohol shall be "SOLD" on the grounds or inside of the Bayfront Pavilion without proper permits or license.
- D. Alcohol shall not be served or sold to anyone under 21 years of age.
- E. Appropriate police action will be taken against any person deemed to be intoxicated and posing a danger to himself or others.
- F. Distribution of alcohol is to be made in one of the following forms:
 - a. Alcohol and/or all mixers may be brought by attendees and checked at the door where a bartender (hired by Lessee) will distribute alcohol for the duration of the event. Said bartender must be 21 years of age or older and must possess any and all then applicable licensing pursuant to local, state, and federal law.
 - b. An event may contract with a licensed caterer for said event to set up cash bar or distribute alcohol. A licensed caterer is one that has purchased the requisite host liquor liability insurance, a City of Daphne business license, and attained all requisite alcohol licensing
- G. Should an event have alcohol, host liquor liability insurance in a minimum amount of \$1,000,000.00 must be purchased. All insurance certificates and proof of requisite licensing must be on file at least 14 days prior to the event.
- H. A list of bartenders and/or caterers possessing additional voluntary certifications(s), provided through alcoholic beverage distributors for the serving of alcoholic beverages, may be provided by the Bayfront Pavilion Director upon request.

SECTION XXII: SMOKING

ALL CITY OF DAPHNE BUILDINGS ARE SMOKE FREE 20 feet from any and all entrances. There will be no smoking in the Bayfront Pavilion. A fine of three hundred dollars (\$300.00) shall be imposed per occurrence by the City of Daphne. A three hundred dollar (\$300.00) cleaning fine shall be imposed on the Lessee if smoking has occurred in the Bayfront Pavilion.

No smoking on the deck, all fire must be 30 feet from the building.

SECTION XXIII: PETS

No pets allowed inside the facility other than those for the express use by disabled persons, or by permission of the Bayfront Pavilion Director.

SECTION XXIV: BUILDING ACCESS

The City will provide reasonable access according to the Americans with Disabilities Act.

SECTION XV: THEFT

The City of Daphne is not responsible for theft of property on the grounds of the Daphne Bayfront Pavilion, in automobiles, in the facility or any other structure on the property.

SECTION XVI: HEAVY METAL/RAP/ALTERNATIVE CONCERTS

- A. The City of Daphne has set forth the following guidelines to establish rules and regulations for Heavy Metal, Rap, and Alternative concerts in effort to provide a safe and enjoyable concert experience for attendees.
- B. The Daphne City Council must approve all heavy metal, rap, and alternative concerts prior to the concert booking. The Buildings and Property Committee will determine if a concert is Alternative. The following are necessary:
 - 1. Names of all artists to appear must be provided to the Bayfront Pavilion Director.
 - 2. Date of the event and ticket information must be provided to the Bayfront Pavilion Director.
 - 3. A letter stating that approved security and fire arrangements have been made for the concert from the Daphne Police Department and Daphne Fire Department must be presented to the Bayfront Pavilion Director. All special effects must be approved by the Fire Marshal and a letter stating this information must be provided to the Director.
 - 4. A letter of approval must be obtained from the Bayfront Pavilion Director and presented to the Buildings and Property Committee along with the above listed documentation. The Buildings and Property Committee will make recommendation to the full City Council. The Bayfront Pavilion Director shall provide the Council's approval or disapproval to the proposed Lessee.

5. A security bond or deposit may be required for potential damages. If required, the bond or deposit must be presented to the Director no later than thirty (30) days prior to the event.
6. A five hundred-dollar cleaning fee may be required.
7. The promoter must obtain a public liability and property damage policy in an amount not less than \$1,000,000.00. The policy must be written by an insurance company licensed to do business in the State of Alabama and having a minimum rating of A- in the current issue of the A. M. Best Manual. The policy must name the City of Daphne and the Bayfront ~~Park~~ Pavilion as additional insured. This certificate must be presented to the Director at least thirty (30) days prior to the scheduled concert.
8. If required by the State of Alabama, promoter must obtain Liquor Liability Insurance in an amount not less than \$1,000,000 and list the City of Daphne, Bayfront Pavilion as additional insured on the policy. Proof of this policy must be presented to the sales office not less than one week prior of the event.
9. House lights are not allowed to go dark. A minimum of 20% of house lights must be on at all times.
10. An addendum may be required to the contract if any of the performing acts have a history of performing songs or making statements that are considered by the Daphne City Council to incite or provoke violence by the audience.
11. Other rules and regulations as deemed necessary by the Director, Buildings and Property Committee, or Daphne City Council may apply.

SECTION XXVII: SOUND EQUIPMENT

- A. The Lessor shall not be responsible for any damage or injury that may occur from the result of sound, lighting, or electrical equipment being utilized by the Lessee, Lessee's agent, employees, or guest from any cause whatsoever, prior, during, or subsequent to the period covered by the lease and the said Lessee will release said Lessor from, and agrees to indemnify it against any and all claims for such loss, damage, or injury.
- B. Any damage to the City of Daphne, Bayfront Pavilion sound, lighting, or electrical equipment shall be at the expense of the Lessee when Lessee utilizes said equipment or services. Bayfront Park personnel, The City of Daphne, Daphne Police Department, or any authorized City Employee can request that the Lessee, or their agents, desist from utilizing City Property at any time.
- C. The Bayfront Pavilion must be notified of all sound requirements at least fourteen (14) days prior to the event.

- D. The City of Daphne shall provide the following fee waivers with no others to be considered in Committee meetings or City Council meetings. **All bookings are on a first come first serve basis.**

SECTION XXVIII: FEE WAIVERS

The City of Daphne shall provide the following fee waivers with no others to be considered in Committee meetings or City Council meetings. All bookings are on a first come first serve basis.

1. **BAYFRONT PAVILION REDUCED RATE PROGRAM MONDAY, TUESDAY & WEDNESDAY:**

This program will apply to all with the following exceptions. This program excludes paid concerts, all for profit events, Mardi Gras balls/meetings and fund raising events. These events will pay full fare. AU rental items remain the same. The reduced rate will consist of half rate for the base rental fee. The cleaning fee will remain the same. The booking includes four (4) hours of usage and must be between the hours of 7:00 a.m. - 5:00 p.m. Any usage over four (4) hours and any hours used after 5:00 p.m. will be charged an additional \$15.00 per hour. If requested, the City of Daphne, Bayfront Pavilion shall be listed as a Sponsor of the event. Any Monday, Tuesday, or Wednesday that is a holiday or city holiday will be charged all regular holiday rates. All bookings remain on a first come first serve basis. This program is not to be used for continued bookings. The City of Daphne reserves the right to deny any group or organization usage of these provisions.

2. **BAYFRONT PAVILION REDUCED RATE PROGRAM (CIVIC GROUPS AND NOT FOR PROFITS -501-C3 MONDAY, TUESDAY & WEDNESDAY)**

This program will apply to all civic groups that are not for profit and have a 501-C3 status. Proof of this status is required. This program excludes paid concerts, all for profit events, and fund raising events. These events will pay full fare. All rental items remain the same. The reduced rate will consist of a waived base fee, full rate on cleaning fees, and a \$15.00 per hour charge. Any Monday, Tuesday, or Wednesday booking that is a holiday or city holiday will be charged all regular holiday rates. If requested, the City of Daphne, Daphne Bayfront Pavilion shall be listed as a Sponsor of the event. All bookings remain on a first come first serve basis. This program is not to be used for continued bookings. The City of Daphne reserves the right to deny any group, or organization usage of these provisions. All groups utilizing this reduced rate program must use the facility between 8:00 a.m. to 10:00 p.m. All groups that have not left the facility by 10:00 p.m. will be charged all regular rates.

3. **CITY OF DAPHNE DEPARTMENTS FOR CONDUCTING CITY BUSINESS.**

The City of Daphne encourages all City Departments to utilize the Bayfront Pavilion for your entire department booking needs. For tracking purposes all City departments must estimate

their projected bookings for the Bayfront Pavilion and budget all fees, rental items, cleaning fees, and per hour charges needed at regular rates for their facility functions. The department may submit in writing to the Director a request to wave base rental fees only. The decision will be based on the criteria for event, time of day and year and day of week. The approval of this request will be at the discretion of the Director and Mayor. Invoices for usage will be routed from the Bayfront Pavilion to the Finance Department for journal entry after each event. The Finance Department will notify the Bayfront Pavilion sales office when the journal entry is complete to make report to the Buildings and Property Committee at the monthly meeting.

4. CITY EMPLOYEES FOR PERSONAL BUSINESS

Current and in good standing City of Daphne employees will be entitled to a 20% discount off of base rental rates only for events that the employee is hosting. This discount is not applicable for family or friends, only the employee him/herself. All rules, guidelines and all other fees of this ordinance apply. The employee must make a request in writing which should include type of event, day and time. The approval of this request will be at the discretion of the Director and/or Mayor. Should for any reason the employee violate the guidelines mentioned above, said employee will not be entitled to this benefit in the future and will be responsible for full base rental rate which will be deducted from damage fee or billed with additional damage fee.

SECTION XXIX: BOOKING POLICY—ALL OTHER GROUPS

If an organization or group desires to book the same date continually, year after year, such organizations must submit a letter to the Director making such request listing the exact dates and years that the organization is requesting and all facility needs. All base fees must be paid in advance for the first two consecutive years. At the end of the second year a new request must be made in writing and delivered to the sales department of the Bayfront Pavilion no later than 7 days after the second year event for the following two years, along with the fees for the next two years. Future bookings will also be secured using the same guidelines. All bookings are on a first come first serve basis.

SECTION XXX: PENALTY

- A. Any person found guilty of violating any provision of this Ordinance shall be punished by a fine of not less than fifty dollars (\$50.00) nor more than five hundred dollars (\$500.00), or by imprisonment for a period not exceeding six (6) months, or both, at the discretion of the Municipal Judge.
- B. This Ordinance shall also be subject to enforcement by the issuance of a summons and complaint.

SECTION XXXI: REPEALER

Ordinances Nos. 2004-21 and 2014-50 are hereby repealed in their entirety. All other City Ordinances or parts thereof in conflict with the provision of this Ordinance, in so far as they conflict, are hereby repealed.

SECTION XXXII: SEVERABILITY

The provisions of this Ordinance are severable. If any provision, section, paragraph, sentence or part thereof shall be held unconstitutional or invalid, such decision shall not affect or impair the remainder of the Ordinance, it being the legislative intent to ordain and enact each provision, section, paragraph, sentence and part thereof separately and independently of each other.

SECTION XXXIII: EFFECTIVE DATE

This Ordinance shall become effective and be in force from and after the date of its approval and adoption by the City Council of Daphne and publication as required by law.

ADOPTED AND APPROVED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF DAPHNE, ALABAMA, this the ____ day of _____, 2014.

**Dane Haygood,
Mayor**

ATTEST:

Rebecca A. Hayes, City Clerk

**CITY OF DAPHNE
ORDINANCE NO. 2014-**

**AN ORDINANCE TO REPEAL ORDINANCE NOS. 2011-09
AND ESTABLISHING RULES, REGULATIONS, RATES AND
A LEASE AGREEMENT FOR THE RENTAL OF THE
BAYFRONT PARK PAVILION**

WHEREAS, the City Council of the City of Daphne desires that all citizens of the City of Daphne and guests thereof be able to peaceably use and enjoy the Bayfront Park Pavilion; and,

WHEREAS, the City Council of the City of Daphne desires to promote the health and safety of the citizens of the City of Daphne by providing rental schedules, rules, regulations and a lease agreement for the rental of the Bayfront Park Pavilion, and,

WHEREAS, changes in policy have mandated the repealing of the preceding Ordinance establishing rules, regulations, rates, and a lease agreement for the rental of the Bayfront Park Pavilion,

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

SECTION I: DEFINITIONS

A. For the purpose of this Ordinance the following terms, phrases, words and their derivations shall have the meaning given herein. When not inconsistent with the context, words used in the present tense include the future tense, words in the plural number include the singular number and words in the singular number include the plural number. The word "shall" is always mandatory and not merely directive.

1. Lessor: The City of Daphne and Bayfront Park Pavilion.
2. Lessee: Signer of City of Bayfront Park Pavilion Lease Agreement.
3. Facility: Bayfront Park Pavilion.
4. Event: The purpose for which facility is leased.

SECTION II: RULES AND REGULATIONS-GENERAL

A. The Director is authorized to execute on behalf of the City of Daphne, the Bayfront Park Pavilion lease agreement as approved by the City Council. The following rules apply.

1. Governmental functions will take precedence over all other functions. All other reservations are on a first come first served basis.

2. The Lease agreement must be executed by persons 21 years of age or older and the executor of said lessee agreement must be in attendance at the event.

3. Dates will not be considered "booked" prior to the completion of a City of Daphne Bayfront Park Pavilion Lease Agreement and payment of applicable fees.

4. The performance of this Agreement shall terminate without liability upon the occurrence of any circumstance beyond the control of Lessor – such as emergency use of the facility as a distribution or dispensing center, acts of God, fire, storm, pestilence, war, terrorism, disaster, Federal regulations, strikes, civil disorder, criminal acts, curtailment of transportation facilities or any other casualty or unforeseen occurrence – to the extent that such circumstances make it illegal or impossible to provide or use of the facilities. Notice may be provided by Lessor at the earliest practicable time however is not required to absolve Lessor of liability under this paragraph. In case the facility, or any part thereof, shall be destroyed or damaged by fire, or any other cause, or if any other casualty or unforeseen occurrence shall render the fulfillment of the lease by the Lessor impossible, then and thereupon the lease shall terminate, and the Lessee shall pay rental for said premises only up to the time of such termination, at the rate specified on the Lease Agreement and the said Lessee waives any claim for damages or compensation should the lease be so terminated. Should termination due to unforeseen events as described above occur prior to any actual use of the facility, Lessee shall be refunded all reservation fees that have not been obligated by Lessor.

5. City personnel will inspect the facility after each event. If damage is found, lessee will be notified of charges to be deducted from damage deposit or of additional charges beyond damage deposit.

6. Garbage cans, trash bags, rest room supplies, and outside trash receptacles will be supplied for Lessee use with the exception of Mardi Gras groups, or other large groups as determined by the Director. Additional charges may apply.

7. City functions must portray the City of Daphne in the best light for the good and benefit of the citizens of Daphne.

8. Additional services, personnel and/or equipment (other than those specified at the time of lease) which may be requested and utilized will be additionally charged based on Bayfront Park Pavilion prevailing rates.

9. Security, firefighters and other personnel will be charged at the prevailing rates per hour. Lessee must make necessary arrangements.

10. Arrangements must be confirmed at least fourteen (14) days in advance of an event so as to schedule the personnel, equipment and services required.

11. The Lessor requires that only trained city personnel use and handle facility equipment during events and set-ups.

12. The Lessee is charged with the responsibility of paying all applicable City, County, and State sales tax on admissions and sales at the Bayfront Pavilion as well as applicable license fees.

13. All fees shall be paid 14 (fourteen) days prior to the event. Exceptions may be made for State, County, and those approved by the Director.

14. The Lessor will bill any final charges that cannot be determined prior to, during, or after the event by Bayfront Park personnel. These fees must be paid no later than 7 days after the event date. All accounts that are not paid within the 7 days will be turned in for collection. In accordance with paragraph 22 of this Agreement any cost, including but not limited to attorney fees, incurred by attempts to recover said fees, Lessee shall pay such costs.

15. Lessee agrees to pay for all fees in lawful money of the United States of America, cashier's check, personal checks, or company checks at the Sales Office of the Bayfront Park Pavilion. Lessee further agrees to pay said Lessor on demand any sum which may be due to said Lessor for additional services and/or accommodation for material furnished or provided to said Lessee.

16. The Lessee will comply with all laws of the United States, and of the State of Alabama, all ordinances of the City of Daphne, Alabama and all rules and requirements of the Police and Fire Departments, or other municipal authorities of the City of Daphne, and will obtain and pay for all necessary permits and licenses, and will not do nor suffer to be done, anything on said

premises during the term of the lease in violation of any such laws, ordinances, rules or requirements, and if Lessor calls any such violation to the attention of the Lessee, or any person employed by or admitted to the said premises by said Lessee, such Lessee will immediately desist from and correct such violation. Lessee will provide Lessor with a copy of all necessary permits and licenses fourteen (14) days in advance from start of event.

17. No performance, exhibition or entertainment shall be given or held on said demised premises, which shall be objected to by the Lessor.

18. The City of Daphne, Bayfront Park Pavilion, employees, or agents shall not be responsible for any misrepresentation of or failure to perform by any promoter, agent, group, or act that is not booked by the City of Daphne or Bayfront Park Pavilion.

19. LESSEE, IN CONSIDERATION OF THE EXECUTION BY LESSOR OF THE LEASE AGREEMENT REPRESENTS AND GUARANTEES TO LESSOR THAT PERFORMERS BY THEIR SPEECH, SONG, MUSIC, CONDUCT, OR MANNER WILL NOT VIOLATE OR INCITE OTHERS TO VIOLATE ANY STATUTE, LAW, ORDINANCE, RULE, REGULATION OR ORDER OF ANY FEDERAL, STATE, MUNICIPAL OR OTHER GOVERNMENTAL AUTHORITY.

a) If performers speak, sing, play, perform or otherwise act in any manner which shall cause Lessor or any person, organization, or authority whose duty it is to enforce any such statute, law, ordinance, rule, regulation, or order to maintain public safety on the premises, think that performers have violated or incited others to violate any such statute, law, ordinance, rule, regulation, or order, the Lessor shall have the absolute right in its sole discretion to terminate the performance in progress and, regardless of whether the performance is terminated, to delay and withhold payment and settlement of all accounts and funds related to money collected or received by Lessor under this agreement until completion of an investigation relating to any incident thought to be such a violation. Lessee agrees to hold Lessor harmless from any and all damages suffered or sustained by reason of the termination of any performance and will defend any suit instituted against Lessor arising out of such termination at Lessee's expense, all in addition to the remedies otherwise given Lessor herein.

b) If upon completion of the investigation Lessor concludes that performers have violated and/or incited others to violate any such statute, law, ordinance, rule, regulation or order, then Lessee shall be deemed to have committed material breach of the Lease Agreement, for which breach Lessee shall be liable to the Lessor. The Lessee and the Lessor hereto acknowledge and agree that it will be impossible to measure actual damages to premises as the result of a breach of this agreement arising out of a violation or incitement of others to violate any statute, law, ordinance, rule, regulation or order as aforesaid, and therefore, the parties have agreed to the sum of \$5,000.00 as liquidated damages and not as a penalty, which amount Lessee hereby authorizes Lessor to deduct from any accounts or funds held or received by Lessor prior to any payment to Lessee if monies are due or Lessee agrees to pay Lessor the agreed sum of \$5,000.00 as stated above or pay the actual damage amount which will be determined after inspection and or repair of damage.

20. The Lessee shall not admit to said premises a larger number of persons than the seating capacity thereof will accommodate, or can safely or freely move about in said rented areas, and the decision of the Fire Marshal in this respect shall be final. The Bayfront Pavilion Director and their agents shall maintain an updated occupancy table with limits pursuant to City of Daphne Fire Marshal's regulations which is to be treated as part of this Ordinance.

21. In rendering said space to the Lessee; the Lessor does not relinquish the right to control the management thereof or to enforce all the necessary and proper rules for the management and operation of the same. The City of Daphne and the Bayfront Park Pavilion, their agents, and their employees may enter said building and all the demised premises, at any time and on any occasion in performance of their duties and responsibilities.

22. The Lessee agrees to pay reasonable attorney's fees on any part of said rental or service charge that may be collected by suit or by attorney after said rental or service charge is past due.

23. The Lessee shall not permit the demised premises to be used for lodging rooms, or for any improper, immoral or objectionable purpose.

24. The Lessee shall not assign the lease, nor suffer any use of said premises, other than specified, nor subject the same premises or any part thereof, without the written consent of the Lessor.

25. The Lessee waives all right under the Constitution and laws of the State of Alabama or any other state to claim personal property exempt as against any liability, debt or obligation arising under the contract.

26. Lessee shall make all necessary arrangements with the union business agents of all trades involved in their presentation of their event.

27. The Bayfront Park Pavilion and the keys thereto shall be at all times under the charge and control of the Bayfront Park Pavilion personnel. All exceptions must be approved by the Director.

28. That Lessee shall agree that if any default is made in the payment of the rent or any part thereof or if any default is made in the covenant or agreement the letting and the relation of 115

landlord and tenant at the option of Lessor, shall cease and terminate and the relation of the parties shall be the same in all respect as if said term had fully expired, and the said Lessor may re-enter the said premises and hold the same as of its former estate therein, remove all persons there from and resort to any legal proceedings to obtain such possession and the said Lessee shall notwithstanding such re-enter and must pay the full amount of said lease for the facility, services, and any usage fees as herein agreed to be paid.

29. The Lessor shall not be responsible for any damage or injury that may happen to the lessee, or the Lessee's agent, employees, property, guests from any cause whatsoever, prior, during or subsequent to the period covered by the lease and the said Lessee will release said Lessor from, and agrees to indemnify it against any and all claims for such loss, damage or injury.

30. That in the handling, control, custody and keeping of receipts and funds, whether the same are received through the box office or otherwise, the Lessor is acting for the accommodations and sole benefit of the Lessee, and that as to such receipts, and funds the Lessor shall be responsible only for gross neglect or bad faith.

31. Any matters not expressly provided for shall be in the discretion of the City of Daphne Mayor, City Council and/or Bayfront Director.

32. That all terms and conditions of the written lease shall be binding upon the parties, their heirs and assigns, and cannot be varied or waived by any oral representations or promise of any agent or other person of the parties hereto unless the same be in writing and mutually signed by the duly authorized agent or agents who executed the lease. See attached Lease Agreement and information sheet which is incorporated by reference as if fully set forth herein.

33. The signed Lease Agreement will hold the City of Daphne and the Bayfront Park Pavilion harmless and indemnify them against any claims or liability for compensation under the Alabama Workmen's Compensation law or similar laws arising out of injuries sustained by any employees of Lessee or of any contractor or subcontractor under Lessee.

34. Renters shall adhere to all signs posted at location.

35. The Mayor and/or his designee are authorized to promulgate and post rules and regulations at the facility which provide for proper operation and protect the health, safety, and welfare of persons attending events at the facility.

36. Lessee, Lessee's agent, employees, guests, or anyone entering the building that are under the supervision of the Lessee may not move or remove any City owned decorations or property in the facility. Doing so will be in violation of said ordinance and may incur additional damage fees.

37. Lessor reserves the right to refuse to lease to any person, group or organization known to willfully violate any provisions of this ordinance.

SECTION III: ADVERTISING

A. All advertising will be straightforward, accurate, and true and when admission is charged, must state the total admission prices. Advertising of any event or the appearance of any performer, selling of tickets, acquiring sponsorships, selling of tradeshow booths or the like is prohibited until all contracts between all parties involved have been properly executed and exhibited to the Director is prohibited.

B. All advertising with reference to the Bayfront Park Pavilion and use of Bayfront Park Pavilion by city departments or otherwise must be approved by the Director of the Bayfront Park Pavilion prior to usage.

SECTION IV: COPYRIGHT

Lessee/Artist/Promoter warrants at the signing of the Lease Agreement that all copyrighted material to be performed has been duly licensed or authorized by the copyright owners or their representatives and agrees to indemnify and hold the City of Daphne and the Bayfront Park Pavilion harmless from any and all claims, losses, or expenses incurred with regard thereto.

SECTION V: CONCESSION

The Lessor relinquishes all food and beverage concession rights to the Lessee. All City, County, and State taxes and fees apply.

SECTION VI: DECORATIONS

A. The Lessor requires that all decorations, signs, and posters must be coordinated with Bayfront Park Pavilion personnel prior to placing or erecting in the Bayfront Park Pavilion building or on facility grounds.

B. All decorations must be free standing. No nails, tacks, brackets, glue or self-adhesive tape or any other similar items will be allowed on or in the walls, ceilings, floors or any material that will deface, mar, or damage a finish. ANY SUCH DAMAGE MAY RESULT IN AN EXTRA CHARGE FOR DAMAGES AND WILL BE THE RESPONSIBILITY OF THE LEESSEE. No shaving cream, toilet paper, silly string, rice, birdseed, sparklers, glitter, confetti (including decorative jewels) or the like will be thrown or used for decoration inside or outside the facility. ALL FIRE MUST BE 30 FEET FROM THE BUILDING; ABSOLUTLEY NO FIRE INSIDE OR ON DECK. If any of these items are found on the floor, additional clean-up/damage fees will be imposed on Lessee.

C. Combustible decorative materials such as, but not limited to, cotton batting, paper, foam plastics, cloth, vegetation, moss straw, hay, vines, split bamboo, leaves and similar material shall not be used in the facility unless materials are flame resistant or have been treated with a fire retardant coating. The classification of fire retardant coatings shall apply only when the coating is applied at the rates of coverage and to the type or kind of surfaces indicated on the test report when the coating is applied in accordance with the manufacturer's directions supplied with the container. These coatings shall be applied in accordance with the manufacturer's direction. The applications shall be certified by the applicator as being in conformance with the manufacturer's direction for application. A flame test will be done on the material before being approved by the Fire Official. **WARNING!!! You are advised to contact the Daphne Fire Marshal for approval of decorations at least 2 weeks prior to your event. Decorations not meeting the Fire Marshal's** 17

approval will not be allowed in the facility. Lessee must present in writing to Lessor the approval from the Fire Marshal which will be kept on file.

FLOOR PLANS

SECTION VII:

A. The Lessee shall file with the Sales Office or Event Office at least fourteen (14) days prior to the occurrence of the event for which this agreement is issued, a full and detailed outline of all facilities required, stage requirements, table and chair set-up, and such other information as may be required by the Director for planning, staging and preparation for such event. The number of attendees is to be included on the Bayfront Park Pavilion Lease Agreement.

B. Occupancy Limits. Pursuant to City of Daphne Fire Department regulations:

Room	Square Ft.	Chairs/people	Chairs/Tables
The Sunset	4,500	290	210/21
The Jubilee	1,200	49	50/10

SECTION VIII: INSURANCE

A. By the acceptance of the lease agreement the Lessee covenants to indemnify, save and keep free and harmless the City of Daphne, its officers and employees, from and against any and all claims, demands, loss, liability, cost or expense of any kind or nature whatsoever which the City, its officers or employees, or any of them, may sustain or incur, or that may be imposed upon them, or any damages to property arising out of, connected with or attributable to the use and occupancy of the facility by Lessee. Lessee agrees to pay for any damage to the facility and for any damage to or loss of any City property resulting from the occupancy of said facility by Lessee or resulting from the conduct or actions of Lessee, its agents or employees, or any person, or person's participation in or attending the event during Lessee's occupancy.

B. Simultaneously with the acceptance of this lease and as a condition precedent to the effectiveness hereof, Lessee shall procure and maintain, in full force, and effect during Lessee's occupancy of the facility, and during the term of this permit, a policy of public liability and property damage insurance from a reliable insurance company authorized to transact business in the State of Alabama. The insurance company must have a minimum rating of A- in the current issue of the A. M. Best Manual. The Lessee, the City, and its officers and employees shall be named co-insured in said policy and the policy shall cover the insured's against whom claim is or may be, in the same manner as if separate policies had been issued to each. Said policy shall contain not less than the following limits of liability:

\$1,000,000.00 combined single limit per occurrence. (Bodily injury and property damage)

C. If the proposed use or occupancy by Lessee is such as to present a high degree of exposure to bodily injury or property damage, the Director may, in his/her discretion require higher limits of bodily injury and/or damage insurance.

D. The policy shall provide that the same shall not be cancelled prior to the termination of this lease until the Director shall have received a ten-day written notice of such proposed cancellation. Said policy shall provide that the insurance afforded thereby shall be primary insurance to the full limits of liability stated in the declarations, and if the City I its officers and employees have other insurance against a loss covered by said policy, that such other insurance shall be excess insurance only.

E. Lessee shall, coincidentally with the acceptance of this lease, deliver said policy of insurance, or certified photo static copy thereof, to the Director. Said policy shall be approved by the Director as to sufficiency.

F. The signed lease Agreement shall hold the City of Daphne and the Bayfront Park Pavilion harmless and indemnify them against any claims or liability arising or resulting from any injury to any visitor, spectator or participant in any activity in any part or portion of the Bayfront Park, regardless of entrance gained to said Bayfront Park Pavilion whether by paid admissions, by pass- issued by Lessee or Lessor or by any unlawful admission gained without knowledge of Lessor or Lessee. To indemnify Lessor as herein provided, Lessee shall carry public liability insurance with the coverage and the amount thereof to be

specified and approved by the Director of the Bayfront Park Pavilion with Lessee to furnish Lessor with a certificate of insurance or other satisfactory evidence of compliance with this requirement prior to commencement of Lessee's event. This insurance requirement may be waived depending on circumstances.

G. Upon approval of said policy, the same shall be filed with the Director or designee. After said policy has been so approved the Lessee shall file with the City a certificate of insurance issued by an insurance carrier certifying that the aforesaid insurance is in full force and effect and that all operations of the insured under the permit are covered thereby. In lieu of the presentation of the original policy, or of a certified photo static copy thereof, the Lessee may file a certificate of insurance to which is attached an endorsement in a form approved by the City Attorney. The endorsement shall provide that liability assumed by Lessee under this permit is covered by the policy, that the City, its officers, and employees, are named insured under said policy, and that in event of anyone of the insured's incurring liability to any other of the insured's, the policy shall cover the insured against whom claim is or may be made in the same manner as if separate policies have been issued to each, and that said insurance is primary insurance as set forth hereinabove. The endorsement shall also provide that the policy shall not be cancelled prior to the termination of the permit or until the Director shall have received a ten-day notice in writing of such proposed cancellation and that such endorsement controls over all other provisions of the policy, or endorsements thereto, which are inconsistent therewith. Lessee shall be responsible for all insurance deductibles.

H. Host Liquor Liability Insurance must be obtained in an amount not less than \$1,000,000 and the City of Daphne, Bayfront Park Pavilion must be listed as additionally insured on the policy. Proof of this policy must be presented to the sales office not less than fourteen (14) days prior of the event.

I. Proof of all policies applicable must be presented to the Bayfront Pavilion Sales Office not less than fourteen (14) days prior to event.

SECTION IX: INVENTORY

Facility inventory will not be loaned or permitted to be removed from the premises. These items include but are not limited to chairs, tables, podiums, audiovisual equipment, kitchen equipment, plants, decorations, or displays. The City of Daphne shall impose a fine of three hundred dollars (\$300.00) for each violation in addition to a charge for damage.

SECTION X: DEFACING OF PROPERTY

A. The Lessee will not injure, nor mar, nor in any manner deface said premises, and shall not cause or permit anything to be done whereby the said premises shall be in any manner injured, marred or defaced; and will not drive or permit to be driven nails, hooks, tacks or screws into any part of said building, and will not make, or allow to be made, any alterations of any kind therein. Glue hooks or tacky putty will not be permitted (contact Bayfront Pavilion Sales Assistant for suggestions).

B. No decorations shall be placed in or on the building, nor shall any devices or signs be supported by any means on wall or woodwork without the consent of the Sales Agent. Sets, scenery, exhibit material, et cetera, shall be of flameproof material and conform to the Fire Prevention code of the City of Daphne.

C. If said premises, or any portion of said building, during the term of the lease, shall be damaged by the act, default or negligence of the Lessee's agents, employees, patrons, guests or any person admitted to said premises by Lessee, or unlawful admission gained, LESSEE WILL PAY TO THE LESSOR UPON DEMAND SUCH SUM AS SHALL BE NECESSARY TO RESTORE SAID PREMISES TO THEIR ORIGINAL CONDITION. The Lessee hereby assumes full responsibility for the character, acts and conduct of all persons admitted to said premises, or to any portion of said building by the consent of the said Lessee, or by or with the consent of any person acting for or on behalf of said Lessee, and said Lessee agrees to have on hand at all times sufficient Police and Fire Personnel to maintain order and protect persons and property. Daphne Police and Fire Personnel will be provided at the expense of the Lessee. Fire Personnel to maintain order and protect persons and property. Daphne Police and fire Personnel will be provided at the expense of the Lessee. In addition, the City of Daphne's fine of three hundred dollars (\$300.00) for Damage/Defacing City Property will be imposed.

SECTION XI: TICKET OUTLET SALES/BOX OFFICE

A. The City of Daphne stipulates that all ticketed events will be handled through the Bayfront Park Pavilion Sales office unless otherwise stated by the Director. The basic Box Office charge will be 5% of all Gross Ticket Sales. Bayfront Park Pavilion Box Office sales and services are the exclusive right of Bayfront Park Pavilion.

B. The Bayfront Park Pavilion Ticket Office hours shall be 8:00 a.m. - 5:00 p.m., Monday through Friday.

C. All tickets must be sold at advertised prices and any deviation must be approved in writing by the Director.

D. All Moneys' collected for advance ticket sales must be paid in cash and are not be subject to 'draw' by the promoter until such time show time occurs, all specifications of the Bayfront Park Pavilion Lease Agreement have been met and all funds have been collected which exceed Bayfront Park Pavilion expenses therefore.

E. All tickets purchased must be paid for in cash. The Director shall notify the Lessee if other payment plans are permissible.

F. The Bayfront Park Pavilion management will deal only with the individual who negotiated the contract or their duly authorized representative's with regards to box office transactions, show settlement, and facility usage.

G. In the event of show cancellation, the Bayfront Park Pavilion Director reserves the right to determine the ticket refund procedures. Refunds will be made at the outlet location of purchase only.

H. Any deviation or changes to the stated regulations must be approved by the Director.

SECTION XII: POSTING BILLS

A. The Lessee will not post or exhibit, nor allow to be posted or exhibited, signs, advertisements, show bills, lithographs, posters or cards of any description, inside or in front of, or on any part of said building except upon the regular billboards provided by the Lessor therefore and will use, post or exhibit only such signs, advertisements, show bills, lithographs, posters or cards upon said billboards as relate to the performance or exhibit to be given in the demised premises. Amounts and contents of Lessee's display advertising materials at the Bayfront Park shall be at the discretion of the Director.

B. The Lessee shall take down and remove forthwith all signs, advertisements, show bills, lithographs, posters or cards of any description objected to by said Lessor, or its representatives.

SECTION XIII: PASSAGEWAYS

A. The Lessee will permit no chair or movable seat to be or remain in the passageways, and will keep said passageways clear at all times.

B. No portion of the sidewalks, entries, passage, vestibules, halls, stairways, or access to public utilities or said building shall be obstructed by the Lessee, or used for any purpose other than for ingress to and from the demised premises. The doors, stairways, or openings that reflect or admit light into any place in the building, including hallways, corridors, passages, also house-lighting attachments, shall not be covered or obstructed by the Lessee. The water closets or other water apparatus shall not be used for any purpose other than for which they were constructed, and no sweepings, rubbish, rags, papers or other substance shall be thrown therein. Any damage resulting to them from misuse of any nature or character whatever shall be paid for by the Lessee.

SECTION XIV: REMOVAL OF PROPERTY

A. All personal property, including rental items, brought into the Bayfront Pavilion for any event must be dismantled and removed immediately following the event unless pre-approved by the Director. Any personal property not removed shall become the property of the City of Daphne. The City of Daphne will hold all lost and found items for seven (7) days following the event. Thereafter, the City reserves the right to dispose of all unclaimed items. City of Daphne, Bayfront Pavilion employees will be held harmless for any property approved by the Director to be left in the building or in Bayfront Park Pavilion. Approval must be made at least fourteen (14) working days prior to start of event. No exceptions will be made.

B. Bayfront Park Pavilion employees, workers, volunteers, or any representative of the Bayfront Park Pavilion cannot assist in the load-in, event set-up and/or load-out of any personal event or handle any personal property.

C. The Lessor shall have the sole right to collect and have the custody of articles left in the building by persons attending any performance, exhibition or entertainment given or held in the demised premises, and the Lessee, or any person in Lessee's employ shall not collect nor interfere with the collection or custody of such article.

D. The Lessor reserves the right to remove from the building all effects remaining in building after time specified at the expense of the Lessee or to charge the daily rental as shown on the current Bayfront Park rate sheet for the area in which the effects have been left or stored.

SECTION XV: BUILDING DEPARTURE

Lessee shall agree that the music would be stopped, all bars must be closed and the building must be cleared at the ending time stated on the contract. If the Lessee goes over stated time on contract the Lessee will be charged with additional rental that must be paid at the time that the function goes over the ending time as is stated on the contract.

SECTION XVI: WAIVED FEES

All requests for waived fees must be sent in writing and addressed to the Director. The Director will forward all requests to the Mayor.

SECTION XVII: RENTAL FEES

A. Bayfront Park Rental Fees and hourly rates shall start as listed below:

Entire Facility:	\$475.00 (This reserves sections of the parking area)
The Sunset	\$300.00
The Jubilee	\$150.00
The Kitchen	\$40.00
Cleaning	200.00 (Optional)

B. In addition to the base rental fees the following hourly rates shall apply: ~~\$1520.00~~ \$150.00 per hour for each hour of usage with a minimum of 4 hours required and \$50.00 per hour of usage for all holidays and City holidays. The Director shall maintain an updated list of rental items which is to be treated as part of this Ordinance's fee schedule.

C. Lease rates for the Bayfront Park Pavilion are based on the prevailing rates as set forth in this Ordinance. In addition to the base rental fees, depending on each events setup and needs to have a successful event, an additional labor fee may be required. This fee is at the discretion of the Bayfront Pavilion Director and will be presented to lessee prior to the execution of Bayfront Pavilion contract.

D. The City shall apply rental proceeds to the operating requirements of the facility.

E. Lessee shall not split rental hours.

F. Lessee shall pay a \$150.00 refundable damage deposit. The damage deposit will be refunded after the facility is inspected by Bayfront Park Pavilion personnel and no damage is found. Any additional damage charges over \$150.00 will be charged to the lessee.

G. If children are present during event, they must be supervised at all times and for safety/security reasons, should remain with parents or guardians. Children will not be allowed in any non-rental or off-limit areas. Any damaged or broken items caused from lack of supervision will be the Lessee's responsibility.

SECTION XVIII: CANCELLATIONS

Cancellations must be in writing, dated and signed by the Lessee. Reimbursements for cancelled events will be refunded as follows: 75% refund for cancellations received at least 9 months prior to the day of start of event; 50% refund for cancellations received at least 6 months prior to the day of start of event; no refunds will be made for cancellations received under 6 months prior to the day of start of event. Any exceptions to this rule must be approved by the Buildings and Property committee. **Should Bayfront Pavilion be able to book another event of equal or greater economic value, then 100% refund will be issued. Refunds will be issued by check.

SECTION XIX: CLEANING FEES

~~Cleaning fees will be waived if and only if lessee does own cleanup—Bayfront will provide all necessary cleaning supplies and check list as reference. Should lessee choose to forgo this option, then the \$200.00 is mandatory. In addition to any and all fees, costs and deposits, a mandatory cleaning fee of \$200 shall be payable at the time of reservation.~~

SECTION XX: SECURITY (FIRE/POLICE)

A. The City of Daphne Police Department and Fire Department reserve the right to determine the appropriate amount of security and fire protection needed for any and all events held at the Bayfront Park. The Lessee shall provide security and/or fire protection if it is determined necessary for any event. If security and/or fire protection is required, it must be obtained through the City of Daphne Police Department and the City of Daphne Fire Department no later than fourteen (14) days prior to an event. If the Lessee fails to provide the required security or fire protection if required, a fine of \$300.00 shall be imposed and the relation of the landlord and tenant at the option of Lessor, shall cease and terminate and the relation of the parties shall be the same in all respects as if said term had fully expired, and the said Lessor may re-enter the said premises and hold the same as of its former estate therein, remove all persons there from and resort to any legal proceedings to obtain such possession.

B. The Lessor reserves the right through its Director or his/her representatives to eject any objectionable person or persons from said building, and upon the exercise of this authority through its Director, agents or policemen, the Lessee hereby waives any rights and all claims for damages against the Management.

C. The Lessee shall not, without written consent of the Lessor, put up or operate any engine or motor machinery on the demised premises, or use oils, burning fluids, camphene, kerosene, naphtha, or gasoline for either mechanical or other purposes or any other agent than natural gas or electricity for illuminating the demised premises.

D. Should an event require security, then Lessee shall comply with Ala. Code § 6-5-338 (1975) by the purchasing of general liability insurance in the amount of \$100,000.00 per off-duty officer.

SECTION XXI: ALCOHOL/BEVERAGE

A. Consumption of alcohol will be allowed inside the facility only during the time of function. No Alcohol/beverages shall be allowed on the dance floor. Consumption of alcohol is not allowed in the parking lot or on the grounds of the facility. **The City of Daphne is not liable for accidents, deaths, or injuries that may occur as a result of the consumption of alcohol.**

B. The Lessee shall be fined three hundred dollars (\$300.00) by the City of Daphne for violation by Lessee, Lessee's agents, employees, patrons, guests, or any person admitted to said premises by Lessee per occurrence.

C. No Alcohol shall be "SOLD" on the grounds or inside of the Bayfront Pavilion without proper permits or license.

D. Alcohol shall not be served or sold to anyone under 21 years of age.

E. Appropriate police action will be taken against any person deemed to be intoxicated and posing a danger to himself or others.

F. Distribution of alcohol is to be made in one of the following forms:

- a. Alcohol and/or all mixers may be brought by attendees and checked at the door where a bartender (hired by Lessee) will distribute alcohol for the duration of the event. Said bartender must be 21 years of age or older and must possess any and all then applicable licensing pursuant to local, state, and federal law.
- b. An event may contract with a licensed caterer for said event to set up cash bar or distribute alcohol. A licensed caterer is one that has purchased the requisite host liquor liability insurance, a City of Daphne business license, and attained all requisite alcohol licensing.

G. Should an event have alcohol, host liquor liability insurance in a minimum amount of \$1,000,000.00 must be purchased. All insurance certificates and proof of requisite licensing must be on file at least 14 days prior to the event.

H. A list of bartenders and/or caterers possessing additional voluntary certifications(s), provided through alcoholic beverage distributors for the serving of alcoholic beverages, may be provided by the Bayfront Pavilion Director upon request.

SECTION XXII: SMOKING

ALL CITY OF DAPHNE BUILDINGS ARE SMOKE FREE 20 feet from any and all entrances. There will be no smoking in the Bayfront Pavilion. A fine of three hundred dollars (\$300.00) shall be imposed per occurrence by the City of Daphne. A three hundred dollar (\$300.00) cleaning fine shall be imposed on the Lessee if smoking has occurred in the Bayfront Pavilion. No smoking on the deck, all fire must be 30 feet from the building.

SECTION XXIII: PETS

No pets allowed inside the facility other than those for the express use by disabled persons, or by permission of the Bayfront Pavilion Director.

SECTION XXIV: BUILDING ACCESS

The City will provide reasonable access according to the Americans with Disabilities Act.

SECTION XXV: THEFT

The City of Daphne is not responsible for theft of property on the grounds of the Daphne Bayfront Pavilion, in automobiles, in the facility or any other structure on the property.

SECTION XXVI: HEAVY METAL/RAP/ALTERNATIVE CONCERTS

A. The City of Daphne has set forth the following guidelines to establish rules and regulations for Heavy Metal, Rap, and Alternative concerts in effort to provide a safe and enjoyable concert experience for attendees.

B. The Daphne City Council must approve all heavy metal, rap, and alternative concerts prior to the concert booking. The Buildings and Property Committee will determine if a concert is Alternative. The following are necessary:

1. Names of all artists to appear must be provided to the Bayfront Pavilion Director.
2. Date of the event and ticket information must be provided to the Bayfront Pavilion Director.
3. A letter stating that approved security and fire arrangements have been made for the concert from the Daphne Police Department and Daphne Fire Department must be presented to the Bayfront Pavilion Director. All special effects must be approved by the Fire Marshal and a letter stating this information must be provided to the Director.
4. A letter of approval must be obtained from the Bayfront Pavilion Director and presented to the Buildings and Property Committee along with the above listed documentation. The Buildings and Property Committee will make recommendation to the full City Council. The Bayfront Pavilion Director shall provide the Council's approval or disapproval to the proposed Lessee.
5. A security bond or deposit may be required for potential damages. If required, the bond or deposit must be presented to the Director no later than thirty (30) days prior to the event.
6. A five hundred-dollar cleaning fee may be required.
7. The promoter must obtain a public liability and property damage policy in an amount not less than \$1,000,000.00. The policy must be written by an insurance company licensed to do business in the State of Alabama and having a minimum rating of A- in the current issue of the A. M. Best Manual. The policy must name the City of Daphne and the Bayfront ~~Park~~ Pavilion as additional insured. This certificate must be presented to the Director at least thirty (30) days prior to the scheduled concert.

8. If required by the State of Alabama, promoter must obtain Liquor Liability Insurance in an amount not less than \$1,000,000 and list the City of Daphne, Bayfront Pavilion as additional insured on the policy. Proof of this policy must be presented to the sales office not less than one week prior of the event.

9. House lights are not allowed to go dark. A minimum of 20% of house lights must be on at all times.

10. An addendum may be required to the contract if any of the performing acts have a history of performing songs or making statements that are considered by the Daphne City Council to incite or provoke violence by the audience.

11. Other rules and regulations as deemed necessary by the Director, Buildings and Property Committee, or Daphne City Council may apply.

SECTION XXVII: SOUND EQUIPMENT

A. The Lessor shall not be responsible for any damage or injury that may occur from the result of sound, lighting, or electrical equipment being utilized by the Lessee, Lessee's agent, employees, or guest from any cause whatsoever, prior, during, or subsequent to the period covered by the lease and the said Lessee will release said Lessor from, and agrees to indemnify it against any and all claims for such Joss, damage, or injury.

B. Any damage to the City of Daphne, Bayfront Pavilion sound, lighting, or electrical equipment shall be at the expense of the Lessee when Lessee utilizes said equipment or services. Bayfront Park personnel, The City of Daphne, Daphne Police Department, or any authorized City Employee can request that the Lessee, or their agents, desist from utilizing City Property at any time.

C. The Bayfront Pavilion must be notified of all sound requirements at least fourteen (14) days prior to the event.

D. The City of Daphne shall provide the following fee waivers with no others to be considered in Committee meetings or City Council meetings. **All bookings are on a first come first serve basis.**

SECTION XXVIII: FEE WAIVERS

A. The City of Daphne shall provide the following fee waivers with no others to be considered in Committee meetings or City Council meetings. All bookings are on a first come first serve basis.

1. BAYFRONT PAVILION REDUCED RATE PROGRAM MONDAY, TUESDAY & WEDNESDAY

- (a) This program will apply to all with the following exceptions. This program excludes paid concerts, all for profit events, Mardi Gras balls/meetings and fund raising events. These events will pay full fare. AU rental items remain the same. The reduced rate will consist of half rate for the base rental fee. The cleaning fee will remain the same. The booking includes four (4) hours of usage and must be between the hours of 7:00 a.m. - 5:00 p.m. Any usage over four (4) hours and any hours used after 5:00 p.m. will be charged an additional \$15.00 per hour. If requested, the City of Daphne, Bayfront Pavilion shall be listed as a Sponsor of the event. Any Monday 128

Tuesday, or Wednesday that is a holiday or city holiday will be charged all regular holiday rates. All bookings remain on a first come first serve basis. This program is not to be used for continued bookings. The City of Daphne reserves the right to deny any group or organization usage of these provisions.

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2. BAYFRONT PAVILION REDUCED RATE PROGRAM (CIVIC GROUPS AND NOT FOR PROFITS -501-C3 MONDAY, TUESDAY & WEDNESDAY)

(a) This program will apply to all civic groups that are not for profit and have a 501-C3 status. Proof of this status is required. This program excludes paid concerts, all for profit events, and fund raising events. These events will pay full fare. All rental items remain the same. The reduced rate will consist of a waived base fee, full rate on cleaning fees, and a \$15.00 per hour charge. Any Monday, Tuesday, or Wednesday booking that is a holiday or city holiday will be charged all regular holiday rates. If requested, the City of Daphne, Daphne Bayfront Pavilion shall be listed as a Sponsor of the event. All bookings remain on a first come first serve basis. This program is not to be used for continued bookings. The City of Daphne reserves the right to deny any group, or organization usage of these provisions. All groups utilizing this reduced rate program must use the facility between 8:00 a.m. to 10:00 p.m. All groups that have not left the facility by 10:00 p.m. will be charged all regular rates.

3. CITY OF DAPHNE DEPARTMENTS FOR CONDUCTING CITY BUSINESS.

(a) The City of Daphne encourages all City Departments to utilize the Bayfront Pavilion for your entire department booking needs. For tracking purposes all City departments must estimate their projected bookings for the Bayfront Pavilion and budget all fees, rental items, cleaning fees, and per hour charges needed at regular rates for their facility functions. The department may submit in writing to the Director a request to wave base rental fees only. The decision will be based on the criteria for event, time of day and year and day of week. The approval of this request will be at the discretion of the Director and Mayor. Invoices for usage will be routed from the Bayfront Pavilion to the Finance Department for journal entry after each event. The Finance Department will notify the Bayfront Pavilion sales office when the journal entry is complete to make report to the Buildings and Property Committee at the monthly meeting.

4. CITY EMPLOYEES FOR PERSONAL BUSINESS

(a) Current and in good standing City of Daphne employees will be entitled to a 20% discount off of base rental rates only for events that the employee is hosting. This discount is not applicable for family or friends, only the employee him/herself. All rules, guidelines and all other fees of this ordinance apply. The employee must make a request in writing which should include type of event, day and time. The approval of this request will be at the discretion of the Director and/or Mayor. Should for any reason the employee violate the guidelines mentioned above, said employee will not be entitled to this benefit in the future and will be responsible for full base rental rate which will be deducted from damage fee or billed with additional damage fee.

SECTION XXIX: BOOKING POLICY - ALL OTHER GROUPS

If an organization or group desires to book the same date continually, year after year, such organizations must submit a letter to the Director making such request listing the exact dates and years that the organization is requesting and all facility needs. All base fees must be paid in advance for the first two consecutive years. At the end of the second year a new request must be made in writing and delivered to the sales department of the Bayfront Pavilion no later than 7 days after the second year event for the following two years, along with the fees for the next two years. Future bookings will also be secured using the same guidelines. All bookings are on a first come first serve basis.

SECTION XXX: PENALTY

A. Any person found guilty of violating any provision of this Ordinance shall be punished by a fine of not less than fifty dollars (\$50.00) nor more than five hundred dollars (\$500.00), or by imprisonment for a period not exceeding six (6) months, or both, at the discretion of the Municipal Judge.

B. This Ordinance shall also be subject to enforcement by the issuance of a summons and complaint.

SECTION XXXI: REPEALER

Ordinances Nos. 2004-21 and 2010-50 are hereby repealed in their entirety. All other City Ordinances or parts thereof in conflict with the provision of this Ordinance, in so far as they conflict, are hereby repealed.

SECTION XXXII: SEVERABILITY

The provisions of this Ordinance are severable. If any provision, section, paragraph, sentence or part thereof shall be held unconstitutional or invalid, such decision shall not affect or impair the remainder of the Ordinance, it being the legislative intent to ordain and enact each provision, section, paragraph, sentence and part thereof separately and independently of each other.

SECTION XXXIII: EFFECTIVE DATE

This Ordinance shall become effective and be in force from and after the date of its approval and adoption by the City Council of Daphne and publication as required by law.

ADOPTED AND APPROVED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF DAPHNE, ALABAMA, this the 21st day of February, 2011.

**Cathy S. Barnette,
Council President**

**Fred Small,
Mayor**

ATTEST:

David Cohen, City Clerk, MMC

