SUPPLEMENT NO. 1
January 2012

CODE OF ORDINANCES

City of

DAPHNE, ALABAMA

Looseleaf Supplement

This Supplement contains all ordinances deemed advisable to be included at this time through:

Ordinance No. 2011-54, enacted July 18, 2011.

See the Code Comparative Table for further information.

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Municipal Code Corporation • PO Box 2235 Tallahassee, FL 32316
info@municode.com • 800.262.2633
fax 850.575.8852 • www.municode.com

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From our experience in publishing Looseleaf Supplements on a page-for-page substitution basis, it has become evident that through usage and supplementation many pages can be inserted and removed in error.

The following listing is included in this Code as a ready guide for the user to determine whether the Code volume properly reflects the latest printing of each page.

In the first column all page numbers are listed in sequence. The second column reflects the latest printing of the pages as they should appear in an up-to-date volume. The letters "OC" indicate the pages have not been reprinted in the Supplement Service and appear as published for the original Code. When a page has been reprinted or printed in the Supplement Service, this column reflects the identification number or Supplement Number printed on the bottom of the page.

In addition to assisting existing holders of the Code, this list may be used in compiling an up-to-date copy from the original Code and subsequent Supplements.

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SUPPLEMENT HISTORY TABLE

The table below allows users of this Code to quickly and accurately determine what ordinances have been considered for codification in each supplement. Ordinances that are of a general and permanent nature are codified in the Code Book and are considered "Includes." Ordinances that are not of a general and permanent nature are not codified in the Code Book and are considered "Omits."

In addition, by adding to this table with each supplement, users of this Code of Ordinances will be able to gain a more complete picture of the Code's historical evolution.

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REPUBLICATION
January 2006

CODE OF ORDINANCES

City of

DAPHNE, ALABAMA

Looseleaf Supplement

This copy of the Daphne Code of Ordinances is issued as a "replacement copy" and contains all legislation deemed advisable to be included through Ordinance No. 2005-25, adopted May 17, 2005. See the Code Comparative Table for further information.

This copy replaces all existing copies of the Code of Ordinances. Future supplements will commence with "Supplement No. 1".

MUNICIPAL CODE CORPORATION
Post Office Box 2235
1700 Capital Circle, S.W.
Tallahassee, FL 32316
(850) 576-3171
1-800-262-CODE
Website: www.municode.com

CODE OF ORDINANCES

CITY OF

DAPHNE, ALABAMA

Published by Order of the City Council

Adopted: April 15, 1996
Effective: April 24, 1996

MUNICIPAL CODE CORPORATION

Tallahassee, Florida 1997
Republished 2005

OFFICIALS

of the

CITY OF

DAPHNE, ALABAMA

AT THE TIME OF THIS CODIFICATION

E. Harry Brown
Mayor

John Montgomery, District 1
J. Rhea Silvernail, District 2
John Lake, District 3
Verna Elliott, District 4
Dennis Greenwood, District 5
John Sasser, District 6
Gordon Waller, District 7
City Council

Beatty Pearson
Manley Cummins, III
(Deampsey, Pearson & Cummins, Attorneys)
City Attorney

Ruth P. Martin
City Clerk

OFFICIALS

of the

CITY OF

DAPHNE, ALABAMA

AT THE TIME OF THIS REPUBLICATION

Fred Small
Mayor

Bailey Yelding, Jr., District 1
Cathy Barnette, District 2
John L. Lake, District 3
Greg W. Burnam, District 4
Ron Scott, District 5
Regina Landry, District 6
August A. Palumbo, District 7
City Council

Jay M. Ross
City Attorney

David L. Cohen, MMC
City Clerk

PREFACE

This Code constitutes a complete codification of the general and permanent ordinances of the City of Daphne, Alabama.

Source materials used in the preparation of the Code were the ordinances adopted by the city council. The source of each section is included in the history note appearing in parentheses at the end thereof. The absence of such a note indicates that the section is new and was adopted for the first time with the adoption of the Code. By use of the comparative tables appearing in the back of this Code, the reader can locate any section of any ordinance included herein.

This 2005 republication includes all amendatory legislation through Ord. No. 2005-25, adopted May 17, 2005, and was accomplished under the supervision of Diana Ossi, Editor.

The chapters of the Code have been conveniently arranged in alphabetical order and the various sections within each chapter have been catchlined to facilitate usage. Notes which tie related sections of the Code together and which refer to relevant state law have been included. A table listing the state law citations and setting forth their location within the Code is included at the back of this Code.

Numbering System

The numbering system used in this Code is the same system used in many state and local government codes. Each section number consists of two parts separated by a dash. The figure before the dash refers to the chapter number and the figure after the dash refers to the position of the section within the chapter. Thus, the second section of Chapter 1 is numbered 1-2 and the first section of Chapter 4 is 4-1. Under this system, each section is identified with its chapter and at the same time new sections or even whole chapters can be inserted in their proper place by using the decimal system for amendments. For example, if new material consisting of one section that would logically come between sections 3-1 and 3-2 is desired to be added, such new section would be numbered 3-1.5. New chapters may be included in the same manner. If the new material is to be included between Chapters 12 and 13, it will be designated as Chapter 12.5. Care should be taken that the alphabetical arrangement of chapters is maintained when including new chapters. New articles and new divisions may be included in the same way or, in the case of articles, may be placed at the end of the chapter embracing the subject, and, in the case of divisions, may be placed at the end of the article embracing the subject. The next successive number shall be assigned to the new article or division.

Index

The index has been prepared with the greatest of care. Each particular item has been placed under several headings, some of which are couched in lay phraseology, others in legal terminology, and still others in language generally

used by local government officials and employees. There are numerous cross references within the index itself which stand as guideposts to direct the user to the particular item in which the user is interested.

Looseleaf Supplements

A special feature of this publication is the looseleaf system of binding and supplemental servicing of the publication. With this system, the publication will be kept up-to-date. Subsequent amendatory legislation will be properly edited and the appropriate page or pages affected will be reprinted. These new pages will be distributed to holders of copies of the publication, with instructions for the manner of inserting the new pages and deleting the obsolete pages.

Keeping this publication up-to-date at all times will depend largely upon the holder of the publication. As revised sheets are received, it will then become the responsibility of the holder to have the amendments inserted according to the attached instructions. It is strongly recommended by the publisher that all such amendments be inserted immediately upon receipt to avoid misplacing them and, in addition, that all deleted pages be saved and filed for historical reference purposes.

Acknowledgments

This publication was under the direct supervision of Roger Merriam, Supervising Editor, of the Municipal Code Corporation, Tallahassee, Florida. Credit is gratefully given to the other members of the publisher's staff for their sincere interest and able assistance throughout the project.

The publisher is most grateful to Mr. David L. Cohen, City Clerk, and Mr. Jay M. Ross, City Attorney, for their cooperation and assistance during the progress of the work on this republication. It is hoped that their efforts and those of the publisher have resulted in a Code of Ordinances which will make the active law of the city readily accessible to all citizens and which will be a valuable tool in the day-to-day administration of the city's affairs.

MUNICIPAL CODE CORPORATION
Tallahassee, Florida

ORDINANCE NO. 1996-15

An ordinance adopting and enacting a new code for the City of Daphne, Alabama providing for the repeal of certain ordinances not included therein; providing a penalty for the violation thereof; providing for the manner of amending such Code; and providing when such Code and this ordinance shall become effective.

BE IT ORDAINED BY THE CITY COUNCIL OF DAPHNE, ALABAMA:

Section 1: The Code entitled "Code of Ordinance, City of Daphne, Alabama" published by Municipal Code Corporation consisting of Chapters 1 through 20, each inclusive, is adopted; as public notice of adoption is provided in Resolution No. 1996-23 adopted the eighteenth day of March, 1996, as required by Code of Alabama Section 11-45-8(c) for the adoption of codes in book form.

Section 2: All ordinances of a general and permanent nature enacted on or before August 16, 1993, and not included in the Code or recognized and continued in force by reference therein, are repealed.

Section 3: The repeal provided for in Section 2 hereof shall not be construed to revive any ordinance or part thereof that has been repealed by a subsequent ordinance that is repealed by this ordinance.

Section 4: Unless another penalty is expressly provided, every person convicted of a violation of any provision of the Code or any ordinance, rule or regulation adopted or issued in pursuance thereof, shall be punished by a fine of not more than five hundred dollars ($500.00) and imprisonment for not more than six (6) months, or both. Each act of violation and each day upon which any such violation shall occur shall constitute a separate offense. The penalty provided by this section, unless another penalty is expressly provided shall apply to the amendment of any Code section whether or not such penalty is reenacted in the amendatory ordinance. In addition to the penalty prescribed above, the city may pursue other remedies such as amendment of nuisances, injunctive relief, and revocation of licenses or permits.

Section 5: Additions or amendments to the Code when passed in form as to indicate the intention of the City Council to make the same a part of the Code shall be deemed to be incorporated in the Code, so that reference to the Code includes the additions and amendments.

Section 6: Ordinances adopted after August 16, 1993 that amend or refer to ordinances that have been codified in the Code, shall be construed as if they amend or refer to like provisions of the Code.

Section 7: Severability Clause—The provisions of this ordinance and

the Daphne Code of Ordinances adopted hereby are severable. In the event that any of the provisions hereof, or of the Daphne Code of Ordinances are declared invalid by a court of competent jurisdiction, then the remaining portions shall remain in full force and effect notwithstanding such invalidity.

Section 8: This ordinance shall become effective upon publication of such notice April 24, 1996.

APPROVED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF DAPHNE, THIS 15th day of April, 1996.

/s/ E. Harry Brown, Mayor

ATTEST:

/s/ Ruth P. Martin, City Clerk

STATE OF ALABAMA)
COUNTY OF BALDWIN)

I, Ruth P. Martin, hereby certify the foregoing to be a true copy of the ordinance passed at the regular meeting of the City Council of the City of Daphne, Alabama, held on the 15th day of April, 1996.

/s/ Ruth P. Martin, City Clerk

ORDINANCE NO. 1998-04

An ordinance adopting and enacting the 1997 Supplement Code for the City of Daphne, Alabama providing for the repeal of certain ordinances not included therein; providing a penalty for the violation thereof; providing for the manner of amending such Code; and providing when such Code and this ordinance shall become effective.

BE IT ORDAINED BY THE CITY COUNCIL OF DAPHNE, ALABAMA:

Section 1: The Code entitled "Code of Ordinance, City of Daphne, Alabama" published by Municipal Code Corporation consisting of Chapters 1 through 20, each inclusive, is adopted; as public notice of adoption is provided in Resolution No. 1996-23 adopted the eighteenth day of March, 1996, as required by Code of Alabama Section 11-45-8(c) for the adoption of codes in book form.

Section 2: All ordinances of a general and permanent nature enacted on or before August 16, 1993, and not included in the Code or recognized and continued in force by reference therein, are repealed.

Section 3: The repeal provided for in Section 2 hereof shall not be construed to revive any ordinance or part thereof that has been repealed by a subsequent ordinance that is repealed by this ordinance.

Section 4: Unless another penalty is expressly provided, every person convicted of a violation of any provision of the Code or any ordinance, rule or regulation adopted or issued in pursuance thereof, shall be punished by a fine of not more than five hundred dollars ($500.00) and imprisonment for not more than six (6) months, or both. Each act of violation and each day upon which any such violation shall occur shall constitute a separate offense. The penalty provided by this section, unless another penalty is expressly provided shall apply to the amendment of any Code section whether or not such penalty is reenacted in the amendatory ordinance. In addition to the penalty prescribed above, the city may pursue other remedies such as amendment of nuisances, injunctive relief, and revocation of licenses or permits.

Section 5: Additions or amendments to the Code when passed in form as to indicate the intention of the City Council to make the same a part of the Code shall be deemed to be incorporated in the Code, so that reference to the Code includes the additions and amendments.

Section 6: Ordinances adopted after August 16, 1993 that amend or refer to ordinances that have been codified in the Code, shall be construed as if they amend or refer to like provisions of the Code.

Section 7: Severability Clause—The provisions of this ordinance and

the Daphne Code of Ordinances adopted hereby are severable. In the event that any of the provisions hereof, or of the Daphne Code of Ordinances are declared invalid by a court of competent jurisdiction, then the remaining portions shall remain in full force and effect notwithstanding such invalidity.

Section 8: This ordinance shall become effective upon publication of such notice.

APPROVED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF DAPHNE, THIS 16th day of February, 1998.

/s/ E. Harry Brown, Mayor

ATTEST:

/s/ Ruth P. Martin, City Clerk, CMC

STATE OF ALABAMA)
COUNTY OF BALDWIN)

I, Ruth P. Martin, hereby certify the foregoing to be a true copy of the ordinance passed at the regular meeting of the City Council of the City of Daphne, Alabama, held on the 16th day of February, 1998.

/s/ Ruth P. Martin, City Clerk

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CODE OF ORDINANCES

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Sec. 1-1. Designation and citation of Code.

The ordinances embraced in this and the following chapters and sections shall constitute and be designated "Code of Ordinances, City of Daphne, Alabama," and may be so cited.

Sec. 1-2. Definitions and rules of construction.

In the construction of this Code, and of all ordinances, the following definitions and rules of construction shall be observed; provided, these definitions and rules of construction shall not be applied to any section of this Code or any ordinance which contains any express provisions excluding such construction or where the subject matter or content of such section may be repugnant thereto:

General rule: All words and phrases shall be construed and understood according to the common and approved usage of the language, but technical words and phrases and such others as may have acquired a peculiar and appropriate meaning in the law shall be construed and understood according to such peculiar and appropriate meanings.

Acts by agents: When any provision requires an act to be done which may by law as well be done by an agent as by the principal such requirement shall be construed to include all such acts when done by an authorized agent.

Bond: When a bond is required, an undertaking in writing is sufficient.

City, this city, in the city: The term "the city" or "in the city" shall mean the City of Daphne, Alabama; and shall include any duly authorized officer or employee if the context so admits. Every section contained in this Code, when not expressed to apply "in the city" or "within the corporate limits," shall apply, and have full force and effect within the corporate limits of the city and within the police jurisdiction thereof and within the territorial limits of any property or right-of-way owned by the city, wherever situated; provided, any such section shall not apply within the police jurisdiction outside of the city if the same cannot legally be made to apply in the police jurisdiction outside of the city, or if the same, otherwise than by use of such terms as "in the city" or "within the city," contains clear inherent evidence of intent that it shall not apply in the police jurisdiction outside of the city.

City officials, officers and employees: Whenever reference is made to officials, boards, commissions, departments, officers or employees by title only, this shall be construed as though followed by the words "of the City of Daphne" and shall be taken to mean the official, board, commission, department, officer or employee of this city having the title mentioned or performing the duties indicated; and powers and authority granted to them shall be deemed to be grants of such powers and authority to their respective duly designated subordinates.

Code of Alabama: Whenever reference is made of the "Code of Alabama" or the "Alabama Code" it shall mean the Code of Alabama 1975, as amended, or any subsequent code of this state.

Computation of time: The time in which an act is to be done must be computed by excluding the first and including the last day; and if the last day is a Sunday or legal holiday, that shall be excluded.

Council, city council, governing body: The terms "council" or "city council" and "governing body" shall mean the city council of the City of Daphne, Alabama.

County: The term "county" or "this county" shall mean Baldwin, County, Alabama.

Gender: A word importing one gender only shall also extend and be applied to the other genders.

Interpretation: In the interpretation and application of any provision, it shall be held to be the minimum requirements adopted for the promotion of the public health, safety, comfort, convenience and general welfare. Where any provision imposes greater restrictions upon the subject matter than the general provisions imposed by the Code, or another ordinance, the provision imposing the greater restriction or regulation shall be controlling.

Joint authority: All words giving joint authority to three (3) or more persons or officers give such authority to a majority of such persons or officers, unless it is otherwise declared.

Jurisdiction: All provisions of this Code and other laws and ordinances of the city prescribing police or sanitary regulations and prescribing penalties for violations thereof, shall have force and effect in the corporate limits of the city and in the police jurisdiction thereof outside of the city and on any property or rights-of-way belonging to the city, except those provisions, laws and ordinances which specifically limit their force and effect to the corporate limits, or which, for any reason mentioned under the definition of "city" in this section, cannot legally apply in any such area outside of the corporate limits.

Month: The word "month" means a calendar month, unless otherwise expressed.

Number: Words used in the singular include the plural, and the plural includes the singular.

Oath: The word "oath" includes affirmation.

Or, and: The word "or" may be read as "and" and the word "and" as "or," where the sense requires it.

Owner: The word "owner" shall include not only the owner of the whole, but shall include the owner of any part of the property, any joint owner, tenant in common or joint tenant of the whole or a part of property.

Person: The word "person" shall extend and be applied to firms, partnerships, corporations, associations, organizations, trustees, agents and bodies politic, or any combination thereof, as well as to natural persons.

Personal property: The term "personal property" includes every species of property except real property, as defined herein.

Police jurisdiction: The words "police jurisdiction" mean the territory outside the corporate limits of the city within three (3) miles thereof, or as otherwise permitted by statute, but not including territory within the corporate limits of any other incorporated municipality. The police jurisdiction shall not overlap the police jurisdiction of a neighboring municipality, but shall extend to the median line of such police jurisdiction lines, or as otherwise provided by laws of the state and the decisions of its courts.

Preceding, following: The words "preceding" and "following" mean next before and next after, respectively.

Property: The word "property" includes real and personal property.

Real property: The term "real property" includes lands, tenements, and hereditaments.

Reasonable time: In all cases where any provision shall require any act to be done in a reasonable time or reasonable notice to be given, such reasonable time or notice shall be deemed to mean only such time as may be necessary for the prompt performance of such duty, or compliance with such notice.

Shall: The word "shall" is mandatory.

Sidewalk: The word "sidewalk" shall mean any portion of a street between the curblines or the lateral lines of a roadway and the adjacent property lines intended for the use of pedestrians.

Signature or *subscription:* The word "signature" or "subscription" shall include a mark when a person cannot write.

State: The words "the state" or "this state" shall mean the State of Alabama.

Street: The word "street" shall be construed to embrace streets, avenues, boulevards, roads, alleys, lanes, viaducts and all other public ways in the city, and shall embrace all parts thereof within the designated right-of-way. In those instances where the context requires, the word "street" shall embrace only the area between the opposite curbs or curblines designated for vehicular traffic.

Tense: Words used in the present, future or past tense shall include each of the other tenses.

Wholesale, wholesale dealer: In all cases where the term "wholesaler" or "wholesale dealer" is used in this Code or any ordinance, unless otherwise specifically defined, it shall be understood to relate to the sale of goods, merchandise, articles

or things in quantity to persons who purchase for the purpose of resale, as distinguished from a retail dealer who sells directly to the consumer.

Writing or *in writing:* The term "writing" or "in writing" may be construed to include any representation of words, letters or figures, whether by printing or otherwise.

Year: The word "year" means a calendar year.

Sec. 1-3. Catchlines of sections.

The catchlines of the several sections of this Code printed in boldface type are intended as mere catchwords to indicate the contents of the section, and shall not be deemed or taken to be titles of such sections, nor as any part of the section, nor, unless expressly so provided, shall they be so deemed when any such sections, including the catchlines, are amended or reenacted.

Sec. 1-4. Effect of repeal of an ordinance.

(a) No new ordinance shall be construed or held to repeal a former ordinance, whether or not such former ordinance is expressly repealed, as to any offense committed against such former ordinance or as to any act done, any penalty, forfeiture or punishment so incurred, or any right accrued or claim arising under the former ordinance, or in any way whatever to affect any such offense or act so committed or so done, or any penalty, forfeiture or punishment so incurred or any right accrued or claim arising before the new ordinance takes effect, save only that the proceedings thereafter shall conform to the ordinance in force at the time of such proceeding, so far as practicable. If any penalty, forfeiture or punishment is mitigated by any provision of a new ordinance, such provision may be, by the consent of the party affected, applied to any judgment announced after the new ordinance takes effect.

(b) The repeal of an ordinance shall not revive any ordinances in force before or at the time the ordinance repealed took effect.

(c) This section shall extend to all repeals, either by express words or implication, whether the repeal is in the ordinance making any new provisions upon the same subject or in any other ordinance.

(d) Nothing contained in this Code shall be construed as abating any action now pending under or by virtue of any general ordinance of the city herein repealed; or as discontinuing, abating, modifying or altering any penalty accrued or to accrue, or as affecting the liability of any person, or as waiving any right of the city under any ordinance or provision thereof in force at the time of adoption of this Code.

Sec. 1-5. Severability.

It is hereby declared to be the intention of the council that the sections, paragraphs, sentences, clauses and phrases of this Code and all ordinances are severable, and if any phrase, clause, sentence, paragraph or section of this Code or any ordinance shall be declared invalid by the valid judgment or decree of any court of competent jurisdiction, such judgment or decree shall not affect the validity or enforceability of any of the remaining phrases, clauses, sentences, paragraphs and sections of this Code or any ordinance.

Sec. 1-6. Supplementation of Code.

(a) By contractor or by city personnel, supplements to this Code shall be prepared and printed whenever authorized or directed by the city council. A supplement to the Code shall include all substantive, permanent and general parts of ordinances passed by the city council or adopted by initiative and referendum during the period covered by the supplement and all changes made thereby in the Code. The pages of a supplement shall be so numbered that they will fit properly into the Code and will, where necessary, replace pages which have become obsolete or partially obsolete; and the new pages shall be so prepared that, when they have been inserted, the Code will be current though the date of the adoption of the latest ordinance included in the supplement.

(b) In preparing a supplement to this Code, all portions of the Code which have been repealed shall be excluded from the Code by the omission thereof from reprinted pages.

(c) When preparing a supplement to this Code, the codifier (meaning the person, agency or organization authorized to prepare the supplement) may make formal, nonsubstantive changes in

ordinances and parts of ordinances included in the supplement, insofar as it is necessary to do so to embody them in a unified code. For example, the codifier may:

(1) Organize the ordinance material into appropriate subdivisions;

(2) Provide appropriate catchlines, headings and titles for sections and other subdivisions of the Code printed in the supplement, and make changes in such catchlines, headings and titles;

(3) Assign appropriate numbers to sections and other subdivisions to be inserted in the Code and, where necessary to accommodate new material, change existing section or other subdivision numbers;

(4) Change the words "this ordinance" or words of the same meaning to "this chapter," "this article," "this division," etc., as the case may be, or to "sections _____ to _____" (inserting section numbers to indicate the sections of the Code which embody the substantive sections of the ordinance incorporated into the Code); and

(5) Make other nonsubstantive changes necessary to preserve the original meaning of ordinance sections inserted into the Code; but in no case shall the codifier make any change in the meaning or effect of ordinance material included in the supplement or already embodied in the Code.

Sec. 1-7. Altering Code.

It shall be unlawful to change or amend by addition or deletion any part of this Code or to insert or delete pages or portions thereof, or to alter or tamper with this Code in any manner whatsoever which will cause the law of the city to be misrepresented thereby.

Sec. 1-8. General penalty; violations of Code, ordinance, or state law.

(a) Any person, firm or corporation committing an offense within the corporate limits of the City of Daphne, Alabama, or within the police jurisdiction thereof, which is declared by law or laws of the State of Alabama now existing or hereafter enacted to be a misdemeanor, shall be guilty of an offense against the City of Daphne, Alabama.

(b) Any person, firm or corporation committing an offense within the corporate limits of the City of Daphne, Alabama, or within the police jurisdiction thereof, which is declared by the law or laws of the State of Alabama now existing or hereafter enacted to be a violation, shall be guilty of an offense against the City of Daphne, Alabama.

(c) Any person, firm or corporation committing an offense, as defined by Code of Ala. 1975, § 13A-1-2(10), within the corporate limits of the City of Daphne, Alabama, or within the police jurisdiction thereof, which is not declared by a law or laws if the State of Alabama now existing or hereafter enacted to be a felony, misdemeanor or violation, shall be guilty of an offense against the City of Daphne, Alabama.

(d) Any person, firm or corporation found to be in violation of subsection (a), (b), or (c) of this section shall, upon conviction, be punished in accordance with the provisions of Code of Ala. 1975, § 11-45-9, as amended or may be amended from time to time hereafter.

(e) Any person found to be in violation of this ordinance for the commission of an offense as defined in Code of Ala. 1975, § 32-5A-191, as amended or may be amended from time to time hereafter, shall, upon conviction, be punished in accordance with the provisions of Code of Ala. 1975, § 32-5A-191, as amended or may be amended.

(f) Any person found to be in violation of this ordinance for the commission of an offense as defined in Code of Ala. 1975, § 32-5A-191.3, as amended or may be amended from time to time hereafter, shall, upon conviction, be punished in accordance with the provisions of Code of Ala. 1975, § 32-5A-191.3, as amended or may be amended.

(g) In all cases where the same offense is made punishable or is created by different clauses or sections of this Code or of an ordinance, the prosecuting officer may elect under which to proceed; but not more than one (1) recovery shall be had against the same person for the same offense; provided, the revocation of a license or permit, or

the abatement of a nuisance and the assessment of the cost thereof shall not be considered a recovery or penalty so as to bar the enforcement of any other penalty.

(h) Whenever a minimum, but not a maximum, fine or penalty is imposed, the court may in its discretion fine the offender the minimum or any sum exceeding the minimum fine or penalty so imposed, but not exceeding the maximum provided in this section.

(i) No provision of this Code or any ordinance designating the duties of any officer or employee shall be so construed as to make such officer or employee liable for any fine or penalty for a failure to perform such duty, unless the intention of the council to impose such fine or penalty on such officer or employee is specifically and clearly expressed in the section creating the duty.
(Ord. No. 1987-8, §§ 4, 5, 3-16-87; Ord. No. 1987-9, § 1, 3-16-87; Ord. No. 2002-18, §§ I—VI, 8-5-02; Ord. No. 2003-18, §§ I—VI, 7-21-03)

Cross references—Minimum penalties for violation of animal and fowl regulations, § 4-10; power of municipal court, § 6-9; court costs, § 6-9(d); adoption of state offenses, etc., § 14-1.

Sec. 1-8.1. Summons and complaint.

(a) *Authorization.* Any law enforcement officer of the city or any law enforcement officer of the state, in lieu of placing persons under custodial arrest, is hereby authorized to issue a summons and complaint to any person charged with violating any city municipal ordinance including but not limited to the city licensing code/ordinance, sales tax code/ordinance, use tax code/ordinance, rental tax code/ordinance, liquor tax code/ordinance, tobacco tax code/ordinance, gasoline tax code/ordinance, land use and development code/municipal code/ordinance, litter control code/ordinance, weed control code/ordinance, fire prevention code/ordinance, fire prevention code/ordinance, animal control code/ordinance, and amendments thereto, or any other city municipal ordinance or code section now enacted or enacted in the future, and amendments thereto, not involving violence, threat of violence or alcohol or drugs.

(b) *Form.* Such summons and complaint shall be on a form approved by the city council and shall contain the name of the defendant; a description of the offense, including the municipal ordinance and section number or code section where appropriate; the place of the offense; signature of the officer issuing the citation; the scheduled court date and time; and a signature block for the magistrate to sign upon the officer's oath and affirmation given prior to trial.

(c) *Arrest; release upon promise to appear.* Whenever any person is arrested for violation of any of the ordinances enumerated in subsection (a) of this section or code section violations, the arresting officer shall take the name and address of such person and any other identifying information and issue a summons and complaint to the person charged. Such officer shall release the person from custody upon his written promise to appear in court at the designated time and place, as evidenced by his signature on the summons and complaint, without any condition relating to the deposit or security.

(d) *Refusal; writ of arrest; bond.* If any person refuses to give a written recognizance to appear by placing his signature on the summons and complaint, the officer shall inform that person that upon failure to appear in court at the designated time, a writ of arrest may be issued to take that person into custody and bring him before any officer or official who is authorized to approve bond.

(e) *Schedule of fines.* The city council hereby adopts a schedule of fines for first, second and subsequent offenders of the alleged violation of such ordinances, which schedule shall be posted in a place conspicuous to the public within the court clerk's office and the police department.

(f) *Appearance; entry of plea; payment of fine.* When a person is charged with a violation of one of the ordinances enumerated in subsection (a) of this section or a section of this Code, he may elect to appear before the municipal court magistrate, on or before the time specified in the summons and complaint and, upon entering a plea of guilty, pay the fine and court costs as set out in subsec-

tion (e) of this section. A plea of guilty shall only be accepted by the magistrate after the defendant has executed a notice and waiver of rights form.

(g) *Warrant for arrest.* If the defendant fails to appear as specified in the summons and complaint, the judge or magistrate may issue a warrant for his arrest commanding that he be brought before the court to answer the charge contained on the summons and complaint. In addition, any person who willfully violates his written promise or bond to appear, given in accordance with this section, shall be guilty of the separate offense of failing to appear, a misdemeanor, and punished in accordance with section 1-8, as applicable, and not in conflict with the Code of Alabama 1975, regardless of the disposition of the charge, upon which he was originally arrested.
(Ord. No. 1993-01, § 1, 1-4-93; Ord. No. 1995-02, § 1, 1-18-95; Ord. No. 1997-19, § 1, 7-7-97)

Sec. 1-8.2. Violation of municipal ordinances; penalties and enforcement.

(1) *Penalty and enforcement procedures.*

(a) Except as otherwise provided by separate ordinance, any person, firm or corporation committing an offense within the corporate limits of the city or within the police jurisdiction thereof, which is in violation of an ordinance of the city now existing or hereafter enacted shall, upon conviction, be punishable by a fine not to exceed five hundred dollars ($500.00).

(b) In addition thereto, any person so convicted may be imprisoned or sentenced to hard labor for the city for a period not exceeding six (6) months, at the discretion of the court trying the case.

(c) Except where otherwise provided, every day any violation of such code or any other ordinance of the city or such rule, regulation or order shall continue shall constitute a separate offense.

(2) *Violations subject to municipal offense ticket.* Violations of the following municipal laws, as may be amended from time to time, shall be punishable by the issuance of a municipal offense ticket as set out further herein:

1965-10, 1966-04, 1969-07, 1978-03, 1980-01, 1980-03, 1982-01, 1987-10, 1987-12, 1989-04, 1990-04, 1990-12, 1990-15, 1990-16, 1990-18, 1990-22, 1990-23, 1990-25, 1990-28, 1990-29, 1990-31, 1990-35, 1990-36, 1993-07, 1993-10, 1993-23, 1995-01, 1995-08, 1997-03, 1997-24, 1997-27, 1997-29, 1997-30, 1998-03, 1998-11, 1998-13, 1998-29

(3) *Schedule of fines.* The schedule of fines attached to Ordinance No. 2001-01 is hereby established by the city pursuant to ordinances of the City of Daphne and laws of the state. In addition to the fines so established, the defendant shall pay, in addition to such fine amount, any court costs which are in effect at the time such violation occurs. If a defendant elects to plead guilty before a magistrate to a violation of any of the listed municipal laws for which there is a fine set forth in this section, the fine plus applicable court costs shall apply in such case. In lieu of appearing before a magistrate, the defendant may sign a guilty plea and waiver of trial provision on the municipal offense ticket, and deliver the amount of the fine plus applicable court costs to the clerk of the municipal court or mail such amount to the Clerk of the Municipal Court at 1502 Highway 98, Daphne, AL 36526.

(4) *Procedure for issuance of municipal offense ticket and disposition of charge.*

(a) When any officer, inspector, investigator, auditor or other employee of the city, designated by the City Code, ordinance or appointment by the mayor, as an enforcement officer finds any violation or violations of any provision of any municipal law which he is authorized and required to enforce, the city employee may issue on forms provided by the city, a municipal offense ticket and deliver it to the person, firm, or corporation in violation of such municipal law. The municipal offense ticket shall direct the person or a representative of the firm or corporation, whichever the case may be, to appear in municipal court of the city at a time and on a date stated therein to answer the charge or charges for violating such municipal law, which shall be stated in the municipal offense ticket. However, in the alternative, if the violation is the first violation of such municipal law by the person, firm, or

corporation cited, or if subsection (3) provides a scheduled fine for a second or third offense, then such person, firm, or corporation, in lieu of appearing in municipal court, pursuant to the municipal offense ticket, may pay the appropriate fine and court costs pursuant to the terms stated in subsection (3) and on the municipal offense ticket, in addition to either of the following:

1. Appearing in person before a magistrate, signing the plea of guilty and waiver of trial provision on the ticket or on a form provided by the magistrate and paying the fine and court costs, provided that the magistrate retains a copy of the ticket or such other form; or

2. Signing the guilty plea and waiver of trial provisions on the ticket and mailing the ticket and the amount of the fine and court costs to the clerk of the court. Remittance by mail of the fine and costs constitutes a guilty plea and waiver of trial, whether or not the guilty plea and waiver of trial provisions on the ticket are signed by the defendant. Should the amount tendered by insufficient, such money received by the magistrate or clerk shall be considered to be a partial payment of the lawful penalty, applied by the clerk to the fines and costs, and disbursed as required by law. The clerk may give notice of such insufficiency, and a supplemental summons or warrant of arrest shall be issued for the offender's arrest, and a judgment shall be entered by the magistrate of court for the balance of the penalty due.

(b) If any person, firm or corporation, so cited shall fail to appear in the municipal court of the city at the time and place stated in any municipal offense ticket duly issued or to pay the appropriate fine set forth on the municipal offense ticket, as set forth herein, the officer, inspector, investigator, auditor or other employee of the city issuing such citation is hereby authorized and directed to swear out a warrant or execute an affidavit or complaint charging such person, firm or corporation with a violation of the municipal law or laws, listed on such municipal offense ticket.

(c) The officers, inspectors, investigators, auditors, or other employees of the city, designated by municipal law as enforcement officers and authorized to issue municipal offense tickets as herein provided, are hereby further authorized to swear out warrants or execute affidavits or complaints charging such person(s), firm, or corporation with any violation of municipal law without having first issued a municipal offense ticket for such violation.

(5) *Penalties for subsequent offenses, failure to appear, etc.*

(a) Any person, firm or corporation, receiving a subsequent (second, third or more) municipal offense ticket for violation of a municipal law or laws for which there is no scheduled fine for subsequent (second, third or more) offense, and anyone failing to appear in municipal court, or otherwise to settle the matter by payment of the applicable fine and court cost prior to the date stated on the municipal offense ticket shall be punishable as provided in subsection (1) of this section, or by community service for a period not exceeding six (6) months, or by both such fine and imprisonment, and/or community service at the discretion of the judge, unless otherwise prohibited by state law.

(b) For the purposes of this section, the term subsequent (second, third) offense shall mean the committing of an offense involving the same offense for which the defendant has been previously issued a municipal offense ticket within three (3) years of the earlier offense.

(Ord. No. 1998-33, §§ I—V, 11-2-98; Ord. No. 2001-01, §§ 1—3, 2-5-01)

Sec. 1-9. Violation of orders, rules and regulations adopted.

Any person who shall violate, or fail, neglect or refuse to comply with any lawful order of any lawful officer of the city made in pursuance of and under such officer's authority as such officer, who shall violate, or shall fail, neglect or refuse to comply with any of the codes, rules, regulations or laws adopted by this Code, shall be guilty of an offense; provided, however, the provisions of this section shall not apply to violations of official duty imposed by this Code upon officers or employees of the city as such, unless the provision imposing the duty also expressly makes the violation thereof unlawful or punishable.

Sec. 1-10. Imprisonment in default of payment of fine.

If a fine is assessed against any party by the judge, upon conviction under this Code or any of the ordinances of the city, and if the fines and costs are not then paid, the judge shall sentence the party so in default to work out the fine and costs under the direction of the city authorities, allowing not exceeding fifteen dollars ($15.00) for each day's service, within the limit prescribed by Rule 26.11 of the Rules of Criminal Procedure, for the courts of the state.

Sec. 1-11. City not liable for costs or fees.

No part of the costs, nor any fees due any officer in any case or proceeding for a violation of the city laws shall be taxed against or be paid by the city.

Sec. 1-12. Conflicts with technical codes.

In case of conflict between this Code of Ordinances and any technical code adopted herein by reference, the more restrictive provision shall apply.

Sec. 1-13. Ordinances, resolutions and activities not affected by Code.

The adoption of this Code shall not repeal or otherwise affect any of the following:

(1) Any offense or act committed or done or any penalty of forfeiture incurred or any contract or right established or accruing before the effective date of this Code;

(2) Any ordinance promising or guaranteeing the payment of money for the city or authorizing the issuance of any bonds of the city or any evidence of the city's indebtedness;

(3) Any resolution not mentioned in the Code and not inconsistent with it;

(4) Any contract or obligation assumed by the city;

(5) Any ordinance prescribing zoning or subdivision regulations, or zoning particular property, or accepting or dedicating any subdivision plat;

(6) Any right or franchise granted by the city;

(7) Any ordinance dedicating, naming, establishing, locating, opening, widening, paving, etc., any street or public way in the city;

(8) Any appropriation ordinance;

(9) Any administrative or personnel ordinance or ordinance fixing compensation or expenses of elected officials not mentioned in the Code and not inconsistent with it;

(10) Any ordinance not in conflict with this Code, describing the city boundaries, or annexing property to the city, or excluding property from the city;

(11) Any ordinance or resolution not in conflict with such Code regulating traffic on specific streets or portions thereof or in specific areas of the city;

(12) Any ordinance levying any tax or assessment, including the general business licensing ordinance;

(13) Any ordinance establishing any board, commission or authority, not mentioned in the Code and not inconsistent with it.

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Chapter 2

ADMINISTRATION

Article I. In General

Sec. 2-1. Composition of governing body.
Sec. 2-2. Voting at large for mayor, and by district for councilmembers—Required.
Sec. 2-3. Same—Place designation of council candidates.
Sec. 2-4. Single-member council districts—Purpose.
Sec. 2-5. Same—Adoption of system.
Sec. 2-6. Same—Districts established, etc.
Sec. 2-7. Reserved.
Sec. 2-8. Amendment of district boundaries.
Sec. 2-9. Organizational structure of city government.
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Sec. 2-34. Motion for adjournment.
Sec. 2-35. Amending notes.
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Sec. 2-37. Committee reports.
Sec. 2-38. Expenditures of money.
Sec. 2-39. Submission of motions, resolutions and ordinances to be in writing.
Sec. 2-40. Attendance by officers and employees.
Sec. 2-41. Adoption of permanent ordinances, resolutions or motions.
Sec. 2-42. Roberts' Rules of Order adopted.

ARTICLE I. IN GENERAL

Sec. 2-1. Composition of governing body.

The governing body of the city shall consist of a mayor and seven (7) councilmembers who shall be elected by a vote of the electors in the city.
(Ord. No. 1989-01, § 1, 3-20-89)

Sec. 2-2. Voting at large for mayor, and by district for councilmembers—Required.

The mayor shall be elected by a vote of the voters at large and the seven (7) councilmembers shall be elected by a vote of the voters in the district of the candidate's permanent residence.
(Ord. No. 1989-01, § 2, 3-20-89)

Sec. 2-3. Same—Place designation of council candidates.

(a) The places on the city council are hereby designated as District Number 1, District Number 2, District Number 3, District Number 4, District Number 5, District Number 6, and District Number 7.

(b) Each candidate for a place on the city council shall in such candidate's announcement of the candidacy designate by number the place for which such person is a candidate and no person shall be a candidate for more than one (1) place.
(Ord. No. 1989-01, §§ 3, 4, 3-20-89)

Sec. 2-4. Single-member council districts—Purpose.

The city in order to encourage more active citizen participation in local government, to assure equitable representation on the city council in compliance with the Voting Rights Act of 1965, as amended, and to promote the general welfare of all residents of the city, hereby enacts into law single-member council district requirements.
(Ord. No. 1988-11, § 2, 1-4-89; Ord. No. 1992-07, § 2, 3-16-92; Ord. No. 1995-18, § 2, 9-6-95)

Sec. 2-5. Same—Adoption of system.

The single-member district requirements set forth in this article are hereby adopted pursuant to the authority granted by Act No. 91-545 of the 1991 Alabama Legislature (Code of Ala. 1975, § 11-43A-70 et seq.) as signed by the Governor and approved by the United States Justice Department.
(Ord. No. 1988-11, § 3, 1-4-89; Ord. No. 1992-07, § 3, 3-16-92; Ord. No. 1995-18, § 3, 9-6-95)

Sec. 2-6. Same—Districts established, etc.

The city is hereby divided into single-member council districts as listed and described in this section and as illustrated on the official single-member council district map which is hereby adopted and made a part of this Code. The map shall be signed by the mayor and attested by the city clerk. It shall be filed in the office of the city clerk and shall show thereon the date of adoption of the ordinance from which this section is derived. The ordinance and map have been certified to the judge of probate of the county.

(1) *District 1:* District 1 shall comprise the following 1990 census blocks:

Tract	*Blocks*
108	101, 102, 108, 112, 113, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127A, 128, 129, 130, 134, 143, 144A, 144B, 149, 150, 151A, 152, 153A, 154, 155, 156, 157A, 162A,
107.02	207B, 208, 215B

(2) *District 2:* District 2 shall comprise the following 1990 census blocks:

Tract	*Blocks*
108	105, 106, 109, 110, 111, 114, 115, 116, 117, 158A, 159, 161, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 215, 216, 217, 219, 221, 222, 223, 224, 226, 227, 228, 229, 231, 235, 236, 237, 238, 239, 240, 241, 242, 243, 244, 245, 246, 247, 248, 249, 250A, 250B, 251, 252, 253

(3) *District 3:* District 3 shall comprise the following 1990 census blocks:

Tract	*Blocks*
108	103, 104, 201, 203, 214, 218, 220, 232, 233, 234

Tract	*Blocks*
107.02	110A, 158, 159, 160, 178, 179, 180, 181, 182, 183

(4) *District 4:* District 4 shall comprise the following 1990 census blocks:

Tract	*Blocks*
108	107, 202, 225, 230
107.02	152, 170, 171, 172, 173, 174, 175, 207A, 212, 213, 214, 215A, 216, 217, 218, 219

(5) *District 5:* District 5 shall comprise the following 1990 census blocks:

Tract	*Blocks*
107.02	153, 154, 155, 161, 162, 163, 164, 165, 166, 167, 168, 169

(6) *District 6:* District 6 shall comprise the following 1990 census blocks:

Tract	*Blocks*
107.32	135, 136, 137, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 176, 177, 184, 185, 186A, 187, 188, 189, 190, 202, 205A, 206

(7) *District 7:* District 7 shall comprise the following 1990 census blocks:

Tract	*Blocks*
107.01	107B, 146, 159, 160
107.02	103A, 105A, 106, 107A, 113, 114, 115, 116, 117, 118A, 119A, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134A, 134B, 138, 156, 157

(Ord. No. 1988-11, § 4, 1-4-89; Ord. No. 1992-07, 3-16-92; Ord. No. 1995-18, § 4, Exh. A, 9-6-95)

Sec. 2-7. Reserved.

Sec. 2-8. Amendment of district boundaries.

The city shall assess the population in the single-member council districts following each decennial U.S. census and shall make the minimum adjustments to the district boundaries that are necessary to maintain roughly equal populations within each district that are within the limits of deviation allowed by law as such may presently exist or be hereafter amended, and to assure Black representation on the city council that generally approximates the Black proportion of the city's population.
(Ord. No. 1988-11, § 6, 1-4-89; Ord. No. 1992-07, § 5, 3-16-92)

Sec. 2-9. Organizational structure of city government.

There is adopted the following organizational structure, and the associated departments and divisions indicated. Specifically, they include:

(1) City council division.

(2) Legal division.

(3) Administrative division.

(4) Public services division.

(5) Community enhancement division.

(6) Public safety division.

(7) City clerk.

(8) Treasurer.

(9) Special operations department.

(10) Recreation department.

(11) Street department.

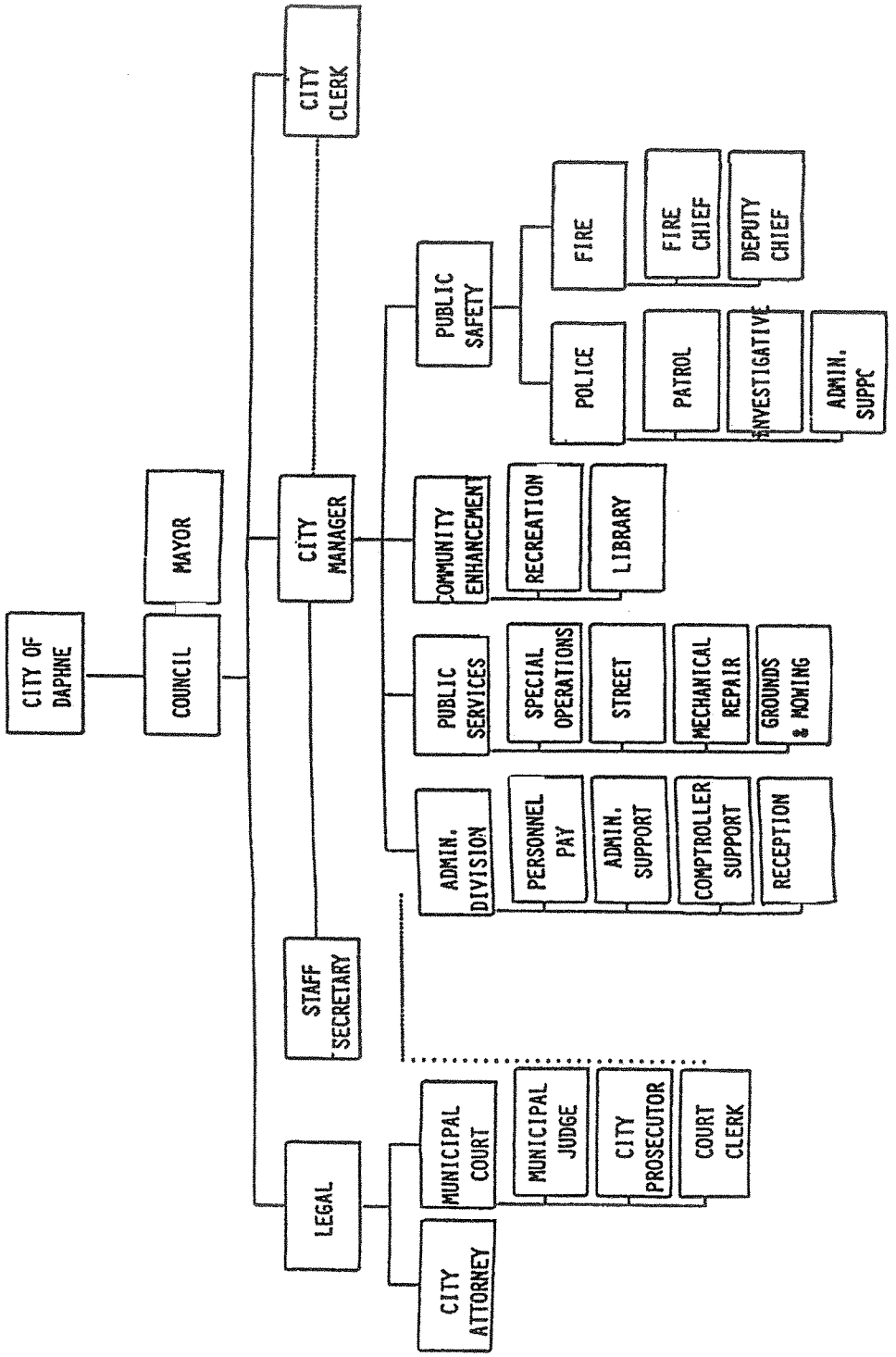
(12) Library department.

(13) Police department.

(14) Fire department.

(15) Mechanical repair department.

(16) Grounds and mowing department.



City Government Organizational Flow Chart

(Ord. No. 1989-12, § 2, 9-18-89)

Sec. 2-10. Surety bonds for certain officers and employees.

(a) The following officers and employees of the city shall give bond in the amount of one hundred thousand dollars ($100,000.00) with an appropriate surety:

(1) Mayor.

(2) President pro tempore.

(3) Finance director/treasurer.

(4) Revenue agent.

(5) Municipal court magistrate.

(6) Council members authorized by ordinance as signatures on bank accounts.

(b) The premiums for the surety bonds described in subsection (a) of this section shall be paid by the city.
(Ord. No. 1991-10, §§ 1, 2, 8-19-91; Ord. No. 1996-27, §§ 1, 2, 10-21-96)

Sec. 2-11. Abandoned or stolen property.

(a) *Possession; storage; records.* It shall be the duty of the members of the police department of the city to take into their possession all abandoned and stolen personal property, other than motor vehicles, found within the city and the police jurisdiction thereof and to store such property at or in the police station or some other suitable place to protect such property from deterioration. A permanent record shall be kept at the police station, available for inspection by all interested parties, and such record shall contain a description of each piece of such property, the date of the taking and the place where the property was found.

(b) *Utilization after search for owner.* Such abandoned and stolen property, other than motor vehicles, firearms or deadly weapons, may be utilized by the police department, provided that diligent search has been made for the owner of the property and that the property has been in possession and custody of the police department continuously for at least the preceding twelve (12) months, without claim of ownership.

(c) *State law provisions.* Nothing in this section is intended to supersede any of the provisions of the Uniform Disposition of Unclaimed Property Act (Code of Ala. 1975, § 35-12-20 et seq.). The provisions of this section shall be in addition to and supplementary to the provisions of such act, but if there is any conflict the provisions of the act shall prevail.

(d) *Disposition of perishable property.* If the property taken, as provided in subsections (a) through (c) of this section, is perishable in nature, some member of the police department designated by the chief of police shall immediately sell the property to the best advantage, without notice, and the proceeds of the sale shall be held in a trust fund for a period of six (6) months for the account of the owner. If not called for within that time, the proceeds of the sale shall be converted into the general fund of the city. All expenses incurred in and about the taking, storing, transporting and selling of such personal property shall be deducted from the proceeds of the sale before remittance is made to the owner.

(e) *Sale at public auction; notice.* At least every six (6) months the chief of police shall sell at public auction to the highest bidder, for cash, abandoned personal property which shall have been taken up and stored for a period of three (3) months or more. The sales shall be made after notice of the time and place thereof shall have first been given by publication of notice once a week for two (2) successive weeks in a newspaper of general circulation published in the city. The first publication shall be at least twenty (20) days before the sale. The owner of any of the property taken up and stored may redeem the property at any time prior to its sales by paying the reasonable expense of taking the property in charge, its maintenance and storage and a pro rata of the cost of publication. Each article shall be sold separately and a notation in the storage record book shall be made of the amount received for each article. Any and all bids may be rejected if the amount bid is unreasonably low, and the sales may be continued from time to time if no bidders are present. After deducting and paying all expenses incurred in the taking up, storing, main-

taining and selling of the property, the balance, if any, shall be paid unto the general fund of the municipality.
(Ord. No. 1993-03, §§ 1—3, 2-1-93)

Sec. 2-12. Mayor, full-time position.

Pursuant to the provisions of Act. No. 95-327, the office of mayor of the city effective October 1, 1996, shall be a full-time position and the candidate elected shall hold no other job which conflicts with the exercise of his/her duties.
(Ord. No. 1996-08, 2-19-96)

Sec. 2-13. Designated signatures of city.

(a) The following officers of the city are officially designated as the appropriate and authorized signatories on the various city accounts of the city:

(1) Mayor.

(2) Treasurer/finance director.

(3) Three (3) councilmembers.

(b) All checks, drafts, and all other financial transfers shall be signed by two (2) of the above-designated signatories.
(Ord. No. 1996-26, §§ 1, 2, 10-7-96)

Sec. 2-14. Disposition of surplus items.

(a) Department heads shall submit annually to the city account a list of the personal property no longer of use to his/her department. The city account shall compile a list of said personal property and submit the list to all city department heads in order to determine if any departments may use the property for municipal purposes.

(b) The city accountant shall compile a list of any personal property not claimed for use by any of the departments for submission to the city council.

(c) The city council shall determine whether the items may be declared as surplus property. A resolution scheduling the surplus property shall be adopted. Upon declaring the property surplus, the council may authorize the city accountant to advertise for the sale of such property through the bid process.

(d) If the council moves to dispose of personal property by the bid process the disposal of such items shall be properly advertised for two (2) weeks in the local paper, listing the items declared as surplus personal property. Such notice shall state the date and time of the bid opening. A pre-bid viewing shall be held. The date and time of the pre-bid viewing shall be stated in the notice. The notice shall also state all items sold "As Is" with no warranty options.

(e) All sealed bids received shall be opened by the mayor or designee and minutes shall be recorded by the city accountant or designee at a date and time so stated in the public notice.

(f) The council has the option to accept the highest bid or to reject any or all bids received. The council may authorize the disposal of any surplus property not claimed through the bid process. The manner of reasonable disposition shall be determined by the mayor.

(g) All proceeds from the surplus sale shall be paid to the general fund for the municipality.
(Ord. No. 1997-04, §§ 1—7, 3-17-97)

Secs. 2-15—2-20. Reserved.

ARTICLE II. COUNCIL MEETINGS*

Sec. 2-21. Applicability.

The rules of procedure herein contained shall govern the liberations and meetings of all of the council of the City of Daphne, Alabama.
(Ord. No. 2004-33, § I, 10-4-04)

Sec. 2-22. Regular meeting days.

The regular meetings of the city council shall be held on the first and third Mondays of each month, which meeting shall convene at 6:30 p.m. at the City Hall Council Chamber and all meet-

*Editor's note—Section XXIII of Ord. No. 2004-33, adopted Oct. 4, 2004, repealed Ord. No. 1996-25, Ord. No. 1998-31, Ord. No. 2000-32, Ord. No. 2001-27, and Ord. No. 2002-29 from which Art. II, §§ 2-20—2-42 derived. Sections I—XXII enacted similar provisions which have been codified to read as herein set out.

ings, regular and special, shall be opened to the public, except when council meets in executive session as authorized by state law.
(Ord. No. 2004-33, § II, 10-4-04)

Sec. 2-23. Calling of special meetings.

Special meetings may be held at the call of the presiding officer by serving notice on each member of the council not less than twenty-four (24) hours before the time set for such special call meeting. All special meetings may be held as provided by Code of Ala. 1975 (as amended), § 11-43-50. Furthermore, any two (2) council members shall have the right to call for a special meeting. Notice of all special meetings shall be posted on a bulletin board and appropriate customary media notified is accessible to the public twenty-four (24) hours prior to such scheduled meeting.
(Ord. No. 2004-33, § III, 10-4-04)

Sec. 2-24. Quorum.

A quorum shall be determined as provided by Code of Ala. 1975 (as amended), § 11-43-40.
(Ord. No. 2004-33, § IV, 10-4-04)

Sec. 2-25. Order of business.

The order of business of each council meeting shall be as follows:

(1) Call to order.

(2) Role call/invocation/pledge of allegiance.

(3) Approval of the minutes of the previous meeting(s).

(4) Reports of standing committees:

a. Finance committee.

b. Building/property committee.

c. Planning/zoning code enforcement committee.

d. Public safety/ordinance committee.

e. Public works/solid waste committee.

(5) Reports of special boards and commissions:

a. Board of zoning adjustment.

b. Downtown redevelopment authority.

c. Industrial development board.

d. Library board.

e. Planning commission.

f. Recreation board.

g. Utility board.

(6) Report of officers:

a. Mayors report.

b. City attorney report.

c. Department heads report.

(7) Public participation.

(8) Resolution ordinances and other business.

(9) Council comments.

(10) Adjournment.

(Ord. No. 2004-33, § V, 10-4-04)

Sec. 2-26. Permission to speak more than twice on same subject.

No member shall speak more than twice on the same subject without permission of the presiding officer, and after all other council members have had the opportunity to speak.
(Ord. No. 2004-33, § VI, 10-4-04)

Sec. 2-27. Permission for nonmember to address council.

No individual who is not a member of the city council or the mayor shall be allowed to address the same while in session without permission of the presiding officer and for not more than three (3) minutes, unless approved by the presiding officer. No person shall be allowed to address the council on any matter which shall be the subject of a public hearing scheduled by the council until the meeting under which the public hearing on that matter is scheduled to be heard.
(Ord. No. 2004-33, § VII, 10-4-04)

Sec. 2-28. Motion to reconsider.

Motions to reconsider must be made by a council member who voted with the majority and at the same or next succeeding meeting of the council.
(Ord. No. 2004-33, § VIII, 10-4-04)

Sec. 2-29. Recording vote; division on the question.

Whenever it shall be required by one (1) or more members that the "ayes" and the "nays" shall be recorded and any member may call for a division on any question.
(Ord. No. 2004-33, § IX, 10-4-04)

Sec. 2-30. Deciding questions of order.

All questions of order shall be decided by the presiding officer of the council with the right of appeal to the council.
(Ord. No. 2004-33, § X, 10-4-04)

Sec. 2-31. Calling members to take the chair.

The presiding officer of the council may at his or her discretion, call any member to take the chair, to allow him or her to address the council or make a motion or discuss any other matter at issue.
(Ord. No. 2004-33, § XI, 10-4-04)

Sec. 2-32. Priority of motion.

Motions to lay any matter on the table shall be first in order, and on all questions, the last amendment, the most distant day, and the largest sum shall be first put.
(Ord. No. 2004-33, § XII, 10-4-04)

Sec. 2-33. Executive session.

Council may meet in executive session only for purposes authorized by state law. When a council person makes a motion for executive session for an enumerated purpose, the presiding officer shall put a motion to vote. If the majority of the council shall vote in favor of the motion for executive session the body shall then move into executive session for discussion of the matter for which executive session was called. No action may be taken in an executive session. When the discussion has been completed, the council shall resume its deliberations in public.
(Ord. No. 2004-33, § XIII, 10-4-04)

Sec. 2-34. Motion for adjournment.

A motion for adjournment shall always be in order.
(Ord. No. 2004-33, § XIV, 10-4-04)

Sec. 2-35. Amending notes.

The rules of the council may be amended in the same manner as any other ordinance of general or permanent nature.
(Ord. No. 2004-33, § XV, 10-4-04)

Sec. 2-36. Suspending rules.

The rules of the council may be temporarily suspended by vote of two-thirds (2/3) of the members present.
(Ord. No. 2004-33, § XVI, 10-4-04)

Sec. 2-37. Committee reports.

The chair of each respective committee, or the council member acting for him or her, shall submit and make report to the council when so requested by the presiding officer or any member of the council or at the request of the mayor.
(Ord. No. 2004-33, § XVII, 10-4-04)

Sec. 2-38. Expenditures of money.

All ordinances, resolutions or propositions submitted to council which require the expenditure of money will lie over until the next council meeting; provided that such ordinance, resolution or propositions may be considered earlier by unanimous consent of the council members present at such meeting by roll call vote and provided further that this rule shall not apply to the current expenses of, or contracts previously made with, or regular salaries of officers, or wages of employees of the city.
(Ord. No. 2004-33, § XVIII, 10-4-04)

Sec. 2-39. Submission of motions, resolutions and ordinances to be in writing.

All motions, resolutions, ordinances or other business required to be in writing shall be prepared and supplied to all council members by 12:00 noon one (1) full city work day before the council meeting in which it is to be presented (e.g.

if city offices are not open, the Friday before the Monday council meeting, then the writings and documentation shall be supplied to each city council member by placing same in each member's mailbox at City Hall by 12:00 noon Thursday).

(a) It is desired that information be supplied to the city clerk in time to be made part of the agenda packet.

(b) When a work session is called or scheduled between two (2) council meetings, all motions, resolutions, ordinances or other business required to be in writing shall be presented in substantially the same form as that which is required for presentation at council meeting.

(c) Notwithstanding subsections (a) and (b) here and above, in the situation of an actual emergency subsections (a) and (b) here and above shall not apply. For purposes herein an actual emergency exist from failure to act will result in an immediate and irrefutable harm to the city or any of its citizens and or otherwise it was physically impossible to comply with a notice requirements set forth herein as the same may be determined by the presiding officer of the council.

(Ord. No. 2004-33, § XIX, 10-4-04)

Sec. 2-40. Attendance by officers and employees.

The city clerk, city engineer, city attorney, chief of police and fire chief and all and such other officers and employees shall, when requested, attend all meetings of the city council shall otherwise remain in the council chamber for such length of time as the council, presiding officer or mayor may direct.

(Ord. No. 2004-33, § XX, 10-4-04)

Sec. 2-41. Adoption of permanent ordinances, resolutions or motions.

No ordinance, resolution or motion of a permanent and general nature shall be adopted at the meeting at which it is first introduced unless unanimous consent be obtained for the immediate consideration of such ordinance, resolution or motion, and such consent shall be by roll call vote of the council members present at such meeting.

(Ord. No. 2004-33, § XX, 10-4-04)

Sec. 2-42. Roberts' Rules of Order adopted.

Roberts' Rules of Order be and is hereby adopted as the rules of procedure for this council in those situations which cannot be resolved by the rules set forth in this article.

(Ord. No. 2004-33, § XXI, 10-4-04)

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Chapter 3

ALCOHOLIC BEVERAGES*

Article I. In General

Sec. 3-1. Use of alcoholic beverages within city.
Secs. 3-2—3-25. Reserved.

Article II. Liquor and Table Wine

Sec. 3-26. Definitions.
Sec. 3-27. Scope of article.
Sec. 3-28. Levy of tax on liquor.
Sec. 3-29. Levy of tax on table wine.
Sec. 3-30. Records; payment due date; penalty.
Sec. 3-31. Right of entry and inspection.
Sec. 3-32. Enforcement; penalty.
Secs. 3-33—3-75. Reserved.

Article III. Beer

Sec. 3-76. Definitions.
Sec. 3-77. Levy of tax.
Sec. 3-78. Tax added to sales price; required.
Sec. 3-79. Collection of tax.
Sec. 3-80. Inspection of books and records.
Sec. 3-81. Filing of bond.
Sec. 3-82. Payment of tax proceeds.
Sec. 3-83. Exemption from tax.
Sec. 3-84. Exclusivity of tax.
Sec. 3-85. Records; payment due date; penalty.
Sec. 3-86. Enforcement; penalty.
Sec. 3-87. Right of inspection.

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*__Cross references__—Licenses, § 13-2; alcoholic beverages on municipal pier, § 15-4.

ARTICLE I. IN GENERAL

Sec. 3-1. Use of alcoholic beverages within city.

(a) It shall be unlawful under this section for any person to drink or exhibit alcoholic beverages while upon any street, right-of-way, or in any public park, public parking lot, or upon any other public property located within the city.

(b) It shall be unlawful under this section for any person to possess, drink, or exhibit alcoholic beverages while upon any city park, city pier, or city property owned by the city which is used by the public for recreational purposes.

(c) This section shall not apply to any person, organization, or other entity who has been issued a proper permit by the city to use the facility known as the Daphne Civic Center or a portion thereof for any private party or private function so long as any alcoholic beverages are contained inside the facilities.

(d) This section in no way provides for or allows the sale of alcoholic beverages within or upon the facilities known as the Daphne Civic Center unless the sale is permitted by and properly licensed by all of the appropriate and necessary governmental and state regulatory agencies.

(e) Any person violating the provisions of this section shall be guilty of an offense against the city, and for each such offense shall be fined not less than twenty-five dollars ($25.00) nor more than one hundred dollars ($100.00). For any second or subsequent offense, the fine shall be not less than fifty dollars ($50.00) and no more than two hundred dollars ($200.00).

(f) Each and every provision of this section is hereby declared to be an independent provision and the holding of any provision hereof to be void and invalid shall not affect any other provision hereof, and it is hereby declared that the other provisions of this section would have been enacted regardless of any provision which might have been held invalid.
(Ord. No. 1993-16, § 4, 7-19-93; Ord. No. 1993-21, §§ 1, 2, 9-8-93)

Secs. 3-2—3-25. Reserved.

ARTICLE II. LIQUOR AND TABLE WINE

Sec. 3-26. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Liquor: Any alcoholic beverage, except beer as defined in the Code of Ala. 1975, § 28-3-1.

Liquor license: Any authorized license for the retail sale of liquor, excluding those licenses exclusively for the sale of beer and/or table wine.

Table wine: Any wine containing not more than fourteen (14) percent alcohol by volume.

Taxpayer, tax debtor (used interchangeably): Any person, except the state, who sells retail liquor and is subject to the liquor licenses laws of the state.
(Ord. No. 1982-15, § 1, 11-1-82; Ord. No. 1990-18, § I, 8-6-90)

Cross reference—Definitions and rules of construction generally, § 1-2.

Sec. 3-27. Scope of article.

All liquor and table wine purchased in the name of the licensee and/or liquor and table wine brought to or remaining upon the premises where the business of the licensee is conducted shall be presumed to have been purchased for resale, and therefore, subject to the provisions of this article.
(Ord. No. 1982-15, § 4, 11-1-82)

Sec. 3-28. Levy of tax on liquor.

There is hereby levied an excise tax in addition to all other taxes imposed by law or ordinance against any person other than the state alcoholic beverage control board, who sells liquor within the city equal to ten (10) percent of the purchase price paid for all liquor bought by the licensee for use or resale by the licensee and consumed on the premises of the licensee, and an excise tax equal to five (5) percent of the purchase price paid for all liquor bought by the licensee and resold for consumption other than on the premises occupied by the licensee. Purchase price as used in this section is defined as the gross or total price paid to the state alcoholic beverage control board whole-

sale store or any other source, including any federal or state taxes paid at the time of purchase, and there shall be no deduction from the gross sale price not specifically provided for in this section.
(Ord. No. 1982-15, § 2, 11-1-82; Ord. No. 1990-21, § 1, 8-6-90)

Sec. 3-29. Levy of tax on table wine.

There is hereby levied an excise tax in addition to all other taxes imposed by law or ordinance against any person other than the state alcoholic beverage control board, who sells table wine within the city in an amount equal to seven cents ($0.07) per liter for all table wine bought by the licensee for use or resale by the licensee and consumed on or off the premises of the licensee.
(Ord. No. 1990-18, § II, 8-6-90)

Sec. 3-30. Records; payment due date; penalty.

The licensee must keep accurate records of all purchases and furnish to the city comptroller all pertinent information as to the amount of purchases, gross amount paid thereof, or other information as may be required from time to time by the city comptroller, and shall pay monthly to the city comptroller not later than the twentieth of each month, the amount due as hereby fixed and prescribed; and if not paid by such day, a penalty of twenty (20) percent of the amount due, together with interest thereon at the rate of one (1) percent per month, or a fraction thereof from the date at which the tax levied in this article became due and payable, such penalty and interest to be assessed and collected as part of the taxes levied pursuant to this article.
(Ord. No. 1982-15, § 3, 11-1-82; Ord. No. 1990-18, § III, 8-6-90; Ord. No. 1990-21, § 2, 8-6-90; Ord. No. 1990-28, § I, 10-15-90; Ord. No. 1990-31, § I, 10-15-90)

Sec. 3-31. Right of entry and inspection.

The licensee, by applying for and accepting a license for the sale of alcoholic beverages within the city or police jurisdiction thereof, specifically agrees that the city, through any one of its authorized agent, servants or employees, may come upon the premises of a licensee and inspect all books and records pertaining to the purchase and/or sale of alcoholic beverages.
(Ord. No. 1982-15, § 4, 11-1-82; Ord. No. 1990-18, § IV, 8-6-90)

Sec. 3-32. Enforcement; penalty.

(a) If any person subject to the provisions of this article shall fail or refuse to make a report to the city comptroller, the city comptroller may make or cause to be made an assessment of tax owed by such person from such evidence as the city comptroller can obtain by lawful means; provided, however, that the person or licensee against whom such assessment is made may within ten (10) days of a notice of the assessment protest the assessment in writing. Should the city comptroller deny the matter set forth in such protest, then it shall notify the person or licensee of his decision, and such person or licensee must pay the assessment or he shall be subject to a fine of two hundred dollars ($200.00) and or have his license subjected to revocation, suspension, or nonrenewal by the city.

(b) If any person subject to this article shall be in willful violation of it, he shall be fined a sum of two hundred dollars ($200.00) and/or have his liquor license subjected to revocation, suspension or renewal by the city.
(Ord. No. 1990-18, § V, 8-6-90; Ord. No. 1982-15, §§ 5, 6, 11-1-82; Ord. No. 1990-21, § 3, 8-6-90; Ord. No. 1990-28, § II, 10-15-90; Ord. No. 1990-31, § II, 10-15-90)

Secs. 3-33—3-75. Reserved.

ARTICLE III. BEER

Sec. 3-76. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Jurisdiction: The corporate limits of the city.

Person, taxpayer or *tax debtor:* Any person, firm, corporation, association, or other entity, except the state, who sells retail beer and is subject to the beer license law of the state.
(Ord. No. 1990-17, § I, 8-6-90)

Cross reference—Definitions and rules of construction generally, § 1-2.

Sec. 3-77. Levy of tax.

In addition to the annual privilege or license tax now or hereafter levied, there is hereby levied an excise tax against any person other than the state alcoholic beverage control board, who sells beer within the city in an amount equal to 1.625 cents ($0.01625) per four (4) fluid ounces for all beer bought by the licensee for use or resale by the licensee and consumed on or off the premises of the licensee.
(Ord. No. 1990-17, § II, 8-6-90)

Sec. 3-78. Tax added to sales price; required.

The tax levied in this article shall be added to the sales price of all beer sold, and shall be collected from the purchasers. It shall be unlawful for any person who is required to pay the tax in the first instance to fail or refuse to add to the sales price and collect from the purchaser the required amount of tax, it being the intent and purpose of this section that the tax levied is, in fact, a tax on the consumer, with the person who pays the tax in the first instance acting merely as an agent of the municipality for the collection and payment of the tax.
(Ord. No. 1990-17, § III, 8-6-90)

Sec. 3-79. Collection of tax.

The tax levied in section 3-77 shall be collected by a return in the form as prescribed by the city comptroller, which shall be filed by the wholesaler with the city not later than the twentieth day of the month following the month during which the beer is sold, which return shall be accompanied by the remittance of the tax due, provided where the taxes are timely paid, the tax due shall be discounted by 2.5 percent, which discount shall be retained by such wholesaler for collecting the tax.
(Ord. No. 1990-17, § IV, 8-6-90)

Sec. 3-80. Inspection of books and records.

The city shall have the authority to inspect, examine, and audit the books and records of any person, firm, corporation, club, or association who sells, stores, or receives for the purpose of distribution any beer to determine the accuracy of any return required to be filed with it.
(Ord. No. 1990-17, § IV, 8-6-90)

Sec. 3-81. Filing of bond.

The city shall have the authority to require any wholesale beer licensee who sells, distributes, or delivers beer within the city to file with the tax collection authority a bond not to exceed twice the amount of the average monthly tax due by the licensee to such authority estimated by such tax collection authority, conditioned upon payment of the beer tax levied hereby to become due by the licensee.
(Ord. No. 1990-17, § IV, 8-6-90)

Sec. 3-82. Payment of tax proceeds.

The proceeds of the tax levied in this article shall be paid as follows:

(1) All taxes on sales within the city limits shall be paid to the city.

(2) One-half (1/2) of the taxes on sales within the police jurisdiction of the city shall be paid to the city, and the remaining one-half shall be paid to the county.

(Ord. No. 1990-17, § V, 8-6-90)

Sec. 3-83. Exemption from tax.

The tax levied by section 3-77 shall not be imposed upon the sale, trade, or barter of malt or brewed beverages by one licensed wholesaler or distributor to another wholesaler or distributor licensed to sell and handle malt or brewed beverage in this state, which transaction is hereby made exempt from such tax; provided, however, that the city may require written reporting of any such transaction in such form as may be prescribed by the city comptroller.
(Ord. No. 1990-17, § VI, 8-6-90)

Sec. 3-84. Exclusivity of tax.

The tax levied in section 3-77 is exclusive and shall be in lieu of all other or additional local taxes imposed on or measured by the sale or volume of sale of beer, provided that nothing contained in this section shall be construed to exempt the retail sales of beer from the levy of a tax on general retail sales by the city in the nature of, or in lieu of, a general sales tax.
(Ord. No. 1990-17, § VII, 8-6-90)

Sec. 3-85. Records; payment due date; penalty.

The licensee must keep accurate records of all purchases and furnish to the city comptroller all pertinent information as to the amount of purchases, gross amount paid thereof, or other information as may be required from time to time by the city comptroller, and shall pay monthly to the city comptroller not later than the twentieth of each month, the amount due as hereby fixed and prescribed. If the amount due is not paid by such day, a penalty of twenty (20) percent of the amount due, together with interest thereon at the rate of one (1) percent per month, or a fraction thereof from the date at which the tax levied in section 3-77 became due and payable, such penalty and interest to be assessed and collected as part of the taxes levied pursuant to this article.
(Ord. No. 1990-17, § VIII, 8-6-90; Ord. No. 1990-27, § I, 10-15-90)

Sec. 3-86. Enforcement; penalty.

If any person subject to the provisions of this article shall fail or refuse to make report to the city comptroller, the city comptroller may make or cause to be made an assessment of the tax owed by such person from such evidence as the city comptroller can obtain by lawful means; provided, however, that the person or licensee against whom such assessment is made may, within ten (10) days of a notice of such assessment, protest the assessment in writing. Should the city comptroller deny the matter set forth in such protest, then he shall notify the person or licensee of his decision, and such person or licensee must pay the assessment or shall be subject to punishment as provided in section 1-8.
(Ord. No. 1990-17, § IX, 8-6-90; Ord. No. 1990-27, § II, 10-15-90)

Sec. 3-87. Right of inspection.

The licensee, by applying for and accepting a license for the sale of beer within the city specifically agrees that the city, through any one or more of its authorized agents, servants, or employees, may come upon the premises of a licensee and inspect all books and records pertaining to the purchase and/or sale of beer. All beer purchased in the name of the licensee and/or remaining upon the premises where the business of the licensee is conducted shall be presumed to have been purchased for resale and, therefore, subject to the provisions of this article.
(Ord. No. 1990-17, § X, 8-6-90)

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Chapter 4

ANIMALS AND FOWL*

Sec. 4-1.	Office of animal control officer created.
Sec. 4-2.	Definitions.
Sec. 4-3.	Livestock and fowl.
Sec. 4-4.	License required.
Sec. 4-5.	Dog, cat or domesticated animal at large.
Sec. 4-6.	Seizure of dogs, cats or domesticated animals at large.
Sec. 4-7.	Noisy animals.
Sec. 4-8.	Right of entry onto land.
Sec. 4-9.	Procedure for redemption.
Sec. 4-10.	Disposition of unredeemed dogs, cats or domesticated animals.
Sec. 4-11.	Rabies vaccination required; penalty.
Sec. 4-12.	Vaccination period.
Sec. 4-13.	Confinement of dogs or cats in heat.
Sec. 4-14.	Duty to restrain.
Sec. 4-15.	Stray dogs, cats or domesticated animals may be taken up.
Sec. 4-16.	Humane traps.
Sec. 4-17.	Cruelty to animals.
Sec. 4-18.	Animals suspected of having rabies declared nuisances; impoundment of same.
Sec. 4-19.	Citations.
Sec. 4-20.	Disposition of fees.
Sec. 4-21.	Minimum penalties.
Sec. 4-22.	Vicious animals.
Sec. 4-23.	Donations to animal shelter.

*__Editor's note__—Section XXIII of Ord. No. 2003-11, adopted Oct. 20, 2003, repealed Ord. No. 2002-01 from which Ch. 4 formerly derived. Ord. No. 2003-11 further enacted similar provisions to read as herein set out.

Cross reference—Disposal of dead animals, § 12-38.

Sec. 4-1. Office of animal control officer created.

(a) There is hereby recognized within the City of Daphne, the previously established position of animal control officer. The animal control officer shall be under the supervision, direction and control of the City of Daphne Police Department. The animal control officer shall be supervisor over the City of Daphne Animal Shelter and over all employees assigned to the City of Daphne Animal Shelter. All enforcement officers assigned to the City of Daphne Animal Shelter shall hereafter be known as animal control officers.

(b) It shall be unlawful for any person to knowingly or willingly oppose or resist any animal control officer in executing or attempting to execute any lawful process or in the discharge of any regular duty, or in any way to interfere with, hinder or prevent any such officer from discharging his duty.
(Ord. No. 2003-11, § I, 10-20-03)

Sec. 4-2. Definitions.

For the purpose of this chapter, the following words and phrases shall have the meaning respectively ascribed to them by this section unless taken specific exception to elsewhere in this chapter.

Animal. The term shall mean any nonhuman, animate being which is endowed with the power of voluntary motion to include, but not limited to: Mammals, i.e. dogs, cats, horses, hogs, cows, sheep, goats, rabbits, etc.; reptiles; birds; salamanders; toads; frogs; sharks; snakes; rays; bony fishes; and amphibians.

Animal shelter. The place designated or used as such by the city for the maintenance and operation of a pound.

Animal control officers. All enforcement officers assigned to the City of Daphne Animal Shelter.

At large. Any animal which is off the property of its owner or person in charge and not carried by said person, kept in an effective closure or under control or restraint by such person by means of a leash in such a way as to prevent its free movement, and so as to prevent said animal from freely charging or attacking persons or animals.

Bitten. Seized with teeth or jaws such that the skin of the person or thing seized has been nipped or gripped or has been wounded or pierced and there has been probable contact of saliva with the break or abrasion of the skin.

Caged. Confinement in a container, which may include a vehicle but not its trunk, in such a way that the free movement of such animal is restrained and so as to prevent the animal caged from biting or attacking a person or animal.

Cat. All members of the domestic feline family.

City of Daphne Animal Shelter. The location designated or used as such by the city for a place of confinement of animals held pursuant to the authority of this chapter.

Corral. Any uncovered, enclosed parcel of land where large animals are kept.

Dog. All members of the domestic canine family.

Dogs presumed to be vicious. Any dog which is known by the owner or person in charge to habitually chase moving vehicles or charge persons on the public streets and other public ways shall be presumed to be vicious, whether or not such dog has actually bitten or attacked a person or other animal.

Domesticated animal. Shall mean, but is not limited to rabbits, squirrels, raccoons, pot-bellied pigs or any other animal used as a pet.

Fowl. Chicken, turkey, ducks, geese, guineas or other domestic fowl.

Livestock. Horses, mules, donkeys, oxen, sheep, goats, cows, buffaloes and swine, or any one of them.

Owner. means any person, firm, corporation, organization, or department having a right of property in the animal, or who keeps or harbors the animal, or who has it in his care, or acts as its custodian, or who permits the animal to remain on or about any premises occupied by him or her.

Person in charge. Any person who feeds a dog or cat not owned by him or her or who otherwise cares for the animal. This definition shall not include individuals who perform humane acts for the health and safety of an animal on a one time or temporary basis.

Vicious and dangerous animal.

(1) Any dog with a known propensity, tendency or disposition to attack unprovoked, to cause injury to, or otherwise threaten the safety of human beings or domestic animals.

(2) Any dog which because of its size, physical nature or vicious propensity is capable of inflicting serious physical harm or death to humans and which constitutes a danger to human life or property if it were not kept in the manner required by this chapter.

(3) Any dog which, without provocation, attacks or bites or has attacked or bitten a human being or domestic animal.

(4) Any dog owned or harbored primarily or in part for the purpose of dog fighting, or any dog trained for dog fighting.

The terms "potentially dangerous" and "vicious" shall not apply to dogs used by law enforcement officials for legitimate law enforcement purposes, nor dogs used as certified guide dogs for the blind, hearing dogs for the deaf nor aid dogs for the handicapped nor shall it apply to licensed kennels, humane society shelters, animal control facilities, or veterinarians.
(Ord. No. 2003-11, § II, 10-20-03; Ord. No. 2010-56, § I, 9-7-10)

Sec. 4-3. Livestock and fowl.

(a) *General provisions.*

(1) *General prohibition.* It shall be unlawful for any person to keep any livestock or fowl within the city limits of the City of Daphne.

(2) *Exceptions.*

a. All livestock or fowl within the city limits of the City of Daphne, prior to adoption of this chapter, are hereby grand fathered. Animal control officers shall make full inventory of all livestock and fowl currently maintained within the city limits at the time of adoption of this chapter. It shall be unlawful to replace any livestock or fowl that is sold, traded, given away, lost, deceased or otherwise disposed of. All livestock or fowl located upon any real property within the City of Daphne at the time of adoption of this chapter shall be removed therefrom upon the sell, lease, rent, conveyance or gift of said real property or upon the death of the owner of said livestock or fowl.

b. This section shall not apply to those who's property is annexed in the future should those property owners maintain livestock or fowl upon the property prior to annexation.

(3) *Condition of premises.* If the premises, exempted from this section as described in subsection (a)(2), where livestock or fowl are kept shall not be free from unsanitary droppings, refuse and odors, or shall be in such condition as to breed flies, the animal control office shall notify the owner or person-in-charge of the animals or fowl to remove such matter or cure such condition within a reasonable time to be fixed by the animal control officer and, if such objectionable conditions are not cured within such time as is specified, the animal control officer shall issue a citation to the owner or person-in-charge.

(b) *Livestock or fowl at large.* It shall be unlawful for any owner or person-in-charge exempted by subsection (a)(2) to knowingly, voluntarily or willfully permit any such livestock or fowl to be at large within the city.

(c) *Horse stable permit.*

(1) Any person, firm or corporation desiring to open, operate or be in charge of a horse stable within the City of Daphne must obtain a yearly permit therefor. The application for permit shall be maintained by the animal control officer and will

indicate the number and type of horses, the name, address and phone number of the owner or person-in-charge of each and the veterinarian contact number. The cost of a stable permit will be one hundred fifty dollars ($150.00) for a new permit and one hundred dollars ($100.00) for yearly renewal.

(2) A consent petition must be signed by all neighbors within five hundred (500) feet of the exterior parameter of the real property line where the stable is located. The petition and application will then be forwarded to the planning commission along with plans reflecting, at a minimum, the boundaries of the proposed pasture area and the proposed stable area with square footage per animal indicated thereon. The planning commission will then make a recommendation to the city council. If approved and the stable becomes operational, animal control officers will conduct an inspection of the facility to determine whether the condition of the premises is in compliance with subsection 4-4(a)(3). A stable exists where two (2) or more horses are kept.

(3) This section does not apply to stables existing within the City of Daphne prior to the adoption of this chapter or to newly annexed properties where stables existed and were operated immediately prior to annexation.

(Ord. No. 2003-11, § III, 10-20-03)

Sec. 4-4. License required.

(a) *Dogs and cats.* The owner or person-in-charge of every dog or cat in the city which is more than three (3) months of age shall annually register the same as to sex, breed, description, name and address of the owner or person-in-charge, and name of the dog or cat, if any. At the time of said registration, such owner or person-in-charge shall obtain a license for said dog or cat and shall pay a license fee as follows:

Unspayed or unneutered male or female	$5.00
Spayed or neutered male or female	3.00

(b) *License tag attached.* The license tag issue at the time of registration shall be attached to the collar and worn by the dog or cat at all times within the City of Daphne. It shall be unlawful for any owner or person-in-charge of any dog or cat not to keep attached to said dog or cat the tag evidencing registration with the city as provided in this section.

(Ord. No. 2003-11, § IV, 10-20-03)

Sec. 4-5. Dog, cat or domesticated animal at large.

(a) *General prohibition.* No owner or person in charge of a dog, cat or domesticated animal shall permit the dog, cat or domesticated animal to be at large at any time within the City of Daphne.

(b) *Owner liability.* If the owner of any dog, cat or domesticated animal carelessly manages said dog, cat or domesticated animal or permits said animal to be at large, and another person, without fault suffers damage thereby, such owner shall be liable for damages.

(Ord. No. 2003-11, § V, 10-20-03; Ord. No. 2010-56, § II, 9-7-10)

Sec. 4-6. Seizure of dogs, cats or domesticated animals at large.

(a) *Police officer's duty to notify animal control officer of dogs or cats at large; procedure for seizure of dogs or cats at large.* It shall be the duty of every police officer in the city, upon discovering a dog, cat or domesticated animal at large within the city, to promptly notify the animal control officer. It shall be the duty of the animal control officer when so notified, or whenever the animal control officer observes any dog, cat or domesticated animal at large, to immediately seize the dog, cat or domesticated animal and confine the animal to the city animal shelter and if said dog or cat is licensed by the city, to make a reasonable effort to notify the owner. Any dog, cat or domesticated animal found unlawfully to be at large within the city is hereby declared a nuisance and shall be seized and confined by the animal control officer, and cared for in a humane manner for a period of not less than seven (7) days.

(b) *Return of dogs, cats or domesticated animals to owner permitted.* In addition to, or in lieu of, confining a dog, cat or domesticated animal found unlawfully at large when the owner or person-in-charge of said dog, cat or domesticated animal is known to the animal control officer, the animal control officer may return the dog, cat or domesticated animal to the owner or person in charge and issue a citation for violation of this chapter.

(c) *Notice to owner of confinement of dogs, cats or domesticated animals.* Immediately upon confinement of a dog, cat or domesticated animal, the animal control officer shall make reasonable effort to ascertain the identity of and notify the owner or person-in-charge of such dog, cats or domesticated animal of their confinement and of the conditions under which they may regain possession of such animal.
(Ord. No. 2003-11, § VI, 10-20-03)

Sec. 4-7. Noisy animals.

(a) *Residential neighborhood prohibition against keeping of noisy animals.* It shall be unlawful and a nuisance for any person to keep on a residential lot or premises any animal or group of animals known to said person to habitually, continuously or intermittently to make or emit sounds or noises of such volume and nature as unreasonably to interfere with or disturb the peace, quiet, comfort and repose of persons of ordinary sensibilities within the neighborhood in the reasonable use and enjoyment of adjacent property.

(b) *Other areas prohibition against keeping of noisy animals.* It shall be unlawful and a nuisance for any person to keep, on any tract, lot or premises within the city, any animal or group of animals under such circumstances that the sounds or noises emitted by said animals are of such volume and nature as unreasonably to interfere with or disturb the peace, quiet, comfort and repose of persons of ordinary sensibilities in the reasonable use and enjoyment of any adjacent property used for residential purposes.

(c) *Abatement of noise; enforcement.*

(1) Any owner or person-in-charge violating this section shall be guilty of maintaining a nuisance. However, that no prosecution shall be commenced and no arrest made pursuant to this section, except upon affidavit made before, and warrant issued by a magistrate.

(2) Any police officer or animal control officer may take steps immediately to cure the situation to cause the noise to be abated, either through issuance of a citation, or impounding the animal if the owner, agent or person-in-charge cannot be found at the time of the disturbance.

(Ord. No. 2003-11, § VII, 10-20-03)

Sec. 4-8. Right of entry onto land.

The animal control officer shall have the right and duty and to enter upon any property, except inside a private dwelling house, for the purpose of capturing any dog, cat or domesticated animal at large, in compliance with the provisions of this chapter.
(Ord. No. 2003-11, § VIII, 10-20-03)

Sec. 4-9. Procedure for redemption.

The owner of any impounded dog, cat or domesticated animal may, within seven (7) days after the dog, cat or domesticated animal is impounded, redeem the dog or cat or domesticated animal by paying to the city the sum of twenty-five dollars ($25.00) for impounding and four dollars ($4.00) per day for the care of said dog, cat or domesticated animal; but if said dog or cat is not currently licensed by the city, the owner must also secure a city license after exhibiting evidence that the dog or cat has been inoculated against rabies.
(Ord. No. 2003-11, § IX, 10-20-03)

Sec. 4-10. Disposition of unredeemed dogs, cats or domesticated animals.

(a) *Adoption or humane destruction.* In the event any impounded dog, cat or domesticated animal is not redeemed within ten (10) days after the same is impounded and the dog, cat or domesticated animal does not bear a current city license, or if after ten (10) days from the time notice is mailed to the owner of dog, cat or domesticated animal which has been impounded, but bears a current city license, the animal control officer may, at such officer's discretion, place said dog,

cat or domesticated animal in a home or turn the dog, cat or domesticated animal over to the Daphne Animal Shelter for adoption, or the animal control officer, at such officer's discretion, may destroy said dog, cat or domesticated animal by lethal injection anytime thereafter. If prior to the expiration of the ten (10) days, the animal is injured or ill, the animal control officer may, in his discretion, destroy the animal in the manner as heretofore described.

(b) *Humane destruction of nuisance animals.* After a dog, cat or domesticated animal has been confined for the period of time as otherwise provided in this chapter and if the owner or person in charge entitled to possession fails to make application for release of such dog, cat or domesticated animal as herein provided, or fails to pay the fine(s) as provided in this chapter or fails to pay the proper inoculation for rabies, or if such satisfactory evidence as required by ordinance is not provided, then such dog, cat or domesticated animal is hereby declared a nuisance and a danger to the health, safety and welfare of the city; and the authorized animal control officer shall cause such dog, cat or domesticated animal to be humanely destroyed as herein provided; however, any dog, cat or domesticated animal under two (2) weeks old or whose eyes have not opened since birth may be humanely disposed of upon being impounded where it has been found in violation of this chapter.

(c) *Authority to use firearm.* Any animal control officer may be authorized by the chief of police to carry a firearm for the purpose of assisting in impounding any dog, cat or domesticated animal shall have the authority to shoot and kill such dog, cat or domesticated animal if, in attempting to capture the same or in otherwise keeping the same, it shall become an immediate hazard to the safety of the person or to the safety of persons or animals in the immediate vicinity.

(d) *Humane destruction of diseased animals; acts of mercy.* Any confined dog, cat or domesticated animal that is injured or diseased, shall, as an act of mercy, be humanely destroyed immediately after inspection by a veterinarian, or by the animal control officer if it is determined that such destruction is necessary to prevent unnecessary suffering, to prevent the spread of disease or because the animal is incurable. A written agreement to this effect shall be signed by those inspecting the animal and such agreement shall be retained by animal control for a period of one (1) year.

(e) *Manner of disposal.* The animal control officer, when required to dispose of dogs, cats or domesticated animals, shall do so by such process as is recognized by veterinary science as being a humane manner in which to destroy dogs, cats and domesticated animals.

(f) *Disposal of nondomesticated animals.* Nondomesticated animals may be destroyed by the animal control officer or by their direction, for public safety to prevent the spread of disease and acts of mercy. Such authority shall come from the chief of police for animal control personnel to carry out the provisions of this order.

(g) *Required sterilization.* Any person who adopts a sexually mature dog or cat, at least one hundred eighty (180) days in age, is required by state law to have the animal properly sterilized. Therefore, for all animals adopted through the Daphne Animal Shelter, the following fees will be collected by the Daphne Animal Shelter prior to the adoption of any dog or cat that is not sterilized and which is not privately owned:

For an unsterilized dog:	$75.00
For an unsterilized cat:	$50.00

These fees will be deposited with the Baldwin Animal Rescue Center which has agreed to be responsible for the voluntary transport of the required documentation, the payment, and the animal to a licensed veterinarian, the name and location of which shall be given to the adopting party for the retrieval of the animal after sterilization. The adopting party may, at their election, transport the animal to a specified veterinarian, but in any case, the payment and documentation will be delivered to that veterinarian by the Baldwin Animal Rescue Center. Follow-up will be conducted by the Baldwin Animal Rescue Center to determine that the adopting party has complied with the sterilization law. Should it be determined that an adopting party has not complied with the law, which is a misdemeanor of-

fense, referral will then be made by the Baldwin Animal Rescue Center to the proper authorities for enforcement.

This section does not apply to private persons who have evidence of ownership of an animal taken into custody of the Daphne Animal Shelter. (Ord. No. 2003-11, § X, 10-20-03; Ord. No. 2007-27, §§ I, II, 6-4-07)

Sec. 4-11. Rabies vaccination required; penalty.

(a) *Rabies vaccination required.* It shall be unlawful for any owner or person in charge of any premises where dog or cat is kept to keep any dog or cat more than three (3) months of age, thereon, which has not been vaccinated against rabies within the preceding twelve (12) months.

(b) *Penalty.* Any owner or person in charge in violation hereof shall be subject to a penalty not to exceed an amount equal to twice the state approved charge for inoculation, to be imposed by the animal control officer or his authorized representative, in addition to the fee prescribed for the inoculation.

(c) *Licensed veterinarian.* In order to be sufficient under this chapter, the vaccination of any dog or cat shall be accomplished by a licensed veterinarian.

(d) *Tag attachment mandatory.* The serially numbered rabies tag issued at the time of inoculation shall at all times be attached to a collar or harness worn by the dog or cat for which the tag is issued. It shall be unlawful for any owner or person in charge of any dog or cat not to keep attached to said dog or cat the tag evidencing the anti-rabies vaccine or inoculation as provided in this chapter. However, said tag need not be attached during supervised obedience training classes or animal shows.

(e) *Animal bite.*

(1) Whenever the Daphne Police Department or an animal control officer receives information that any person has been bitten by an animal required to be inoculated against rabies, the animal will be placed in quarantine with a duly licensed veterinarian for observation of rabies for ten (10) consecutive days. The owner or person-in-charge shall be responsible for ensuring the quarantine is carried out immediately and at the owner or person-in-charge's expense. A police report will be completed documenting the incident and confirmation of quarantine. It shall be unlawful for any person having knowledge that any person has been bitten by any such animal to refuse to notify promptly the Daphne Police Department or an animal control officer.

(2) It shall be unlawful for an owner or person-in-charge to refuse or fail to quarantine an animal.

(3) Where biting occurs by a stray animal, the animal control officer may humanely destroy the animal immediately after the bite and submit the animal's head to the state health laboratory for rabies examination.

(4) K-9 animals used by law enforcement shall be exempted from the quarantine period where such bite occurs in the line of duty and evidence of proper vaccination against rabies, but shall be examined at the end of ten (10) days by a duly licensed veterinarian.

(Ord. No. 2003-11, § XI, 10-20-03)

Sec. 4-12. Vaccination period.

The vaccination of any dog or cat against rabies shall be valid for a period of one (1) year.
(Ord. No. 2003-11, § XII, 10-20-03)

Sec. 4-13. Confinement of dogs or cats in heat.

Every female dog or cat in heat shall be kept confined by the owner or person-in-charge. At any time a female dog or cat in heat is found to be causing a disturbance of any dog or cat on adjoining premises, it shall be the duty of the owner or person-in-charge of said dog or cat to immediately confine said dog or cat in a manner so as to avoid such disturbance.
(Ord. No. 2003-11, § XIII, 10-20-03)

Sec. 4-14. Duty to restrain.

(a) *Dogs, cats or domesticated animals.* It shall be the duty of every owner or person in charge of any dog, cat or domesticated animal to keep said animal under effective restraint, while the same is within the limits of the city, whether or not said dog or cat is upon or away from his or her premises. It shall be unlawful for the owner or person in charge of any dog or cat to fail to keep said animal under effective restraint. Proof that a dog, cat or domesticated animal was not properly restrained, whether on or off the premises of the owner or person in charge, shall be prima facie evidence of a violation. Negligent failure to provide or maintain effective restraint shall not be a defense; however, competent evidence that said failure was occasioned by an unforeseeable and independent act of a third person shall shift the burden on the city to prove otherwise.

(b) *Dogs, cats and domesticated animals/destruction-damage to property.* It shall be unlawful for the owner or person-in-charge of any dog, cat or domesticated animal within the City of Daphne known to said person to habitually cause destruction or damage to the property of another to allow said dog, cat or domestic animal to run at large.

(c) *Defecation on another's property.* No owner or person-in-charge of any dog, cat or domesticated animal shall permit such animal to defecate on another person's property. Such owner or person-in-charge shall, while walking such animal, utilize a restraint device to prevent the animal from defecating on other person's property. It shall be the duty of the owner or person-in-charge to remove and dispose of any feces deposited by said animal upon the grounds of any public park or public place, upon any residential lot of another occupied for human habitation, or upon any right-of-way adjacent thereto. Such removal and disposal shall be done on demand by the owner or occupant of such property or by the animal control officer.

(d) *Condition of premises.*

(1) The premises where any dog, cat or domesticated animal is kept shall be free from unsanitary droppings, refuse and odors, or in a condition to breed flies or infestation of fleas. Unsanitary or inhumane living conditions for these animals will not be allowed. The animal control officer shall notify the owner or person-in-charge of the premises to remove such matter or cure such condition within a reasonable time, to be fixed by the animal control officer. If such condition is not remedied within the time so fixed, the animal control officer shall issue a citation to the owner or person-in-charge. Animals found in cruel, abusive or neglectful situations may be promptly impounded if the life or health of the animal is at risk. If no contact is immediately made with the owner, then a written notice shall be left indicating the location of the animal and the reason for impoundment. The animal may remain impounded until the condition has been corrected.

(2) An owner or person-in-charge of any dog, cat or domesticated animal shall provide adequate shelter from the elements if the animal is kept outside. Adequate food and water shall be made available to the animal. Dogs shall not be kept or maintained on a chain or tether in the city limits of Daphne. Any dog confined with a fenced in yard must have adequate space for exercise based on the dimensions of at least one hundred fifty (150) square feet per dog. Such enclosure shall be constructed of chain link or wooden fencing or a similar type material with all four sides enclosed. The enclosure shall be of sufficient height to prevent the animal from escaping from such enclosure and shall meet the requirements of the Alabama Animal Rights Protection Act, Section 13A-11-24(1). At no time may any animal be tied or leashed to an inanimate object, i.e., tree, post, etc.

As an alternative, the owner may use underground "invisible" fencing to meet the requirements of this section in lieu of a chain link or wooden fence. The invisible fencing must be able to properly and humanely restrain the dog on the property. A dog at large is prima facie evidence

that the invisible fence did not properly restrain the animal. During power outages, etc., the owner must take other proper measures such as bringing the animal inside to prevent the animal from being at large during power outages.

Owners shall have ninety (90) days from the effective date of this chapter to come into compliance with its requirements as set out herein.

(3) No dog, cat or domesticated animal shall be restrained with a restraining device less than six (6) feet long unless walking or training such animal.

(4) No dog, cat or domesticated animal shall be placed, confined or allowed to be placed or confined in a motor vehicle under such conditions or for such a period of time as to endanger the health or welfare of the animal because of temperature, lack of food or water, or such other conditions as may reasonably be expected to cause suffering, disability or death.

(h) *Right of entry to inspect.* The animal control officer shall have the right and it shall be the officer's duty to enter upon any property, except a private dwelling house, for the purpose of inspecting any living condition for an animal for which there is a reasonable suspicion to believe that there exists thereupon a violation of this chapter. (Ord. No. 2003-11, § XIV, 10-20-03; Ord. No. 2007-27, § III, 6-4-07)

Sec. 4-15. Stray dogs, cats or domesticated animals may be taken up.

Any person in the city finding any dog, cat or domesticated running at large about his premises or residence, or the residence of which he is in charge, may have such animal confined by the animal control officer as an at large animal or stray.
(Ord. No. 2003-11, § XV, 10-20-03)

Sec. 4-16. Humane traps.

(a) The animal control officer is hereby authorized, in order to apprehend animals in violation of this chapter which are otherwise difficult to apprehend, to use traps designed to humanely capture said animals by placing the same upon any public property of the city, upon the right-of-way of any public street or highway or upon the private property of any person granting permission therefor.

(b) It shall be the duty of the animal control officer to check such traps daily and remove captured animals therefrom to the city animal shelter where they shall be disposed or treated as otherwise provided herein.

(c) It shall be unlawful for any person to molest or tamper with any such trap, or to remove any animal captured in any such trap or to interfere with the animal control officer in setting or servicing any such trap.

(d) Any owner or person-in-charge of any premises within the city may set their own humane trap on such premises for the purpose of removing any animal, except songbirds, which has entered onto the premises.

(e) It shall be the duty of the owner or person-in-charge to check such trap daily and deliver any animal captured therein to the city animal shelter or to the animal's owner.

(f) Any owner or person-in-charge of any dog, cat or domesticated animal captured in a humane trap which is off the premises of the owner or person-in-charge thereof shall be prima facie presumed to have allowed, suffered or permitted such animal to be or run at large. At any time dogs or cats are captured by use of such trap and the owner or person-in-charge is known or becomes known to the animal control officer, such owner or person-in-charge shall be given a citation to appear in city court as provided hereafter. (Ord. No. 2003-11, § XVI, 10-20-03)

Sec. 4-17. Cruelty to animals.

(a) Any person who commits any of the acts enumerated hereafter shall be guilty of a misdemeanor:

(1) Any person who overrides, over-drives, overloads, drives when overloaded, tortures, torments, deprives of necessary sustenance, cruelly beats, mutilates, or cruelly kills or causes or procures to be

overridden, over-driven, overloaded, driven when overloaded, tortured, tormented, deprived of necessary sustenance, cruelly beaten, mutilated, abandoned or cruelly killed; or

(2) Any person having the charge or custody of such animal, either as owner or otherwise, inflicts unnecessary cruelty upon same, or fails to provide the same with proper food, drink or protection from the weather, or cruelly drives or allows to be ridden or over-driven when unfit for labor; or

(3) Any person who, having the charge or custody of any animal known to him to require medical treatment or care in order to prevent unjustifiable physical pain, suffering or death, who having such knowledge fails to provide proper treatment and care, or in the alternative to cause said animal to be humanely disposed of; or

(4) Any person who unlawfully or maliciously kills, disables, disfigures, or injures any animal, without good cause.

(b) *Exception.* This section shall not be construed as prohibiting the dehorning or castration of cattle, sheep or goats.
(Ord. No. 2003-11, § XVII, 10-20-03)

Sec. 4-18. Animals suspected of having rabies declared nuisances; impoundment of same.

Any animal suspected of infection with rabies is hereby declared to be a public nuisance and a danger to the health and safety of the community. The animal control officer may take up and confine any such animal.
(Ord. No. 2003-11, § XVIII, 10-20-03)

Sec. 4-19. Citations.

When any animal is found by the animal control officer to be in violation of any provision of this chapter, and the person or persons responsible become known to the animal control officer, a citation may issue to the owner or person in charge for said violation directing the person to appear in municipal court at a time and date stated therein to answer to charges of violations of this chapter, which said charges shall be stated in said citation. It shall be unlawful and a misdemeanor for any person to fail to appear in city court at the time and place stated in a citation issued by the animal control officer.
(Ord. No. 2003-11, § XIX, 10-20-03)

Sec. 4-20. Disposition of fees.

All monies collected, as provided for in this chapter, shall be turned over and delivered forthwith to the city treasurer and all revenues generated through enforcement of any section of this chapter shall be appropriated by the City of Daphne for use in supporting, maintaining and providing for the ongoing expense of operating the City of Daphne Animal Shelter and expenses and costs incurred in the enforcement of this chapter.
(Ord. No. 2003-11, § XX, 10-20-03)

Sec. 4-21. Minimum penalties.

(a) *Penalty for violation; fines.* The following schedule of fines is hereby established by the City of Daphne pursuant to this chapter and the laws of the State of Alabama. In addition to the fines so established, the defendant shall pay, in addition to such fine amount, any court costs which are in effect at the time of such violation occurs. If the defendant elects to plead guilty before a magistrate to a violation of any of the municipal offenses contained herein for which there is a fine set forth in this section, the fine plus applicable court cost shall apply. In lieu of appearing before a magistrate, the defendant may sign a guilty plea and waiver of trial provision on the municipal offense citation, and deliver the amount of the fine plus applicable court costs to the clerk of the municipal court or mail such amount to the Clerk of the Municipal Court for the City of Daphne at 1502 Highway 98, Daphne, Alabama 36526.

(b) *Schedule of fines.* Any person found guilty of the provisions of this chapter as referenced herein, the minimum fines shall apply as follows:

Infraction		*Fine*
Allowing dog to defecate another's property	1st offense within a twelve-month period	$15.00
	2nd offense within a twelve-month period	25.00
	3rd offense within a twelve-month period	50.00
Animal restrained by leash or restraining device less than six (6) feet long	1st offense within a twelve-month period	15.00
	2nd offense within a twelve-month period	25.00
	3rd offense within a twelve-month period	50.00
Cat at large/destruction damage to property (no tag)	1st offense within a twelve-month period	15.00
	2nd offense within a twelve-month period	25.00
	3rd offense within a twelve-month period	50.00
Cat at large/destruction damage to property (with tag)	1st offense within a twelve-month period	10.00
	2nd offense within a twelve-month period	25.00
	3rd offense within a twelve-month period	50.00
Cruelty to animals	1st offense	Court
	2nd offense	Court
	3rd offense	Court
Dog on runner instead of fenced enclosure	1st offense	100.00
	2nd offense	250.00
	3rd offense	500.00 and/or 30 days in jail and/or impoundment of the animal
Dog at large (with tag)	1st offense within a twelve-month period	10 .00
	2nd offense within a twelve-month period	25.00
	3rd offense within a twelve-month period	50.00
Dog at large (no tag)	1st offense within a twelve-month period	15.00
	2nd offense within a twelve-month period	25.00
	3rd offense within a twelve-month period	50.00
Failure to restrain	1st offense within a twelve-month period	15.00
	2nd offense within a twelve-month period	25.00
	3rd offense within a twelve-month period	50.00
Fowl at large	1st offense within a twelve-month period	15.00
	2nd offense within a twelve-month period	25.00
	3rd offense within a twelve-month period	50.00
Failure to quarantine animal that has bitten	1st offense within a twelve-month period	Court
	2nd offense within a twelve-month period	Court
Failure to notify authorities of bite	1st offense within a twelve-month period	Court
	2nd offense within a twelve-month period	Court
Failure to obtain rabies vaccination	1st offense within a twelve-month period	15.00
	2nd offense within a twelve-month period	25.00
	3rd offense within a twelve-month period	50.00

Infraction		*Fine*
Failure to attach rabies tag	1st offense within a twelve-month period	15.00
	2nd offense within a twelve-month period	25.00
	3rd offense within a twelve-month period	50.00
Failure to attach tag (dog/cat)	1st offense within a twelve-month period	15.00
	2nd offense within a twelve-month period	25.00
	3rd offense within a twelve-month period	50.00
Failure to license (dog/cat)	1st offense within a twelve-month period	15.00
	2nd offense within a twelve-month period	25.00
	3rd offense within a twelve-month period	50.00
Failure to surrender Dangerous/vicious animal	1st offense	Court
	2nd offense	Court
Failure to confine dog/cat in heat	1st offense within a twelve-month period	25.00
	2nd offense within a twelve-month period	50.00
	3rd offense within a twelve-month period	100.00
Keeping a dangerous and vicious animal	See Section J	
Failure to provide adequate shelter/food and/or water	1st offense within a twelve-month period	25.00
	2nd offense within a twelve-month period	50.00
	3rd offense within a twelve-month period	Court
Interfering/opposing animal control officer	1st offense within a twelve-month period	Court
	2nd offense within a twelve-month period	Court
	3rd offense within a twelve-month period	Court
Keeping prohibited livestock in city limits	1st offense within a twelve-month period	25.00
	2nd offense within a twelve-month period	50.00
	3rd offense within a twelve-month period	Court
Keeping prohibited fowl in city limits	1st offense within a twelve-month period	25.00
	2nd offense within a twelve-month period	50.00
	3rd offense within a twelve-month period	Court
Livestock at large	1st offense within a twelve-month period	15.00
	2nd offense within a twelve-month period	25.00
	3rd offense within a twelve-month period	50.00
Noisy animals	1st offense within a twelve-month period	15.00
	2nd offense within a twelve-month period	25.00
	3rd offense within a twelve-month period	50.00
Operating illegal horse stable	1st offense within a twelve-month period	Court
	2nd offense within a twelve-month period	Court
Promoting animal fighting	1st offense	Court
	2nd offense	Court
Refusing to allow inspection	1st offense within a twelve-month period	Court
	2nd offense within a twelve-month period	Court
Tamper with animal trap/removing animal from trap/interfering with ACO in setting/servicing trap	1st offense within a twelve-month period	Court
	2nd offense within a twelve-month period	Court
	3rd offense within a twelve-month period	Court
Unsanitary living condition—fowl/livestock	1st offense within a twelve-month period	25.00

Infraction		*Fine*
	2nd offense within a twelve-month period	50.00
	3rd offense within a twelve-month period	Court
Unsanitary/inhumane living condition (any animal)	1st offense within a twelve-month period	50.00
	2nd offense within a twelve-month period	100.00
	3rd offense within a twelve-month period	Court
Dangerous and vicious animal at large	1st offense	Court
	2nd offense	Court
	3rd offense	Court

(c) In addition to any offense not referred to in this section, any person so convicted of any other section of this chapter, separately and/or separately shall be fined the sum of not less than fifty dollars ($50.00) or more than five hundred dollars ($500.00), and/or incarceration in the Daphne Municipal Jail for a period not to exceed one hundred eighty (180) days or both, at the discretion of the municipal court judge.
(Ord. No. 2003-11, § XXI, 10-20-03; Ord. No. 2007-27, § IV, 6-4-07; Ord. No. 2010-56, § III, 9-7-10)

Sec. 4-22. Vicious animals.

(a) *Harboring.* No person shall own or harbor any animal for the purpose of animal fighting, or train, torment, badger, bait or use any animal for the purpose of causing or encouraging said animal to attack human beings or domestic animals when not provoked.

No person shall sell, offer for sale, breed, buy or attempt to buy any vicious animal within the city.

(b) *Registration of dogs.* The tag and a certificate of registration or license shall be of such form and design and shall contain such information as the city shall prescribe and shall be issued to the owner or keeper upon payment of the registration fee. The registration fee for all neutered and spayed dogs shall be three dollars ($3.00) and the registration fee for all un-neutered and un-spayed dogs shall be five dollars ($5.00).

The owner or person in charge shall at all times, keep the tag affixed to said dog or cat. It shall be unlawful for any owner or person in charge of an animal to fail to comply fully with all of the requirements of this section by failing to register a dog or a cat. It shall also be unlawful for any person, except the owner or person in charge and upon its own premises, to remove a tag from a dog or cat tagged under the provisions of this section or to place a tag upon a dog or cat for which said tag was not issued, to procure a tag from the city by fraud or misrepresentation, or to disfigure or alter the words or figures upon a tag.

If a tag becomes lost or mutilated it shall be replaced with a tag or decal marked "duplicate" upon payment of the fee of three dollars ($3.00). No duplicate tag or decal shall be issued unless the dog or cat has been inoculated for rabies within twelve (12) months of the date of issuance of the duplicate tag.

In addition to the information listed above, if an animal is vicious or presumed to be vicious, as defined herein or as is determined at a hearing for such purpose, then the owner shall provide two identification color photographs of the animal clearly showing the color, any markings and approximate size of the animal.

(c) *Insurance.* All owners or keepers of a vicious dog or dog presumed to be vicious, as previously defined or as shall be determined to be vicious after judicial review, shall provide proof of liability insurance in a single incident amount of at least one hundred thousand dollars ($100,000.00), specifically covering any damage or injury which may result from the ownership, keeping or maintenance of such animal.

The policy shall contain a provision requiring the city to be named as an additional insured for the sole purpose of being notified by the insurer of any cancellation, termination or expiration of the liability insurance policy.

(d) *Investigation of vicious dogs.* When any person claims that an animal is vicious, he or she shall make a sworn statement setting forth the name of the animal's owner, the location where the animal is being kept in the city, and the reason he or she believes the animal to be vicious.

The sworn statement will be delivered to the animal control officer who will complete a vicious animal investigation.

Animal control officers are authorized to initiate a vicious animal investigation in cases where a bite or serious injury to any person has been reported or when the officer has other reason to believe a dog may be vicious.

Police officers and/or animal control officers shall be permitted to enter the exterior property where a vicious animal or animal presumed to be vicious is located for the purpose of investigating the allegation of viciousness. If the police officer and/or animal control officer has reason to believe an animal poses an immediate threat to the health, safety or welfare of the general public, the officer may seize the animal and impound the animal at the animal shelter pending completion of the investigation and hearing.

If an animal control officer or a law enforcement officer has investigated and determined that there exists probable cause to believe that an animal is potentially dangerous or vicious, the animal control officer, the chief officer of the public pound or animal control department or his or her immediate supervisor or the head of the local law enforcement agency, or his or her designee, shall petition the municipal court of the City of Daphne for a hearing for the purpose of determining whether or not the animal in question should be declared potentially dangerous or vicious. Whenever possible, any complaint received from a member of the public which serves as the evidentiary basis for the animal control officer or law enforcement officer to find probable cause shall be sworn to and verified by the complainant and shall be attached to the petition.

In the event the vicious animal investigation leads the animal control officer to believe the allegation is unfounded, the animal control officer shall advise the complaint of his findings and submit the results of the investigation to the municipal court and his animal control supervisor.

(e) *Notice, court hearing, and appeal.*

(1) The owner or keeper of the animal shall be served with notice of the hearing and a copy of the petition, either personally or by first-class mail with return receipt requested. The hearing shall be held no less than ten (10) days nor more than twenty (20) days after such notice is mailed to the owner or keeper of the animal and shall be open to the public.

(2) At such hearing all interested persons shall have the opportunity to present evidence on the issue of the animal's dangerousness. The court may admit all relevant evidence, including incident reports and the affidavits of witnesses, photographs and video tapes, limit the scope of discovery, and may shorten the time to produce records or witnesses.

In the event that the animal in question has caused injury to any person, the municipal judge may impound the animal, at the owner's expense, pending the hearing and determination of the complaint. If the court finds that the animal is potentially dangerous or vicious, it may make any orders authorized by this chapter or other laws, including but not limited to assessment of fines and costs as provided in this Code.

(3) If a determination is made that the animal is potentially dangerous or vicious and no appeal is filed, the owner or keeper shall comply with the municipal court's order no later than fourteen (14) days following the rendering of the decision. If the owner or keeper of the animal contests the determination, he or she may, within fourteen (14) days of the municipal court's decision appeal the decision to the circuit court of the county. All filing fees and costs shall be paid by the owner or keeper of the animal. The owner or keeper of the animal shall serve notice upon the city that the appeal has been filed.

(4) The circuit court shall conduct a hearing de novo, and make its own determination as to potential danger and viciousness and make other orders authorized by this chapter, based upon the evidence presented. The court may admit all relevant evidence, including incident reports and the affidavits of witnesses, limit the scope of discovery, and may shorten the time to produce records or witnesses. If the court rules the animal to be potentially dangerous or vicious, compliance with the order shall begin within seven (7) days of the date of the court's determination.

(5) The determination of the circuit court shall be final and conclusive upon all parties. However, the animal control authority shall have the right, following due process, to later declare an animal to be vicious or to determine that the animal constitutes a threat to the public health and safety, for any subsequent actions of the animal.

(f) *Regulation of potentially dangerous or vicious animals.* If it is determined at the hearing that the animal is dangerous or vicious, the court may order the following:

(1) *Confinement.*

a. Owners shall provide an exterior perimeter fence suitable to contain an average animal of the same type. The perimeter fence shall be constructed of chain link or wooden privacy type and shall be at least four (4) feet in height.

b. Owners shall provide an additional fence or pen of adequate size inside the perimeter fence to humanely confine the vicious animal.

1. This additional fence or pen may not share common fencing with the perimeter fence.

2. This additional fence or pen must have secure sides and a secure top attached at all sides.

3. All four sides of this additional fence or pen must be sunk at least two (2) feet into the ground or the fence or pen must be built over a concrete pad to prevent the animal from digging out.

4. The additional fence or pen must have an inward-opening gate and shall be kept locked at all times by pad lock or key lock except when tending to the care of the animal.

5. The sides of this additional fence or pen shall be from ground to top at least twice the height of the animal, the height of the animal being measured from its shoulders.

6. The additional fence or pen must not be positioned so that neighbors or passers by have access to the animal. It must be no less than twenty (20) feet from any neighboring property line.

7. Signs shall be posted on each side of this additional fence or pen stating that a vicious animal is enclosed and shall specify the type of animal enclosed, i.e. "Vicious Dog". Signs must be printed and legible from twenty (20) feet.

8. The pen or structure must also provide the animal with protection from the elements and must at all times be kept in sanitary condition.

c. Whenever the animal is outside either the additional fence or pen provided for this section:

1. It must be attended by the owner; and

2. It must be restrained by a secure collar and leash or rope to [no longer than eight (8) feet] and of sufficient strength to prevent escape; and

3. It must be securely muzzled so as to effectively prevent such animal from biting another animal or person.

d. No vicious animal shall be allowed outside the owner's property except in emergencies or for normal or necessary medical or health related treatment.

(2) *Destruction of a vicious dog.* In the event it is determined at the hearing that the release of the animal would create a significant threat to the public health, safety and welfare, the animal may be humanely destroyed by the department of animal control.

(3) *When it is determined that the animal is not dangerous or vicious.* In the event it is determined at the hearing that the animal is not vicious, the court shall inform the complainant of said findings.

(g) *Minor owner or keeper.* In the event that the owner or keeper of a potentially dangerous or vicious animal is a minor, the parent or guardian of such minor shall be liable for all injuries and property damage sustained by any person or domestic animal caused by a unprovoked attack by such potentially dangerous or vicious animal.

(h) *Procedure upon loss, sale or transfer of animal.* The owner or keeper of a potentially dangerous or vicious animal shall notify the department of animal control or the police department immediately if such potentially dangerous or vicious animal is loose or missing or if the potentially dangerous or vicious animal has attacked or wounded a human being or another animal. If the animal in question dies, or is sold, transferred, or permanently removed from the city or county where the owner or keeper resides, the owner of a potentially dangerous or vicious animal shall notify the animal control department of the changed condition and new location of the animal in writing within two (2) working days. If the owner or keeper of a potentially dangerous or vicious animal moves the animal to a different address within the city limits of the city, such owner or keeper shall notify the department of animal control of such fact and the new address within twenty-four (24) hours.

(i) *Keeping potentially dangerous or vicious animals.* It shall be unlawful for any owner, keeper or other person to be in violation of any provision of this chapter or any order of any court as provided in this chapter. Any owner or keeper found to be in violation of this section shall be guilty of a misdemeanor and shall be punishable as provided in subsection (j) of this section.

(j) *Penalty for violation.* The penalty for violation of any provision of this section shall be as follows:

1st offense	Not less than $100.00 or more than $350.00 and/or not to exceed six (6) months in jail;
2nd and subsequent offenses	Not less than $350.00 or more than $500.00 and/or not to exceed six (6) months in jail.

In addition, the court shall assess the violator with any and all costs incurred for the impoundment and/or destruction of the dog.

(k) *Confinement generally.* No owner, keeper or harborer of an animal shall permit a vicious or dangerous dog to be kept on a chain, rope or other type of leash outside of its fence and/or pen unless it is under physical control of a leash. Such dogs may not be leashed or chained to inanimate objects such as trees, posts, buildings, etc. outside of the perimeter fence and/or pen. No vicious or dangerous dog may be kept on a porch, patio or in any other portion of the house or structure that would allow the dog to exit such building or structure on its on volition. In addition, no such animal may be kept in a house or structure where screen doors are the only obstacle preventing the dog from exiting the structure.

(l) *Registration of vicious dogs.* All dangerous or vicious dogs as defined herein or as found to be vicious after a municipal court hearing shall be registered on the city's website. Such registry shall include the address where the dog is located and identifying information on the dog, including two (2) identifying color photographs of the dog. The registry shall not contain the name or names of the owners or tenants at said location.
(Ord. No. 2010-56 § IV, 9-7-10; Ord. No. 2010-67, § I, 11-15-10)

Sec. 4-23. Donations to animal shelter.

This section shall establish an additional procedure for donations to the City of Daphne Animal Shelter via online payment at the City of Daphne Animal Shelter website through generally accepted credit cards.
(Ord. No. 2010-56 § V, 9-7-10)

Chapter 5

BUILDINGS, CONSTRUCTION AND RELATED ACTIVITIES*

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*__Cross reference__—Building debris, §§ 10-29(b), 12-40.

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ARTICLE I. IN GENERAL

Sec. 5-1. Technical codes—Adopted by reference.

(a) For the purposes of establishing uniform rules and regulations, the council hereby adopts by reference the following codes and subsequent amendments issued thereto:

(1) ICC International Building Code, 2006 edition.

(2) ICC International Residential Code, 2006 edition.

(3) ICC International Fuel Gas Code, 2006 edition.

(4) ICC International Mechanical Code, 2006 edition.

(5) ICC International Plumbing Code, 2006 edition. Copyrights 2006 by the International Code Council Incorporated.

(6) National Electrical Code, 2005 edition. Copyright 2004 by the National Fire Prevention Association Incorporated.

(b) ICC International Building Code, 2006 edition, ICC International Fuel Gas Code, 2006 edition, ICC International Mechanical Code, 2006 edition, ICC International Plumbing Code, 2006 edition, National Electrical Code, 2005 edition, and ICC International Residential Code, 2006 edition are hereby adopted and incorporated as if fully set out in this section, with additions, deletions and changes to the ICC International Residential Code, 2006 edition, as prescribed in subsections (c) and (d), and from the date on which this section shall take effect, the provisions thereof shall be controlling in the construction or alteration, or repair of all buildings and other structures therein contained within the corporate limits of the city.

(c) The following section of the International Residential Code, edition 2006, is hereby revised in its entirety to read as follows:

R. 106.1 Submittal documents. Construction documents, special inspection and structural observation programs and other data shall be submitted in two sets with each application for a permit the construction documents shall be prepared by a registered design professional when the square footage meets or exceeds 2,500 sq. ft. Where special conditions exist, the building official is authorized to require additional construction documents to be prepared by a registered design professional.

EXCEPTION: The building official is authorized to waive the submission of construction documents and other data not required to be prepared by a registered design professional if it is found that the nature of the work applied for is such that reviewing of construction documents is not necessary to obtain compliance with this code.

905.2.3.1.1.1 Underlayment. Roofing underlayment shall be of a synthetic tear resistant polypropylene, polyester or fiberglass fabric certified by an approved testing agency or ICC-ES report. The building official may approve an equal or higher performing product. Asphalt felt roofing underlayment shall not be installed as a roof covering underlayment. Roof underlayment shall be fastened in accordance with the manufacturer's installation instructions.

905.2.6 Attachment. Asphalt shingles shall have the minimum numbers of fasteners required by the manufacturer. For normal application, asphalt shingles shall be secured to the roof with not less than six fasteners per strip shingle or two fasteners per individual shingle. Where the roof slope exceeds twenty (20) units horizontal (167% slope), special methods of fastening are required.

(d) The above referenced technical codes are hereby adopted as the International Building Code of the City of Daphne.

(e) Copies of the above referenced codes are on file in the office of the city clerk.

(f) Appendix G, International Building Code, 2006 edition, is adopted by reference.

(1) For the purposes of establishing uniform rules and regulations, the council hereby adopts by reference: Appendix G of the ICC International Building Code, 2006 edition.

(2) The above referenced appendix is hereby adopted as the standard code of the City

of Daphne as to swimming pools, spas, hot tubs and the barrier requirements of such.

(3) Said Appendix G is hereby adopted and incorporated as fully as if set out at length herein, and from the date on which this section shall take effect, the provisions thereof shall be controlling in the construction or alteration, or repair of swimming pools, spas, and hot tubs and the barrier requirements of each in or [on] the lot of a one- or two-family dwelling.

(Ord. No. 1967-1, § 1, 1-9-67; Ord. No. 1979-1, §§ 1—3, 1-2-79; Ord. No. 1988-04, §§ 1—3, 4-18-88; Ord. No. 1996-12, 3-4-96; Ord. No. 2007-23, § I, 5-21-07; Ord. No. 2008-03, § I, 1-7-07)

Sec. 5-2. Same—Administration and enforcement.

Administration and enforcement of the building and safety codes of the city shall be the duty of the building official of the city. Such office is hereby established. Such official shall be appointed by the mayor and the appointment shall be approved by the city council.

(Ord. No. 1993-01, § 1, 1-4-93)

Sec. 5-3. Permit fees.

(1) *Building permit fees.* Each person, firm corporation or other entity engaged in building or constructing any individual building or remodeling or adding to air conditioning, roofing, re-roofing, storage tanks, fire sprinkler systems or repairing any existing building, shall submit plans for each such building, construction, addition, remodeling, air conditioning, roofing, reroofing, or repair, copies of bona fide signed contracts or other evidence of cost of the above referenced work to the building official, and shall, before the commencement of work, take out and secure, by payment in full, as provided for herein, a building permit for each building construction, extension, remodeling, air conditioning, roofing, re-roofing, or repairing from the City of Daphne, Alabama, along with payment for all required inspection fees contained in subsections (2) through (5) herein. For the purpose of determining the fee for the issuance of a building permit, the valuations of the requested work shall be determined by bonafide signed contracts, or other evidence of cost as submitted by the person, firms, corporations or other entities requesting a building permit.

(a) *Basic construction and improvements.* The following charges shall be made for the issuance of building permits based on the valuation of bonafide signed contracts:

1. Residential building permit:

   a. Miscellaneous building permits such as, additions, remodels, carports, sunrooms, fences, re-roof, vinyl siding, pools, repairs, etc., will be twenty dollars ($20.00) plus five dollars ($5.00) for each one thousand dollars ($1,000.00), or fraction thereof, over one thousand dollars ($1,000.00) of the contract amount.

   b. All new residential building permits will be assessed a site containment fee of fifty dollars ($50.00).

   c. There will be a plan review fee of twenty-five dollars ($25.00) on all residential building permits.

2. Fees for plumbing, electrical and mechanical:

   a. Electrical permits will be a flat fee of one hundred ten dollars ($110.00).

   b. Plumbing permits will be a flat fee of one hundred ten dollars ($110.00).

   c. Mechanical permits will be a flat fee of one hundred ten dollars ($110.00).

   d. Any plumbing, electrical and mechanical permits for miscellaneous permit (see above for list of miscellaneous permits) will be twenty dollars ($20.00) plus five dollars ($5.00) for each one thousand dollars ($1,000.00), or fraction thereof,

over one thousand dollars ($1,000.00) of the contract amount.

3. Fees for commercial building permits:

a. Permit fee will be six dollars ($6.00) per one thousand dollars ($1,000.00) of the total contract price.

b. All mechanical, electrical and plumbing permits will be one and one-half (1.5) percent of subcontractors total contract amount, a minimum permit fee of one hundred ten dollars ($110.00).

c. There will be a plan review fee of one hundred dollars ($100.00) on all commercial building permits.

(b) *Moving of a building or structure.* For the moving of any mobile home, manufactured home, building or structure for which the cost to move said structure is greater than or equal to one thousand dollars ($1,000.00), the permit fee shall be one hundred fifty dollars ($150.00).

(c) *Demolition of a building or structure.* For the demolition of any building or structure the permit fee shall be as follows:

1. Where the building or structure is one hundred thousand (100,000) cubic feet or less the permit fee is fifty dollars ($50.00).

2. Where the building or structure is greater than one hundred thousand (100,000) cubic feet the permit fee is fifty dollars ($50.00) plus fifty cents ($0.50) per one thousand (1,000) cubic feet or fractions thereof over one hundred thousand (100,000) cubic feet.

(d) *Mobile structure use fees.* For the use of any mobile or manufactured home or structure as an approved permanent or temporary commercial structure, as otherwise permitted by ordinances of the City of Daphne, Alabama, the use permit fee structure shall be as follows:

1. Where the mobile or manufactured home or structure is used as a permanent or temporary commercial use the permit fee shall be two hundred fifty dollars ($250.00) for a six-month period, plus two hundred fifty dollars ($250.00) for each six-month renewal thereafter.

2. Where the mobile or manufactured home or structure is used as a temporary construction field office the permit fee shall be fifty dollars ($50.00) for a six-month period, plus fifty dollars ($50.00) for each six-month renewal thereafter.

3. Where the mobile or manufactured home or structure is used as quarters for a watchman the permit fee shall be two hundred fifty dollars ($250.00) for a six-month period, plus two hundred fifty dollars ($250.00) for each six-month renewal thereafter.

(2) *HVAC inspection fees.* Mechanical inspection fees will be based on the contract valuation of the work to be performed and will be payable at the time the building permit fee is paid, and precede the issuance of the permit based on the following: Minimum mechanical inspection fee is seventy dollars ($70.00) up to three (3) tons plus twenty dollars ($20.00) for each additional ton of air.

(3) *Electrical inspection fees.* The minimum electrical inspection fee for any work performed will be seventy dollars ($70.00).

(a)	Inspection not otherwise provided for in this section	$5.00
(b)	Inspection for temporary installation of any switch, fixture, appliance, or other electrical devise	10.00
(c)	Inspection for temporary electrical power	50.00

(4) *Plumbing inspection fees.* The minimum plumbing inspection fee for any work performed will be seventy dollars ($70.00) for the first three (3) bathrooms, twenty dollars ($20.00) for each additional bathroom.

(5) *Utility connection fees.* In addition to the fees charged for the issuance of building permits as described in subsection (1) hereinabove, before issuance of a building permit, the applicant must submit evidence to the building official of payment of any connection or tap fees for water, sewer, and gas, if applicable, prior to the issuance of a permit for the construction, alteration, relocation, or repair for which a permit is sought.

(6) *Street repair and street boring permit.* Any work to be performed in the City of Daphne, Alabama, that requires a street or alley to be transversely or longitudinally cut, for any reason, shall require a permit and plans reviewed by the public works director based on the following schedule:

(a) *Fees.*

1. An application fee of twenty-five dollars ($25.00) shall be assessed for permits and inspections at the time of application for the permit.
2. The permittee shall be required to pay additional charges for work requiring a City of Daphne official to work hours other than normal city hours at an hourly rate of forty dollars ($40.00) for the first hour or portion thereof, required for this inspection, plus twenty-five dollars ($25.00) for each additional hour or portion thereof required.
3. The permit fee itself is not subject to refund if the permittee chooses not to perform the work, for any reason, under said permit.

(b) *Bond.*

1. A guaranty valid for a period of one (1) year from the date of performance under the permit in the form of a noncancelable performance bond, letter of credit or cashier's check, in the amount of the one thousand dollars ($1,000.00), payable to the City of Daphne, shall be required in the name of the permittee prior to the issuance of any permit. Said guaranty shall assure that the permittee will comply with all city standards and specifications and shall assure recovery by the city of any expenses incurred, within a period of one (1) year. The mayor or public works director have the authority to waive the bond requirement when good cause is shown.
2. The permittee, by acceptance of the permit, expressly guarantees complete performance of the work in an acceptable manner to the city, guarantees all work done by him for a period of one (1) year after the date of acceptance and agrees upon demand to maintain and make all necessary repairs during the warranty period. Failure to do so shall subject the permittee to forfeiture of his bond.

(7) *Site plan permit.*

(a) Each person, firm, corporation, utility, or other entity engaged in excavation work, street paving, landscaping irrigation installation, drainage, sewer, water installation, grassing, clearing, or any other land disturbing activity that is a part of the erection, renovation, improvement, maintenance, expansion, development or completion of a business, commercial, or utility site shall be required to have a permit for all items of work or a permit for each individual item of work. Permit must be purchased or obtained prior to the commencement of any work and such permit shall only be issued upon compliance with requirements of Land Use Ordinance No. 1987-12, Article 17, Section 17.18 or any amendments thereto. No permits shall be issued prior to the approval of site plans by the planning commission. If permit is not purchased before the commencement of any work, all penalties will apply.

(b) The schedule of fees is set out as twenty dollars ($20.00) for the first one thousand dollars ($1,000.00) and five dollars ($5.00) for each additional one thousand dollars ($1,000.00) paid for each item of work. Utilities shall not be charged a permit fee, but must comply with all other provisions of this section.

(c) This permit will be issued by the City of Daphne planning department, and approved by the planning director, building official, and code enforcement officer or his appointed designee.

(d) After the work has been completed the developer/contractor shall notify the planning department and request a final inspection.

(8) *Special limitation to permit and inspection fees and issuance of the same for services relative to alarms, telephone, and signaling and cable television systems.*

(a) The provisions of the ordinance shall not apply to any work performed subject to regulatory control by Alabama Public Service Commission or other regulatory agencies.

(b) Any independent contractor doing work controlled by these agencies which is to be performed at a time other than the time and day or days of the week when the authorized permitting department of the City of Daphne is open for business shall be deemed as emergencies and shall be controlled by the following provisions:

1. The person performing such work shall immediately notify, by telephone, the public service dispatcher that the work is being performed in the city.

2. The person shall obtain a permit as otherwise provided by this section on the next business day that the authorized permitting department's office is open for normal business.

(9) *Other permits and fees.*

(a) *Reinspection fees.* Any reinspection of any item covered under the provisions of this section, as necessitated by lack of approval of the item upon initial inspection, shall require a separate permit fee. The first reinspection is no charge, second reinspection will be fifty dollars ($50.00), third reinspection will be one hundred dollars ($100.00) and the fourth reinspection will be two hundred dollars ($200.00). Reinspection fees will only be applied to items on original list. Any new items will not be considered a reinspect at time of next inspection. All reinspection fees must be paid prior to the reinspection.

(b) *Stop work.* Any stop work order issued will be charged one hundred dollars ($100.00) for a reinspection.

(10) *Payment of fees.* All fees determined due and payable under this section shall be paid at the office of the building inspection department of the City of Daphne, Alabama, and shall be duly received prior to issuance of any permit or permits.

(11) *Fees for additional work.*

(a) In the event that during the performance of the work of installation or alteration permitted under the permit, additional installations or alterations are required, it shall be unlawful for the person who secured the original permit to fail to immediately remit to the building official an amount equal to the additional fees for permits and inspection incurred by the additional installations or alterations.

(b) Any fees not immediately remitted for installation or alteration of work not permitted on the original permit shall be subject to subsections (12) and (14) of this section.

(12) *Double permit and inspection fees.* When work for which a permit is required is commenced prior to the obtaining of a permit, or when a building or improvement is occupied prior to the issuance of the certificate of occupancy by the building inspection department, and completion of all required inspections, permit applicant shall be required to pay a one hundred dollar ($100.00) penalty plus a double permit fee. In no event shall the applicant pay less than one hundred thirty dollars ($130.00). The payment of the required fee shall not relieve any person from fully complying with all of the requirements of all applicable regulations and code, nor shall it relieve them from being subject to any of the penalties therein.

(13) *Condition of issued permit.* The building inspection department shall act upon an application for a permit with drawings and/or specifications, as filed, or as amended, without unreasonable or unnecessary delay. A permit issued shall be construed to be a license to proceed with the work and shall not be construed as authority to violate, cancel, alter, or set aside any of the provisions of this Code, no shall such issuance of a permit prevent the building inspection department from thereafter requiring correction of errors in construction or of violations of this Code. Any permit issued shall become invalid unless the work authorized by it shall have been commenced within ninety (90) days after its issuance, or if the work authorized by such permit is suspended or abandoned for a period of ninety (90) days after the time the work is commenced, provided that for cause, one or more extensions of time for periods not exceeding ninety (90) days each, may be allowed in writing by the building inspection department.

(14) *Liability, penalties and remedies.*

(a) *Liability.* Any person who shall undertake work pursuant to any permit issued under the provisions of this chapter shall be liable for any damage occasioned to persons, animals, or property by reason of carelessness and negligence connected with such work and shall hold the city harmless therefore.

(b) *Penalties.*

1. Failure of the applicant to comply with any of the terms and conditions of the permit shall be sufficient cause for cancellation of the permit by the building official, and may be cause for the refusal of future permits. The permit, the privileges granted by the permit, and the obligations of the permittee shall be binding upon the successors and subcontractors of the permittee.

2. Permit requirements shall apply to emergency repairs; however, a delay of forty-eight (48) hours is granted, excluding weekends and holidays, following the beginning of such repair before the lack of a permit shall warrant a fine.

3. Any excavation or construction in any street, alley, sidewalk, or other public right-of-way in the city (with or without a permit as required by this chapter) which constitutes an emergency presenting imminent danger or serious injury to person or property is hereby declared to be a public nuisance which may be summarily abated as provided in the zoning ordinance of the city.

(c) *Civil remedy.* In addition to the penalties established above, violations of this chapter shall be cause for the city to proceed

against any surety, condemn any bond, or to commence an action in a court of competent jurisdiction for the appropriate legal and equitable relief, and any other action permitted by law.

(d) *Summons and complaint.*

1. Any summons and complaint ordinance authority of the City of Daphne shall serve upon the owner of property or each person, firm, or corporation engaged in the activities regulated thereunder, which activities are being conducted in violation of this section, a citation to appear in the Daphne Municipal Court of the City of Daphne at a time and date specified thereon to answer the charge of such violation(s) of this section. All citations shall be singed by inspectors finding such violations and shall be sent by certified mail to the contractor or persons responsible for the permit or the owner of the property on which the violation is found, as such owner's names and address appear in the records of the Baldwin County Tax Assessor's Office.

2. Provided, however, that prior to 4:00 p.m. on the date this matter is to be set before the Daphne Municipal Court, such person, firm, or corporation charged in such citation, if he has not previously settled or been convicted of three (3) or more such violations within twenty-four (24) months of the date of such citation, may dispose of the citation by settlement in the following manner:

   a. Payment to the clerk of the Daphne Municipal Court a fine for the offenses charged in the amount of five hundred dollars ($500.00), plus any and all charges otherwise payable to the city pursuant to the terms and conditions of this section, and the summons and complaint ordinance.

   b. If the settlement of the charges set out in the citation is not made prior to 4:00 p.m. on the date the case is set for trial in Daphne Municipal Court and if the party charged fails to appear and answer such charge in the Daphne Municipal Court at the time or place set out in such court a warrant shall be issued charging such party with the violation set out in the citation, which warrant shall be obtained and served and tried as provided by law for the arrest and trial of offenses involving violations of the ordinances of the city.

3. If within the twenty-four (24) months preceding the issuance of a citation such person, firm, or corporation charged in such citation has been convicted of three (3) or more such violations, settlement cannot be voluntarily made to the clerk of the Daphne Municipal Court as referred to above. Said person, firm, or corporation shall be required to stand trial in the Daphne Municipal Court.

4. Once the warrant has been issued and tried before the municipal court, a person found guilty of such violations shall be guilty of a misdemeanor and shall be punished as provided in section 1-7 of the Code of Ordinances of the City of Daphne, which shall include the payment of any fines levied by the court, plus any court cost herein provided and issued by the court. Each day such offense continues shall constitute a separate offense.

(15) *Unused permits and refunds.*

(a) The finance director of the City of Daphne is authorized to make refund of amounts paid for permits issued under this ordinance at any time within ninety (90) days

after the issuance of said permits provided the building inspector certifies to said finance director as follows:

1. The permit for which the refund is requested has been canceled and no work begun thereunder; or

2. The inspection for which a refund of fee therefore paid is requested has not been made.

(b) Any refund made under the provision of this section shall be subject to an administrative charge of twenty dollars ($20.00) which amount shall be deducted from the amount of refund applied for.

(Ord. No. 2004-10, §§ I—XV, 4-5-04; Ord. No. 2006-55, 8-7-06)

Editor's note—Ord. No. 2004-10, adopted April 5, 2004, repealed Ord. No. 2002-30 from which § 5-3 derived, and enacted similar provisions to read as herein set out.

Sec. 5-4. Excavations near gas lines—Permit required.

Any person, before engaging in earth moving operations, including but not limited to any digging, boring, tunneling, backfilling or removal of above ground structures by any means whatsoever, including but not limited to the use of hand tools, mechanical equipment or explosives capable of cutting or rupturing natural gas pipelines, in the immediate vicinity of any natural gas pipeline or related facility of the city, shall first obtain from the city a permit before undertaking such operation.

(Ord. No. 1983-1, § 1, 9-6-83)

Sec. 5-5. Same—Notice of operation; marking; inspection.

The city shall be notified of any proposed operation referred to in section 5-4 not less than forty-eight (48) hours prior to the time any operation is to begin and no operation shall begin under the permit until the pipeline and any related facilities have been marked by the city superintendent or the superintendent's designees. No operation shall be closed, until the inspection by city superintendent or designees for damage, and there shall be on file a copy of line location request with the approval and signature of the superintendent.

(Ord. No. 1983-1, § 2, 9-6-83)

Sec. 5-6. Same—Violation.

Any person who shall fail or refuse to secure the permit required in section 5-4 or who shall fail to give notice of any operation as required in section 5-5 shall be guilty of a misdemeanor. Each day that any operation is continued in violation shall constitute a separate offense. If a person convicted of a violation shall be a licensed plumber, contractor, gas fitter or other person doing business under a license issued by the city, the council may revoke the license to do business in the city or its police jurisdiction thereafter.

(Ord. No. 1983-1, § 3, 9-6-83)

Sec. 5-7. Sand, gravel, etc., pits—Screening required; exemption.

(a) Any person within the city who owns or controls any pit or area used for the sale of top soil, sand, clay, rock, gravel, etc., when the same is located at, on or near a public right-of-way shall provide a screen to conceal the open pits.

(b) Pits which are located in such a manner that the natural terrain obscures the pit and its operation shall not be required to be screened.

(Ord. No. 1968-8, §§ 1, 3, 7-15-68)

Sec. 5-8. Same—Specifications for screen.

The screen to be provided shall be a minimum of six (6) feet in height, constructed of solid boards or a chain link fence with laths interwoven in such a manner as to provide a tight surface.

(Ord. No. 1968-8, § 2, 7-15-68)

Sec. 5-9. Same—Fence to prevent entry.

Any pit located near a residential area is considered to constitute a safety hazard and the same shall be fenced to obstruct a view of the pit and its operation and also shall be fenced in a manner which will discourage and prevent entry by unauthorized persons.

(Ord. No. 1968-8, § 4, 7-15-68)

Sec. 5-10. Same—Drainage or treatment of water to control insects.

Any pit or hole that cannot be drained, and in which water accumulates and remains to form a pool to become stagnant, shall be treated in such a manner as to control the breeding of obnoxious, disease-bearing mosquitoes and other insects.
(Ord. No. 1968-8, § 5, 7-15-68)

Sec. 5-11. Same—Setback from property line.

No pit shall be dug within thirty (30) feet of any property line and no pit shall be dug near a property line when the removal of the material would cause an erosion problem for the adjacent property owner.
(Ord. No. 1968-8, § 6, 7-15-68)

Secs. 5-12—5-19. Reserved.

ARTICLE II. FLOOD PREVENTION*

DIVISION 1. GENERALLY

Sec. 5-20. Statutory authorization.

The legislature of the State of Alabama has in Title 11, Chapter 19, Sections 1-24, Chapter 52, Sections 1-84, and Title 41, Chapter 9, Section 166 of the Code of Alabama, 1975, authorized local government units to adopt regulations designed to promote the public health, safety, and general welfare of its citizenry. Therefore, the City Counsel of Daphne, Alabama, does ordain as follows:
(Ord. No. 2009-01, art. 1, § A, 1-5-09)

Sec. 5-21. Findings of fact.

(a) The flood hazard areas of Daphne, Alabama, are subject to periodic inundation which results in loss of life and property, health and safety hazards, disruption of commerce and governmental services, extraordinary public expenditures for flood relief and protection, and impairment of the tax base, all of which adversely affect the public health, safety and general welfare.

(b) These flood losses are caused by the occupancy in flood hazard areas of uses vulnerable to floods, which are inadequately elevated, floodproofed, or otherwise unprotected from flood damages, and by the cumulative effect of obstructions in floodplains causing increases in flood heights and velocities.
(Ord. No. 2009-01, art. 1, § B, 1-5-09)

Sec. 5-22. Statement of purpose.

It is the purpose of this article to promote the public health, safety and general welfare and to minimize public and private losses due to flood condition in specific areas by provisions designed to:

(1) Require that uses vulnerable to floods, including facilities which serve such uses, be protected against flood damage at the time of initial construction;

(2) Restrict or prohibit uses which are dangerous to health safety and property due to water or erosion hazards, or which increase flood heights, velocities, or erosion;

(3) Control filling, grading, dredging and other development which may increase flood damage or erosion;

(4) Prevent or regulate the construction of flood barriers which will unnaturally divert floodwaters or which may increase flood hazards to other lands; and

(5) Control the alteration of natural floodplains, stream channels, and natural protective barriers which are involved in the accommodation of floodwaters.

(Ord. No. 2009-01, art. 1, § C, 1-5-09)

Sec. 5-23. Objectives.

The objectives of this article are:

(1) To protect human life and health;

*Editor's note—Ord. No. 2009-01, adopted Jan. 5, 2009, amended Art. II in its entirety to read as set out herein. Former Art. II, §§ 5-20—5-31, 5-40—5-44, and 5-50—5-55, pertained to similar subject matter and derived from Ord. No. 1993-12, arts. 1—5, adopted June 21, 1993; Ord. No. 1998-02, arts. 1—6, adopted Jan. 21, 1998; and Ord. No. 2007-29, adopted July 2, 2007.

(2) To minimize damage to public facilities and utilities such as water and gas mains, electric, telephone and sewer lines, streets and bridges located in floodplains;

(3) To help maintain a stable tax base by providing for the sound use and development of floodprone areas in such a manner as to minimize flood blight areas;

(4) To minimize expenditure of public money for costly flood control projects;

(5) To minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the general public;

(6) To minimize prolonged business interruptions; and

(7) To insure that potential home buyers are notified that property is in a flood area.

(Ord. No. 2009-01, art. 1, § D, 1-5-09)

Sec. 5-24. Lands to which this article applies.

This article shall apply to all areas of special flood hazard within the jurisdiction of Daphne, Alabama.

(Ord. No. 2009-01, art. 2, § A, 1-5-09)

Sec. 5-25. Basis for area of special flood hazard.

The areas of special flood hazard identified by the Federal Emergency Management Agency in its DFIRM and Flood Insurance Study (FIS), dated July 17, 2007, with accompanying maps and other supporting data and revision thereto, are adopted by reference and declared a part of this article. For those land areas acquired by a municipality through annexation, the current effective FIS and data for ("Baldwin County") are hereby adopted by reference. Areas of special flood hazard may also include those areas known to have flooded historically or defined through standard engineering analysis by governmental agencies or private parties but not yet incorporated in a FIS.

(Ord. No. 2009-01, art. 2, § B, 1-5-09)

Sec. 5-26. Establishment of development permit.

A development permit shall be required in conformance with the provisions of this article prior to the commencement of any development activities.

(Ord. No. 2009-01, art. 2, § C, 1-5-09)

Sec. 5-27. Compliance.

No structure or land shall hereafter be located, extended, converted or altered without full compliance with the terms of this article and other applicable regulations.

(Ord. No. 2009-01, art. 2, § D, 1-5-09)

Sec. 5-28. Abrogation and greater restrictions.

This article is not intended to repeal, abrogate, or impair any existing ordinance, easements, covenants, or deed restrictions. However, where this article and another conflict or overlap, whichever imposes the more stringent restrictions shall prevail.

(Ord. No. 2009-01, art. 2, § E, 1-5-09)

Sec. 5-29. Interpretation.

In the interpretation and application of this article, all provisions shall be:

(1) Considered as minimum requirements;

(2) Liberally construed in favor of the governing body; and

(3) Deemed neither to limit nor repeal any other powers granted under state statutes.

(Ord. No. 2009-01, art. 2, § F, 1-5-09)

Sec. 5-30. Warning and disclaimer of liability.

The degree of flood protection required by this article is considered reasonable for regulatory purposes and is based on scientific and engineering consideration. Larger floods can and will occur; flood heights may be increased by manmade or natural causes. This article does not imply that land outside the areas of special flood hazard or uses permitted within such areas will be free from

flooding or flood damages. This article shall not create liability on the part of the City of Daphne or by any officer or employee thereof for any flood damage that result from reliance on this article or any administrative decision lawfully made there under.
(Ord. No. 2009-01, art. 2, § G, 1-5-09)

Sec. 5-31. Penalties for violation.

Violation of the provisions of this article or failure to comply with any of its requirements, including violation of conditions and safeguards established in connection with grants of variance or special exceptions shall constitute a misdemeanor. Any person who violates this article or fails to comply with any of its requirements shall, upon conviction thereof, be fined not more than one hundred dollars ($100.00) or imprisoned for not more than one (1) day, or both, and in addition, shall pay all costs and expenses involved in the case. Each day such a violation continues shall be considered a separate offense. Nothing herein contained shall prevent the City of Daphne from taking such other lawful actions as is necessary to prevent or remedy any violation.
(Ord. No. 2009-01, art. 2, § H, 1-5-09)

Sec. 5-32. Saving clause.

If any section, subsection, sentence, clause, phrase, or word of this article is for any reason held to be noncompliant with 44 Code of Federal Regulation 59-78, such decision shall not affect the validity of the remaining portions of this article.
(Ord. No. 2009-01, art. 2, § I, 1-5-09)

Sec. 5-33. Definitions.

Unless specifically defined below, words or phrases used in this article shall be interpreted so as to give them the meaning they have in common usage and to give this article it's most reasonable application.

Addition (to an existing building) means any walled and roofed expansion to the perimeter of a building in which the addition is connected by a common load-bearing wall other than a fire wall. Any walled and roofed addition which is connected by a fire wall or is separated by an independent perimeter load-bearing wall shall be considered "new construction."

Appeal means a request for a review of the building official's interpretation of any provision of this article.

Area of shallow flooding means a designated AO or AH Zone on a community's flood insurance rate map (FIRM) with base flood depths from one (1) to three (3) feet, and/or where a clearly defined channel does not exist where the path of flooding is unpredictable and indeterminate, and where velocity flow may be evident.

Area of special flood hazard is the land [in] the floodplain within a community subject to one (1) percent or greater chance of flooding in any given year. In the absence of official designation by the Federal Emergency Management Agency, areas of special flood hazard shall be those designated by the local community and referenced in section 5-25.

Base flood means the flood having one (1) percent chance of being equaled or exceeded in any given year.

Basement means that portion of a building having its floor sub-grade (below ground level) on all sides.

Breakaway wall means a wall that is not part of the structural support of the building and is intended through its design and construction to collapse under specific lateral loading forces, without causing damage to the elevated portion of the building or the supporting foundation system.

Building means any structure built for support, shelter or enclosure for any occupancy or storage. (See Structure)

Coastal high hazard area means the area subject to high velocity waters caused by, but not limited to, hurricane wave wash. The area is designated on a FIRM as Zone V1-30, VE or V.

Development means any manmade change to improved or unimproved real estate, including, but not limited to, buildings or other structures,

mining, dredging, filling, grading, paving, excavation, drilling operations, and storage of equipment or material.

Elevated building means a non-basement building built to have the lowest floor of the lowest enclosed area elevated above the ground by means of solid foundation perimeter walls, pilings, columns, piers, or shear walls adequately anchored so as not to impair the structural integrity of the building during a base flood event.

Existing construction means any structure for which the start of construction commenced before February 21, 1975 [(i.e., the effective date of the first floodplain management code or ordinance adopted by the community as a basis for that community's participation in the National Flood Insurance Program (NFIP)].

Existing manufactured home park or subdivision" means a manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured home are to be affixed (including at a minimum the installation of utilities, the construction of streets, and final site grading or the pouring of concrete pads) is completed before February 21, 1975 [i.e., the effective date of the first floodplain management regulations adopted by a community].

Expansion to an existing manufactured home park or subdivision means the preparation of additional sites by the construction of facilities for servicing the lots on which the manufactured homes are to be affixed, including the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads.

Flood or flooding means a general and temporary condition partial or complete inundation of normally dry land areas from:

The overflow of inland or tidal waters; or

The unusual and rapid accumulation or runoff of surface waters from any source.

Flood hazard boundary map (FHBM) means an official map of the community, issued by the Federal Insurance Administration, where the boundaries of areas of special flood hazard have been designated a Zone A.

Flood insurance rate map (FIRM) means an official map of a community, issued by the Federal Insurance Administration, delineating the areas of special flood hazard and/or risk premium zones applicable to the community.

Flood insurance study means the official report by the Federal Insurance Administration evaluating flood hazards and containing flood profiles and water surface elevations of the base flood.

Floodplain means any land area susceptible to flooding.

Floodway (regulatory floodway) means the channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than a designated height.

Functionally dependent facility means a facility which can not be used for its intended purpose unless it is located or carried out in close proximity to water, such as a docking or port facility necessary for the loading and unloading of cargo or passengers, shipbuilding, or ship repair facilities. The term does not include long-term storage, manufacture, sales, or service facilities.

Highest adjacent grade means the highest natural elevation of the ground surface, prior to construction, adjacent to the proposed walls of a structure.

Historic structure means any structure that is:

Listed individually in the National Register of Historic Places (a listing maintained by the U.S. Department of Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register;

Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance for a registered historic district or a district preliminary determined by the Secretary to qualify as a registered historic district;

Individually listed on a state inventory of historic places and determined as eligible by states

with historic preservation programs which have been approved by the Secretary of the Interior; or

Individually listed on a local inventory of historic places and determined as eligible by communities with historic preservation programs that have been certified either:

By an approved state program as determined by the Secretary of the Interior, or

Directly by the Secretary of the Interior in states without approved programs.

Levee means a manmade structure; usually an earthen embankment designed and constructed, in accordance with sound engineering practices to contain, control, or diverts the flow of water so as to provide protection from temporary flooding.

Levee system means a flood protection system which consists of a levee, or levees, and associated structures, such as closure and drainage devices, which are constructed and operated in accordance with sound engineering practices.

Lowest floor means the lowest floor of the lowest enclosed area (including basement). An unfinished or flood resistant enclosure, used solely for parking of vehicles, building access, or storage in areas other than a basement, is not considered a building's lowest floor, provided that such enclosure is not built so as to render the structure in violation of other provision of this Code.

Manufactured home means a building, transportable in one or more sections built on a permanent chassis and designed to be used with or without a permanent foundation when connected to the required utilities. The term includes park trailer, travel trailers and similar transportable structures placed on a site for one hundred eighty (180) consecutive days or longer and intended to be improved property.

Mean sea level means the average height of the sea for all stages of the tides. It is used as a reference for establishing various elevations within the floodplain. For purposes of this article, the term is synonymous with National Geodetic Vertical Datum (NGVD) of 1929 or other datum.

National Geodetic Vertical Datum (NGVD) as corrected in 1929 is a vertical control used as a reference for establishing varying elevations within the floodplain.

New construction means any structure (see definition) for which the "start of construction" commenced after February 21, 1975, and includes any subsequent improvements to the structure. [i.e., the effective date of the first floodplain management ordinance adopted by the community as a basis for community participation in the (NFIP)] and includes any subsequent improvements to such structures.

New manufactured home park or subdivision means a manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed on or after February 21, 1975 [i.e., the effective date of the first floodplain management regulations adopted by a community].

Repetitive loss means flood-related damages sustained by a structure on two (2) separate occasions during a ten-year period for which the cost of repairs at the time of each such flood event, on the average, equals or exceeds twenty-five (25) percent of the market value of the structure before the damages occurred.

Recreational vehicle means a vehicle which is:

Built on a single chassis;

Four hundred (400) square feet or less when measured at the largest horizontal projection;

Designed to be self-propelled or permanently towable by a light duty truck;

Designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel or seasonal use.

Sand dunes means naturally occurring accumulations of sand in ridges or mounds landward of the beach.

Start of construction means the date the development permit was issued, provided the actual

start of construction, repair, reconstruction, or improvement was within one hundred eighty (180) days of the permit date. The actual start means the first placement of permanent date. The actual start means the first placement of permanent construction of the structure such as the pouring of slabs or footing, installation of piles, construction of columns, or any work beyond the stage of excavation, and includes the placement of a manufactured home on a foundation. (Permanent construction does not include initial land preparation, such as clearing, grading and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for a basement, footing, piers or foundation or the erection of temporary forms; nor does it include the installation on the property of buildings appurtenant to the permitted structure, such as garages or sheds not occupied as dwelling units or part of the main structure. (NOTE: accessory structures are not exempt from any ordinance requirements) For a substantial improvement, the actual start of construction means the first alteration of any wall, ceiling, floor, or other structural part of a building, whether or not that alteration affects the external dimensions of the building.

Structure means a walled and roofed building that is principally above ground, a manufactured home, a gas or liquid storage tank.

Substantial damage means damage of any origin sustained by a structure whereby the cost of restoring the structure to its before damaged condition would equal or exceed fifty (50) percent of the market value of the structure before the damage occurred. Substantial damage means flood-related damages sustained by a structure on two (2) separate occasions during a ten-year period for which the cost of repairs at the time of each such flood event, on the average equals or exceeds twenty-five (25) percent of the market value of the structure before the damages occurred.

Substantial improvement means any reconstruction, rehabilitation, addition, or other improvement of a structure, the cost of which equals or exceeds fifty (50) percent of the market value of the structure before the "start of construction" of the improvement. This term includes structures which have incurred "repetitive loss" or "substantial damage", regardless of the actual repair work performed. The market value of the building should be (1) the appraised value of the structure prior to the start of the initial repair or improvement, or (2) in the case of damage, the value of the structure prior to the damage occurring. This term includes structures which have incurred "substantial damage", regardless of the actual amount of repair work performed.

For the purposes of this definition, "substantial improvement" is considered to occur when the first alteration of any wall, ceiling, floor, or other structural part of the building commences, whether or not that alteration affects the external dimensions of the building. The term does not, however, include either: (1) any project for improvement of a structure to correct existing violations of state or local health, sanitary or safety code specifications which have been identified by the local code enforcement official and which are the minimum necessary to assure safe living conditions, or; (2) any alteration of a "historic structure", provided that the alteration will not preclude the structure's continued designation as a "historic structure".

Substantially improved existing manufactured home parks or subdivisions is where the repair, reconstruction, rehabilitation or improvement of the streets, utilities and pads equals or exceeds fifty (50) percent of the value of the streets, utilities and pads before the repair, reconstruction or improvement commenced.

Variance is a grant of relief from the requirements of this article which permits construction in a manner otherwise prohibited by this article.

Violation means the failure of a structure or other development to be fully compliant with the community's flood plain management regulation. A structure or other development without the elevation certificate, other certification, or other evidence of compliance required in the Code of Federal Regulations (CFR, 44, Sec 60.3(b)(5), (c)(4), (c)(10), (d)(3), (e)(4), or (e)(5) and corresponding parts of this article is presumed to be in violation until such time as that documentation is provided.
(Ord. No. 2009-01, art. 6, 1-5-09)

Secs. 5-34—5-45. Reserved.

DIVISION 2. ADMINISTRATION

Sec. 5-46. Designation of article administrator.

Building official is hereby appointed to administer and implement the provisions of this article. (Ord. No. 2009-01, art. 3, § A, 1-5-09)

Sec. 5-47. Permit procedures.

Applications for a development permit shall be made to the building official on forms furnished by the community prior to any development activities, and may include, but not be limited to the following: plans in duplicate drawn to scale showing the elevations of the area in question and the nature, location, dimensions of existing or proposed structures, fill placement, storage of materials or equipment, and drainage facilities.

Specifically, the following information is required:

(1) *Application stage.*

a. Elevation in relation to mean sea level (or highest adjacent grade) of the regulatory lowest floor level, including basement, of all proposed structures;

b. Elevation in relation to mean sea level to which any nonresidential structure will be floodproofed;

c. Design certification from a registered professional engineer or architect that any proposed nonresidential floodproofed structure will meet the floodproofing criteria of subsections 5-52(2) and 5-54(2);

d. Design certification from a registered professional engineer or architect that any new construction or substantial improvement placed in a coastal high hazard area will meet the criteria of subsection 5-55(5); and

e. Description of the extent to which any watercourse will be altered or relocated as a result of a proposed development.

(2) *Construction stage.* For all new construction and substantial improvements, the permit holder shall provide to the administrator an as-built certification of the regulatory floor elevation or floodproofing level using appropriate FEMA elevation or floodproofing certificate immediately after the lowest floor or floodproofing is completed. Where a structure is subject to the provisions applicable to coastal high hazard areas and after placement of the lowest horizontal structural members. Any regulatory floor certification made relative to mean sea level shall be prepared by or under the direct supervision of a registered land surveyor or professional engineer and certified by same. When floodproofing is utilized for nonresidential structures, said certification shall be prepared by or under the direct supervision of a professional engineer or architect and certified by same.

Any work undertaken prior to submission of these certifications shall be at the permit holder's risk. The building official shall review the above referenced certification data submitted. Deficiencies detected by such a review shall be corrected by the permit holder immediately and prior to further progressive work being allowed to proceed. Failure to submit certification or failure to make said corrections required hereby shall be cause to issue a stop work order for the project.

(Ord. No. 2009-01, art. 3, § B, 1-5-09)

Sec. 5-48. Duties and responsibilities of the administrator.

Duties of the building official shall include, but shall not be limited to:

(1) Review all development permits to assure that the permit requirements of this article have been satisfied and that the site is reasonable safe from flooding.

(2) Review proposed development to assure that all necessary permits have been received from governmental agencies from which approval is required by federal or state law, including Section 404 of the Federal Water Pollution Control Act Amendments of 1972, 33 USC 1334. Require that copies of such permits be provided and maintained on file.

(3) When base flood elevation data or floodway data have not been provided in accordance with section 5-25, then the building official shall obtain, review and reasonably utilize any base flood elevation and floodway data available from the federal, state or other sources in order to administer the provisions of this division.

(4) Verify and record the actual elevation in relation to mean sea level (or highest adjacent grade) of the regulatory floor level, including basement, of all new construction or substantially improved structures in accordance with subsection 5-47(2).

(5) Verify and record the actual elevation, in relation to mean sea level to which any new or substantially improved structures have been floodproofed, in accordance with subsections 5-52(2) and 5-54(2).

(6) When floodproofing is utilized for a structure, the building official shall obtain certification of design criteria from a registered professional engineer or architect in accordance with subsection 5-47(1)c. and subsections 5-52(2) or 5-54(2).

(7) Obtain design certification from a registered professional engineer or architect that any new construction or substantial improvement placed in a coastal high hazard area will meet the criteria of subsection 5-55(5).

(8) Notify adjacent communities and the Alabama Department of Natural Resources prior to any alteration or relocation of a watercourse and submit evidence of such notification to the Federal Emergency Management Agency (FEMA), and the Alabama Department of Economic and Community of Affairs (ADECA) and the Office of Water Resources (OWR).

(9) For any altered or relocated watercourse, submit engineering data/analysis within six (6) months to FEMA and ADECA/OWR to ensure accuracy of community flood maps through the letter of map revision process. Assure flood carrying capacity of any altered or relocated watercourse is maintained.

(10) Where interpretation is needed as to the exact location of boundaries of the areas of special flood hazard (for example, where there appears to be a conflict between a mapped boundary and actual field conditions) the building official shall make the necessary interpretation. Any person contesting the location of the boundary shall be given a reasonable opportunity to appeal the interpretation as provided in this article.

(11) All records pertaining to the provision of this article shall be maintained in the office of the building official and shall be open for public inspection.

(Ord. No. 2009-01, art. 3, § C, 1-5-09)

Secs. 5-49, 5-50. Reserved.

DIVISION 3. PROVISION FOR FLOOD HAZARD REDUCTION

Sec. 5-51. General standards.

In all areas of special flood hazard the following provisions are required:

(1) New construction and substantial improvements of existing structures shall be anchored to prevent flotation, collapse and lateral movement of the structure.

(2) New construction and substantial improvements of existing structures shall be constructed with materials and utility equipment resistant to flood damage.

(3) New construction and substantial improvements of existing structures shall be constructed by methods and practices that minimize flood damage.

(4) Elevated buildings—All new construction or substantial improvements of existing structures that include any fully enclosed area located below the lowest floor formed by foundation and other exterior walls shall be designed so as to be an unfinished or flood-resistant enclosure. The enclosure shall be designed to equalize hydrostatic flood forces on exterior walls by allowing for the automatic entry and exit of floodwater. (Not applicable in coastal high hazard areas)

a. Designs complying with this requirement must either be certified by a professional engineer or architect or meet the following minimum criteria:

i. Provide a minimum of two (2) openings having a total net area of not less than one (1) square inch for every square foot of enclosed area subject to flooding;

ii. The bottom of all openings shall be not higher than one (1) foot above grade; and

iii. Openings may be equipped with screens, louvers, valves or other coverings or devices provided that they permit the automatic flow of floodwater in both directions.

b. So as not to violate the "lowest floor" criteria of this article, the unfinished or flood-resistant enclosure shall only be used for parking of vehicle, limited storage of maintenance equipment used in connection with the premises, or entry to the elevated area; and

c. The interior portion of such enclosed area shall not be partitioned or finished into separate rooms.

(5) All heating and air conditioning equipment and components, all electrical, ventilation, plumbing, and other service facilities shall be designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding.

(6) Manufactured homes shall be anchored to prevent flotation, collapse, or lateral movement. Methods of anchoring may include, but are not limited to, use of over the top or frame ties to ground anchors. This standard shall be in addition to and consistent with applicable state requirements for resisting wind forces.

(7) New and replacement water supply systems shall be designed to minimize or eliminate infiltration of floodwater into the system.

(8) New and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of floodwater into the systems and discharges from the systems into floodwater.

(9) On-site waste disposal systems shall be located and constructed to avoid impairment to them or contamination from them during flooding.

(10) Any alteration, repair, reconstruction or improvement to a structure which is not compliant with the provisions of this article, shall be undertaken only if the nonconformity is not furthered, extended or replaced.

(Ord. No. 2009-01, art. 4, § A, 1-5-09)

Sec. 5-52. Specific standards.

In all areas of special flood hazard designated as A1-30, AE, AH, A (with estimated BFE), the following provisions are required;

(1) *New construction and substantial improvements.* Where base flood elevation data are available, new construction or substantial improvement of any structure or manufactured home shall have the lowest floor, including the basement, elevated not lower than one (1) foot above the base flood

elevation. Should the solid foundation perimeter walls be used to elevate a structure, openings sufficient to facilitate the unimpeded movements of floodwaters shall be provided in accordance with standards of subsection 5-51(4), "elevated building".

(2) *Nonresidential construction.* New construction or the substantial improvement of any nonresidential structure located in A1-30, AE, or AH Zones, may be floodproofed in lieu of elevation. The structure, together with attendant utility and sanitary facilities, must be designed to be watertight to one (1) foot above the base flood elevation, with walls substantially impermeable to the passage of water, and structural components having the capability of resisting hydrostatic and hydrodynamic loads and the effect of buoyancy. A registered professional engineer or architect shall certify that the design and methods of construction are in accordance with accepted standard of practice for meeting the provisions above, and shall provide such certification to the official as set forth above and in subsection 5-48(6).

(3) *Standards for manufactured homes and recreational vehicles.* Where base flood elevation data are available:

a. All manufactured homes placed or substantially improved on:

(i) Individual lots or parcels.

(ii) In new or substantially improved manufactured home parks or subdivisions.

(iii) In expansions to existing manufactured home parks or subdivisions.

(iv) On a site in an existing manufactured home park or subdivision where a manufactured home has incurred substantial damages as the result of a flood, must have the lowest floor including basement elevated no lower than one (1) foot above the base flood elevation.

b. Manufactured homes placed or substantially improved in an existing manufactured home park or subdivision may be elevated so that either:

(i) The lowest floor of the manufactured home is elevated no lower than one (1) foot above the level of the base flood elevation.

(ii) The manufactured home chassis is elevated and supported by reinforced piers or other foundation elements of at least an equivalent strength of no less than thirty-six (36) inches in height above grade.

c. All manufactured homes must be securely anchored to an adequately anchored foundation system to resist flotation, collapse and lateral movement. (Refer to section 5-51 above)

d. All recreational vehicles places on sites must either:

(i) Be on the site for fewer than one hundred eighty (180) consecutive days, fully licensed, on its wheels or jacking system, attached to the site only by quick disconnect type utilities and security devices, and has no permanently attached structures or additions; or

(ii) The recreational vehicle must meet all the requirements for "new construction", including the anchoring and elevation requirements of subsection (3)a. and c., above.

(4) *Floodway.* Located within areas of special flood hazard established in section 5-25 are areas designated as floodway. A floodway may be an extremely hazardous area due to velocity floodwaters, debris or erosion potential. In addition, the area must remain free of encroachment in order to allow for the discharge of the base

flood without increased flood heights. Therefore, the following provisions shall apply:

a. Encroachments are prohibited, including fill, new construction, substantial improvements or other development within the regulatory floodway. Development may be permitted however, provided it is demonstrated through hydrologic and hydraulic analyses performed in accordance with standard engineering practice that the encroachment shall not result in any increase in flood levels or floodway widths during a base flood discharge. A registered professional engineer must provide supporting technical data and certification thereof.

b. 44 CFR60.3 "Require until a regulatory floodway is designated, that no new construction, substantial improvements, or other development (including fill) shall be permitted within Zones A and AE on the FIRM, unless it is demonstrated that the cumulative effect of the proposed development, when combined with all other existing and anticipated development, will not increase the water surface elevation of the base flood more than [one] foot at any point within the City."

c. Only if subsection (4)a. above is satisfied, then any new construction or substantial improvement shall comply with all other applicable flood hazard reduction provisions of division 3.

(Ord. No. 2009-01, art. 4, § B, 1-5-09)

Sec. 5-53. Building standard for streams without established base flood elevation and/or floodway (A-Zones).

Located within the areas of special flood hazard established in section 5-25, where streams exist but no base flood data have been provided (A-Zones), or where base flood data have been provided but a floodway has not been delineated, the following provisions apply:

(1) When base flood elevation data or floodway data have not been provided in accordance with section 5-25, then the building official shall obtain, review and reasonable utilize any scientific or historic base flood elevation and floodway data available from a federal, state, or other source, in order to administer the provision of division 3. Only if data are not available from these sources, then the following provisions (2) and (3) shall apply:

(2) No encroachments, including structures or fill material shall be located within an area equal to the width of the stream or twenty-five (25) feet, whichever is greater, measured from the top of the stream bank, unless certification by a registered professional engineer is provided demonstrating that such encroachment shall not result in any increase in flood levels during the occurrence of the base flood discharge.

(3) In special flood hazard areas without base flood elevation data, new construction and substantial improvements of existing structures shall have the lowest floor of the lowest enclosed areas (including basement) elevated no less than three (3) feet above the highest adjacent grade at the building site. Openings sufficient to facilitate the unimpeded movements of floodwaters shall be provided in accordance with standards of subsection 5-51(4), "Elevated buildings".

Building official shall certify the lowest floor elevation level and the record shall become a permanent part of the permit file.

(Ord. No. 2009-01, art. 4, § C, 1-5-09)

Sec. 5-54. Standards for areas of shallow flooding (A-O Zones).

Areas of special flood hazard established in section 5-52, may include designated "AO" shallow flooding areas. These areas have base flood

depths of one (1) to three (3) feet above ground, with no clearly defined channel. The following provisions apply:

(1) All new construction and substantial improvements of residential and nonresidential structures shall have the lowest floor, including basement, elevated to the flood depth number specified on the flood insurance rate map (FIRM) above the highest adjacent grade. If no flood depth number is specified, the lowest floor, including the basement, shall be elevated at least three feet (3) above the highest adjacent grade. Openings sufficient to facilitate the unimpeded movements of floodwaters shall be provided in accordance with standards of subsection 5-51(4), "Elevated buildings".

Building official shall certify the lowest floor elevation level and the record shall become a permanent part of the permit file.

(2) New construction or the substantial improvement of a nonresidential structure may be floodproofed in lieu of elevation. The structure, together with attendant utility and sanitary facilities, must be designed to be watertight to the specified FIRM flood level plus two (2) feet, above highest adjacent grade, with walls substantially impermeable to the passage of water, and structural components having the capability of resisting hydrostatic and hydrodynamic loads and the effect of buoyancy. A registered professional engineer or architect shall certify that the design and methods of construction are in accordance with accepted standards of practice for meeting the provisions above, and shall provide such certification to the official as set forth above and as required in subsections 5-47(1)c. and (2).

(3) Drainage paths shall be provided to guide floodwater around and away from any proposed structure.

(Ord. No. 2009-01, art. 4, § D, 1-5-09)

Sec. 5-55. Coastal high hazard areas (V-Zones).

Located within the areas of special flood hazard established in section 5-25, are areas designated as coastal high hazard areas (V-Zones). These areas have special flood hazards associated with wave action and storm surge; therefore, the following provisions shall apply:

(1) All new construction and substantial improvements of existing structures shall be located landward of the reach of the mean high tide;

(2) All new construction and substantial improvements of existing structures shall be elevated on piles, columns, or shear walls parallel to the flow of water so that the bottom of the lowest supporting horizontal structural bottom of the lowest supporting horizontal structural member (excluding pilings or columns) is located no lower than one (1) foot above the base flood elevation level. All space below the lowest supporting member shall remain free of obstruction. Open lattice work or decorative screening may be permitted for aesthetic purposes only and must be designed to wash away in the event of abnormal wave action and in accordance with subsection (6) below;

(3) All new construction and substantial improvements of existing structures shall be securely anchored on pilings, columns, or shear walls; and

(4) All pile and column foundations and the structures attached thereto shall be anchored to resist flotation, collapse, and lateral movement due to the combined effects of wind and water loads acting simultaneously on all building components, both (non-structural and structural). Water loading values shall equal or exceed those of the base flood. Wind loading values shall be in accordance with the most current edition of the International Building Codes.

(5) A registered professional engineer or architect shall certify that the design, specifications and plans for construction are in full compliance with the provisions contained in subsections (2), (3), and (4) herein.

(6) All space below the lowest horizontal supporting member must remain free of obstruction. Open lattice work or decorative screening may be permitted for aesthetic purposes only and must be designed to wash away in the event of abnormal wave action without causing structural damage to the supporting foundation or elevated portion of the structure. The following design specifications are allowed:

a. No solid walls shall be allowed.

b. Material shall consist of lattice or mesh screening only.

c. If aesthetic lattice work or screening is utilized, any enclosed space shall not be used for human habitation, but shall be designed to be used only for parking of vehicles, building access, or limited storage of maintenance equipment used in connection with the premises.

(7) Prior to construction, plans for any structure using lattice or decorative screening must be submitted to the building official for approval;

(8) Any alteration, repair, reconstruction or improvement to any structure shall not enclose the space below the lowest floor except with lattice work or decorative screening, as provided in this section.

(9) There shall be no fill material used as structural support. Non-compacted fill may be used around the perimeter of a building for landscaping/aesthetic purposes provided the fill will wash out from storm surge, (thereby rendering the building free of obstruction) prior to generating excessive loading forces, ramping effects, or wave deflection. The building official shall approve design plans for landscaping/aesthetic fill only after the applicant has provided an analysis by an engineer, architect, and/or soil scientist, which demonstrates that the following factors have been fully considered:

a. Particle composition of fill material does not have a tendency for excessive natural compaction;

b. Volume and distribution of fill will not cause wave deflection to adjacent properties; and

c. Slope of fill will not cause wave run-up or ramping.

(10) There shall be no alteration of sand dunes or mangrove stands which would increase potential flood damage;

(11) Prohibit the placement of manufactured homes (mobile homes), except in an existing manufactured homes park or subdivision. A replacement manufactured home may be placed on a lot in an existing manufactured home park or subdivision provided the anchoring and elevation standards of this section are met.

(Ord. No. 2009-01, art. 4, § E, 1-5-09)

Sec. 5-56. Standards for subdivisions.

(a) All subdivision proposals shall be consistent with the need to minimize flood damage;

(b) All subdivision proposals shall have public utilities and facilities such as sewer, gas, electrical and water systems located and constructed to minimize flood damage;

(c) All subdivisions proposals shall have adequate drainage provided to reduce exposure to flood hazards; and

(d) Base flood elevation data shall be provided for subdivision proposals and all other proposed development, including manufactured home parks and subdivisions, greater than fifty (50) lots or five (5) acres, whichever is less.

(Ord. No. 2009-01, art. 4, § F, 1-5-09)

Sec. 5-57. Reserved.

DIVISION 4. VARIANCE PROCEDURES

Sec. 5-58. Variance procedures.

(a) The board of adjustments as established by the city council shall hear and decide requests for appeals or variance from the requirements of this article.

(b) The board of adjustments shall hear and decide appeals when it is alleged an error in any requirement, decision, or determination is made by the city council in the enforcement or administration of this article.

(c) Any person aggrieved by the decision of the building official may appeal such decision to the circuit court, as provided by the Code of Alabama 1975.

(d) Variances may be issued for the repair or rehabilitation of historic structures upon a determination that the proposed repair or rehabilitation will not prelude the structure's continued designation as a historic structure and the variance is the minimum to preserve the historic character and design of the structure.

(e) Variance may be issued for development necessary for the conduct of a functionally dependent use, provided the criteria of the article are met, no reasonable alternative exists, and the development is protected by methods that minimize flood damage during the base flood and create no additional threats to public safety.

(f) Variances shall not be issued within any designated floodway if any increase in flood levels during the base flood discharge would result.

(g) In reviewing such request, the board of adjustments shall consider all technical evaluation, relevant factors, and all standards specified in this and other sections of this article.

(h) Condition for variances:

(1) A variance shall be issued only when there is:

(2) a. A finding of good and sufficient cause;

b. A determination that failure to grant the variance would result in exceptional hardship; and

c. A determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisance cause fraud on or victimization of the public, or conflict with existing local laws or ordinances.

(3) The provisions of this article are minimum standards for flood loss reductions, therefore any deviation from the standards must be weighed carefully. Variances shall only be issued upon determination that the variance is the minimum necessary, considering the flood hazard, to afford relief; and, in the instance of a historic structure, a determination that the variance is the minimum necessary so as not to destroy the historic character and design of the building.

(4) Any applicant to whom a variance is granted shall be given written notice specifying the difference between the base flood elevation and the elevation of the proposed lowest floor and stating that the cost of flood insurance will be commensurate with the increased risk to life and property resulting from the reduced lowest floor elevation.

(5) The building official shall maintain the records of all appeal actions and report any variances to the federal and state emergency management agencies upon request.

(i) Upon consideration of the factors listed above and the purposes of this article, the board of adjustments may attach such conditions to the granting of variances as it deems necessary to further the purposes of this article.
(Ord. No. 2009-01, art. 5, 1-5-09)

Secs. 5-59, 5-60. Reserved.

ARTICLE III. PUBLIC AND PRIVATE OUTDOOR LIGHTING*

Sec. 5-61. Definitions.

For the purpose of this article, the following words and phrases shall have the meaning respec-

*Editor's note—Section VI of Ord. No. 2003-31, adopted Dec. 15, 2003, repealed in its entirety Ord. No. 2003-10, from which former Art. III derived, and enacted similar provisions to read as herein set out.

tively ascribed to them by this section unless taken specific exception to elsewhere in this article.

Direct light. Light emitted directly from the lamp, off of the reflector or reflector diffuser, or through the refractor or diffuser lens, of a luminaire.

Fixture. The assembly that houses the lamp or lamps and can include all or some of the following parts: a housing, a mounting bracket or pole socket, a lamp holder, a ballast, a reflector or mirror, and/or a refractor or lens.

Footcandle. A quantitative unit of measure referring to the measurement of illumination incident at a single point. One (1) footcandle is equal to one (1) lumen uniformly distributed over an area of one (1) square foot.

Glare. Light emitting from a luminaire with an intensity great enough to reduce a viewer's ability to see, and in extreme cases causing momentary blindness.

Grandfathered luminaires. Luminaires not conforming to this Code that were in place at the time this Code was voted into effect. When an ordinance "grandfathers" a luminaire, it means that such already-existing outdoor lighting does not need to be changed unless a specified period is specified for adherence to the Code.

Height of luminaire. The height of a luminaire shall be the vertical distance from the ground directly below the centerline of the luminaire to the lowest direct-light-emitting part of the luminaire.

Indirect light. Direct light that has been reflected or has scattered off of other surfaces.

Lamp. The component of a luminaire that produces the actual light.

Lumen. A unit of luminous flux. One (1) footcandle is one (1) lumen per square foot. For the purposes of this article, the lumen-output values shall be the initial lumen output ratings of a lamp.

Luminaire. A complete lighting unit consisting of a lamp or lamps together with the components designed to distribute the light, to position and protect the lamps, and to connect the lamps to the power supply. A luminaire is also commonly referred to as a fixture.

Outdoor lighting. The night-time illumination of an outside area or object by any man-made device located outdoors that produces light by any means.

Temporary outdoor lighting. The specific illumination of an outside area or object by any man-made device located outdoors that produces light by any means for a period of less than fourteen (14) days, with at least one hundred eighty (180) days passing before being used again unless otherwise approved by the city council.
(Ord. No. 2003-31, § I, 12-15-03)

Sec. 5-62. Regulations.

(a) *Regulations.* All public and private outdoor lighting installed in the City of Daphne shall be in conformance with the requirements established by this article.

(b) *Luminaire restrictions.*

(1) Private outdoor luminaires shall not exceed thirty thousand (30,000) lumens and shall not exceed forty (40) feet in height. No direct light from any private outdoor luminaire owned by any owner or tenant of any residential property shall direct light upon any residential property, house or structure not owned by that owner or tenant. The intentional directing of light upon the personal property, house or structure of another shall not be subject to any grandfather provision as provided in this article.

(2) With the exception of outdoor sports luminaries, public outdoor luminaires shall not exceed fifty-five thousand (55,000) lumens. Outdoor sports luminaries shall not exceed two hundred thousand (200,000) lumens.

(c) *Exceptions.*

(1) All temporary emergency lighting needed by the police or fire departments or other

emergency services, as well as all vehicular luminaires, shall be exempt from the requirements of this article.

(2) All hazard warning luminaires required by federal regulatory agencies are exempt from the requirements of this article, except that all luminaires used must be red and must be shown to be as close as possible to the federally required minimum lumen output requirement for the specific task.

(3) Law governing conflicts. Where any provision of federal, state, county, of town statutes, codes, or laws conflicts with any provision of this Code, the most restrictive shall govern unless otherwise regulated by law.

(4) Temporary circus, fair, carnival, or civic uses.

(5) Lighting necessary for construction is exempt from this Code provided said lighting is discontinued immediately upon completion of the construction work.

(d) *Outdoor advertising signs.*

(1) Luminaries used to illuminate outdoor advertising sign shall direct light only on the intended advertising sign and shall not direct light upon any other structure.

(2) Outdoor advertising signs of the type constructed of translucent materials and wholly illuminated from within shall not cause glare. Dark backgrounds with light lettering or symbols are preferred, to minimize detrimental effects.

(3) Compliance limit. Existing outdoor advertising structures shall be brought into conformance with this Code within ten (10) years from the date of adoption of this provision.

(e) *Recreational facilities.*

(1) Any light source permitted by this Code may be used for lighting of outdoor recreational facilities (public or private), such as, but not limited to, football fields, soccer fields, baseball fields, softball fields, tennis courts, or show areas, provided all the following conditions are met:

a. All events shall be scheduled so as to be completed before or as near to 10:30 p.m. as practicable. Under no circumstances shall an event begin after 11:00 p.m. except to conclude scheduled events that were in progress before 11:00 p.m. and circumstances prevented concluding before 11:00 p.m.

b. The lighting fixtures shall be specified in the lighting plan, mounted and aimed so that the illumination falls within the primary playing area and immediate surrounding so that no direct light illumination is directed off site.

(f) *Prohibitions.*

(1) *Laser source light.* The use of laser source light or any similar high intensity light for outdoor advertising is prohibited. The use of laser source light or any similar high intensity light may be permitted pursuant to the provisions of subsection (g) below.

(2) *Searchlights.* The operation of searchlights for advertising purposes is prohibited. The use of searchlights or any similar high intensity light may be permitted pursuant to the provisions of subsection (g) below.

(g) *Temporary outdoor lighting.* Any temporary outdoor lighting that conforms to the requirements of this article shall be allowed. Nonconforming temporary outdoor lighting may be permitted by the city council after considering:

(1) The public and/or private benefits that will result from the temporary lighting;

(2) Any annoyance or safety problems that may result from the use of the temporary lighting; and

(3) The duration of the temporary nonconforming lighting.

The applicant shall submit a detailed description of the proposed temporary nonconforming lighting to the city council, who shall consider the request at a duly called meeting of the city council. A failure by the city council to act on a request within the time allowed shall be construed a denial of the request.
(Ord. No. 2003-31, § II, 12-15-03)

Sec. 5-63. Grandfathered luminaires.

(a) All luminaires lawfully installed prior to the effective date of this article shall be grandfathered. However, any luminaire that replaces a grandfathered luminaire, or any grandfathered luminaire that is moved, must meet the standards of this article. Advertising signs are grandfathered only for a period of ten (10) years from effective date of this article.

(b) Grandfathered luminaires that direct light toward streets or parking lots that cause disability glare to motorists or cyclists should be either shielded or redirected within ninety (90) days of notification, so that the luminaires do not cause a potential hazard to motorists or cyclists.
(Ord. No. 2003-31, § III, 12-15-03)

Sec. 5-64. Penalty.

(a) *Violation.* It shall be an offense for any person to violate any of the provisions of this article. Each and every day during which the violation continues shall constitute a separate offense.

(b) *Violations and legal actions.* If after investigation, the code enforcement officer finds that any provision of the ordinance is being violated, he shall give notice by hand delivery or by certified mail, return-receipt requested, of such violation to the owner and/or to the occupant of such premises, demanding that violation be abated within thirty (30) days of the date of hand delivery or of the date of mailing of the notice. If the violation is not abated within the thirty-day period, the code enforcement officer may institute actions and proceedings, either legal or equitable, to enjoin, restrain, or abate any violations of this article and to collect the penalties for such violation, including the issuance of a municipal offense citation.

(c) *Penalties.* A violation of this article, or any provision thereof, shall be punishable by a fine of not less than fifty dollars ($50.00) nor more than five hundred dollars ($500.00) for any individual, corporation, association, or other legal entity for each violation. The imposition of a fine under this Code shall not be suspended. Each day of violation after the expiration of the thirty-day period provided in subsection (b) above shall constitute a separate offense for the purpose of calculating the civil penalty.

(d) *Summons and complaint.* This article shall also be subject to enforcement by the issuance of a summons and complaint pursuant to the provisions of Ordinance No. 1993-02, as the same may be from time to time amended.
(Ord. No. 2003-31, § IV, 12-15-03)

Secs. 5-65—5-70. Reserved.

ARTICLE IV. UNSAFE STRUCTURES*

Sec. 5-71. Amendments to Standard Unsafe Building Abatement Code, 1985 Edition.

(a) *Section 302.1.3 Method of Service of Notice of Hearing.* Section 302.1.3 of the Standard Unsafe Building Abatement Code, 1985 edition, is hereby amended to include the additional sentences as follows:

> "In the event service by certified mail is refused, then service shall hereby be deemed effective, and the recipient thereof shall be deemed to have been notified of the contents of the Notice contained therein. In the event the notice is returned unclaimed, then the serving party may serve the recipient by publication of said notice in a local newspaper of general circulation 1 time no less than 10 days prior to the date of the hearing of the governing body."

*__Editor's note__—Ord. No. 2005-31, §§ II, III, adopted Aug. 1, 2005, repealed Art. IV, §§ 5-71—5-79, and enacted a new Art. IV to read as set out herein. Former Art. IV pertained to similar subject matter and derived from Ord. No. 2004-15, §§ I—IX, adopted Apr. 19, 2004.

(b) *Chapter 7, Standard Unsafe Building Abatement code, 1985 edition (Recovery of Cost of Repair or Demolition).* Chapter 7 of the Standard Unsafe Building Abatement Code, 1985 edition, is hereby amended and expanded to include the procedures and protection afforded in Alabama Code 1975, §§ 11-53B-5 thru and including 11-53B-16, which are included herein as follows:

A. (Ala. Code §11-53B-5). *Fixing of costs.*

Upon demolition or repair of the building or structure, the appropriate city official shall make a report to the governing body of the cost thereof, and the governing body shall adopt a resolution fixing the costs which it finds were reasonably incurred in the demolition or repair and assessing the same against the property; provided, however, the proceeds of any moneys received from the sale of salvaged materials from the building or structure shall be used or applied against the cost of the demolition; and provided further, that any person, firm, or corporation having an interest in the property may be heard at the meeting as to any objection he or she may have to the fixing of such costs or the amounts thereof. The clerk of the municipality shall give notice of the meeting at which the fixing of the costs is to be considered by first-class mail to all entities having an interest in the property whose address and interest is determined from the tax assessor's records on the property or as otherwise known to the clerk. The fixing of the costs by the governing body shall constitute an assessment against the lot or lots, parcel or parcels of land upon which the building or structure was located, and as made and confirmed shall constitute a lien on the property for the amount of the assessment ("the final assessment"). The lien shall be superior to all other liens on the property except liens for taxes, and except for mortgages recorded prior to the creation of the lien for the assessment, and shall continue in force until paid. A certified copy of the resolution fixing the final assessment shall also be recorded in the office of the judge of probate of the county in which the municipality is situated.

B. (Ala. Code §11-53B-6). *Assessments against state purchased property.*

The municipality shall have the power to assess the costs authorized herein against any lot or lots, parcel or parcels of land purchased by the State of Alabama at any sale for the nonpayment of taxes, and where such an assessment is made against the lot or lots, parcel or parcels of land, a subsequent redemption thereof by any person authorized to redeem, or sale thereof by the state, shall not operate or discharge, or in any manner affect the lien of the city for the assessment, but any redemptioner or purchaser at any sale by the state of any lot or lots, parcel or parcels of land upon which an assessment has been levied, whether prior to or subsequent to a sale by the state for the nonpayment of taxes, shall take the same subject to the assessment.

C. (Ala. Code §11-53B-7). *Payment of assessments.*

The municipality, in ordering any repair or demolition the cost of which or any part thereof is to be assessed against any property in accordance with the provisions of this chapter, may provide that the same shall be paid in cash within 30 days after the final assessment; provided, however, that if the assessed amount is greater than ten thousand dollars ($ 10,000), the property owner may, at his or her election, to be expressed by notifying the municipal official charged with the duty of collecting the assessments in writing within 30 days after the final assessment is determined, pay the final assessment in 10 equal annual installments, which shall bear interest at a rate not exceeding 12 percent per annum. Interest shall begin to accrue upon the expiration of 30 days from the date on which the final assessment is set by the governing body and the interest

shall be due and payable at the time and place the assessment is due and payable.

Any person who elects to make installment payments may pay the outstanding balance of the final assessment together with all accrued interest thereon at any time during the installment payment schedule. The first installment shall be payable within 30 days after the final assessment is determined, and all installments thereof shall be payable at the office of the clerk, finance office, or treasurer of the city or town as may be prescribed. Upon full payment of the final assessments and accrued interest thereon, the municipality shall record a satisfaction of the lien in the office of the judge of probate of the county in which the municipality is located.

D. (Ala. Code §11-53B-8). *Default sale procedures.*

If the property owner fails to pay the assessment lien within 30 days, or having elected to make installment payments, fails to make any installment payment when due, the whole assessment lien shall immediately become due and payable, and the officer designated by the municipality to collect the assessment lien shall proceed to sell the property against which the assessment lien is made to the highest bidder for cash, but in no event less than the amount of the lien plus interest through the date of default. Prior to the sale, notice shall be given by publication once a week for three consecutive weeks in a newspaper published in the municipality or of general circulation therein, setting forth the date and time of the sale and the purpose for which the same is made, together with a description of the property to be sold. If the officer shall fail to advertise and sell any property on which the payments are past due, any taxpayer of the issuing municipality shall have the right to apply for a writ of mandamus requiring the official to take such action to any court of competent jurisdiction, and the court shall, on proof, issue and enforce the writ.

E. (Ala. Code §11-53B-9). *Payment and sale procedures.*

(a) Any property owner, notwithstanding his or her default, may pay the assessment lien with interest and all costs if tendered before a sale of the property.

(b) The cost of any notice and sale resulting from a default on paying an assessment shall constitute a charge against the property to be sold and shall be retained out of the proceeds of the sale.

(c) The officer making the sale shall execute a deed to the purchaser, which shall convey all the rights, title, and interest which the party against whose property the assessment was made had or held in the property at the date of making the assessment or on the date of making the sale. Any surplus arising from the sale shall be paid to the city or municipal treasurer to be kept as a separate fund by the treasurer for the owner upon the responsibility of his or her official bond. The municipality may, by its agents, purchase real estate sold as provided under this article and, in the event of the purchase, the deed for the same shall be made to the municipality.

(d) No mistake in the notice of sale in the description of the property or in the name of the owner shall vitiate the assessment or the lien and if for any reason, the sale made by the municipality is ineffectual to pass title, it shall operate as an assignment of the lien, and, upon the request of the purchaser, supplementary proceedings of the same general character as required in this chapter may be had to correct the errors in

the proceedings for his or her benefit or the lien so assigned to him or her may be enforced by civil action.

F. (Ala. Code §11-53B-10). *Post sale redemption requirements.*

(a) Any real property heretofore or hereafter sold for the satisfaction of an assessment lien imposed thereon by the governing body of a municipality may be redeemed by the former owner, or his or her assigns, or other persons authorized to redeem property sold for taxes by the state, within two years from the date of the sale by depositing with the officer designated by the municipality to collect the assessments the amount of money for which the lands were sold, with interest thereon at the rate of 12 percent per annum from the date of the sale through the date of the payment.

(b) In addition to any other requirements set forth in this section, the proposed redemptioner must pay or tender the purchaser or his transferee all insurance premiums paid or owed by the purchaser with accrued interest on the payments computed from the date the premiums were paid at 12 percent per annum through the date of payment.

(c) In addition to any other requirements set forth in this section, the proposed redemptioner must pay or tender to the purchaser or his transferee the value of all permanent improvements made on the property determined in accordance with this section. As used herein "permanent improvements" shall include, but not be limited to, all repairs, improvements and equipment attached to the property as fixtures. The proposed redemptioner shall make written demand upon the purchaser of a statement of the value of all permanent improvements made on the property since the assessment sale. In response to written demand made pursuant to this section, the purchaser shall within 10 days from the receipt of the demand, furnish the proposed redemptioner with the amount claimed as the value of the permanent improvements, and within 10 days after receipt of the response, the proposed redemptioner either shall accept the value so stated by the purchaser, or disagreeing therewith, shall appoint a referee to ascertain the value of the permanent improvements. The proposed redemptioner shall in writing (i) notify the purchaser of his or her disagreement as to the value; and (ii) inform the purchaser of the name of the referee appointed by him or her. Within 10 days after the receipt of the notice, the purchaser shall appoint a referee to ascertain the value of the permanent improvements and advise the proposed redemptioner of the name of the appointee. The two referees shall, within 10 days after the purchaser has appointed his or her referee, meet and confer upon the award to be made by them. If they cannot agree, the referees shall at once appoint an umpire, and the award by a majority of the body shall be made within 10 days after the appointment of the umpire and shall be final between the parties.

(d) If the proposed redemptioner fails or refuses to nominate a referee as provided in subsection (c), he or she shall pay the value put upon the improvements by the purchaser. If the purchaser refuses or fails to appoint a referee, as provided in subsection (c), the purchaser shall forfeit his or her claim to compensation for the improvements. The failure of the referees or either of them to act or to appoint an umpire shall not operate to impair or forfeit the right of either the proposed redemptioner or the purchaser in the premises. In

the event of failure without fault of the parties to affect an award, the appropriate court shall proceed to ascertain the true value of the permanent improvements and enforce the redemption accordingly.

(e) In addition to all other payments provided hereunder, the proposed redemptioner shall also pay interest to the purchaser on the value of all permanent improvements computed from the date the improvements were made at the rate of 12 percent per annum through the date of the payment.

G. (Ala. Code §11-53B-11). *Time extension.*

The fixed two-year period of redemption allowed by Section 11-53B-10 for the redemption of any property heretofore or hereafter sold for the satisfaction of any assessment lien may be extended to a date 60 days after the date of the certificate of warning to redeem provided for in Section 11-53B-12, but in no event for a longer period than six years from the date of such sale.

H. (Ala. Code §11-53B-12).*Certificate of warning.*

At any time after an assessment sale deed has been recorded in the office of the judge of probate of the county in which the property therein described lies and after expiration of the fixed two-year period of redemption allowed by Section 11-53B-10, any person may apply to the judge of probate for the certificate of warning to redeem, which references the recorded volume and page number of the deed to be recorded in the real estate records, in substantially the following form: "I hereby certify that on or prior to the date of this certificate, I mailed a certified copy of the deed here recorded, together with notice that the same is here recorded, and a warning to redeem to each of the one or more persons other than the grantee in said deed, to whom the property therein described was last finally assessed for ad valorem taxation at the address of each such person as shown by said ad valorem tax assessment records. This _____ day of _____, 2____, Judge of Probate, County, Alabama."

I. (Ala. Code §11-53B-13). *Certification procedures.*

At the time of application for entry of the certificate of warning to redeem, the applicant shall deliver to the judge of probate three certified copies of the recorded deed and shall pay to the judge of probate a fee of one dollar ($1). Copies of the deed need not include any certificate of acknowledgment. The applicant shall also deliver to the judge of probate a certified copy of the ad valorem tax assessment records of the county containing the name of the person or persons other than the grantee in the deed to whom the property described in the deed was last finally assessed for ad valorem taxation, together with the address of each person as shown by the tax assessment records, or an affidavit that there is no one else. The judge of probate shall promptly mail to each person at such address one of the aforesaid certified copies of the deed, together with an attached warning to redeem in substantially the following form: "Take notice that there is recorded in my office in Deed Book at page a deed of which the attached is a correct copy. You are warned that unless you, or those claiming under you, take prompt steps to redeem from those claiming under the deed, all rights of redemption may be lost. This _____ day of _____, 2____, Judge of Probate, County, Alabama."

Promptly upon or after mailing the notice or notices and certified copy or copies of the deed, it shall be the duty of the judge of probate to record in the real estate records the signed and dated certificate of warning substantially as prescribed by Section 11-53B-12. At the expiration of 60

days after the date of the certificate all rights to redeem from the sale shown by the deed shall cease and desist.

J. (Ala. Code §11-53B-14). *Redemption procedures.*

Redemption may be effected after expiration of the fixed two-year period of redemption allowed or provided by Section 11-53B-10 and before the extended period of redemption has expired in the same manner and at the same redemption price as is provided in Section 11-53B-10; provided, that if the judge of probate has made the certificate of warning to redeem as provided in Section 11-53B-12, said redemption price shall be increased by one dollar ($1).

K. (Ala. Code §11-53B-15). *Emergency action.*

Notwithstanding any other provisions of this act, a municipality shall have authority to enact, and may by ordinance authorize, the appropriate city official to initiate immediate repair or demolition of a building structure when, in the opinion of the official so designated, such emergency action is required due to imminent danger of structural collapse endangering adjoining property, the public right of way or human life or health. The cost of the emergency action shall be fixed by the municipal governing body and shall be assessed as provided in the ordinance, or, if such ordinance does not provide a method of assessment, as provided by this chapter.

L. (Ala. Code §11-53B-16). *Applicability.*

This act shall also apply to all assessment liens for demolition or renovation of record as of July 1, 2002.

(Ord. No. 2005-31, § II, 8-1-05)

Chapter 6

COURT AND CRIMINAL PROCEDURE

Sec. 6-1.	Establishment of municipal court.
Sec. 6-2.	Jurisdiction.
Sec. 6-3.	Time and place of holding court.
Sec. 6-4.	Judge—Office established; appointment; qualifications; filling vacancy; disqualification.
Sec. 6-5.	Same—Compensation.
Sec. 6-6.	Same—Acting judge.
Sec. 6-7.	Same—Issuance of warrants.
Sec. 6-8.	Same—Reports.
Sec. 6-9.	Powers of the court.
Sec. 6-10.	Powers of the mayor.
Sec. 6-11.	Magistrates.
Sec. 6-12.	Appeals.
Sec. 6-13	Corrections fund.

Sec. 6-1. Establishment of municipal court.

There is hereby established effective June 1, 1987, a municipal court for the city pursuant to the provisions of Code of Ala. 1975, title 12, ch. 14 (Code of Ala. 1975, § 12-14-1 et seq.).
(Ord. No. 1987-7, § 1, 3-16-87)

Sec. 6-2. Jurisdiction.

The municipal court shall have jurisdiction of all prosecutions for the breach of ordinances of the municipality within its corporate limits and police jurisdiction. The jurisdiction shall also extend to all prosecutions for violations of state offenses committed within the corporate limits and police jurisdiction of the municipality where such offenses have been made offenses against the municipality.
(Ord. No. 1987-7, § 2, 3-16-87)

Cross references—General penalty, § 1-8; state offenses law adopted, § 14-1.

Sec. 6-3. Time and place of holding court.

The municipal court shall be held at such time and place as the governing body may determine with the advice of the municipal judge.
(Ord. No. 1987-7, § 3, 3-16-87)

Sec. 6-4. Judge—Office established; appointment; qualifications; filling vacancy; disqualification.

(a) The municipal court shall consist of one (1) municipal judge to be appointed by a vote of a majority of the members elected or appointed to the municipal governing body. The judge shall be appointed for a term of two (2) years. The municipal judge shall be eligible for reappointment upon the expiration of such judge's term. The judge shall hold office until a successor is appointed and qualified.

(b) The municipal judge must be licensed to practice law in the state and must be a qualified elector of the state. No judge shall be otherwise employed in any capacity by the municipality during such judge's term of office.

(c) The office of the municipal judge shall be vacant if the incumbent dies, resigns, or is removed, and vacancies shall be filled by the municipal governing body in the same manner as original appointments are made. Any person so appointed shall be eligible to serve for two (2) years from the date of appointment.

(d) The municipal judge shall, before assuming office, take and sign the oath provided by the constitution, and a copy thereof shall be filed in the office of the secretary of state, the administrative director of courts and the city clerk.

(e) The municipal judge shall be subject to all grounds of disqualification from hearing specific cases as are applicable to state court judges.
(Ord. No. 1987-7, § 4, 3-16-87)

Sec. 6-5. Same—Compensation.

The annual salary of the municipal judge shall be payable in twelve (12) equal monthly installments. This salary shall not be diminished during the judge's term of office. Any general increase in the compensation of all or substantially all municipal employees shall be applied proportionately to the salary of the municipal judge.
(Ord. No. 1987-7, § 5, 3-16-87)

Sec. 6-6. Same—Acting judge.

In the absence from the city, death, disability, or disqualification of a municipal judge, for any reason, the mayor shall have the authority to designate a person, licensed to practice law in the state and a qualified elector of the state, not otherwise employed in any capacity by the municipality, to serve as acting municipal judge with all power and authority of a duly appointed municipal judge. No such acting judge may serve for more than thirty (30) successive days or a total of sixty (60) days in any calendar year; provided that when the duly appointed municipal judge is disqualified pursuant to the constitution, the time of service limitations for acting judges shall not apply during such disqualification.
(Ord. No. 1987-7, § 11, 3-16-87)

Sec. 6-7. Same—Issuance of warrants.

The municipal judge is authorized to issue arrest and search warrants upon affidavit for

municipal ordinance violations returnable to the municipal court and for violations of state law returnable to any state court.
(Ord. No. 1987-7, § 9, 3-16-87)

Sec. 6-8. Same—Reports.

(a) The municipal judge shall report on the proceedings of the municipal court as required by law or rule.

(b) The municipal judge shall make a report to the council on the operation of the municipal court every month.
(Ord. No. 1987-7, §§ 12, 13, 3-16-87)

Sec. 6-9. Powers of the court.

(a) The municipal judge shall have the power to admit to bail any person charged with the violation of any municipal ordinance by requiring an appearance bond, with good security, to be approved by the municipal judge or the judge's designee in an amount not to exceed one thousand dollars ($1,000.00) and may, in such judge's discretion, admit to bail such persons on a personal recognizance bond conditioned on the appearance of such persons before such judge on a day named therein to answer the charges preferred against them.

(b) The municipal judge shall have the authority to punish any persons convicted of violating a municipal ordinance with a fine of not more than five hundred dollars ($500.00) and/or a sentence of imprisonment or hard labor for a period not exceeding six (6) months except when in the enforcement of the penalties prescribed in Code of Ala. 1975, § 32-5A-191 (DUI cases), such fines shall not exceed five thousand dollars ($5,000.00) and such sentence of imprisonment or hard labor shall not exceed one (1) year, provided further, that no fine or sentence of imprisonment shall exceed the maximum fine or sentence provided by the city ordinance violated, nor shall the fine or sentence exceed the maximum fine and sentence provided for violation of a substantially similar offense under state law. The penalty imposed on a corporation shall consist of a fine only, plus costs of court.

Cross reference—General penalty, § 1-8.

(c) The municipal judge in such judge's judgment may provide that if a fine and costs are not paid within the time prescribed, the defendant, unless indigent, shall work out the amount of the judgment under the direction of the municipal authority allowing not less than fifteen dollars ($15.00) for each day's service.

(d) Upon each conviction in municipal court for a violation of any ordinance of the city, there shall be taxed against the defendant as court costs the sum of fifteen dollars ($15.00) and there shall also be taxed as costs the additional costs and fees imposed by the statutes of the state as follows, and the latter such costs and fees shall be remitted pursuant to the statutes. All costs taxed for the city, as hereinabove provided, shall be paid into the city treasury. In addition to such costs, twelve dollars ($12.00) shall be assessed and collected as other costs and charges are collected. Five dollars ($5.00) of such sum shall be remitted to the state general fund; five dollars ($5.00) shall be remitted to the general fund of the municipality maintaining the municipal court; and two dollars ($2.00) shall be remitted to the state peace officers' annuity and benefit fund established pursuant to Code of Ala. 1975, § 36-21-66.

(e) Upon conviction, the court may, upon a showing of inability to make immediate payment of fines and costs, accept defendant's bond with or without surety and with waiver of exemptions as to personalty, such fines and costs to be payable within ninety (90) days, upon nonpayment of which executions may issue upon the bond as upon judgments in state courts.

(f) The municipal judge shall have the authority to continue the case from time to time to permit the fine and costs to be paid, remit fines, costs and fees, impose intermittent sentences, establish work release programs, require attendance of educational, corrective or rehabilitative programs, suspend driving privileges for such times and under such conditions as provided by law and order hearings to determine the competence of the defendant to stand trial; provided further, that the judge may enter an order authorizing the defendant to drive under the conditions set forth in the order.

(g) All cases in municipal court shall be tried by a municipal judge without a jury.

(h) The municipal judge may suspend execution of sentence and place a defendant on probation for varying periods of time, not to exceed two (2) years, under the procedures and conditions set out in Code of Ala. 1975, § 12-14-13.

(i) The municipal judge may administer oaths, compel the attendance of witnesses and compel the production of books and papers, punish by fine not exceeding fifty dollars ($50.00) and/or imprisonment not exceeding five (5) days any person found and adjudged to be in contempt of court, and shall have power coextensive with the jurisdiction of the district court to issue writs and other process, and to approve and declare bonds forfeited. The municipal judge shall designate any other municipal officers who shall be authorized to approve appearance and appeal bonds.

(j) The municipal court shall take judicial notice of the ordinances of the municipality.

(k) The sheriff of the county, by statute, and all law enforcement officers of the municipality, by authority of the city, shall obey the municipal judge having legal authority in faithfully executing the warrants and processes committed to them for service according to their mandates.
(Ord. No. 1987-7, § 6, 3-16-87)

Sec. 6-10. Powers of the mayor.

The mayor may remit fines and such costs as are payable to the municipality and commute sentences imposed by municipal judge or the court to which an appeal was taken for violations of municipal ordinances, and shall report such action to the council at the first regular meeting thereof in the succeeding month with the reasons therefor in writing.
(Ord. No. 1987-7, § 7, 3-16-87)

Sec. 6-11. Magistrates.

The municipal judge shall take steps to have a magistrate appointed for the city, pursuant to rule 18 of the Alabama Rules of Judicial Administration. The powers of the magistrate shall be limited to:

(1) Issuance of arrest warrants;

(2) Granting of bail in minor offenses prosecutions;

(3) Receiving of pleas of guilty in minor offenses where a schedule of fines has been prescribed by law or rule;

(4) Accountability to the municipal court for all uniform traffic tickets and complaints, monies received and records of offenses; and

(5) Such other authority as may be granted by law.

(Ord. No. 1987-7, § 10, 3-16-87)

Sec. 6-12. Appeals.

All appeals from judgments of the municipal court shall be to the circuit court as provided by state law, for trial de novo.
(Ord. No. 1987-7, § 8, 3-16-87)

Sec. 6-13. Corrections fund.

(a) The mayor and city council of the City of Daphne believe it to be in the best interest of the city to increase all court costs, in accordance with the provisions of Code of Ala. 1975, § 11-47-7.1, as amended, in the amount of thirty dollars ($30.00) per municipal court case.

(b) The increase of the municipal portion of court cost in the amount of thirty dollars ($30.00) per case shall be imposed for all city municipal offenses subject to all other costs and assessments as may be imposed by state law with court costs to be as follows:

DUI offense	$144.50
Reckless offense	144.50
Other traffic offense	114.50
D/L offense	164.50
Misdemeanor	148.00
Drug cases offense	188.00

(c) The cost increase collected by the enactment of this section shall be collected by the clerk or other collection officer of the court and shall be

paid into a special municipal fund designated as the "Corrections Fund", with said funds being utilized in accord with applicable Alabama law. (Ord. No. 2003-13, §§ 1—3, 5-5-03)

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Chapter 7

EMERGENCY MANAGEMENT

Sec. 7-1. Definition.
Sec. 7-2. Emergency management director.
Sec. 7-3. Emergency management organization—Composition.
Sec. 7-4. Same—Volunteers.
Sec. 7-5. Same—Powers and duties.
Sec. 7-6. Maintenance of plan.

Sec. 7-1. Definition.

As used in this chapter the term "emergency management" shall mean the preparation for and the carrying out of all emergency functions, other than functions for which military forces or other federal agencies are primarily responsible, to prevent, minimize and repair injury and damage resulting from disasters caused by enemy attack, sabotage or other hostile action, or by fire, flood, earthquake or other natural cause. These functions include, without limitation, firefighting services; police services; medical and health services; rescue, engineering, air raid warning services; communications; radiological, chemical and other special weapons of defense; evacuation of persons from stricken areas; emergency welfare services (civilian war aid); emergency transportation; plant protection; temporary restoration of public utility services; and other functions related to civilian protection, together with all other activities necessary or incidental to the preparation for and carrying out of the foregoing functions.
(Ord. No. 1965-9, § 1, 10-4-65)

Cross reference—Definitions and rules of construction generally, § 1-2.

Sec. 7-2. Emergency management director.

There is hereby created the office of emergency management director. Such officer shall be nominated by the mayor, and approved by the council. The director is hereby charged:

(1) To represent the mayor on all matters pertaining to emergency management.

(2) During periods of emergency to direct the services of all municipal emergency management forces.

(3) To obtain and utilize cooperation of city officials in the preparation and implementation of all emergency management plans.

(4) During periods of emergency to obtain vital supplies and equipment needed for the protection of life and property of people.

(Ord. No. 1965-9, § 3, 10-4-65)

Sec. 7-3. Emergency management organization—Composition.

Officers and employees of the municipality, with volunteer forces enrolled, to aid them during an emergency, and all groups, organizations and persons who make the agreements on operation of law, shall be charged with duties necessary for the protection of life and property in the city during an emergency.
(Ord. No. 1965-9, § 4, 10-4-65)

Sec. 7-4. Same—Volunteers.

All persons, other than officers and employees of the municipality, volunteering in service pursuant to compliance with this chapter, shall serve with or without compensation. While engaged in such service they shall have the same immunities as employees of the municipality performing similar duties.
(Ord. No. 1965-9, § 5, 10-4-65)

Sec. 7-5. Same—Powers and duties.

It shall be the duty of the emergency management organization, and it is hereby empowered:

(1) To develop a municipal emergency management plan. This plan shall provide for the effective mobilization of all resources of the municipality, both private and public.

(2) To prepare and recommend for consideration by the city council, ordinances necessary to implement the plan.

(3) To consider and recommend to the city council for approval, all mutual aid plans and agreements.

(4) Other (as may be determined locally).

(Ord. No. 1965-9, § 2, 10-4-65)

Sec. 7-6. Maintenance of plan.

A complete and adequate emergency management plan will be maintained. This plan will be based upon plans formulated by the state and in its emergency management plan.
(Ord. No. 1965-9, § 6, 10-4-65)

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Chapter 8

FINANCE AND TAXATION*

Sec. 8-1. Annual ad valorem tax levy.
Sec. 8-2. Assessment and collection of ad valorem taxes.
Sec. 8-3. Providing address to revenue commissioner by vehicle owner.

*Cross reference—Occupational licenses, taxes and regulations, ch. 13.

Sec. 8-1. Annual ad valorem tax levy.

As authorized by subsection (e) of amendment 373 to the Alabama Constitution of 1901, there is hereby levied for the municipal ad valorem tax year beginning on the first day of October each year, in addition to all ad valorem taxes previously levied by the municipality, an additional ad valorem tax on all real property and personal property and intangibles situated within the corporate limits of the city, and which is subject to municipal ad valorem taxes by the city under the constitution and laws of the state at an annual rate of fifteen (15) mills.
(Ord. No. 1979-4, § 1, 8-6-79)

Sec. 8-2. Assessment and collection of ad valorem taxes.

Authority is hereby granted by the city council to the revenue commissioner of the county to make all assessments of city ad valorem taxes, and to the revenue commissioner of the county to collect all city ad valorem taxes.
(Ord. No. 1975-7, § 2, 9-2-75; Ord. No. 1979-4, § 2, 8-6-79)

Sec. 8-3. Providing address to revenue commissioner by vehicle owner.

It shall be unlawful for any person residing within, or any firm located within, the city to fail to provide the revenue commissioner of the county with such person's proper address within the city when such person has vehicles assessed for ad valorem tax purposes.
(Ord. No. 1965-7, § 1, 9-7-65)

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Chapter 9

FIRE PREVENTION AND PROTECTION*

Article I. In General

Secs. 9-1—9-25. Reserved.

Article II. Volunteer Fire Department

Sec. 9-26. Authorization of signators on department account.
Secs. 9-27—9-39. Reserved.

Article III. Fire Prevention Standards

Division 1. Generally

Sec. 9-40. Punishment for violation of codes.
Secs. 9-41—9-49. Reserved.

Division 2. Reserved

Secs. 9-50—9-64. Reserved.

Division 3. International Fire Code

Sec. 9-65. Adoption.
Sec. 9-66. Amendments.
Sec. 9-67. Penalties.

***Cross references**—Disposition of flammable or explosive refuse, § 12-36; parade not to interfere with firefighting, § 14-23(5); driving or parking near standing fire apparatus, §§ 19-5, 19-48; driving over fire hose, entering roped off area, § 19-6; parking in fire lanes, § 19-49; parking near fire plugs, § 19-47.

ARTICLE I. IN GENERAL

Secs. 9-1—9-25. Reserved.

ARTICLE II. VOLUNTEER FIRE DEPARTMENT

Sec. 9-26. Authorization of signators on department account.

The following officers of the city volunteer fire department are hereby officially designated as signators on the city volunteer fire department accounts:

(1) Volunteer fire chief.

(2) Volunteer assistant fire chief.

(3) Treasurer.

(Ord. No. 1990-34, § I, 11-5-90)

Secs. 9-27—9-39. Reserved.

ARTICLE III. FIRE PREVENTION STANDARDS

DIVISION 1. GENERALLY

Sec. 9-40. Punishment for violation of codes.

Any person violating the Standard Fire Prevention Code or the National Fire Codes adopted in this chapter shall be subjected to a fine of not less than twenty-five dollars ($25.00), nor more than fifty dollars ($50.00) for the first offense, plus suppression costs, if any; and for subsequent offenses, not less than fifty dollars ($50.00) nor more than five hundred dollars ($500.00) per offense, plus suppression costs, if any, and if warranted in the discretion of the municipal judge, a subsequent offender may also be sentenced to confinement in the municipal or county jail for a period not exceeding six (6) months during such period to be subject to performing hard labor for the city, or in lieu of imprisonment, the municipal judge may order, in addition to a fine, for a subsequent offender, that such subsequent offender perform clean-up or repair work for the fire department of the city.

(Ord. No. 1990-11, § 6, 5-7-90; Ord. No. 1992-16, 8-17-92)

Secs. 9-41—9-49. Reserved.

DIVISION 2. RESERVED*

Secs. 9-50—9-64. Reserved.

DIVISION 3. INTERNATIONAL FIRE CODE†

Sec. 9-65. Adoption.

The 2006 International Fire Code, copyright by the International Code Council, with amendments thereto, has heretofore been on file in the office of the city clerk of the City of Daphne, Alabama, pursuant to Resolution No. 2006-101 adopted by the city council of the City of Daphne, Alabama, on the 2nd day of January, 2007, is hereby adopted as the fire prevention code of the City of Daphne.

(Ord. No. 2009-37, 7-20-09)

Cross reference—Building code, other codes adopted, § 5-1.

***Editor's note**—Section 3 of Ord. No. 92-09, adopted June 15, 1992, provided for the repeal of conflicting provisions. Inasmuch as §§ 1 and 2 of said ordinance adopted the Standard Fire Prevention Code as the fire prevention code for the city, §§ 9-50—9-52, which pertained to the National Fire Codes, have been removed. See §§ 9-65—9-67 for current fire prevention code provisions.

†**Editor's note**—Ord. No. 2009-37, §§ 1, 2, adopted July 20, 2009, repealed the former Art. III, Div. 3, §§ 9-65—9-67, and enacted a new Art. III, Div. 3, as set out herein. The former Art. III, Div. 3, pertained to the Standard Fire Prevention Code, 1999 edition, and derived from Ord. No. 1990-11, §§ 1, 4, adopted May 7, 1990; Ord. No. 1992-09, §§ 1, 4, adopted June 15, 1992; Ord. No. 1992-18, § 1, adopted Sept. 9, 1992; Ord. No. 1994-11, §§ 1, 3—5, adopted Sept. 7, 1994; Ord. No. 1997-01, § 1, adopted Mar. 3, 1997; Ord. No. 1998-11, adopted June 15, 1998; Ord. No. 2000-13, §§ 1, 2, adopted Apr. 17, 2000; Ord. No. 2002-10, §§ 1, 2, adopted May 6, 2002; Ord. No. 2002-20, §§ 1, 2, adopted Aug. 5, 2002; Ord. No. 2005-07, §§ 1, 2, adopted Mar. 21, 2005; Ord. No. 2007-02, § 1, adopted Jan. 2, 2007; and Ord. No. 2007-31, § 1, adopted Aug. 6, 2007.

Sec. 9-66. Amendments.

(a) Section 101.1 of the International Fire Code shall be repealed in its entirety and a new section 101.1 shall be added to read as follows:

101.1 Title. These regulations shall be known as the Fire Code of Daphne, hereinafter referred to as "this code."

(b) Section 103.1 of the International Fire Code shall be repealed in its entirety and a new section 103.1 shall be added to read as follows:

103.1 General. Bureau of Fire Prevention. There is hereby established a department to be called the Bureau of Fire Prevention and the person in charge shall be known in this Code as the Fire Code Official, who shall be the Fire Marshal of the City of Daphne. The function of the department shall be the implementation, administration and enforcement of the provisions of this code and amendments.

(c) Section 103.2 Appointment, of the International Fire Code shall be removed in its entirety.

(d) Section 105.6.30 of the International Fire Code shall be repealed in its entirety and a new section 105.6.30 shall be added to read as follows.

Open Burning. No person shall kindle or maintain any bonfire or rubbish fire or authorize any such fire to be kindled or maintained without a permit or other proper authorization.

No waste materials, rubbish, trees, bushes or brush cleared for construction or demolition of buildings or structures shall be disposed of by burning on the premises or in the immediate vicinity by the owner, the contractor, or any other person, unless a permit or other proper authorization has been obtained to burn said waste materials in an approved waste burner/incinerator.

The permit for each approved waste burner/incinerator shall be $75.00.

(e) Section 105.7.1 of the International Fire Code shall be repealed in its entirety and a new section 105.7.1 shall be added to read as follows:

Servicing Fixed Fire Extinguishing Systems. No person shall engage in the business of servicing or inspecting fixed fire extinguishing systems without obtaining a permit from the Bureau of Fire Prevention. The permit is good only for that calendar year of which it is issued.

No person shall service or inspect a fixed fire extinguishing system without obtaining a current City of Daphne business license.

No person shall be issued a permit to service or inspect fixed fire extinguishing equipment who does not possess a manufacturers certification for installation and servicing for the type system being installed and have a Certificate of Insurance, General Liability for $1,000,000 with the City of Daphne, Bureau of Fire Prevention, P.O. Box 400, Daphne AL. 36526 listed as a Certificate Holder.

Any modifications made to a fixed system including adding additional flow points will require an installation permit.

A complete plan/drawing of the system and the devices that are being protected shall be submitted before a permit is issued and a copy shall be placed in the control box.

The technician who actually performs the work of servicing or inspecting the fixed fire extinguishing systems shall legibly sign and date the service tag verifying that all work was done in compliance with current NFPA standards.

A permit is not required for follow up inspection or service, if a permit was received for that system in the same year. However a report shall be furnished to the Bureau of Fire Prevention upon completion of work being done.

The permit fee for servicing a fixed fire extinguisher system shall be $75.00.

Section 105.7.1.1 Fixed Fire Extinguishing Systems Installation. No person shall engage in the business of installing fixed fire extinguishing systems without obtaining a permit from the Bureau of Fire Prevention.

No person shall install a fixed fire extinguishing system without obtaining a current City of Daphne business license.

No person shall be issued a permit to install fixed fire extinguishing equipment who does not possess a manufacturers

certification for installation and servicing for the type system being installed and have a Certificate of Insurance, General Liability for $1,000,000 with the City of Daphne, Bureau of Fire Prevention, P.O. Box 400, Daphne AL. 36526 listed as a Certificate Holder.

Any modifications made to a fixed system including adding additional flow points will require an installation permit.

A complete plan/drawing of the system and the devices that are being protected shall be submitted before a permit is issued and a copy shall be placed in the control box.

The technician who actually performs the installation of the fixed fire extinguishing systems shall legibly sign and date the service tag verifying that all work was done in compliance with current NFPA standards.

The Fire Code Official shall require certain operational tests upon final inspection.

The permit fee for each fire extinguisher system installation shall be $75.00.

(f) Section 105.7.4 of the International Fire Code shall be repealed in its entirety and a new section 105.7.4 shall read as follows:

Servicing Fire Alarm Systems. No person shall engage in the business of servicing fire alarm systems without obtaining a permit from the Fire Code Official. The permit is good only for that calendar year of which it is issued. There is excepted from the requirements of Section 105.7.4 installations of the following types:

(1) One and two family dwellings

(2) Any buildings with single station detectors only.

(3) Owners of buildings may maintain their own systems as long as their maintenance person is certified by the manufacturer of the installed equipment or has National Institute for Certification in Engineering Technologies (NICET) level II in fire alarms.

No person shall be issued a permit to modify, repair, test or service fire alarm systems who does not possess a State of Alabama Fire Alarm Permit issued by the State Fire Marshals office.

A service tag or sticker shall be required to be installed by the permitted alarm servicing individual or company at the control panel of each fire alarm system, stating the company's name, address, phone number, name of the technician performing the service, date and the type of service performed.

The permit fee to service a fire alarm system shall be $75.00.

Section 105.7.4.1 Fire Alarm System Installation. No person shall install a fire alarm system without having the plans reviewed by the Fire Code Official before commencing any part of the work. No person shall commence working on a fire alarm system without first obtaining a permit from the Bureau of Fire Prevention.

There is excepted from the requirements of this Section 105.7.4.1 installations in any building with single station detectors only.

Installer must possess a State Fire Alarm Permit issued by the State Fire Marshals office.

Any person or entity who designs fire alarm systems must possess a State Fire Alarm Permit issued by the State Fire Marshals office.

Licensed electricians may pull wire, mount ancillary equipment, and connect the main power to the control panel after a permit has been issued; but no one other than a qualified fire alarm installer shall be allowed to make any other connections inside the control panel.

A certified fire sprinkler installer may install devices integral to the operation of the fire sprinkler system, but shall not make and connections to the fire alarm system.

Upon final inspection, the NFPA Fire Alarm System Record of Completion form must be properly filled out and submitted to the Fire Code Official and a fire alarm system test must be performed in the presence of the Fire Code Official.

All fire alarm circuit disconnecting means shall have a red marking and shall be identified as "Fire Alarm".

Fire Alarm Control Units (FACU) will be located at the entrance of the building or provide an annunciator panel at the entrance and also indicate the location of the main panel.

The permit fee for installing a fire alarm system shall be $75.00.

(g) Section 105.7.5 of the International Fire Code shall be repealed in its entirety and a new section 105.7.5 shall be added to read as follows:

Fire Pumps Installation. Any person who installs fire pumps must be licensed by the Alabama State Fire Marshal's Office and approved by the Fire Code Official.

No person shall install a fire pump without first obtaining a permit from the Bureau of Fire Prevention.

Installer must possess a current City of Daphne business license and have a Certificate of Insurance, General Liability for $1,000,000 with the City of Daphne, Bureau of Fire Prevention, P.O. Box 400, Daphne AL. 36526 listed as a Certificate Holder.

Installer must have fire pump plans reviewed by the Fire Code Official before commencing installation.

All testing of the fire pump shall comply with NFPA 25. The Fire Code Official may require certain operational test upon final inspection.

The permit fee to install a fire pump shall be $75.00.

Section 105.7.5.1 shall be added to read as follows:

Servicing Fire Pumps. Any person who services, test or inspects fire pumps must be licensed by the Alabama State Fire Marshal's Office and approved by the Fire Code Official.

No person shall service, test or inspect a fire pump without first obtaining a permit from the Bureau of Fire Prevention.

The Person/Business who obtains the permit must possess a current City of Daphne business license and have a Certificate of Insurance, General Liability for $1,000,000 with the City of Daphne, Bureau of Fire Prevention, P.O. Box 400, Daphne AL. 36526 listed as a Certificate Holder.

The permit fee to service, test or inspect a fire pump shall be $75.00.

(H) Section 105.7.14 shall be added to read as follows:

Portable Fire Extinguisher Service. No person shall engage in the business of servicing portable fire extinguishers without obtaining a permit from the Bureau of Fire Prevention. The permit is good only for that calendar year of which it is issued.

No person shall service portable fire extinguishers without obtaining a current City of Daphne business license.

No person shall be issued a permit to service a portable fire extinguisher that does not posses a manufactures service manual for the type of extinguisher being serviced, and have the proper training. They shall have a Certificate of Insurance, General Liability for $1,000,000 with the City of Daphne, Bureau of Fire Prevention, P.O. Box 400 Daphne, AL 36526 listed as a Certificate Holder.

The technician who actually performs the work of servicing the portable fire extinguishers shall legibly sign and date the service tag verifying that all work was done in compliance with current NFPA standards.

The annual permit fee for portable fire extinguisher service shall be $75.00.

(i) Section 105.7.15 shall be added to read as follows:

Servicing Fire Sprinkler Systems.

No person shall service or inspect an automatic fire sprinkler system without obtaining a permit from the Bureau of Fire Prevention.

Any person who services or maintains fire sprinkler systems must be certified by the Alabama State Fire Marshal's Office, and have a Certificate of Insurance, General Liability for

$1,000,000 with the City of Daphne, Bureau of Fire Prevention, P.O. Box 400, Daphne AL. 36526 listed as a Certificate Holder.

No person shall perform maintenance or testing on fire sprinkler systems unless that person is certified by the Alabama State Fire Marshal's office and approved by the Fire Code Official.

Installer must possess a current City of Daphne business license.

The permit fee for servicing a fire sprinkler system shall be $75.00.

The permit is good only for that calendar year of which it is issued.

Section 105.7.15.1 Install Automatic Fire Sprinkler Systems. No person shall install, modify or repair an automatic fire sprinkler system without obtaining a permit from the Bureau of Fire Prevention.

Any person who installs or maintains fire sprinkler systems (hereinafter called in Section 402.35 "installer") must be certified by the Alabama State Fire Marshal's Office, and have a Certificate of Insurance, General Liability for $1,000,000 with the City of Daphne, Bureau of Fire Prevention, P.O. Box 400, Daphne AL. 36526 listed as a Certificate Holder.

Installer must possess a current City of Daphne business license.

Installer must have sprinkler plans reviewed by the Fire Code Official before commencing installation.

Upon final inspection, the National Fire Protection Association (NFPA) Contractor's Material and Test Certificate for Aboveground Piping must be properly completed and submitted to the Bureau of Fire Prevention.

The Fire Code Official shall be present during the final inspection of the sprinkler system.

Relocating more than three (3) sprinkler heads in an existing fire sprinkler system shall require a permit from the Bureau of Fire Prevention.

The permit fee for each automatic fire sprinkler system installation shall be $75.00.

(J) Section 105.7.16 shall be added to read as follows:

Additional Permits. Where work for which a permit is required by this code commences prior to obtaining said permit, the permit fee herein specified shall be doubled.

It shall be required that a copy of all annual or semi-annual inspection reports be submitted to the Bureau of Fire Prevention with any and all deficiencies clearly noted.

All checks and money orders shall be made out to the City of Daphne.

All certifications whether they are manufacture or NICET must be current and not have expired.

General requirements for a permit are as followed:

1. Current city of Daphne Business license.
2. Current one million dollar ($1,000,000) general liability insurance policy with the City of Daphne listed as a certificate holder, P.O. Box 400, Daphne, AL 36526.
3. Approved by the Fire Code Official.
4. Current Training certificates.
5. Permit fee of $75.00.

(k) Section 307.2.1 of the International Fire Code shall be repealed in its entirety and a new section 307.2.1 shall read as follows:

Authorization. Open burning shall only be allowed once a calendar month per address/location during the months that outdoor burning is allowed by the State Air Quality Agencies. A permit must be obtained before any burning starts and all provisions of the burn permit shall be followed.

(l) Section 307.4.1 of the International Fire Code shall be repealed in its entirety and a new section 307.4.1 shall read as follows:

Bonfires. A bonfire shall not be conducted within 50 feet (15 240 mm) of a structure or combustible material unless the fire is contained in a barbecue pit. Conditions which could cause a fire to spread within 50 feet (15 240 mm) of a structure shall be eliminated prior to ignition.

Bonfire permits shall only be issued to organizations (Churches, Schools, and other Civic Groups) not to private individuals.

(m) Section 503.2.5 of the International Fire Code shall be repealed in its entirety and a new section 503.2.5 shall read as follows:

Dead ends. Dead-end fire apparatus access roads in excess of 150 feet (45 720 mm) in length shall be provided with an approved area for turning around fire apparatus per the provisions in accordance with Appendix D, Table D103.4. and figure D103.1.

(n) Section 505.1 of the International Fire Code that reads "Numbers shall be a minimum of 4 inches high with a minimum stroke width of 0.5 inches" shall be repealed and shall read "numbers shall be a minimum of 5 inches high with a minimum stroke of 0.5 inches".

(o) Section 506.1 of the International Fire Code shall be repealed in its entirety and a new section 506.1 shall read as follows:

Key boxes. Key boxes shall be installed in all buildings having an automatic fire sprinkler system, fire alarm system or any alarm that generates a fire department response. The Fire Code Official shall also have the authority to require a key box to be installed in an accessible location where access to or within a structure or area is difficult because of security. The key box shall be of and approved type and shall contain keys to gain necessary access as required by the Fire Code Official.

(p) 508.5.7 Hydrant Outlet Location shall be added to read as follows:

Hydrants shall be installed with the center of the outlet cap nut at least 18 inches above the adjoining final grade.

(q) Section 905.3.1 of the International Fire Code shall be repealed in its entirety and a new section 905.3.1 shall read as follows:

Building height. Class III standpipe systems shall be installed throughout buildings where the floor level of the highest story is located more than 30 feet (9144 mm) above the lowest level of the fire department vehicle access, or where the floor level of the lowest story is located more than 30 feet (9144 mm) below the highest level of fire department vehicle access. A class I, Manual Wet, standpipe system shall be installed in building where the floor level is of the highest story is located more than 20 feet above the lowest level of the fire department vehicle access.

(r) Section 906 Portable Fire Extinguishers, 906.1 "Exception" shall be removed in its entirety.

(s) Section 1007.6.3 Two-way communication shall be repealed in its entirety and new section 1007.6.3 shall read as follows:

Two-way communication. Areas of refuge shall be provided with a two-way communication system between the area of refuge and a central control point. The area of refuge shall also have controlled access to a public telephone system. Location of the central control point shall be approved by the fire department. The two-way communication system shall include both audible and visible signals.

(Ord. No. 2009-37, § 1, 7-20-09)

Sec. 9-67. Penalties.

Any person violating this division shall be subject to a fine as adopted by City of Daphne Procedures for Violation of Municipal Ordinances Ordinance No. 2005-55 and Ordinance No. 2007-31 and/or its amendments or updated ordinance in effect at the time of the offense.

(Ord. No. 2009-37, § 2, 7-20-09)

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Chapter 10

HEALTH AND SANITATION*

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*__Cross references__—Fluoridation of drinking water, § 12-1; draining or treatment of water in pits to control insects, § 5-10; disposal of contagious disease refuse, § 12-35.

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ARTICLE I. IN GENERAL

Sec. 10-1. Junk shops or yards; vehicle salvage yards.

(a) *Definition:* For the purpose of this section the term "yard" shall mean any yard, premises, or tract of land in or upon which any person stores or allows to remain more than three (3) days, any rags, scrap paper, old iron, chain, brass, copper, tin, lead or other base metals, rubber, glass bottles, all articles and things discarded as manufactured articles composed of or consisting of any one (1) or more of the materials or articles mentioned including, but not limited to, nonoperating vehicles or motor vehicles which are wrecked or dismantled for the purpose of wrecking.

(b) *Regulations:* It shall be unlawful for any person to carry on, maintain, or conduct a storage or salvage or junk yard as herein defined unless such establishment is carried on, maintained, or conducted in compliance with the following regulations:

(1) Such establishment shall be carried on, maintained, or conducted entirely inside an enclosed building or buildings, or upon premises fenced on all sides which adjoin or abut property being used for other than business purposes. Such fence shall be at least six (6) feet high and shall be of solid wood or metal or woven wire of at least ten (10) gauge, line wire and twelve and one-half (12½) gauge filler or stay. If the fence is wire, a sufficient number of shrubs or trees shall be planted along the same to screen the premises from view. Property separated from the salvage yard by only a street, alley, or easement, or public way shall be considered as abutting or adjoining such salvage yard.

(2) Such fence, wall, shrubbery and trees shall be maintained in a neat, substantial, safe condition and shall be painted, unless constructed of masonry, rustproof metals or wire.

(3) The density of motor vehicles on a salvage yard shall not exceed one (1) vehicle for each two hundred (200) square feet of land or floor area; provided, however, the owner of any salvage yard containing a greater density of vehicles thereon upon the effective date of the ordinance from which this section is derived shall not be required to move the same but shall not be permitted, however, to place any additional vehicles thereon until such time as it can be done without exceeding such density of one (1) vehicle for each two hundred (200) square feet.

(4) All gasoline shall be drained and removed from any unregistered motor vehicle or other object to be stored, junked, or wrecked, and located in such building or on such premises.

(5) The material located in or on such premises shall be so arranged that reasonable inspection or access on all parts of the premises can be had at any time by the proper fire, health, police and building authorities.

(6) Water shall not be permitted to accumulate in the yard until it becomes vile or stagnant, and weeds and rank vegetation shall not be permitted on such premises.

(7) The yard shall be kept free of vermin, rodents, reptiles, and animals of all kinds.

(Ord. No. 1989-16, §§ 1, 2, 10-16-89)

Sec. 10-2. Control of mosquitoes and stagnant water.

(1) *Definitions.* The following words, when used in this section shall have the meaning ascribed to them, except where the context clearly indicates otherwise or requires a different meaning:

City shall mean the City of Daphne, Alabama, and its police jurisdiction.

Corrective notice shall mean a courtesy letter provided to advise anyone that there may be a violation of this section that may require corrective action on the part of the recipient of the notice.

Hot tub and *Jacuzzi* shall mean any pool of water utilized by persons as a hot tub, as that product is commonly known.

Occupant shall mean the person or entity in current possession or control of subject real property.

Owner shall mean the last person or entity against whom ad valorem taxes were assessed for subject real property.

Pond shall mean any ornamental or decorative fish pond or other type of in ground or above ground pond designed to hold water and/or fish and/or water plants.

Swimming pool shall mean any pool of water designed or constructed for swimming either and being installed either in ground or above ground.

(2) *Areas subject to section.* Unless specifically stated otherwise or where the context clearly indicates otherwise or requires a different meaning, each provision of this section shall apply to all real property within the city.

(3) *Standard for maintenance of swimming pools, hot tubs, jacuzzis and ponds.* It shall be the duty and responsibility of every owner or occupant of any parcel of real property to keep and maintain swimming pools, hot tubs, Jacuzzis or ponds located on said property clean and free of stagnant water and mosquito larvae.

(a) It shall be unlawful to keep, maintain, cause or permit within the city or its police jurisdiction any body or collection of water, in containers or otherwise, including but not limited to swimming pools, hot tubs, Jacuzzis, ponds or other constructions, either standing or flowing under such conditions or circumstances as may permit or favor the propagation or reproduction of mosquitoes. The presence of live mosquito larvae in such collections or bodies of water shall be prima facie evidence of the propagation or reproduction of mosquitoes in such water.

(b) It shall be unlawful for the owner, proprietor or person in charge or control of any lot or parcel of land in the city to create or permit upon such lot or parcel of land any pool or body of stagnant water, or offensive damp place.

(4) *Enforcement procedures.*

(a) When any police officer and/or other employee of the city designated by law or ordinance as an enforcement officer finds any violation of any provision of this section which he is authorized or required to enforce, such may issue on forms provided by the city, a municipal offense citation and delivery it to the person in violation, directing the person to appear before the municipal court of the City of Daphne at a time and date stated thereon to answer to the charge or charges for the violation, which shall be stated in the citation.

(b) The police officers and/or other employees of the city, designated by law or ordinance as enforcement officers and authorized to issue citations as above provided, are hereby authorized to swear out warrants or execute affidavits or complaints charging persons with the violations of this section without first having issued a citation for such violation.

(c) Any employee of the city designated by the mayor or the chief of police may issue corrective notices to persons, corporations, establishments, companies, owners, tenants, occupants and agents found to be in violation of any provision of this section. The issuance of such corrective notice is not necessary for the prosecution of violations of this section.

(5) *Failure to comply with notice.* Any person, corporation, company, firm, business, institution, owner, lessee, agent, tenant or occupant who has been served with a corrective notice in accordance with the provisions of this section and who shall neglect or shall refuse or shall fail to fully comply with the corrective notices so ordered and/or within the time frame so ordered therein, shall be in violation of this section.

(6) *Penalties.* Any person found guilty of violating any provision of this section 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 in the municipal jail for a period not exceeding six (6) months, or both, or in the alternative, may be sentenced to

community service or any other lawful remedial action which the municipal judge may deem appropriate.
(Ord. No. 2004-48, § I—VI, 12-6-04)

Secs. 10-3—10-19. Reserved.

ARTICLE II. CLEANLINESS OF PREMISES; LITTERING*

DIVISION 1. GENERALLY

Sec. 10-20. Definitions.

As used in this article, the following terms shall have the respective meanings ascribed to them:

Bulk container: Any dumpster or stationary storage facility placed for the temporary containerization of solid waste at a place of business, or multiple dwelling complex, or industrial or construction site.

Citation: A notice charging the violation of this article which directs anyone in violation to pay the prescribed fine or to appear in municipal court to answer the charges of violation.

Commercial solid waste: Man-made solid waste generated by stores, offices, restaurants, cafeterias, shopping centers, fast food establishments, convenience stores, and other nonindustrial sources.

Corrective notice: A courtesy letter to advise anyone that there may be a violation of this article that may require corrective action on the part of the recipient of the notice.

Garbage: Putrescible animal and vegetable wastes resulting from the handling, preparation, cooking and consumption of food.

Garbage can: A watertight receptacle or container for temporary storage of putrescible and nonputrescible waste; constructed of substantial metal, plastic, or rubber and having a capacity of not less than ten (10) gallons, nor more than thirty (30) gallons, with a tight-fitting lid or cover and with a handle on the lid and two (2) handles on the receptacle by which same may be conveniently lifted or moved.

Household solid waste: All domestic or residential solid waste that normally originates in a household environment.

Institution: Any public or private establishment which educates, instructs, treats for health purposes, or otherwise performs a service or meets a need for the community, city, state, region, or nation.

Institutional solid waste: Solid waste originating from educational, health care, religious, or research facilities.

Junk: Any vehicle or vehicle parts, rubber tires, appliances, dilapidated furniture, machinery, equipment, building material or other items which are either in a wholly or partially rusted, wrecked, junked, dismantled, or inoperative condition.

Junked car or other vehicle: One that does not bear a current Alabama license plate and is not capable of being driven.

Litter: All uncontainerized man-made solid waste materials including, but not limited to, paper, plastic, garbage, bottles, cans, glass, crockery, scrap metal, construction materials, rubbish, disposable packages or containers which are discarded, thrown, or otherwise deposited as prohibited herein.

Litter receptacle: A container constructed and placed for use as a depository for litter.

Premises: Any dwelling, flat, rooming house, apartment house, hospital, school, hotel, club, restaurant, boarding house, office, eating place, shop, church, place of business, manufacturing establishment, courthouse, jail, city hall, post office, or other public building.

Private property: Property owned by any person as defined herein, including but not limited to yards, grounds, driveways, entrance or passage ways, parking areas, any body of water, vacant land, and recreation facilities.

Public property: Any area that is used or held for use by the public, whether owned or operated

*Cross references—Littering municipal pier, § 15-5; solid waste collection and disposal, Ch. 12, Art. III.

by public or private interests, including but not limited to highways, streets, street medians, alleys, park recreation areas, sidewalks, rights-of-way, lakes, rivers, streams, drainage ditches, or other bodies of water.

Residence: Single-family or multiple-family dwelling, townhouse, apartment, condominium, trailer, or mobile home, both privately and publicly owned.

Trash: Nonputrescible solid wastes consisting of yard clippings, leaves, wood, tree limbs and trunks, furniture, bedding, appliances, paper and cardboard, plastics, wood, wrappings, cans, and similar materials.

Vehicle: Every device capable of being moved upon a public highway, street or waterway and in, upon or by which any person or property may be transported or drawn upon a public highway, street or waterway. This shall include any watercraft, boat, ship, vessel, barge, or other floating craft. This excludes devices moved by human power or used exclusively for agricultural purposes and licensed pursuant to state law which is not operated on any public highway for purposes other than crossing such public highways or along such highway between two (2) tracts of the owner's land.

(Ord. No. 1990-12, art. I, § 2, 5-23-90)

Cross reference—Definitions and rules of construction generally, § 1-2.

Sec. 10-21. Enforcement procedures—Issuance of citation or corrective notice; fines in summary disposition.

(a) When any police officer or other employee of the city designated by law or ordinance as an enforcement officer finds any violation of any provision of this article which such officer or employee is authorized and required to enforce, such person may issue, on forms provided by the city, a citation and deliver it to the person in violation directing such person to appear in the municipal court at a time and a date stated therein to answer to the charges for the violation, which shall be stated in such citation. Such police officer or enforcement officer is further authorized to swear out warrants or execute affidavits of complaints charging persons with violation of this article, without first having issued a citation for such violation.

(b) Any employee of the city designated by the mayor or council may issue corrective notices to persons found to be in violation of any provision of this article. The issuance of such corrective notice is not necessary for the prosecution of violations of this article.

(c) If the violation is a first violation of such provision of this article by the person cited, such person, in lieu of appearing in the municipal court at the time and on the date stated in the citation, may pay a fine of fifty dollars ($50.00) stated in the citation plus the cost of court within ten (10) days from the date of such citation at the office of the municipal court clerk for the use of the city and other agencies as designated by law; except, however, that commercial establishments, institutions, and construction sites may pay a fine of not less than, nor more than, one hundred dollars ($100.00) stated on the citation plus the cost of court within ten (10) days from the date of such citation at the office of the municipal court clerk for the use of the city and other agencies as designated by law.

(Ord. No. 1990-12, art. II, § 1, 5-23-90)

Sec. 10-22. Same—Failure to comply with notice.

Any person who has been served such notice in accordance with the provision of this article, and who shall neglect or shall refuse or shall fail to fully comply with the corrective notices so ordered and/or within the time frame so ordered therein, shall be in violation of this article.

(Ord. No. 1990-12, art. II, 5-23-90)

Sec. 10-23. Same—Owner's and generator's responsibility.

(a) Any person owning or occupying property within the city who generates litter shall be responsible for ensuring that such litter is managed, stored, and handled in accordance with the provisions of this article.

(b) The owners or occupants of all residential units and commercial establishments shall be responsible for compliance with this article.
(Ord. No. 1990-12, art. II, § 3, 5-23-90)

Sec. 10-24. Same—Cleaning litter or junk from open private property.

(a) The city is hereby authorized and empowered to notify the owner of any open or vacant private property within the city, or the agent of such owner, to properly dispose of litter or junk located on such owner's property. Such notice shall be by certified mail, with return receipt requested, addressed to such owner at such owner's last known address as the same appears on the records in the office of the county revenue commissioner.

(b) The failure, neglect or refusal of any owner so notified to properly dispose of litter or junk within ten (10) days after the receipt of the notice provided for in this section shall constitute a violation of this article. In addition, the city is specifically authorized to institute an action in the circuit court to abate any public nuisance created by litter or junk located on any open or vacant property within the city, and the costs of such proceeding and the removal of such litter or junk shall be assessed against the owners property.

(c) Subsection (a) of this section shall not apply to licensed junk dealers or establishments engaged in the repair, rebuilding, reconditioning, or salvaging of equipment, provided that the work area is screened from public view by a fence, hedge, wall or similar device of sufficient height to provide a visual buffer.
(Ord. No. 1990-12, art. IV, § 5(2), 5-23-90)

Sec. 10-25. Same—Penalties.

(a) Any person found guilty of violating any provision of this article shall be punished as provided in section 1-8. Each day a violation is committed or permitted to continue shall constitute a separate offense and shall be punishable as such.

(b) Any person found guilty of violating any provision of this article may be, in the discretion of the court, sentenced to pick up litter or take other remedial action to comply with the terms of this article in lieu of fine or imprisonment.
(Ord. No. 1990-12, art. II, § 4, 5-23-90)

Sec. 10-26. Littering generally.

It shall be unlawful for any person to drop, deposit, discard or otherwise dispose of litter in or upon any public or private property within the city, including but not restricted to, any street, median, right-of-way, sidewalk, park, vacant or occupied lot, or body of water, except in public receptacles or in authorized private receptacles provided for public use, or in an area designated by the state department of environmental management as a permitted disposal site.
(Ord. No. 1990-12, art. III, § 1, 5-23-90)

Sec. 10-27. Indiscriminate dumping or discarding of litter, junk and solid waste.

It shall be unlawful for any person to discard or dump along any street, street median, or road, on or off the right-of-way, any household or commercial solid waste or junk on any private or public property unless disposed of in receptacles provided for public use for the deposit of such material, or in an area designated by the state department of environmental management as a permitted disposal site. Any person charged with a violation of this section shall be required to appear in court to answer such charges, and upon conviction, shall be fined a minimum of one hundred dollars ($100.00) and shall be subject to any other penalties provided in this article; except that commercial establishments, institutions, and construction sites may pay a fine of five hundred dollars ($500.00) for a violation of this section and shall be subject to any other penalties provided in this article.
(Ord. No. 1990-12, art. IV, § 5(1), 5-23-90)

Sec. 10-28. Escape of load from uncovered vehicles; clearance of glass, etc.

(a) It shall be unlawful for any person to haul garbage, paper, trash, sand, gravel, wet cement, construction materials, other loose materials or

waste unless the truck or vehicle is covered, secured, or sealed to the extent that there will be no loss or spillage during haulage to cause littering of streets and highways or cause a nuisance or hazard to the public health; except however, that the deposit of sand or other substance to increase traction, or water or other substance applied on a street or roadway in the cleaning of maintenance of such street or roadway by the government agency having such responsibilities shall not come within the prohibition.

(b) Any person operating a vehicle from which any glass, nails, or other sharp objects have fallen or escaped which could cause an obstruction or damage a vehicle or otherwise endanger travelers on such public property shall immediately cause the public property to be cleared of such objects and shall pay any costs thereof.
(Ord. No. 1990-12, art. III, § 2, 5-23-90)

Sec. 10-29. Freedom from litter of areas surrounding commercial establishments and institutions.

(a) It shall be the duty of each proprietor and each operator of any business, industry, or institution to keep the adjacent and surrounding area clear and free of litter. These areas include, but are not restricted to, public and private sidewalks, city rights-of-way, roads, alleys, grounds, parking lots, loading and unloading areas, and all vacant lots which are owned or leased by such establishment or institution.

(b) All construction and demolition contractors, owners, or agents shall provide on-site receptacles for loose debris, paper, building materials waste, scrap building materials, and other litter products to prevent scattering of such materials by wind or rain if such materials are not otherwise properly disposed of on a daily basis.

(c) It is a violation of this article for any private property owner, tenant, occupant, lessee, or agent to grant permission to any person to dispose of litter on such person's property.

(d) All commercial establishments shall store their litter in tightly covered containers so as to eliminate wind-driven debris and unsightly litter in and about their establishments. The number and size of containers necessary for each establishment shall be as required to maintain a clean, neat, sanitary premises. Spillage or overflow around containers shall immediately be cleaned up as it occurs.
(Ord. No. 1990-12, art. IV, § 1, 5-23-90)

Sec. 10-30. Keeping residential property clean—General.

It shall be the duty of each residential property owner and tenant to keep all exterior private property free of litter. These areas shall include, but not be restricted to, sidewalks, alleys, driveways, yards, grounds, fences, walls, and property lines, public and privately owned storm drains, and vacant lots within the city.
(Ord. No. 1990-12, art. IV, § 2, 5-23-90)

Sec. 10-31. Same—Disposal of garbage.

Disposal of garbage by single-family dwellings, duplexes, townhouses and condominiums shall be as follows:

(1) All household garbage shall be stored in tightly closed metal, rubber, or plastic cans or in heavy-duty plastic garbage bags so as to prevent scattering of garbage by wind, water, traffic, or scavenging animals.

(2) All household garbage generated by residences provided with common litter receptacles (dumpsters, etc.) shall be placed within such receptacles so as to prevent scattering of garbage by wind or rain.

(Ord. No. 1990-12, art. V, § 1, 5-23-90)

Sec. 10-31.1. Disposal of trash in residential areas.

(a) All trash, as defined in section 10-20, shall be placed for collection at curbside not sooner than twenty-four (24) hours prior to the designated day for such collection.

(b) Loose trash, such as leaves and grass clippings, shall remain at curbside not longer than one (1) week.

(c) All trash, as defined in section 10-20, must be placed at curbside in accordance with current policy of the city.

(d) Scrap, lumber, plaster, roofing, concrete, brick, and sanding dust, resulting from the construction, repair, remodeling, removal, or demolition of any building on any private property will not be removed by the city. All such material shall be removed by the owner or the contractor responsible for the accumulation of same before, during or after construction.

(e) It shall be the responsibility of any person doing work on private property to remove from the premises all residue and rubbish resulting from such work.
(Ord. No. 1990-12, art. V, § 2, 5-23-90)

Sec. 10-32. Keeping sidewalks and right-of-way clean and mown.

Each owner, agent, occupant, or lessee whose property abuts city streets shall be responsible for keeping sidewalks and city right-of-way strips between sidewalk and street mown and free of litter.
(Ord. No. 1990-12, art. IV, § 3, 5-23-90)

Sec. 10-33. Sweeping litter into street.

It shall be unlawful to sweep or push litter or leaves or grass from sidewalks onto streets where it will be washed into the city storm drains. Such litter and leaves or grass shall be deposited in a proper receptacle which shall be tightly covered or tied to prevent scattering before pick-up.
(Ord. No. 1990-12, art. IV, § 4, 5-23-90)

Sec. 10-34. Litter receptacles—Deposits restricted.

It shall be unlawful to deposit any items except litter in any receptacle placed for public use as a depository for litter.
(Ord. No. 1990-12, art. VI, § 1, 5-23-90)

Sec. 10-35. Same—Providing and placement.

(a) Any person owning or operating any establishment or public place shall at such person's own expense be responsible for providing, placing, and the regular maintenance of litter receptacles adequate to contain the litter generated at such establishment.

(b) Any person owning or operating any trailer or mobile home park, or apartment or condominium complex within which the residents thereof are provided with common litter receptacles, shall at such person's own expense be responsible for providing, placing, and the regular maintenance of such common litter receptacles which shall be adequate to contain the litter generated therein.
(Ord. No. 1990-12, art. VI, § 2, 5-23-90)

Sec. 10-36. Same—Standards.

Litter receptacles purchased and placed in compliance with this article shall meet the following minimum standards:

(1) Construction of such quality as to maintain original shape when placed at an outdoor location and reasonably resistant to rust and corrosion.

(2) Constructed and designed or covered in such a manner as to prevent or preclude blowing of litter from the receptacle.

(3) Be serviced frequently enough to prevent spillage from overflow and to prevent offensive odor.

(4) Be maintained sufficiently to present an acceptable appearance.
(Ord. No. 1990-12, art. VI, § 3, 5-23-90)

Sec. 10-37. Same—Removal.

(a) The removal of litter from receptacles placed at public parks, beaches, fishing areas, and other public recreation sites shall be the responsibility of those state and local agencies now performing litter removal services.

(b) The removal of litter from receptacles placed on private property which are used by the public shall remain the duty of the owner or operator of such private property.
(Ord. No. 1990-12, art. VI, § 4, 5-23-90)

Secs. 10-38—10-40. Reserved.

DIVISION 2. CONTROL OF WEEDS AND JUNK VEHICLES*

Sec. 10-41. Definitions.

The following words, when used in this division shall have the meaning ascribed to them, except where the context clearly indicates otherwise or requires a different meaning:

Citation shall mean a notice charging the violation of this division which directs anyone in violation to pay the prescribed fine or appear in municipal court to answer the charge or charges of violations.

City shall mean the City of Daphne, Alabama, and its police jurisdiction.

Corrective notice shall mean a courtesy notice or other communication to advise anyone that there may be a violation of this division that may require corrective action on the part of the recipient of the notice.

Disturbed property shall mean a vacant lot which has been cleared but otherwise not improved upon.

Exempt property shall mean a vacant and/or undeveloped lot.

Junk vehicles shall mean automobiles, trucks, vans, boats, two-wheel and/or four-wheel motorized vehicles that do not have lawfully affixed thereto an unexpired license plate, and/or are in states of disrepair, disassembly, rusted through, wrecked or appearing to be wrecked, and/or are not otherwise capable of being driven or operated for its intended purpose, and boat trailers, utility trailers, horse or livestock trailers or other trailers of other use that are wrecked or appearing to be wrecked and/or in states of disrepair, disassembly, and/or rusted through, that do not have lawfully affixed thereto an unexpired license or tag and/or which are otherwise not capable of performing its intended use.

Occupant shall mean the person or entity in current possession or control of subject real property.

Owner shall mean the last person or entity against whom ad valorem taxes were assessed for subject real property.

Underbrush shall mean a dense growth of shrubs and/or small scrub trees, and or which bear seeds of a wingy or downy nature, which attain a growth higher than twelve (12) inches from ground level.
(Ord. No. 2005-01, § I, 2-9-05)

Sec. 10-42. Areas subject to division.

Unless specifically stated otherwise or where the context clearly indicates otherwise or requires a different meaning, each provision of this division shall apply to all real property within the city other than exempt property as described above.
(Ord. No. 2005-01, § II, 2-9-05)

Sec. 10-43. Standard for maintenance of lots or parcels of real property.

(a) *Weeds.* It shall be the duty and responsibility of every owner or occupant of any parcel of real property (other than "exempt property" as previously defined in this division), to keep said property clean and to remove from the property within the time frame so required by the correction notice issued by the city all weeds and underbrush with a growth higher than twelve (12) inches, and/or dead trees, garbage, debris, and such other things favorable to the harboring of rodents, reptiles, mosquitoes or other insects or creatures which will adversely affect public health and safety.

(b) *Disturbed property.* It shall be the duty and responsibility of every owner or occupant of any parcel of real property other than "exempt property" as described above, to grass said parcel and install erosion control measures on said parcel in compliance with the City of Daphne Land Use Ordinance (currently titled Ordinance No. 2002-22) within thirty (30) days from clearing said lot or parcel.

***Editor's note**—Section IX of Ord. No. 2005-01, adopted Feb. 9, 2005, repealed Ord. No. 1978-3 from which §§ 10-40—10-48 derived. Sections I—VII enacted similar provisions codified to read as herein set out.

Cross reference—Mowing of grass plots, § 10-32.

(c) *Junk vehicles.* It shall be the duty and responsibility of every owner or occupant of real property to remove from the real property within the time frame so required by the correction notice issued by the city all junk vehicles as previously defined in this division.
(Ord. No. 2005-01, § III, 2-9-05)

Sec. 10-44. Enforcement procedures.

(a) When any police officer or other employee of the city designated by law or ordinance as an enforcement officer finds any violation of any provision of this division which he is authorized or required to enforce, such person may issue on forms provided by the city, a municipal offense citation and deliver it to the person in violation, directing the person to appear in the municipal court of the City of Daphne at a time and date stated thereon to answer to the charge or charges of the violation, which shall be stated in the citation.

(b) If the violation is the first charge violation of such provision of this division within a twelve-month period, such person, in lieu of appearing in the municipal court at the time and date stated in the citation, may pay a fine of fifty dollars ($50.00), plus the costs of court within ten (10) calendar days from the date of issuance of the citation. Such payment to be tendered to the office of the municipal court clerk for the use of the city as may be designated by law.

(c) The police officers and other employees of the city, designated by law or ordinance as enforcement officers and authorized to issue citations as above provided, are hereby authorized to swear out warrants or execute affidavits or complaints charging persons with the violations of this division without first having issued a citation for such violation.

(d) Any employee of the city designated by the mayor or chief of police may issue corrective notices to persons, corporations, establishments, companies, owners, tenants, occupants and agents found to be in violation of any provision of this division. The issuance of such corrective notice is not necessary for the prosecution of violations of this division.
(Ord. No. 2005-01, § IV, 2-9-05)

Sec. 10-45. Failure to comply with notice.

Any person, corporation, company, firm, business, institution, owner, lessee, agent, tenant or occupant who has been served with a corrective notice in accordance with the provisions of this division and who shall neglect or shall refuse or shall fail to fully comply with the corrective notices so ordered and/or within the time frame so ordered therein shall be in violation of this division.
(Ord. No. 2005-01, § V, 2-9-05)

Sec. 10-46. Penalties.

Any person found guilty of violating any provision of this division 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 in the city jail for a period not exceeding six (6) months, or both, or, in the alternative, may be sentenced to pick up litter or any other lawful remedial action which the municipal judge deems appropriate. Each day such violation is committed or permitted to continue shall constitute a separate offense and shall be punishable as such hereunder.
(Ord. No. 2005-01, § VI, 2-9-05)

Sec. 10-47. Lien on real property.

If the recipient of a corrective notice fails to fully comply with the same as set forth hereinabove, the city may, exclusive of the provisions of this division, pursuant to the provisions of Code of Ala. 1975, § 11-67-20 et seq. (as amended) declare the property a public nuisance and abate the same in accord with such statutory authority.
(Ord. No. 2005-01, § VII, 2-9-05)

Secs. 10-48—10-65. Reserved.

ARTICLE III. SMOKING IN PUBLIC PLACES*

Sec. 10-66. Definitions.

The following words and phrases, whenever used in this article, shall be construed as defined in this section:

Assisted living facility means a living arrangement in which people with special needs, especially older people with disabilities, reside in a facility that provide help with everyday tasks such as bathing, dressing, and taking medication.

Bar means a stand-alone enclosed area in which the principal or sole purpose and business of the establishment is the serving of alcoholic beverages for consumption which comprises at least sixty (60) percent or greater in gross sales. This term includes such establishments where the sale or service of food is made, but only if it is incidental to the service of alcoholic beverages. Bars must be posted off limits to minors and must not allow any minors inside.

Business means a sole proprietorship, partnership, joint venture, corporation, or other business entity, either for-profit or not-for-profit, includes retail establishments where goods or services are sold; professional corporations and other entities where legal, medical, dental, engineering, architectural, or other professional services are delivered; and private clubs.

Employee means a person who is hired by another to perform a task or job in consideration for direct or indirect monetary wages, gain or profit, and a person who volunteers his or her services for a non-profit entity. This term includes independent contractors.

Employer means a person, business, partnership, association, corporation, including a municipal corporation, trust, or nonprofit entity that hires the services of one (1) or more employees.

Enclosed area means that area between a floor and ceiling that is enclosed or is capable of being enclosed, on all sides by solid walls, windows, and/or doorways and which is climate controlled by a HVAC or similar air handling system.

Place of employment means an area under the control of an employer where employees normally frequent during the course of employment, including, but not limited to, work areas, employee lounges, restrooms, conference rooms, meeting rooms, classrooms, employee cafeterias, hallways, and vehicles. A private residence is not a "place of employment" unless it is also used as a location of a business, child care, adult care, or health care facility.

Private club means an organization, whether incorporated or not, that is the owner, lessee, or occupant of a building or portion thereof used exclusively for club purposes at all times, which is operated solely for a recreational, fraternal, social, patriotic, political, benevolent, or athletic purpose, but not for pecuniary gain, and which only sells alcoholic beverages incidental to its operation. The affairs and management of the organization are conducted by a board of directors, executive committee, or similar body chosen by the members at an annual meeting. The organization has established bylaws and/or a constitution to govern its activities. The organization has been granted an exemption from the payment of federal income tax under 26 U.S.C. Section 501. A "private club" is not open to the general public. A private club established for the purpose of avoiding the prohibitions on smoking called for in this article shall be deemed a public place, however.

Public place means an enclosed area to which the general public is invited or is permitted, including but not limited to, banks, educational facilities, health care facilities, hotel and motel lobbies, laundromats, public transportation, reception areas, restaurants, retail food production and marketing establishments, retail service establishments, retail stores, shopping malls, sports arenas, theaters, and waiting rooms. A "private club" facility is a "public place" when being used for a function to which the general public is invited or allowed to attend. A private residence is

*Editor's note—Ord. No. 2008-19, §§ 1—12, adopted Feb. 18, 2008, amended Art. III to read as set out herein. Former Art. III, §§ 10-66—10-73, pertained to similar subject matter and derived from Ord. No. 1993-10, §§ I—VIII, adopted June 7, 1993.

not a "public place" unless it is used as a business location, child care, adult day care, or health care faculty.

Retail tobacco store means any retail establishment utilized primarily for the sale of tobacco products and smoking accessories in which the sale of other products, including food and beverages, does not exceed forty (40) percent of gross revenues.

Smoking means inhaling, exhaling, burning, or carrying any lighted cigar, cigarette, pipe, or other lighted tobacco product in any manner or form.

Sports arena means sports pavilions, stadiums, public recreational fields, gymnasiums, health spas, boxing arenas, swimming pools, roller and ice rinks, bowling alleys, and other similar places where members of the general public assemble to engage in physical exercise, participate in athletic competition, or witness sports or other events.
(Ord. No. 2008-19, § 1, 2-18-08)

Sec. 10-67. Application of article to city-owned facilities.

All property, including building and vehicle and parks, which are owned, leased, or operated by the City of Daphne shall be subject to the provisions of this article.
(Ord. No. 2008-19, § 2, 2-18-08)

Sec. 10-68. Prohibition of smoking in public places.

Smoking shall be prohibited in all enclosed public places, as well as the areas within a reasonable distance outside of the main entrance(s) of such public places, within the City of Daphne.
(Ord. No. 2008-19, § 3, 2-18-08)

Sec. 10-69. Prohibition of smoking in places of employment.

Smoking shall be prohibited in all enclosed areas which are a place of employment. This includes common work areas, auditoriums, classrooms, conference and meeting rooms, private offices, elevators, hallways, medical facilities, cafeterias, employee lounges, stairs, restrooms, and all other enclosed areas. This prohibition on smoking shall be communicated to all existing employees by the effective date of this article and to all prospective employees upon their application for employment.
(Ord. No. 2008-19, § 4, 2-18-08)

Sec. 10-70. Prohibition of smoking in outdoor arenas and stadiums.

Smoking shall be prohibited in the seating areas of all outdoor sports arenas, stadiums, and amphitheaters, as well as in bleachers and grandstands for use by spectators at sporting and other public events.
(Ord. No. 2008-19, § 5, 2-18-08)

Sec. 10-71. Reasonable distance.

Smoking shall be prohibited within a reasonable distance of twenty (20) linear feet outside all main entrances/exits to enclosed areas where smoking is prohibited in this article.
(Ord. No. 2008-19, § 6, 2-18-08)

Sec. 10-72. Where smoking not prohibited.

Notwithstanding any other provision of this article to the contrary, the following areas shall be exempt from the prohibitions in this article:

(1) Private residences which are not also a place of employment, business or public place as herein defined.

(2) Hotel and motel rooms that are rented to guests and are designated as smoking rooms; provided, however, that no more than thirty (30) percent of rooms rented to guests in a hotel or motel may be so designated. All smoking rooms on the same floor must be contiguous and smoke from these rooms must not infiltrate into areas where smoking is prohibited under the provisions of this article. The status of rooms as smoking on nonsmoking may not be changed, except to add additional nonsmoking rooms.

(3) Private clubs when being used or occupied by its members and their guests only. This

provision shall only apply when no individual under the age of nineteen (19) is present.

(4) Places of employment that do not meet the definition of an enclosed area (except those covered by the provisions of sections 10-70 and 10-71).

(5) Bars.

(6) Private and semiprivate rooms in assisted living facilities or long-term care facilities that are occupied by one (1) or more persons, all of whom are smokers and have requested in writing to be placed in a room where smoking is permitted, provided that smoke from these places does not infiltrate into areas where smoking is prohibited under the provisions of this article.

(7) Retail tobacco stores, provided that no on-premises consumption of alcoholic beverages is permitted and smoke from these establishments does not infiltrate into areas where smoking is prohibited under the provisions of this article.

(Ord. No. 2008-19, § 7, 2-18-08)

Sec. 10-73. Declaration of establishment as nonsmoking.

Notwithstanding any other provision of this article, an owner, operator, manager, or other person in control of an establishment, facility, or outdoor area may designate the premises as a nonsmoking place. Smoking shall be prohibited in any place in which a sign conforming to the requirements of subsection 10-74(a) is posted.
(Ord. No. 2008-19, § 8, 2-18-08)

Sec. 10-74. Posting of signs.

(a) "No Smoking" signs or the international "No Smoking" symbol (consisting of a pictorial representation of a burning cigarette enclosed in a red circle with a red bar across it) shall be clearly and conspicuously posted in every public place and place of employment where smoking is prohibited by this article, by the owner, operator, manager, or other person in control of that place.

(b) Every public place and place of employment where smoking is prohibited by this article shall have posted at every entrance a conspicuous sign clearly stating that smoking is prohibited.

(c) All ashtrays shall be removed from any area where smoking is prohibited by this article by the owner, operator, manager, or other person having control of the area.
(Ord. No. 2008-19, § 9, 2-18-08)

Sec. 10-75. Nonretaliation; nonwaiver of rights.

(a) No person or employer shall discharge, refuse to hire, or in any manner retaliate against an employee, applicant for employment, or customer because that employee, applicant, or customer exercises any rights afforded by this article or reports or attempts to prosecute a violation of this article.

(b) An employee who works in a setting where an employer allows smoking does not waive or otherwise surrender any legal rights the employee may have against the employer or any other party.
(Ord. No. 2008-19, § 10, 2-18-08)

Sec. 10-76. Enforcement.

(a) This article shall be enforced by the Daphne Police Department or code enforcement office, as designated by the mayor.

(b) Notice of the provisions of this article shall be given to all applicants for a business license in the City of Daphne.

(c) Any citizen who desires to register a complaint under this article may initiate enforcement with the police department.

(d) The health department, police department, fire department, or their designees shall, inspect for compliance with this article.

(e) An owner, manager, operator, or employee of an establishment regulated by this article shall inform persons violating this article of the appropriate provisions thereof.

(f) Notwithstanding any other provision of this article, an employee or private citizen may bring legal action to enforce this article.

(g) In addition to the remedies provided by the provisions of the section, the city clerk/administrator or any person aggrieved by the failure of the owner, operator, manager, or other person in control of a public place or a place of employment to comply with the provisions of this article may apply for an injunction to enforce those provisions in any court of competent jurisdiction.
(Ord. No. 2008-19, § 11, 2-18-08)

Sec. 10-77. Violation and penalties.

(a) Any person who smokes in an area where smoking is prohibited by the provisions of this article shall, upon conviction, be guilty of an infraction punishable by a fine not to exceed fifty dollars ($50.00) per occurrence plus court cost.

(b) A person who owns, manages, operates, or otherwise controls a public place or place of employment and who fails to comply with the provisions of the article shall be guilty of an infraction, punishable by:

- A fine not exceeding one hundred dollars ($100.00) for a first violation.
- A fine not exceeding two hundred dollars ($200.00) for a second violation within one (1) year.
- A fine not exceeding five hundred dollars ($500.00) for each additional violation within one (1) year.

(c) In addition to the fines established by this section, violation of this article by a person who owns, manages, operates, or otherwise controls a public place or place of employment may result in the suspension or revocation of any permit or license issued to the person for the premises on which the violation occurred.

(d) Violations of this article are hereby declared to be a public nuisance, which may be abated by the city council by restraining order, preliminary and permanent injunction, or other means provided for by law. The city may take action to recover the costs of the nuisance abatement.

(e) Each day on which a violation of this article occurs shall be considered a separate and distinct violation.
(Ord. No. 2008-19, § 12, 2-18-08)

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Chapter 11

LIBRARY

Sec. 11-1. Library established.
Sec. 11-2. Board of trustees—Composition; terms of office; compensation.
Sec. 11-3. Same—Powers and duties.
Sec. 11-4. Same—Meetings.
Sec. 11-5. Staff; employment, etc.
Sec. 11-6. Finance—Expenditure of income.
Sec. 11-7. Same—Audits; reports.
Sec. 11-8. Failure to return library books or property.
Sec. 11-9. Library materials loaned to minors.

Sec. 11-1. Library established.

The city does hereby create and establish a public library to be known as the Daphne Public Library.
(Ord. No. 1968-10, § 1, 10-21-68)

Sec. 11-2. Board of trustees—Composition; terms of office; compensation.

(a) The library shall be under the management and control of a board of trustees, which shall consist of five (5) members. The membership of the board shall be constituted and shall hold office until their respective terms expire as follows: one member, one year; one member, two (2) years; one member, three (3) years; and two (2) members, four (4) years; such terms to run from October 21, 1968, and each of such members shall hold office until their successors shall be elected as provided in this section. Upon the expiration of the term of each member as designated in this section a successor shall be elected for a period of four (4) years from the date of expiration of such members' present term, by the council, and in the event of a member vacating the board prior to the expiration of the term, such vacancy shall be filled by the council for the remaining portion of the term by electing a successor to fill such unexpired term.

(b) No trustee shall receive any pay or emolument for services as trustee.
(Ord. No. 1968-10, § 3, 10-21-68)

Sec. 11-3. Same—Powers and duties.

The board of trustees shall keep, or cause to be kept, proper books and accurate accounts, showing the receipts and disbursements of all funds belonging to the Daphne Public Library. The board shall have full authority in behalf of the city, to take charge of, control and manage all securities and money. Such board shall have full power to invest and reinvest such funds and securities; provided, that only such investments are made as are usual and customary for trust funds of similar character and subject to the laws of the state governing same.
(Ord. No. 1968-10, § 4, 10-21-68)

Sec. 11-4. Same—Meetings.

The board of trustees shall have at least six (6) regular meetings each year at the Daphne Public Library. The minutes of such meetings shall be duly and properly kept and preserved.
(Ord. No. 1968-10, § 7, 10-21-68)

Sec. 11-5. Staff; employment, etc.

The board of trustees shall have authority to select and employ a librarian for the Daphne Public Library and all other employees pertaining to the operation thereof and to fix their compensation. The librarian and all other employees employed under the provisions of this section shall be subject to the control of and replacement by the board.
(Ord. No. 1968-10, § 6, 10-21-68)

Sec. 11-6. Finance—Expenditure of income.

All gifts, devises and bequests, and the proceeds thereof, heretofore made, or which may in the future be made, to the Daphne Public Library, unless otherwise designated by the donor, shall be considered a part of the principal of the trust fund and the income therefrom only shall be expended by the board.
(Ord. No. 1968-10, § 5, 10-21-68)

Sec. 11-7. Same—Audits; reports.

At least once a year an audit shall be made, by an auditor designated by the council, of all the records, books, accounts and transactions of the board of trustees for the preceding year. A certified copy of such audit shall be filed with the city clerk and made a part of the permanent records of the city. In addition thereto, the board shall cause to be kept available for inspection by the council, at all reasonable times, a full and accurate statement of all assets and liabilities of the library, including the receipts and expenditures, together with vouchers for same, and shall make, or cause to be made, an accurate report to the city clerk whenever the council may so request.
(Ord. No. 1968-10, § 8, 10-21-68)

Sec. 11-8. Failure to return library books or property.

It shall be unlawful for any person to willfully detain or fail to return any book, periodical,

magazine or any property of the Daphne Public Library. Any person failing to return any book, periodical, magazine or any property of the Daphne Public Library within thirty (30) days after receipt of written notice shall be guilty of a misdemeanor.
(Ord. No. 1969-10, § 1, 12-1-69; Ord. No. 2004-14, § I, 4-5-04)

Sec. 11-9. Library materials loaned to minors.

The parent(s) or legal guardian(s) of any minor shall be liable for that minor's willful detainment or failure to return any book, periodical, magazine or any property of the Daphne Public Library and shall be responsible for payment of all fines and/or penalties resulting therefrom.
(Ord. No. 2004-14, § II 4-5-04)

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Chapter 12

MUNICIPAL UTILITIES AND SERVICES*

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Article IV. Recycling

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Sec. 12-52. Territorial application of this article.
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Sec. 12-54. Preparation and receptacle requirements.
Sec. 12-55. Frequency of collection.

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*__Cross reference__—Permit for excavation near gas line, § 5-4.

Sec. 12-56. Prohibited acts.
Sec. 12-57. Approved recyclable materials.
Sec. 12-58. Unapproved recyclable materials.

ARTICLE I. IN GENERAL

Sec. 12-1. Fluoridation of water.

(a) As a matter in the conservation of the health of the inhabitants of the city, approval is given to the introduction of fluorides into the city's water supply in accordance with the regulations of the state health department.

(b) The city or the utilities board is hereby vested with the authority to install the necessary facilities for the introduction of fluorides into its water supply and to introduce such fluorides into the water supply, in accordance with the regulations of the state health department.
(Ord. No. 1982-6, §§ 1, 2, 3-17-82)

Sec. 12-2. Connection to city sewer system.

(a) *Connection to sewer service required.*

(1) It shall be unlawful and an offense against the city for any person to construct or maintain within the city any dwelling, building or other place where human beings reside, are employed, congregate, rent, lease, use or permit to be used for such purposes which is not provided with facilities for disposal of the bodily discharges connected to a sanitary sewer line in the city.

(2) All private or public premises within the City of Daphne shall be required to connect to the city sewer system within six (6) months after the city sewer system is made available.

(3) It shall be a violation of this section for any person to fail or refuse to connect to the city sewer system.

(4) It shall be a violation of this section for any person required to connect to the city sewer system to fail to pay the connection fee prescribed by the city and/or the utility providing said sewer service.

(5) It shall be a violation of this article for any person required to connect to the city sewer system to fail to pay any usage fee prescribed by the city and/or the utility providing said sewer service.

(b) *Regulation of septic tanks.* The Board of Health of Baldwin County or its duly authorized representatives being specifically empowered and directed by state law, are hereby empowered and directed by the city to making such inspections and investigations of and to take such legal steps as may be necessary to regulate and control the type, construction, reconstruction, location, use and maintenance of all septic tanks and all appurtenances thereto or used in connection therewith in the city.

(c) *Use of septic tank, when sanitary sewer available.* It shall be unlawful and an offense against the city for any person to empty raw sewage into any septic tank or by any other means or method to privately dispose of such raw sewage after the time prescribed in subsection (a) hereof.

(d) *Inspection of septic tanks.* All septic tanks within the city shall be subject to inspection or investigation by the board of health or its duly authorized representative(s) at all reasonable times and the board of health or its representative(s) shall have the right to enter upon or into all property, premises or building for such purposes.

(e) *Permit for construction and maintenance of septic tank.*

(1) It shall be unlawful and an offense against the city for any person to construct a septic tank on any property within the city without first having obtained a permit from their county board of health or its duly authorized representative. A copy of said permit will be provided to the city prior to construction of the septic tank. Such permit shall not be issued except in cases where the septic tank is to serve premises where a sanitary sewer is not available. The construction of the septic tank shall be approved and inspected by the county health officer or his representative before being covered. The permit for the construction of such septic tank shall contain a statement whereby the permittee agrees to connect to a sanitary sewer line when the same becomes accessible as defined in subsection (c).

(2) It shall be unlawful and an offense against the city for any person to maintain a septic tank on any property within the city without first having obtained a permit from the city and all said persons shall register within the city the location of said septic tank and provide an inspection report to the city.

(f) *Use of defective septic tank.* It shall be unlawful for a person to use or permit the use of a septic tank which is defective, unclean or for any reason unsanitary or which does not conform to the provisions of this section.

(g) *Special exceptions.*

(1) The board of zoning adjustment of the City of Daphne is hereby authorized to grant limited special exceptions to the requirements of this section upon determination that compliance with the provisions thereof would impose a substantial hardship on the property owner. In determining whether a substantial hardship exists, the board of zoning adjustment may consider all relevant facts and circumstances, including but not limited to: (1) the age of the improvements upon the property in relation to the availability of sewer; (2) the age and condition of the septic tank or other septic system servicing such premises; (3) the size, dimensions and topographic configuration of the property upon which the premises is located; (4) the distance from any improvements on said private or public premises from the city sewer system.

(2) The board of zoning adjustment shall not be authorized to grant any exception unless (1) it is determined that the septic system servicing such premises has been approved by the state public health department and (2) evidence of an inspection by the health department that said septic services are working properly and is submitted to the board of zoning adjustment. There must be a majority vote of the board of zoning adjustment when granting exceptions in excess of one (1) year. Any exception which may be granted shall be subject to user charges and other fees as may be contained in any resolution(s) of the utility service provider or user fees that are changed by the utility service provider.

(h) *Appeal.* In the event any applicant is not satisfied with the decision of the board of zoning adjustment concerning the request for exemption, such applicant shall notify the board of zoning adjustment for the City of Daphne within fifteen (15) days of the board's decision of his/her intent to appeal to the Circuit Court of Baldwin County in accordance with the provisions of the City of Daphne Land Use Ordinance.

(i) *Enforcement.*

(1) Failure to do any of the following shall be considered a violation of this section:

a. Failure to connect.

b. Failure to pay connection fees.

c. Failure to pay usage fees.

When directed by the City of Daphne and/or the utility providing service 1) to connect to the sewer service, and/or 2) pay the required connection fee, and/or 3) to pay usage fees established by the providing utility, each person so directed must comply within fifteen (15) days from the date of receipt of the bill or direction to connect. After the fifteen-day period, each day of non-compliance shall constitute a new and separate offense subject to penalties to be imposed by the municipal court expressed herein.

(j) *Penalties.* A violation of the provisions of this section shall be punishable by a fine of not less than ten dollars ($10.00) nor more than one hundred dollars ($100.00) per day of violation and each day of noncompliance following the fifteenth day after notice shall be considered a separate offense.

(Ord. No. 1994-10, §§ 1—8, 8-15-94; Ord. No. 1999-01, §§ I, II, 1-19-99; Ord. No. 1999-04, §§ 1—4, 2-1-99; Ord. No. 2008-19, § 12, 2-18-08)

Sec. 12-3. Policy and procedure for providing sewer for citizens.

(a) That the utilities board of the City of Daphne and its engineers shall prioritize the various nonsewered areas of the City of Daphne to determine the environmental impact of the sanitary sewer system(s) that are currently in use within areas which are not served by the public sanitary sewer system. In those areas where it is determined that there is a substantial environmental impact on account of the sanitary sewer system or systems in use at the time of the assessment, the utilities board of the City of Daphne, shall immediately commence the process for undertaking a sewer project for these areas.

(b) The cost of installing sanitary sewer infrastructure shall be assessed in accordance with Alabama Code § 11-48-5, et al, said assessment to be established by resolution and, shall be deemed a utility assessment against each affected property. A separate account shall be set up within the city such that all assessments that are collected, whether by individual property or city wide, shall be used for long term debt reduction or capital improvements.

(c) The City of Daphne three (3) percent PILOT tax or similar franchise fee, effective October 1, 1999, shall remain in effect and shall continue to apply to all utility companies providing utilities within the City of Daphne. The entire PILOT or franchise fee shall be expended for capital improvements including debt reduction of capital improvements.

(d) The prior city policy requiring sanitary sewer to be installed on a full assessment basis shall continue to apply for all properties outside the city limits of the City of Daphne as of January, 1990.

(e) In no event shall the amount assessed against any property exceed the amount allowed by the laws of the State of Alabama or the United States.

(f) Exemptions. The city council of the City of Daphne is hereby authorized to grant limited exemptions to the requirements of this section to residential homeowners upon determination that said homeowner must install a pump in order to connect his/her parcel to the gravity type collection system. In determining whether an exemption is due to be granted, the city council may consider all relevant facts and circumstances, including but not limited to: (1) the opinion of the project engineer that such a pump is necessary for connection with the system (as opposed to being optional), (2) the size, dimensions and topographic configuration of the property upon which the premises is located, (3) the distance from any improvements on said private or public premises from the city sewer system. An exemption shall not apply to property owners that utilize pumps serviced by a low pressure sewer system or a force main pressure sewer system. Neither the City of Daphne nor the utility[ies] board of the City of Daphne shall be responsible for any upkeep or maintenance of such pump(s). Any exemptions for sewer assessments shall be detailed in the roll book.

(g) *Appeal.* In the event any applicant is not satisfied with the decision of the city council concerning the request for exemption, such applicant can appeal to the board of zoning adjustments for the City of Daphne within thirty (30) days of the city council's decision.
(Ord. No. 2001-12, 4-16-01; Ord. No. 2006-47, § 1, 8-7-06; Ord. No. 2007-16, § I, 4-2-07)

Secs. 12-4—12-19. Reserved.

ARTICLE II. FRANCHISES TO PUBLIC BODIES

Sec. 12-20. Sanitary sewer (utilities board).

"(1) The words "the town," as used herein, mean the Town of Daphne, a municipal corporation in the State of Alabama as it is now constituted and as it may hereafter be extended or enlarged. The words "the board," as used herein, mean the utilities board of the Town of Daphne, a public corporation existing under Act No. 175 adopted at the 1951 regular session of the legislature of Alabama, as amended (Code of Ala. 1975, § 11-50-310 et seq.).

(2) There is hereby granted to the board the right, privilege, authority and franchise to acquire, own, maintain, construct, enlarge and op-

erate in the town a sanitary sewer system, together with the right, privilege, authority and franchise to lay, construct and maintain mains, laterals, sewers, and related fixtures and appurtenances in, along, across and under the streets, avenues, alleys and other public places of the town for the purpose of operating a sanitary sewer system in the town; and to repair, renew, relay and extend such mains, laterals, sewers, related fixtures and appurtenances, and to make all excavations necessary therefor.

(3) The board shall, and by accepting this franchise agrees, that it will, upon making any excavations of the streets, avenues, alleys, public ways and public places of the town, restore the paving or other surface at the point of such excavations to substantially the same condition such paving or other surface was in before such work was done, all as promptly as may be practicable and within a reasonable length of time thereafter.

(4) The rights, privileges, franchise and authority hereby granted may be exercised by the board or any successors and assigns of the board, and may be mortgaged or conveyed in trust as security for any bonds or other obligations of the board, or of its successors and assigns, all subject nevertheless to the conditions and obligations herein contained.

(5) This ordinance shall be published by posting a copy thereof in each of the following three (3) public places within the corporate limits of the town: the U.S. post office; the town hall; and Trione's Grocery Store. The copies so posted shall remain so posted for not less than five (5) complete and consecutive days; and this ordinance shall become effective upon completion of the said posting. The rights, privileges, consent and franchise herein granted shall begin at the effective date hereof."

(Ord. No. 1969-3, §§ 1—5, 2-28-69)

Sec. 12-21. Water distribution facilities (utilities board).

"Section 1. Definitions. The following words and phrases, as used in this ordinance, shall have the meanings hereinafter ascribed to them in this section:

Town means the Town of Daphne in the State of Alabama.

Utilities board means the utilities board of the Town of Daphne, a public corporation, existing under the provisions of Act No. 175 adopted at the 1951 regular session of the Legislature of Alabama, as amended (Code of Ala. 1975, § 11-50-310 et seq.).

The council means the mayor and town council of the town.

Water facilities means (i) one (1) deep well, water pumping equipment and a water pump building owned by the town, together with the real estate on which they are located, the said real estate being described as Lot 7, Block 3, Dryer's Addition to the Town of Daphne, Alabama, and (ii) all water mains, extensions, water pipes, fire hydrants, meters, valves, fittings, services, and all other water distribution facilities that have been constructed or otherwise acquired by the town subsequent to August 17, 1953 (the date on which the town conveyed to the utilities board the water works plant then owned by the town).

Section 2. Findings. The council hereby ascertains and declares that the following facts are true: the town heretofore acquired (by construction and otherwise) the water facilities and presently has title to the water facilities; the cost to the town of acquiring the water facilities was in excess of $36,225.00; the utilities board presently owns and operates in the town (and in unincorporated territory in Baldwin County, Alabama) a water works plant and distribution system; the utilities board has the corporate power to own and operate the water facilities, and has heretofore operated the water facilities in conjunction with the water works plant and distribution system of the utilities board, although the water facilities have not been formally conveyed by the town to the utilities board; it will be desirable and advantageous to the town and its inhabitants and in the public interest that the town transfer and convey the water facilities to the utilities board for the consideration recited in section 3 hereof; the town has been informed by its engineers that the value of the water facilities is not less than the said sum heretofore expended by the town in acquiring the same; and the conveyance by the town to the utilities board of the water facilities is authorized

by the provisions of Act No. 190 adopted at the 1951 regular session of the Legislature of Alabama (Code of Ala. 1975, §§ 11-50-13, 11-50-14).

Section 3. Authorization of transfer and conveyance. In consideration of the payment by the utilities board to the town of the sum of $36,225.00 and in consideration also of the public benefit that will result from such conveyance, the mayor of the town is hereby authorized and directed to execute and deliver to the utilities board for and in the name of the town an appropriate deed whereby there shall be transferred and conveyed to the utilities board the water facilities; and the town clerk of the town is hereby authorized to affix the corporate seal of the town to the said deed and to attest the same.

Section 4. Publication. This ordinance shall be published by posting a copy thereof in each of the following three (3) public places within the corpo-

rate limits of the town: the U.S. post office; the town hall; and Trione's Grocery Store; and each of the said copies shall remain continuously so posted for not less than five (5) complete and consecutive days."
(Ord. No. 1969-5, §§ 1—4, 2-28-69)

Sec. 12-22. Natural gas (utilities board).

"Section 1. Definitions. The following words and phrases, as used in this ordinance, shall have the meanings hereinafter ascribed to them in this section:

Town means the Town of Daphne in the State of Alabama.

Utilities board means the utilities board of the Town of Daphne, a public corporation, existing under the provisions of Act No. 175 adopted at the 1951 regular session of the Legislature of Alabama, as amended (Code of Ala. 1975, § 11-50-310 et seq.).

The council means the mayor and town council of the town.

Gas system means the natural gas transmission and distribution system of the town situated within the corporate limits of the town and in unincorporated territory in Baldwin County, Alabama, including all properties and interests in properties appurtenant thereto, including (without limitation) all rights in land, easements, permits, privileges, contractual rights, and all properties, real, personal and mixed, now owned by the town and used in connection with the said system.

Section 2. Findings. The council hereby ascertains and declares that the following facts are true: the town has heretofore acquired the gas system; the cost to the town of acquiring the gas system and constructing capital improvements thereto, including the purchase price paid by the town for the gas system, amounts paid to contractors, and necessary expenses incidental to the said acquisition and construction, including engineering, legal and other administrative expenses is approximately $117,715.00; the utilities board has the corporate power to construct, own and operate the gas system; and it will be desirable and advantageous to the town and its inhabitants and in the public interest for the gas system to be owned and operated by the utilities board rather than the town; it is, therefore, necessary and desirable that the town transfer and convey to the utilities board the gas system for the consideration recited in section 3 hereof; the town has been informed by its engineers that the value of the gas system is not less than the said sum heretofore expended by the town in acquiring the same and making capital improvements thereto; and the conveyance by the town to the utilities board of the gas system is authorized by the provisions of Act No. 190 adopted at the 1951 regular session of the Legislature of Alabama (Code of Ala. 1975, §§ 11-50-13, 11-50-14).

Section 3. Authorization of transfer and conveyance. In consideration of the payment by the utilities board of the town of the sum of $117,715.00 and in consideration also of the public benefit that will result from such conveyance, the mayor of the town is hereby authorized and directed to execute and deliver to the utilities board for and in the name of the town an appropriate deed whereby there shall be transferred and conveyed to the utilities board the gas system; and the town clerk of the town is hereby authorized to affix the corporate seal of the town to the said deed and to attest the same.

Section 4. Publication. This ordinance shall be published by posting a copy thereof in each of the following three (3) public places within the corporate limits of the town: the United States post office; the town hall; and Trione's Grocery Store; and each of the said copies shall remain continuously so posted for not less than five (5) complete and consecutive days."
(Ord. No. 1969-4, §§ 1—4, 2-28-69)

Sec. 12-23. Gas (utilities board).

"(1) The word "gas" as used herein includes natural gas, coke-oven gas, manufactured gas and any type of gas suitable for domestic, commercial, or industrial consumption. The words "the town," as used herein, mean the Town of Daphne, a municipal corporation in the State of Alabama, as it is now constituted and as it may be hereafter extended and enlarged. The words "the board," as used herein, mean the utilities board of the Town

of Daphne, a public corporation existing under Act No. 175 adopted at the 1951 regular session of the legislature of Alabama, as amended (Code of Ala. 1975, § 11-50-310 et seq.).

(2) There is hereby granted to the board the right, privilege, authority and franchise to acquire, own, maintain, construct, enlarge and operate in the town a transmission line or lines for the transmission of gas into and through the town and a system for the distribution of gas in the town, together with the right, privilege, authority and franchise (i) to lay, construct and maintain gas mains and pipes and other conductors, fixtures and related appurtenances in, along, across and under the streets, avenues, alleys and other public places in the town for the purpose of conveying and transmitting gas in and through the town, and for the purpose of conveying and distributing gas in the town and (ii) to repair, renew, relay and extend such mains, pipes, conductors, fixtures and related appurtenances, and to make all necessary excavations.

(3) The board shall, and by accepting this franchise agrees that it will, upon making any excavations of the streets, avenues, alleys, public ways and public places in the town, restore the paving or other surface at the point of such excavation to substantially the same condition such paving or other surface was in before such work was done, all as promptly as may be practicable and within a reasonable length of time thereafter.

(4) The rights, privileges, franchise and authority hereby granted may be exercised by the board or any successors and assigns of the board, and may be mortgaged or conveyed in trust as security for any bonds or other obligations of the board, or of its successors and assigns, all subject nevertheless to the conditions and obligations herein contained.

(5) This ordinance shall be published by posting a copy thereof in each of the following three (3) public places within the corporate limits of the town: the U.S. post office; the town hall; and Trione's Grocery Store. The copies so posted shall remain so posted for not less than five (5) complete and consecutive days; and this ordinance shall become effective upon completion of the said posting. The rights, privileges, consent and franchise herein granted shall begin at the effective date hereof."
(Ord. No. 1969-2, §§ 1—5, 2-28-69)

Sec. 12-24. Appointment to utilities board.

(a) *General policy.* It shall be the policy of the city that the board shall consist of one (1) member from each of the council districts.

(b) *Nominating process.* When a vacancy in the board occurs for any reason, the council member representing that district in which the member of the board whose seat is vacant resides, shall nominate a successor to the board at a council meeting. Said nomination is subject to council approval. If the council fails to reject the nominee within thirty (30) days, the nominee is appointed unless otherwise disqualified under state law. If the nominee is rejected, the council member shall make additional nominations until an appointment is made.

(c) *Represented districts.* If the district is already represented by another board member, the nomination shall pass to the council member representing the next higher numbered district. The nomination shall continue to pass in this manner until a district unrepresented on the board is reached. The nominating process is then followed.

(d) *Subsequent vacancies.* Each subsequent vacancy shall be filled in a like manner, starting with the next succeeding district council representative. (Eg., if the council member for district 7 made the last appointment, the district 1 member shall nominate the next appointment.)

(e) *Council members on board.* For purposes of these rules, districts with council members also serving a board members shall be considered represented districts under subsection (c). If the mayor is also a member of the board, he/she shall be considered an "at large" member and not representing any particular district.
(Ord. No. 1996-29, §§ 1—5, 12-16-96)

Sec. 12-25. Imposition of payment in lieu of franchise fee.

(a) There shall be imposed a payment in lieu of taxes or franchise fee in the amount of three (3) percent of gross revenues upon any person, cor-

poration, authority, or other entity which provides water, sewer, gas or electricity to citizens of the City of Daphne.

(b) Any such utility provider which currently remits payments in lieu of taxes or franchise fees in the amount specified above shall be exempt from the provisions hereof.

(c) Any franchise or contract with any such utility provider shall be modified so as to provide for the payments specified hereinabove.

(d) The provisions of this section shall not be construed as granting any franchise or license to any utility provider which does not currently hold a valid franchise or license to provide utilities within the City of Daphne.
(Ord. No. 1999-24, §§ I—IV, 7-19-99)

Secs. 12-26—12-30. Reserved.

ARTICLE III. SOLID WASTE COLLECTION AND DISPOSAL*

DIVISION 1. GARBAGE†

Sec. 12-31. Definitions.

For the purpose of this division the following terms, phrase, words and their derivations shall have the meaning given herein. When not inconsistent with the context the words used in the present tense include the future, 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.

Code enforcement officer. The code enforcement officer of the City of Daphne or a duly authorized representative of the city appointed by the mayor to oversee enforcement of the terms of this division.

Commercial establishment. The term "commercial establishment" shall mean and refer to all commercial establishments, including but not being limited to apartments, motels, and hotels maintaining centralized locations for garbage, laundries and cleaning establishments, industrial establishments, and all other places not classed as residential, producing or accumulating garbage.

Contractor. The term "contractor" shall mean the City of Daphne Solid Waste Department, or any person, firm or corporation to whom the City of Daphne has granted a franchise for the right to collect garbage within the City of Daphne, Alabama.

Garbage. The term "garbage" shall mean putrescible animal and vegetable wastes resulting from the handling, preparation, cooking and consumption of food, including wastes from markets, storage facilities, handling and sale of produce and other food products, and excepting such materials that may be serviced by garbage grinders and handled as household sewage.

Garbage disposal site. "Garbage disposal site" shall mean areas or facilities established for disposal of garbage as designated by the code enforcement officer.

Garbage receptacle. The term "garbage receptacle" shall mean a container that is commercially available for use as a garbage container which is:

(a) Not greater than thirty-five-gallon capacity or less than thirty-gallon capacity; or

(b) A ninety-six-gallon semi-automated garbage cart, as approved by the City of Daphne.

The receptacle shall be free of jagged or sharp edges and shall be watertight and of impervious material, provided with a tight-fitting cover suitable to protect the contents from flies, insects, rats, and other animals, and which shall not have any inside structures, such as inside bands or reinforcing angles or anything within that would prevent the free discharge of the contents. In no event shall metal drums be used as garbage receptacles.

***Cross references**—Disposal of residential garbage, § 10-31; disposal of trash in residential areas, § 10-31.1.

†**Editor's note**—Section VIII of Ord. No. 2002-34, adopted Oct. 28, 2002, repealed Ord. No. 1997-29 from which §§ 12-31—12-38 derived. Similar provisions were enacted by Ord. No. 2002-34 and reset out as §§ 12-31—12-38.

Owner. The term "owner" shall mean person or persons, firm, corporation or association who shall accumulate or cause to accumulate garbage for pickup and disposal by the contractor.

Person. The term "person" shall mean any person or persons, firm, corporation, or association of any type.

Residential unit. The words "residential unit" shall mean any structure or shelter or any part or curtilage thereof used or constructed for use as a residence of one (1) family.
(Ord. No. 2002-34, § I, 10-28-02)

Sec. 12-32. Territorial application of this division.

The provisions of this division shall apply to all territory which presently lies within the city limits or which may be hereinafter annexed to the City of Daphne.
(Ord. No. 2002-34, § II, 10-28-02)

Sec. 12-33. Requirements for garbage removal.

(a) *Residential.* All residents and occupants of residential units in Daphne, Alabama, shall be required to have accumulations of garbage removed and disposed of by:

(1) The City of Daphne Solid Waste Department or a contractor to whom the City of Daphne has granted a franchise;

(2) Transporting to approved bulk containers or approved disposal sites; or

(3) Obtaining a permit from the health department to transport to a landfill.

(b) *Commercial.* All occupants of premises used for commercial purposes shall be required to have accumulations of garbage removed and disposed of by:

(1) A licensed, franchised contractor; or

(2) Transporting in vehicles approved by the code enforcement officer to approved disposal sites.

(c) *Evidence of accumulation.* The fact that any residence or any place of business is occupied shall be prima facie evidence that garbage is being produced and accumulated upon such premises, and garbage shall be stored, transported, and disposed of in a manner approved by the code enforcement officer and in compliance with the requirements of this division and any amendments thereto.

(d) *Placement.* All garbage must be placed at the curbside, within six (6) feet of the street before 7:00 a.m. on the day scheduled for pick up. No garbage shall be placed at the curbside [within] more than twenty-four (24) hours of service. If trash and garbage are scheduled for collection on the same day, materials should be neatly placed in separate areas of the curbside. Containers [are] to be removed from the curbside within twelve (12) hours after collection has occurred.

(e) *Sanitary nuisance.* Accumulation of garbage at any residential unit or any commercial unit for more than five (5) days shall be prima facie evidence of a sanitary nuisance. The code enforcement officer shall, upon finding a nuisance as described above, issue a municipal offense ticket pursuant to the municipal offense ordinance of the City of Daphne, and my pursue all legal remedies available to the city under the law, including but not limited to taking any action necessary to abate the nuisance.
(Ord. No. 2002-34, § III, 10-28-02)

Sec. 12-34. Preparation and receptacle requirements.

(a) *Preparation requirements.* All garbage must be placed in bags and placed in a garbage receptacle as defined herein. Red-colored bags will not be collected, as red is the universal color for medical waste. All garbage, cans and bottles shall be drained of all liquids prior to deposit in the required receptacles. Receptacles shall comply with requirements of the definition as established herein, and shall be kept tightly covered at all times except when it is necessary to lift the cover to deposit garbage.

(b) *Location of receptacles; residential.* Garbage receptacles shall be placed at ground level, within six (6) feet from the roadway on the property of the residential unit or commercial establishment which has accumulated the garbage, and shall not be kept upon city, county or

public property or neighboring property not in the ownership or tenancy of the person by whom the garbage is accumulated, whether such neighboring property be vacant or improved except that it may be kept on the city right-of-way. Such placement of garbage receptacles shall be easily accessible to the code enforcement officer for inspection and to employees of the contractor for collection.

(1) Garbage shall be neatly placed so as to allow convenient passage of persons and vehicles on the roadway. At no time shall a receptacle or garbage be placed in a street, drainage ditch, storm drain or gutter, nor should it be placed near trees, power lines, street signs or near utility, cable or telephone equipment. If garbage is placed near service equipment and damage occurs to said equipment due to collection efforts, the property owner will be responsible for all necessary repairs or replacements.

(2) Ownership of and responsibility for garbage material shall remain with the producer until collected.

(c) *Minimum receptacle specifications.*

(1) *Receptacles required.* All garbage must be placed in bags and the bags placed in garbage receptacles as defined herein. Such receptacles shall be in sufficient number to hold all garbage produced between regular collections.

(2) *Commercial receptacle exceptions.* Garbage from commercial establishments may be stored or collected in a container designed for mechanical pickup provided that such container and the location of such container have been approved by the code enforcement officer.

(3) *Improper receptacles.* Any container used for the collection or storage of garbage failing to meet the requirements of this section shall be clearly marked or identified by an agent of the contractor or code enforcement officer, which marking or identification shall legibly specify in what manner the container fails to meet the requirements of garbage receptacles. Any container so tagged must be replaced with an acceptable container within five (5) days after notification by the code enforcement officer. The contractor will not be responsible for removing garbage that is not properly prepared and placed in approved receptacles.

(Ord. No. 2002-34, § IV, 10-28-02)

Sec. 12-35. Frequency of collection.

Garbage shall be picked up by the contractor from each location once per week. All collection schedules are subject to change due to legal holidays and/or weather conditions. Persons desirous of garbage pickup shall call the public works department of the City of Daphne to obtain a garbage collection schedule.

(Ord. No. 2002-34, § V, 10-28-02; Ord. No. 2009-35, § I, 8-17-09)

Sec. 12-36. Fees for collection and disposal.

Every person or persons occupying a building or dwelling unit which generates garbage within the city limits of the City of Daphne, Alabama, shall be subject to a fee of thirteen dollars and ninety cents ($13.90) per month, which shall be determined by the city and adjusted by separate resolution. Said fee shall include service for garbage and recycling collection and disposal. Such fees for the collection and disposal of garbage shall be subject to change from time to time as deemed necessary in order to cover the increased cost of collection and disposal services. Any change in the fee for such services must be publicly advertised at least thirty (30) days before the effective date of the change.

(Ord. No. 2002-34, § VI, 10-28-02)

Sec. 12-37. Prohibited acts.

(a) *Accumulation of garbage.* It shall be unlawful for any person to accumulate or to cause, permit or allow to be accumulated any garbage upon his property or premises except during regular intervals between collections by the contractor.

(b) *Unlawful disposal.* It shall be unlawful for any person to dump or bury any garbage on public or private property not owned by him unless

permission has been obtained from the respective property owner or owners and such disposal has been authorized by the code enforcement officer. If any garbage is found on public or private property or roadway and its origin is traced to a commercial establishment or residential unit by identification such as mail, statements, checks, etc., and such person or owners are not receiving disposal service by the franchised contractor, such information presented in a statement signed by the code enforcement officer, shall be prima facie evidence that such garbage came from that commercial establishment or residential unit and such person or owner is in violation of this division. The provisions of this section do not apply to dumping on private property, with owner's permission, of sand, dirt, broken brick, blocks, broken pavement or other material suitable for use as fill material to raise the elevation of land.

(c) *Contagious disease refuse.* Refuse consisting of clothing, bedding or other waste from homes or other places where highly infectious or contagious diseases have prevailed shall not be placed in containers for regular collection. Removal of such materials shall be performed under the supervision and direction of the code enforcement officer.

(d) *Flammable or explosive refuse.* Highly flammable or explosive materials shall not be placed in containers for regular collection but shall be disposed of as directed by the code enforcement officer at the expense of the owner or possessor thereof.

(e) *Other hazardous materials.* No person shall place or cause to be placed in such receptacles such materials as unwrapped razor blades and glass, acid, and other like materials which have caused or may cause personal injury to employees of the collection personnel. Such material shall not be collected unless wrapped, rendered harmless or identified as injurious materials.

(f) *Dead animals.* The disposal of all dead animals on private property shall be the responsibility of the property owner. Disposal shall be as required by the code enforcement officer.

(g) *Scattering garbage.* It shall be unlawful to molest, disturb or to scatter or spread about or cause to be molested, disturbed, scattered, or spread about any contents of receptacles set out or intended to be collected and removed.

(h) *Medical waste.* The City of Daphne Solid Waste Department shall not collect any medical waste. The disposal of medical waste shall be the responsibility of the property owner, and shall be collected by a private, licensed contractor in accordance with all federal, state and local laws. (Ord. No. 2002-34, § VII, 10-28-02)

Sec. 12-38. Penalties.

Any person violating any provision of these rules and regulations shall be deemed guilty of a misdemeanor and punished by a fine (fine for a misdemeanor) of not less than fifty dollars ($50.00) nor more than five hundred dollars ($500.00). (Ord. No. 2002-34, § VIII, 10-28-02)

Secs. 12-39, 12-40. Reserved.

DIVISION 2. TRASH*

Sec. 12-41. Definitions.

For the purpose of this division the following terms, phrases, words and their derivations shall have the meaning given herein. When not inconsistent with the context the words used in the present tense include the future, 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.

Code enforcement officer. The term "code enforcement officer" shall mean the code enforcement officer of the City of Daphne or a duly authorized representative of the city appointed by the mayor to oversee enforcement of the terms of this division.

Commercial establishment. The term "commercial establishment" shall mean an establishment

*__Editor's note__—Section X of Ord. No. 2004-05, adopted Feb. 16, 2004, repealed Ord. No. 2002-35 from which §§ 12-41—12-48 derived. Similar provisions were enacted by Ord. No. 2004-05 and reset out as §§ 12-41—12-48.

organized primarily for purpose of conducting commercial activity including, but is not limited to, the following: apartments, motels, and hotels maintaining centralized locations for trash containers, stores, office buildings, restaurants, ser-

vice stations and garages, laundries and cleaning establishments, industrial establishments, retail establishments and all other places not classed as residential which produce or accumulate trash.

Contract. The term "contract" shall describe the agreement between either the City of Daphne Solid Waste Department or any other person, firm or corporation with whom the City of Daphne has contracted and a private property owner and a private contractor. The term "contract" shall apply to either a written or implied agreement for services between the respective parties.

Contractor. The term "contractor" shall mean the City of Daphne Solid Waste Department or any person, firm or corporation to whom the City of Daphne has granted a franchise for the right to collect trash within the City of Daphne, Alabama. The term "contractor" shall also mean a duly licensed person, or business, who accepts either cash payment for services rendered or swaps for services provided by another professional or provider.

Junk. The term "junk" shall mean any vehicle or vehicle parts, rubber tires, automotive batteries, paint or paint containers, oil, gasoline, items containing hazardous or flammable material, chemicals, asphalt, cement or concrete, machinery, equipment, building or construction material, or other items which are either in a wholly or partially rusted, wrecked, junked, dismantled or inoperative condition.

Owner. The term "owner" shall mean any person, firm, corporation or association who accumulates trash, causes trash to be accumulated or causes trash to be placed for pickup and disposal by the contractor.

Person. The term "person" shall mean any person or persons, firm, corporation, or association of any type.

Rubbish. The term "rubbish" shall mean clothing, appliances, furniture, bicycles, lawn mowers, barbecue grills and similar discarded personal and household items, excluding junk as herein defined and excluding recyclable materials.

Trash. The term "trash" shall mean rubbish, shrubbery, trimmings, sidewalk sweepings, leaves, pine straw, grass, weeds, hedge trimmings, small tree trimmings (limbs less than five (5) feet in length and eight (8) inches in diameter), firewood or other refuse originating in yards, on sidewalks, or neutral grounds adjacent to the home or business of the person receiving trash service, excluding the following: junk as herein defined, recyclable materials, trees that have been cut down by contractors or by individuals who have been paid to remove or cut trees.

Trash disposal site. The term "trash disposal site" shall mean any areas or facilities established for the disposal of trash as designated by the code enforcement officer.

Trash receptacle. The term "trash receptacle" shall mean a paper or plastic trash bag that shall be closed and sealed to protect the contents from flies, insects, rats and other animals and which shall be free from jagged and for sharp edges. Red colored bags, garbage containers, cans or boxes are not acceptable trash receptacles. (Red is the universal color for medical waste.)
(Ord. No. 2004-05, § I, 2-16-04)

Sec. 12-42. Territorial application.

The provisions of this division shall apply to all territory which presently lies within the city limits or which may be hereinafter annexed to the City of Daphne.
(Ord. No. 2004-05, § II, 2-16-04)

Sec. 12-43. Requirements for trash removal.

(a) *Residential.* All residents and occupants of residential units in Daphne, Alabama, shall be required to have accumulations of trash removed and disposed of by:

(1) The City of Daphne Solid Waste Department or a contractor with whom the City of Daphne has granted a franchise;

(2) Transporting to approved bulk containers or approved disposal sites; or

(3) Obtaining a permit from the health department to transport to a landfill.

The City of Daphne Solid Waste Department shall not collect junk. The actual producers or owners of junk or the owners of the premises upon which

junk is accumulated must dispose of said materials not included in the definition of trash in a manner that is consistent with the laws of the city, county and state.

(b) *Commercial.* The actual producers or owners of commercial trash or the owners of premises upon which trash is accumulated may collect and dispose of such trash, but shall use a vehicle and disposal site as approved by the code enforcement officer. Contractors shall be responsible for the removal of trash from the premises of the property owner who contracted said services. If a contractor fails to remove trash within seven (7) days of leaving a contracted site, then the City of Daphne Solid Waste Department may remove and dispose of said trash and assess the responsible property owner a bill in the amount governed by this division.

(c) *Evidence of accumulation.* The fact that any residence, commercial establishment or any place of business is occupied shall be prima facie evidence that trash is being produced and accumulated upon such premises. Said trash shall be stored, transported and disposed of in a manner approved by the code enforcement officer and in compliance with the requirements of this division and any amendments thereto.

(d) *Placement.* All trash, as defined by this ordinance, must be placed at the curbside, within six (6) feet of the street before 7:00 a.m. on the day scheduled for pick up. No trash shall be placed at the curbside more than twenty-four (24) hours before the scheduled day of service for pickup. The placement of trash at the curbside in excess of twenty-four (24) hours before the scheduled day of service for pickup shall constitute a violation of the provisions of this division. Any hazardous or other material not constituting trash in accordance with the provisions of this ordinance not collected by the City of Daphne Solid Waste Department shall be removed from the curbside within twenty-four (24) hours of service. Any hazardous or other material not constituting trash in accordance with the provisions of this ordinance not collected by the City of Daphne Solid Waste Department not removed within twenty-four (24) hours of service shall constitute a violation of the provisions of this ordinance. If trash and garbage are scheduled for collection on the same day, materials, including limbs and rubbish, should be neatly placed in separate areas of the curbside.

(e) *Sanitary nuisance.* Accumulation of trash or junk at any residential unit or any commercial unit for more than two (2) days shall be prima facie evidence of a sanitary nuisance. The Code enforcement officer may, upon finding a nuisance as described herein, issue a municipal offense ticket pursuant to the municipal offense ordinance of the City of Daphne, and may pursue all legal remedies available to the city under the law, including but not limited to, taking any action necessary to abate the nuisance.
(Ord. No. 2004-05, § III, 2-16-04)

Sec. 12-44. Preparation and receptacle requirements.

(a) *Preparation requirements.* All trash placed for collection shall be in paper or plastic bags of any color except red, closed and sealed so as to protect the contents from flies, insects, rats, and other animals, free from jagged and sharp edges and shall be placed behind the front curb line within six (6) feet of the roadway. Nongarbage material or improperly placed trash will not be collected. Trash receptacles should not contain materials other than trash or rubbish. If nontrash materials are observed, the City of Daphne Solid Waste Department will not be responsible for collection of any of the material or trash in the receptacle. Tree limbs and stumps need not be containerized. All tree limbs shall be not longer than five (5) feet in length. The maximum trash quantity allowed is fifteen (15) cubic feet per residence per week. Any trash pile exceeding this stated maximum will be collected and the property owner (or resident) assessed the appropriate expense as stated in section 12-45 of this division.

(b) *Location of receptacles.*

(1) *Residential.* Trash containers shall be placed at ground level within six (6) feet of the roadway, on the property of the residential unit or commercial establishment which has accumulated said trash, and shall not be kept upon any city, county or public property or neighboring prop-

erty not in the ownership or tenancy of the person by whom the trash is accumulated, regardless of whether said neighboring property is vacant or improved except that it may be kept on the city right-of-way. The placement of receptacles shall be easily accessible to the code enforcement officer for inspection and to employees of the contractor for collection.

a. Trash shall be neatly placed to allow convenient passage of persons and vehicles on the roadway. At no time shall any receptacle or trash be placed in any street, drainage ditch, storm drain, gutter or median. Trash shall also not be placed near trees, power lines, street signs or utility, cable or telephone equipment. If trash is placed near service equipment and damage occurs to said equipment due to collection efforts, the property owner shall be responsible for all necessary repairs or replacements.

b. Ownership of and responsibility for trash material shall remain with the producer until collected.

(2) *Commercial.* All commercial trash containers and/or bulk containers shall be kept in a place easily accessible to the contractor and in such location as to prevent obnoxious and nuisance conditions to inhabitants and the general public. Adequate screening shall be provided either by location as close to the building or buildings as possible or providing other concealment to be least noticeable from a public thoroughfare and so placed not to interfere with the movement of pedestrian or vehicular traffic.

(c) *Minimum receptacle specifications.*

(1) *Receptacles required.* All trash shall be in receptacles as herein defined, except limbs and stumps which need not be containerized. This includes leaves, pine straw, grass clippings and pine cones. Such receptacles shall be in sufficient number to hold all trash produced between regular collections.

(2) *Commercial receptacle exceptions.* Trash from commercial establishments may be stored or collected in a container designed for mechanical pickup provided that such container and the location of such container have been approved by the code enforcement officer.

(3) *Improper receptacles.* Any container used for the collection or storage of trash failing to meet the requirements of this section shall be clearly marked or identified by an agent of the contractor or code enforcement officer, which marking or identification shall legibly specify in what manner the container fails to meet the requirements of trash receptacles. Any container so tagged must be replaced with an acceptable container within five (5) days after notification by the code enforcement officer. The contractor will not be responsible for removing trash that is not properly prepared and placed in approved receptacles.

(Ord. No. 2004-05, § IV, 2-16-04)

Sec. 12-45. Frequency of collection.

Trash shall be picked up by the contractor from each location once per week. All collection schedules are subject to change due to legal holidays and/or weather conditions. Persons desirous of trash pickup shall call the public works department of the City of Daphne to obtain a trash collection schedule.

(Ord. No. 2004-05, § V, 2-16-04)

Sec. 12-46. Fees for collection and disposal.

Every person or persons occupying a building or dwelling unit which generates trash within the city limits of the City of Daphne, Alabama, shall be subject to a fee of:

(a) *Residential.* Over fifteen (15) cubic feet: One hundred dollars ($100.00) full load and fifty dollars ($50.00) half load; or

(b) *Commercial.* One hundred fifty dollars ($150.00) full load and eighty dollars ($80.00) half load.

Such fees for the collection and disposal of trash shall be subject to change from time to time as deemed necessary in order to cover the increased cost of collection and disposal services. Any change in the fee for such services must be publicly advertised at least thirty (30) days before the effective date of the change.
(Ord. No. 2004-05, § VI, 2-16-04; Ord. No. 2004-36, § VI, 10-18-04)

Sec. 12-47. Prohibited acts.

(a) *Accumulation of trash, rubbish and/or junk.* It shall be unlawful for any person to accumulate or to cause, permit or allow to be accumulated any trash, rubbish or junk upon his property or premises except during regular intervals between collections by the contractor.

(b) *Unlawful disposal.* It shall be unlawful for any person to dump or bury any trash, rubbish or junk on public or private property not owned by him unless permission has been obtained from the respective property owner or owners and such disposal has been authorized by the code enforcement officer. If any trash, rubbish or junk is found on any public or private property or roadway and its origin is traced to a commercial establishment or residential unit by investigation or identification such as mail, statements, checks, etc., and such person or owners are not receiving disposal service by the contractor, such information presented in a statement signed by the code enforcement officer shall be prima facie evidence that such trash, rubbish or junk came from that commercial establishment or residential unit and such person or owner shall be in violation of this division. The provisions of this section do not apply to dumping on private property, with owner's permission, of sand, dirt, broken brick, blocks, broken pavement or other material suitable for use as fill material to raise the elevation of land.

(c) *Contagious disease refuse.* Refuse consisting of clothing, bedding or other waste from homes or other places where highly infectious or contagious diseases have prevailed shall not be placed in containers for regular collection. Removal of such materials shall be performed under the supervision and direction of the code enforcement officer.

(d) *Flammable or explosive refuse.* Highly flammable or explosive materials shall not be placed in containers for regular collection but shall be disposed of as directed by the code enforcement officer at the expense of the owner or possessor thereof.

(e) *Other hazardous materials.* No person shall place or cause to be placed in such receptacles such materials as unwrapped razor blades, glass, acid or other like materials which may cause personal injury to employees of the collection personnel. Such material shall not be collected unless wrapped, rendered harmless or identified as injurious materials. Further, the City of Daphne Solid Waste Department shall not collect automobile batteries, paint, paint thinners, concrete or cement.

(f) *Dead animals.* The disposal of all dead animals on private property shall be the responsibility of the respective property owner. Disposal shall be as required by the code enforcement officer.

(g) *Scattering trash, rubbish or junk.* It shall be unlawful to molest, disturb, scatter or spread about or cause to be molested, disturbed, scattered or spread about the contents of any container or trash set out or intended to be collected and removed.

(h) *Medical waste.* The City of Daphne Solid Waste Department shall not collect any medical waste. The disposal of medical waste shall be the responsibility of the property owner, and shall be collected by a licensed contractor in accordance with all federal, state and local laws.
(Ord. No. 2004-05, § VII, 2-16-04)

Sec. 12-48. Penalties.

Any person found to be in violation of any provision of this division shall be deemed guilty of a misdemeanor and shall punished by a fine of not less than fifty dollars ($50.00) nor more than five hundred dollars ($500.00) or by a period of incarceration not exceeding six (6) months or both in the discretion of the municipal judge.
(Ord. No. 2004-05, § VIII, 2-16-04)

Secs. 12-49, 12-50. Reserved.

ARTICLE IV. RECYCLING

Sec. 12-51. Definitions.

For the purpose of this article the following terms, phrases, words and their derivations shall have the meaning given herein. When not inconsistent with the context the words used in the present tense include the future, words in the plural number include the singular number, and words in the singular number include the future, 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.

Aluminum cans. The term aluminum cans as used herein shall be deemed to include only those containers made entirely of aluminum and used solely for the packaging of beverages and food.

Glass. The term glass as used herein shall be deemed to include all bottles and jars made entirely of glass and used in the storage of food and beverages. Specifically excluded are blue glass and flat glass commonly known as window glass, light bulbs and fixtures.

Metal cans. The term metal cans as used herein shall be deemed to include all cans, other than aluminum, consisting entirely of steel, tin or bi-metal and used in the storage of food and beverages.

Paper recycling materials. The term paper recycling materials as used herein shall be deemed to include newspaper, high-grade paper, mixed paper and corrugated cardboard. Newspapers include paper of any type commonly referred to as newsprint and distributed at stated intervals usually daily or weekly, having printed thereon news and opinions and containing advertisements and other matters of public interest, all magazines or other periodicals, as well as, all other paper products of any nature whatsoever including paperboard. High-grade paper includes office paper, high-grade paper, "junk mail" and advertisements. Corrugated cardboard includes cardboard containers used primarily for the packaging, boxing and/or transporting of products of any type.

Plastics. The term plastics as used herein shall be deemed to include all forms of soft and/or hard plastic used for containers.

Recyclable materials. The term recyclable materials as used herein shall be deemed to include all materials designated by the municipality to be source separated from the solid waste stream for the purpose of recycling, and includes paper-stock recycling materials, glass, plastic, aluminum cans and metal cans. Hazardous wastes or medical waste containers are specifically excluded.

Recycling. The term "recycling" as used herein shall be deemed to mean the process by which designated materials, which would otherwise become solid waste, are separated, collected, processed and returned to be the economic mainstream in the form of raw materials or products.

Residential unit. The words "residential unit" shall mean any structure or shelter or any part or curtilage thereof used or constructed for use as a residence of one (1) family.

Small commercial unit. The term "small commercial unit" shall mean and refer to all commercial establishments, including but not being limited to any retail business, restaurant, or production facilities determined by the Public Works Department of the City of Daphne to produce an amount of recyclable materials to be picked up by the City of Daphne.

Solid waste. The term solid waste as used herein shall be deemed to include all garbage and rubbish that is collected for disposal and include but not limited to, metal, scrap metal, white goods (stoves, refrigerators, washers, dryers, sinks), and all non-recyclable waste streams. Hazardous wastes or medical waste containers are specifically excluded.
(Ord. No. 2002-36, § I, 10-28-02)

Sec. 12-52. Territorial application of this article.

The provisions of this article shall apply to all territory which presently lies within the city limits or which may be hereinafter annexed to the City of Daphne.
(Ord. No. 2002-36, § II, 10-28-02)

Sec. 12-53. Requirements for removal of recyclable materials.

(a) *Residential.* All residents and occupants of residential units in the City of Daphne, Alabama, may, at their discretion, elect to participate in the City of Daphne recycling program. Residents wishing to participate in said program shall acquire from the public works department of the City of Daphne either a fourteen-gallon container or a ninety-six-gallon cart. There shall be no charge for either.

(b) *Commercial.* All small commercial units, as determined by the city, which are located within the City of Daphne, Alabama, may, at their discretion, elect to participate in the City of Daphne recycling program. Small commercial units wishing to participate in said program from the public works department of the City of Daphne a ninety-six-gallon cart. There shall be a monthly fee of two dollars and fifty cents ($2.50) rent per cart.
(Ord. No. 2002-36, § III, 10-28-02)

Sec. 12-54. Preparation and receptacle requirements.

(a) *Preparation requirements.* All recyclable materials must be placed in an City of Daphne Division of Public Works approved container. All materials must be clean and neatly placed in said container.

(b) *Location of receptacles.* All City of Daphne Division of Public Works receptacles shall be placed at the curb side within six (6) feet of the street before 7:00 a.m. but not more than twenty-four (24) hours prior to service.
(Ord. No. 2002-36, § IV, 10-28-02)

Sec. 12-55. Frequency of collection.

Recyclable materials shall be picked up by the city from each location once weekly. All collections schedules are subject to change due to legal holidays, weather conditions, or adjustments as deemed appropriate by the City of Daphne. Persons desirous of recyclable material pick-up shall call the Public Works Department of the City of Daphne to obtain the recyclable material collection schedule.
(Ord. No. 2002-36, § V, 10-28-02)

Sec. 12-56. Prohibited acts.

All approved recyclable materials containers shall contain only approved recyclable materials. No unapproved recyclable materials or solid waste shall be placed therein. The City of Daphne reserves the right to refuse recycling service to any residential or small commercial unit placing unapproved materials in any approved recycling bin or cart.
(Ord. No. 2002-36, § VI, 10-28-02)

Sec. 12-57. Approved recyclable materials.

The following is a list of approved recyclable materials which may be placed in an approved City Of Daphne recycling container or bin for recycling:

(a) *Glass.* Transparent glass containers i.e, clear, green or brown bottles and jars from which the lids and labels are removed and which have been thoroughly rinsed.

(b) *Paper and cardboard.* Any newspaper, newspaper supplements, junk mail, office paper, paper board, magazines or cardboard. All paper must be free of any staples, paperclips or plastic wrap. All cardboard must be broken down and cut into sections no larger than three (3) feet by three (3) feet.

(c) *Plastic.* Any plastic bottles, milk jugs, water containers, soft drink bottles or plastics #1 and #2 from which any lids and labels have been removed and which have been thoroughly rinsed.

(d) *Metal.* Any aluminum cans, metal cans, or clean aluminum foil from which any lids and labels are removed and which have been thoroughly rinsed.

(Ord. No. 2002-36, § VII, 10-28-02)

Sec. 12-58. Unapproved recyclable materials.

The following is a list of unapproved recyclable materials which shall not be placed in a City of Daphne approved recycling container:

(a) *Glass.* Window or plate glass, coffee mugs, ceramics, crystal, or light bulbs.

(b) *Paper.* Cellophane, plastic/coated paper and cards, cigarette butts, wax paper, paper cups or paper plates.

(c) *Plastic.* Plastic bags, PVC, plastic wrap, screen/printed bottles, plastic cups, disposable diapers, or plastics labeled #4, #5, #6 or #7.

(d) *Metal.* Spray cans, paint cans or hazardous materials.

(Ord. No. 2002-36, § VIII, 10-28-02)

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Chapter 13

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ARTICLE I. IN GENERAL

Sec. 13-1. Conformity of state and municipal tax levies.

In accordance with the requirements of the Local Tax Simplification Act of 1998 (Code of Ala. 1975, §§ 11-3-11.2, 11-51-180, 11-51-200 et seq.), effective July 1, 1998, all taxes levied or assessed by the City of Daphne pursuant to Ordinance Numbers 1990-15, 1998-12, 1990-16, 1995-15, and 1990-22 regarding the nature of sales, use, rental, or lodging taxes shall be interpreted and enforced in a manner consistent with the corresponding state tax levy.

All such taxes levied or assessed by the City of Daphne shall be subject to all definitions, exceptions, exemptions, proceedings, requirements, provisions, rules, and regulations promulgated under the Alabama Administrative Procedure Act, direct pay permit and drive-out certificates procedures, statutes of limitations, including penalties, fines, punishments, and deductions for the corresponding state tax as required under Code of Ala. 1975, §§ 11-51-200, 11-51-201, 11-51-203, and 11-51-204, as now or hereafter in effect, except, where inapplicable or where otherwise provided by Code of Ala. 1975, title 11, ch. 51 (Code of Ala. 1975, § 11-51-1 et seq.).
(Ord. No. 2001-26, § 1, 9-17-01)

Sec. 13-2. Hotel registration and retention of registration records.

(a) *Registration requirements.*

(1) Any person who controls or operates a hotel, motel, boardinghouse, roominghouse, guesthouse, apartment hotel, lodging house, motor hotel, extended stay lodging facility, or similar establishment offering rental accommodations shall keep and maintain a register of guests which shall include the true name and address of each guest, the room number occupied by such guest and the beginning and ending dates of occupancy for each guest. The registering guest shall verify his or her true name at the time of registration by presenting valid identification which shall be in the form of a driver's license, non-driver's state issued identification card, federal government identification, military identification, or passport.

(2) Any person who controls or operates an establishment describes in subsection (1) above shall record the issuer of the identification and identifying numbers on the identification presented. No guest shall be allowed to register without presenting valid identification. If the guest is traveling in a motor vehicle, the license number and owner of such motor vehicle shall also be recorded in the register.

(b) *Retention requirements.* Any person who controls or operates an establishment listed in subsection (a)(1) shall also retain the register of guests, including all information required under subsection (a)(1), for three (3) years and open it for inspection at any time the establishment is open for business upon the request and presentation of valid identification by any City of Daphne police officer or any other member of law enforcement having proper authority to enforce the laws of the State of Alabama and the United States of America.

Said information required under subsection (a)(1) shall be stored in a manner in which to be readily available to members of law enforcement when requested, regardless of company policy.

(c) *Penalty.*

(1) It shall be a violation of this section for any person subject to the provisions herein to refuse to keep or maintain a register as required by this section, to fail or refuse to make such register available for inspection as required by this section, to otherwise violate or fail to comply with any other provision of this section, or for any registering guest to register using a false name.

(2) Any person convicted of violating any of the provisions of this section shall be punished by a fine of not less than fifty dollars ($50.00) nor more than five hundred dollars ($500.00), or by imprison-

ment for a period not exceeding six (6) months, or both, in the discretion of the municipal judge.

(Ord. No. 2008-67, §§ I—III, 12-15-08)

Secs. 13-3—13-19. Reserved.

ARTICLE II. TAX ON LEASING OR RENTING OF TANGIBLE PERSONAL PROPERTY

Sec. 13-20. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Business: All activities engaged in, or caused to be engaged in, with the object of gain, profit, benefit or advantage, either direct or indirect, and not excepting subactivities producing marketable commodities used or consumed in the main business activity, each of which subactivities shall be considered business engaged in, taxable in the class in which it falls.

Gross proceeds: The value proceeding or accruing from the leasing or rental of tangible personal property, without any deduction on account of the cost of the property so leased or rented, the cost of materials used, labor or service cost, interest paid or any other expense whatsoever, and without any deduction on account of loss, and shall also include on the part of any person claiming exemption under Code of Ala. 1975, § 40-12-223(4), an amount equal to the rental paid on any tangible personal property acquired under such exemption.

Leasing or *rental:* A transaction whereunder the person who owns or controls the possession of tangible personal property permits another person to have the possession or use thereof for a consideration and for the duration of a definite or indefinite period of time without transfer of the title to such property. The detention by the user thereof of freight cars, oxygen and acetylene tanks and similar property, in respect of which detention a demurrage or per diem charge is made against the user of such property, shall not be deemed to constitute a transaction whereunder property is leased or rented to another within the meaning of this article.

Person: Any natural person, firm, partnership, association, corporation, receiver, trust, estate or other entity, or any other group or combination of any thereof acting as a unit, and the plural as well as the singular number, unless the intention to give a more limited meaning is disclosed by the context.

Tangible personal property: Personal property which may be seen, weighed, measured, felt or touched, or is in any other manner perceptible to the senses. The term "tangible personal property" shall not include stocks, bonds, notes, insurance or other contracts, or securities.

(Ord. No. 1990-22, § 1, 8-6-90)

Cross reference—Definitions and rules of construction generally, § 1-2.

Sec. 13-21. License required.

If any person shall engage in or continue in any business for which a privilege tax is imposed by section 13-22 or 13-23 as a condition precedent to engaging or continuing in such business, he shall apply for and obtain from the city a license to engage in and to conduct such business for the current tax year, upon the condition that he shall pay the taxes accruing to the city under the provisions of this article, provided that no license shall be issued under the provisions of this article to any person who has not complied with the provisions of this article, and no provision of this article shall be construed as relieving any person from the payment of any license or privilege tax now or hereafter imposed by law.

(Ord. No. 1990-22, § 2, 8-6-90)

Sec. 13-22. Levy and amount of tax.

There is hereby levied and imposed, in addition to all other taxes now imposed by law, a privilege or license tax upon each person engaging or continuing in this city in the business of leasing or renting tangible personal property at the rate of two and one-half (2½) percent of the gross proceeds derived by the lessor from the lease or rental of tangible personal property; provided that the privilege or license tax on each person

engaging or continuing in this city in the business of leasing or renting any automotive vehicle or truck trailer, semitrailer or house trailer shall be at the rate of one (1) percent of the gross proceeds derived by the lessor from the lease or rental of such automotive vehicle or truck trailer, semitrailer or house trailer; provided further that the tax levied in this article shall not apply to any leasing or rental, as lessor, by the state, or any municipality or county in the state, or any public corporation organized under the laws of the state, including without limiting, the generality of the foregoing, any corporation organized under the provisions of Code of Ala. 1975, title 11, ch. 54, art. 4, div. 1 (Code of Ala. 1975, § 11-54-80 et seq.); provided further that the privilege or license tax on each person engaging or continuing in this city in the business of the leasing and rental of linens and garments shall be at the rate of one (1) percent of the gross proceeds derived by the lessor from the lease or rental of such linens and garments.
(Ord. No. 1990-22, § 3, 8-6-90)

Sec. 13-23. Exemptions.

There are exempted from the provisions of this article and from the computation of the amount of the tax levied, assessed or payable under this article the gross proceeds derived by the lessor from the lease or rental of tangible personal property which are:

(1) Exempted from taxation under the provisions of Code of Ala. 1975, title 40, ch. 12, art. 4 (Code of Ala. 1975, § 40-12-220 et seq.) entitled "Leasing or Renting Tangible Personal Property," as the same is now or hereafter amended and all acts supplemental thereto except where inapplicable or where otherwise provided in this article; and

(2) Pursuant to leases or rental contracts in effect before October 1, 1990, provided that the exemption hereby afforded shall not apply to any renewal or extension of such leases or contracts and shall not apply to gross proceeds accruing after October 31, 1992.

(Ord. No. 1990-22, § 4, 8-6-90)

Sec. 13-24. Collection of tax.

The provisions of this article shall be administered and the tax levied in this article shall be collected in accordance with the procedures set forth in article VII of this chapter for administering and collecting the tax therein levied, and for such purposes there are hereby incorporated into this article by reference the provisions of sections 13-106 through 13-122, section 13-124, sections 13-127 through 13-130, and section 13-133, together with the definitions applicable to article VII of this chapter contained in section 13-101; provided that wherever in the provisions the term "gross proceeds of sales" or "gross receipts" shall appear, the same for the purposes of this article shall be construed to mean "gross proceeds" as defined in this article; provided further that a sale of tangible personal property to any person en-

gaging in the business of leasing or renting such tangible personal property to others, if such tangible personal property is purchased for the purpose of leasing or renting it to others under a transaction subject to the tax levied in this article, shall be deemed to be a wholesale sale or a sale at wholesale for the purpose of administering article VII and article VIII of this chapter; provided further that a sale of tangible personal property previously purchased at wholesale for the purpose of leasing or renting under a transaction subject to the privilege or license tax levied in this article shall be deemed to be a retail sale or a sale at retail for the purpose of administering articles VII and VIII of this chapter, regardless of whether such sale is to the person who theretofore leased or rented the tangible property or to some other person; provided further in the event of the repeal of article VII of this chapter, such repeal shall not operate to eliminate the tax collection procedures contained therein to the extent they are incorporated in this article by reference, unless the ordinance providing for such repeal shall clearly indicate such a result.
(Ord. No. 1990-22, § 5, 8-6-90)

Sec. 13-25. Proceeds of tax.

The proceeds derived from the rental tax levied in this article shall be placed in the general fund for the city, subject to appropriation by the city council for any lawful purpose of the city.
(Ord. No. 1990-22, § 6, 8-6-90)

Secs. 13-26—13-29. Reserved.

ARTICLE III. LIQUID MOTOR FUEL TAX

Sec. 13-30. Definitions.

As used in this article, the following terms shall have the respective meanings ascribed to them:

Distributor: Any person who shall engage in the selling of gasoline as herein defined in the corporate limits of the city and without the corporate limits, but within the police jurisdiction thereof, at wholesale, but shall not apply to any transaction by such distributor in interstate commerce.

Gasoline: Gasoline, naphtha, diesel, gasohol and other liquid motor fuels or any devices or substitutes therefor used in internal combustion engines; provided, however, that nothing in this article shall be held to apply to those products known commercially as kerosene oil, fuel oil, or crude oil used for lighting, heating or industrial purposes.

Retail dealer: Any person herein defined as the distributor who is engaged in the sale of gasoline as herein defined within the corporate limits of the city and without the corporate limits, but within the police jurisdiction, in broken quantities at retail.

Storer: Any person who ships gasoline into the city and the police jurisdiction thereof, in tank quantities and stores the same and withdraws or uses same for any purpose.
(Ord. No. 1987-6, § 1, 2-2-87)

Sec. 13-31. Levy of tax.

There is hereby levied and imposed an excise tax of one cent ($0.01) per gallon on persons, corporations, copartnerships, companies, agencies or associations engaged in the business of selling, distributing, storing or withdrawing from storage for any purpose whatever gasoline or other liquid motor fuels or devises or substitutes therefor within the corporate limits of the city. Every distributor, retail dealer, or storer of gasoline is required to pay an excise tax in such amount upon the selling, distributing, or withdrawing from storage for any use gasoline in the city. The excise tax levied hereby shall not and is not levied and shall not be collected upon the sales of gasoline in interstate commerce, provided that if the excise tax imposed hereby upon the sale, distribution, or withdrawal from storage of such shall have been paid by a distributor or a retail dealer or by a storer, such payment shall be sufficient, the intention being that the tax shall not be paid but once. The excise tax imposed under this article shall apply to dealers or distributors or other persons storing and distributing the same or allowing the same to be withdrawn from storage, whether such withdrawal is for sale or other use; provided that sellers of gasoline paying the tax herein provided may pay the same

computed and paid on the basis of their sales as herein provided and storers and distributors shall compute and pay such tax on the basis of their withdrawals or distributions. The tax herein imposed shall be in addition to all excise or other taxes imposed on gasoline, or on the business of selling, distributing, storing or withdrawing from storage for any purpose gasoline by the state or any other agency or subdivision of the state or the United States.
(Ord. No. 1987-6, § 2, 2-2-87; Ord. No. 1990-20, § 1, 8-6-90)

Sec. 13-32. Sworn statement; time of payment.

On or before the twentieth day of each month hereafter, every person upon whom the excise tax is levied shall render to the city comptroller, on a form prescribed by the city comptroller, a true and correct statement of all sales and withdrawals of gasoline made by him during the next preceding month liable for payment of the excise tax imposed by this article, and shall furnish to the city comptroller such additional information as the city comptroller may require upon blanks to be formulated and furnished by the city, and, at the time of making such report, shall pay to the city an amount of money equal to the excise tax levied hereby. The statement required in this section to be made by the distributor, storer, or retail dealer shall be sworn to before some officer authorized to administer oaths.
(Ord. No. 1987-6, § 3, 2-2-87; Ord. No. 1990-20, § 2, 8-6-90)

Sec. 13-33. Records.

All distributors, storers and retail dealers shall keep for not less than two (2) years within the state at some certain place or office such books, documents or papers as will clearly show the amount of sales or withdrawals of gasoline made in the city taxed under this article.
(Ord. No. 1987-6, § 4, 2-2-87)

Sec. 13-34. Report of address.

On or before the twentieth day of the month, next following the adoption of the ordinance from which this article is derived, every distributor, storer or retail dealer engaged in the sale or withdrawal of gasoline in the city shall make a report on blanks furnished under section 13-32 to the city comptroller of the city, showing the place and post office address at which he is engaged in business as a distributor or storer or retail dealer in gasoline within the city, which information shall be entered by the city comptroller on a book kept for that purpose, and should such distributor, storer or retail dealer move his place of business from one business address to another, such distributor, storer or retail dealer shall within thirty (30) days thereafter notify the city comptroller of such removal, giving the former place and post office address and also the place and post office address to which his place of business has been removed. No person shall become a distributor, storer or seller of gasoline in the city until he shall have made such reports to the city comptroller.
(Ord. No. 1987-6, § 5, 2-2-87; Ord. No. 1990-30, § II, 10-15-90)

Sec. 13-35. Failure to make report; assessment by city comptroller.

If any person subject to this article shall fail or refuse to make report thereof, the city comptroller may make or cause to be made an assessment of the tax owing by him from such evidence as it can obtain by lawful means; provided, however, that the person or licensee against whom such assessment is made, may within ten (10) days of a notice of such assessment protest the assessment in writing. Should the city comptroller deny the matter set forth in such protest, then he shall notify the person or licensee of its decision and such person or licensee must pay the assessment or shall be subject to punishment as provided in this article.
(Ord. No. 1987-6, § 7, 2-2-87; Ord. No. 1990-20, § 3, 8-6-90; Ord. No. 1990-30, § IV, 10-15-90)

Sec. 13-36. Credit against delinquent payment.

The acceptance of any amount paid for the excise tax imposed hereby shall not preclude the

collection of the amount actually due. However, the amount actually paid shall constitute a credit against the amount actually due.
(Ord. No. 1987-6, § 8, 2-2-87)

Sec. 13-37. Restraining order; prosecution.

Any distributor, storer or dealer against whom such tax shall be imposed by the city who shall violate any provision of this article may be restrained on behalf of the city from distributing, selling, storing or withdrawing from storage any gasoline, the sale or withdrawal of which is taxable until such person shall have complied with the provisions of this article, or proper prosecution may be instituted, either or both.
(Ord. No. 1987-6, § 9, 2-2-87)

Sec. 13-38. Time of payment; delinquency penalty.

The licensee must keep accurate records of all purchases and furnish to the city comptroller all pertinent information as to the amount of purchases, gross amount paid thereof, or other information as may be required from time to time by the city comptroller, and shall pay monthly to the city comptroller not later than the twentieth of each month, the amount due as hereby fixed and prescribed. If not paid by such day, a penalty of twenty (20) percent of the amount due, together with interest thereon at the rate of one (1) percent per month, or a fraction thereof from the date at which the tax levied in this article became due and payable, shall be assessed and collected as part of the taxes levied under this article.
(Ord. No. 1987-6, § 6, 2-2-87; Ord. No. 1990-30, § III, 10-15-90)

Sec. 13-39. Reports of deliveries.

Each agent of a bus or truck operator or other transportation company or agency operating in the city shall report to the city council on the first day of April, July, October and January of each year all shipments of gasoline handled by such person or through the station or office at which such person is the agent, and delivered to any person in the city, during the preceding three (3) months, giving the names and addresses of all consignors or consignees shipping and receiving gasoline and the number of gallons or pounds contained in each shipment.
(Ord. No. 1987-6, § 10, 2-2-87)

Secs. 13-40—13-49. Reserved.

ARTICLE IV. PAWNBROKERS AND SECONDHAND DEALERS

Sec. 13-50. Definitions.

As used in this article, the following terms shall have the respective meanings ascribed to them:

Operating any store, shop or place of business: Operating at any location within the corporate limits or police jurisdiction of the city, whether open or enclosed, where goods are bought, sold, exchanged or bartered; provided that this definition shall not include church, charitable, or fraternal organizations rummage sales, homeowner yard sales of personal belongings, and occasional flea market sales of inexpensive items.

Pawnbroker: A person who lends money upon a pawn, pledge or deposit of any tangible personal property whatsoever, one (1) such act constituting a person a pawnbroker within the meaning hereof and rendering such person subject to all the provisions of this article.

Secondhand dealer: Any person operating any store, shop or place of business where secondhand goods are bought, sold, exchanged or bartered; provided, that this definition shall not include a secondhand car dealer, secondhand furniture dealer, secondhand tire dealer, secondhand clothing dealer, or secondhand dealer of gold, silver, precious metals and/or precious gems in any form, kind or nature.

Secondhand goods: Any property of any kind or description which has been used or which has been transferred from the manufacturer, producer or wholesale or retail distributors to a third party prior to such property being sold, exchanged or bartered to or at such store, shop or place of business as mentioned in the definition of secondhand dealer; provided, that automobiles, tires, furniture, clothing, and gold, silver, pre-

cious metals and precious gems and stones in whatever form shall not be considered secondhand goods within the meaning of this definition.
(Ord. No. 1982-2, § 1, 2-15-82)

Cross reference—Definitions and rules of construction generally, § 1-2.

Sec. 13-51. License required.

It shall be unlawful for any person to conduct, pursue or carry on the business of pawnbroker or secondhand dealer within the corporate limits or police jurisdiction of the city without first paying to the city treasurer the license tax hereinafter prescribed and procuring a license from the city.
(Ord. No. 1982-2, § 2, 2-15-82)

Sec. 13-52. License tax as prescribed.

The license tax hereby levied against all persons who conduct, pursue, or carry on the business of pawnbroker or secondhand dealer shall be as provided in sections 13-1 and 13-2.
(Ord. No. 1982-2, § 3, 2-15-82)

Sec. 13-53. Records—Required.

(a) It shall be the duty of each secondhand dealer and each pawnbroker to keep at such person's place of business a permanently bound book, with the pages therein numbered by the manufacturer, in which such person shall enter, or cause to be entered, in ink, a minute description of all secondhand goods bought, sold or exchanged, and all personal property received on pledge or deposit or by purchase, at such person's place of business, and the time of receipt of such property bought, sold or exchanged, making particular mention of any prominent marks on same, together with the name, sex, color, apparent age and general description, place of residence and positive identification (driver's license or social security number) of the person by whom such property was pledged or deposited, or from, to or with whom such goods were bought, sold or exchanged, and wherever such property or secondhand goods bear a number or the name of a manufacturer or other descriptive mark, the description hereinabove provided for shall include such number, name of manufacturer laundry marks, cleaning marks, and other descriptive marks.

(b) Each secondhand dealer and pawnbroker shall make the entries, or cause the entries to be made, in the book, as herein provided, at the time any such personal property is received on pledge or deposit or by purchase, or such secondhand goods are bought, sold, or exchanged. Each secondhand dealer and pawnbroker shall make the entries herein required by making the first entry at the top of the first page of the book. Subsequent entries in the book shall be made in the order in which the personal property to which the respective entries pertain was received on pledge or deposit or by purchase, or in the order in which the secondhand goods to which the respective entries pertain were bought, sold or exchanged.

(c) It shall be unlawful for any such secondhand dealer or pawnbroker to remove, or permit to be removed, any page or part of page from such book or to erase or obliterate, or permit to be erased or obliterated, any entry made upon any page thereof.
(Ord. No. 1982-2, § 4, 2-15-82)

Sec. 13-54. Same—Inspection thereof, and of property.

Each secondhand dealer and each pawnbroker, during the ordinary hours of business, when requested by the mayor or the chief of police or other police officer of the city, shall submit and exhibit such book as is provided for in section 13-53 to the inspection of the mayor or chief of police or other police officer, and upon demand shall exhibit any goods (whether new or secondhand) or personal property which may be in the place of business of such secondhand dealer or pawnbroker or which may have been bought or received in pledge by such secondhand dealer or pawnbroker and which may be kept by such person at any place.
(Ord. No. 1982-2, § 5, 2-15-82)

Sec. 13-55. Reports.

It shall be the duty of every secondhand dealer and every pawnbroker to furnish to the chief of police, at the chief's office on each day, upon forms provided for that purpose, a complete description of all secondhand goods bought or exchanged and all personal property or other valuable thing

received or deposited during the preceding day, together with the name, sex, color, apparent age, and general description and place of residence of the person selling or exchanging any such secondhand goods or depositing or pledging such personal property, together with the hour such goods or property were received, purchased or exchanged. If any day shall be a legal holiday, the report required by this section may be made on the day following such holiday.
(Ord. No. 1982-2, § 6, 2-15-82)

Sec. 13-56. Permit to dispose of property.

(a) It shall be unlawful for any pawnbroker or secondhand dealer to sell, exchange or remove from the place of business any of the goods or personal property received, bought or exchanged by such person for a period of fifteen (15) days after the making of the report required in section 13-55 unless the chief of police or some officer authorized by the chief of police, after inspection of such personal property or secondhand goods and after investigation, has determined that there is no reason to believe that such personal property or secondhand goods were stolen, and has issued a permit in writing consenting to sale or exchange of such goods or property.

(b) Upon the request, in writing, of any pawnbroker or secondhand dealer to the chief of police that the chief of police inspect any personal property or secondhand goods concerning which such pawnbroker or secondhand dealer has made a report to the chief of police, as required in section 13-55, it shall be the duty of the chief of police to inspect, or to cause some police officer to inspect, such personal property or secondhand goods within three (3) days from the service of such request upon the chief of police.
(Ord. No. 1982-2, § 7, 2-15-82; Ord. No. 1984-3, § 1, 11-5-84)

Sec. 13-57. Dealing with minors.

It shall be unlawful for any pawnbroker or secondhand dealer to buy or receive, whether in pledge or otherwise, any tangible personal property from any person under the age of eighteen (18) years.
(Ord. No. 1982-2, § 8, 2-15-82; Ord. No. 1984-3, § 2, 11-5-84)

Secs. 13-58, 13-59. Reserved.

ARTICLE V. SECONDHAND PRECIOUS METALS AND GEMS

Sec. 13-60. Definition.

The word "applicant" when used herein shall include the plural where applicable, and all agents, officers, servants or employees of the applicant in the city or police jurisdiction if the applicant is other than a sole proprietor.
(Ord. No. 1982-3, § 13, 2-15-82)

Cross reference—Definitions and rules of construction generally, § 1-2.

Sec. 13-61. License—Required.

It shall be unlawful for anyone to conduct, pursue, or carry on the business of purchasing, selling, exchanging, or bartering secondhand gold or silver, precious metals or gems, whether in the form of jewelry, household articles or furnishings, personal effects, bric-a-brac, settings for gems, watches, flatware, service sets, or other articles of like kind, within the corporate limits or police jurisdiction of the city without first paying to the city treasurer the license tax prescribed, and procuring a license from the city.
(Ord. No. 1982-3, § 1, 2-15-82)

Sec. 13-62. Same—Tax as prescribed.

The license tax hereby levied against buyers, sellers, exchangers, or barterers, is as provided in sections 13-1 and 13-2.
(Ord. No. 1982-3, § 2, 2-15-82)

Sec. 13-63. Same—Application, investigation; issuance; denial, appeal.

(a) *Application:* Applicants for license under this article shall file with the city treasurer sworn application in writing, in duplicate, on a form to be furnished by the city treasurer, which shall give the following information:

(1) Name and description of the applicant.

(2) Date of birth and driver's license and social security number of the applicant.

(3) Full local address of the applicant, and the length of time the applicant has resided within the city.

(4) If employed, the name and address of the employer, together with credentials establishing the relationship.

(5) A brief description of the nature of the gold or silver, or precious metals or buying, selling, exchanging, or bartering to be done.

(6) The length of time for which the right to do gold or silver or precious metals or gems buying, selling, exchanging, or bartering, is desired and the location where such buying, selling, exchanging or bartering is to be done.

(7) A photograph of the applicant, taken within sixty (60) days immediately prior to the date of filing the application, which picture shall be two (2) inches by two (2) inches, showing the head and shoulders of the applicant in a clear and distinguishing manner.

(8) The fingerprints of the applicant, and the name of at least two (2) reliable property owners of the county who will certify as to the applicant's good character and business respectability or, in lieu of the names of such references, such other available evidence as to the good character and business responsibility of the applicant as will enable an investigator to properly evaluate such character and business responsibility.

(9) A statement as to whether or not the applicant has been convicted of any crime, misdemeanor or violation of any municipal criminal ordinance, in any state, the nature of the offense and the punishment or penalty assessed therefor.

(b) *Investigation fee:* At the time of filing the application for the permit required by subsection (a) of this section, a fee of twenty-five dollars ($25.00) shall be paid to the city treasurer to cover the cost of an investigation of the facts stated therein.

(c) *Investigation generally; issuance or refusal:* Upon receipt of an application for the license required by subsection (b) of this section, the original shall be referred to the chief of police, who shall cause such investigation of the applicant's business and moral character to be made as such chief deems necessary for the protection of the public good. If, as a result of such an investigation, the applicant's character or business responsibility is found to be unsatisfactory or if the applicant does not otherwise qualify under the provisions of this article, the chief of police shall endorse on such application such chief's disapproval and the reason for the same and return the application to the city treasurer who shall notify the applicant that the application is disapproved and that no license will be issued. If, as a result of such investigation, the character and business responsibility of the applicant are found to be satisfactory, and the applicant otherwise qualifies under this article, the chief of police shall endorse on the application such chief's approval, and return the application to the city treasurer who shall deliver to the applicant the license, in the same manner as to other licenses for the city. If the license is disapproved, the applicant may appeal to the council within fourteen (14) days. (Ord. No. 1982-3, §§ 3—5, 2-15-82)

Sec. 13-64. Same—Signing and contents; display; record.

(a) The license required by section 13-62 shall contain the signature of the city treasurer and shall show the name, address and photographs of the licensee, the date of issuance and length of time the same shall be operative, as well as the license number.

(b) Such licenses shall be displayed at all times whenever the applicant conducts business.

(c) The city treasurer shall keep a permanent record of all licenses issued under this article. (Ord. No. 1982-3, §§ 6, 7, 2-15-82)

Sec. 13-65. Registration of licensees.

Each licensee under this article shall promptly, after the beginning of business, register with the

chief of police, in a book kept for that purpose, licensee's name, address and every place where licensee carries on business or stores property.
(Ord. No. 1982-3, § 9, 2-15-82)

Sec. 13-66. Record of transactions—Required; contents; reporting.

Each applicant who secures a license under this article for selling, exchanging, purchasing, or bartering gold or silver or precious metals or stones in any form set out in section 13-61 shall keep a book in which shall be entered promptly at the time of acquisition or purchase a brief description of the articles or property acquired or purchased, the date and hour of the acquisition or purchase and a brief description of the person from whom the acquisition or purchase is made, together with the address, drivers license and social security number, sex, race, and date of birth of such person. Each entry of such transaction shall be serially numbered on the book at the time of making the entry. Such buyer, seller, exchanger, or barterer shall, on every day, before the hour of 10:00 a.m., deliver to the chief of police, upon a form provided by the chief, a legible transcript of the business done during the business day immediately preceding the filing of the transcript.
(Ord. No. 1982-3, § 8, 2-15-82)

Sec. 13-67. Same—Inspection thereof.

The books and records kept by each licensee of the articles described in section 13-61 shall be open for inspection by the chief of police or by any officer of the police department at all times and the licensee and agents and employees shall at all times exhibit the book to such licensee's officers on request.
(Ord. No. 1982-3, § 10, 2-15-82)

Sec. 13-68. Identification of articles acquired or purchased.

Each licensee under this article acquiring or purchasing gold or silver or precious metals or gems in any form set out in section 13-61 shall attach to or place on each article acquired or purchased a tag or identifying mark or label numbered to correspond with the serial number of the book required by section 13-66 to be kept; except, that where small articles are acquired or bought in bulk and are too numerous to conveniently tag or mark, an identifying number shall be placed on the container or wrapper in which the articles are kept or placed.
(Ord. No. 1982-3, § 11, 2-15-82)

Sec. 13-69. Holding period for articles.

The property of the kind described in section 13-61 shall be held in the same form, shape or condition in which they were purchased or acquired, without mutilation, melting, reduction to block or lump form, or destruction of the form thereof, for a period of thirty (30) days after the licensee reports the acquisition or purchase to the chief of police, during which time articles shall be open to inspection or examination by the chief of police, or such officers of the police department as may be delegated to make such examination or inspection, unless permission for change in form or sale is obtained in writing from the chief of police after the filing of the report required by section 13-66.
(Ord. No. 1982-3, § 12, 2-15-82)

Sec. 13-70. Applicability of article; violations.

(a) The provisions of this article shall be binding upon every employee or agent of the buyer of the articles described in section 13-61, and it shall be unlawful and an offense against the city for such licensee or his agents, servants, officers or employees to fail or refuse to carry out the provisions of this article.

(b) Any person who shall violate any provisions of this article and do business within the city without first obtaining a license as provided herein shall be subject to punishment as provided in section 1-8.

(c) Any person who operates a jewelry store with a jewelry license from the city is hereby exempt from the application of this article.
(Ord. No. 1982-3, §§ 14, 15, 2-15-82)

Secs. 13-71—13-79. Reserved.

ARTICLE VI. TOBACCO TAX

Sec. 13-80. Levy—In city.

In addition to all other taxes now imposed by law, every wholesaler, jobber, dealer or distributor who sells, stores or delivers any tobacco products for sale within the city shall pay a license tax to the city; and every retailer who sells, stores or delivers any tobacco products for sale within the city that were not purchased through a wholesaler, jobber, dealer, or distributor who sells, stores or delivers tobacco products for sale within the city shall pay a license tax to the city; and a license tax is hereby fixed and levied, which license shall be in the following amounts for the sale, storage, and/or delivery of the following named tobacco products in the corporate limits of the city:

(1) *Twenty (20) or fewer cigarettes:* All cigarettes made of tobacco or any substitute therefor, two cents ($0.02) for each package containing twenty (20) cigarettes or less.

(2) *Twenty-one (21) to forty (40) cigarettes:* All cigarettes made of tobacco or any substitute therefor, four cents ($0.04) cents for each package containing more than twenty (20) and not exceeding forty (40) cigarettes.

(3) *Over forty (40) cigarettes:* All cigarettes made of tobacco or any substitute therefor, six cents ($0.06) on each package containing more than forty (40).

(Ord. No. 1980-3, § 2, 9-8-80)

Sec. 13-81. Time of payment; delinquency penalty.

The licensee must keep accurate records of all purchases and furnish to the city comptroller all pertinent information as to the amount of purchases, gross amount paid thereof, or other information as may be required from time to time by the city comptroller, and shall pay monthly to the city comptroller no later than the twentieth of each month, the amount due as hereby fixed and prescribed. If not paid by such day, a penalty of twenty (20) percent of the amount due, together with interest thereon at the rate of one (1) percent per month, or a fraction thereof from the date at which the tax levied in this article became due and payable, shall be assessed and collected as part of the taxes levied under this article.

(Ord. No. 1990-29, § II, 10-15-90)

Sec. 13-82. Issuance of execution for tax.

If any person subject to this article shall fail or refuse to make report thereof, the city comptroller may make or cause to be made an assessment of the tax owing by him from such evidence as he can obtain by lawful means; provided, however, that the person or licensee against whom such assessment is made may within ten (10) days of a notice of such assessment protest the assessment in writing. Should the city comptroller deny the matter set forth in such protest, then he shall notify the person or licensee of its decision and such person or licensee must pay the assessment or he shall be subject to punishment as provided in this article.

(Ord. No. 1990-29, § III, 10-15-90)

Sec. 13-83. Exemptions.

This article shall not be applied so as to impose any unlawful tax or unlawful burden on interstate commerce or any business of the United States government or any branch or agency thereof; or apply to the tobacco products mentioned herein stored by a wholesaler, jobber, dealer or distributor for the purpose of resale or reshipment outside the city and its police jurisdiction and which are actually so resold or reshipped.

(Ord. No. 1980-3, § 7, 9-8-80)

Sec. 13-84. Violations.

It shall be unlawful for any person who is required to file statements with the city treasurer as set forth in this article to fail or omit to file such statements, and it shall also be unlawful to make false statements or to fail to pay the amount of tax, and each day after which such statements or payments are due shall be a separate offense and the person violating any of the provisions of this article shall, upon conviction, be fined not less than fifty dollars ($50.00) and otherwise punished as provided in section 1-8.

(Ord. No. 1980-3, § 9, 9-8-80)

Secs. 13-85—13-100. Reserved.

ARTICLE VII. SALES TAX

Sec. 13-101. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Automotive vehicle: A power shovel, dragline, crawler, crawler crane, ditcher, or any similar machine which is self-propelled, in addition to self-propelled machines which are used primarily as instruments of conveyance.

Business: All activities engaged in, or caused to be engaged in, with the object of gain, profit, benefit or advantage, either direct or indirect, and not excepting subactivities producing marketable commodities used or consumed in the main business activity, each of which subactivities shall be considered business engaged taxable in the class in which it falls.

City comptroller: The administrative division chief of the city.

Department of revenue: The department of revenue of the state.

Gross proceeds of sales: The value proceeding or accruing from the sale of tangible personal property, including the proceeds from the sale of any property handled on consignment by the taxpayer, including merchandise of any kind and character without any deduction on account of the cost of the property sold, the cost of the materials used, labor or service cost, interest paid, or any other expenses whatsoever, and without any deductions on account of loss, provided that cash discounts allowed and taken on sales shall not be included, and gross proceeds of sales shall not include the sales price of property returned by customers when the full sales price thereof is refunded either in cash or by credit. The term "gross proceeds of sales" shall also mean and include the reasonable and fair market value of any tangible personal property previously purchased at wholesale which is withdrawn or used from the business or stock and used or consumed in connection with the business, and shall also mean and include the reasonable and fair market value of any tangible personal property previously purchased at wholesale which is withdrawn from the business or stock and used or consumed by any person so withdrawing the tangible personal property, except property which has been previously withdrawn from such business or stock and so used and consumed with respect to which property the tax has been paid because of such previous withdrawal, use or consumption, and except property which enters into and becomes an ingredient or component part of tangible personal property or products manufactured or compounded for sale and not for the personal and private use or consumption of any person so withdrawing, using or consuming the same.

Gross receipts: The value proceeding or accruing from the sale of tangible personal property, including merchandise and commodities of any kind and character, all receipts actual and accrued, by reason of any business engaged in, not including, however, interest, discounts, rentals of real estate or royalties, and without any deduction on account of the cost of the property sold, the cost of the materials used, labor or service cost, interest paid, or any other expenses whatsoever and without any deductions on account of losses. The term "gross receipts" shall also mean and include the reasonable and fair market value of any tangible personal property previously purchased at wholesale which is withdrawn or used from the business or stock and used or consumed in connection with the business, and shall also mean and include the reasonable and fair market value of any tangible personal property previously purchased at wholesale which is withdrawn from the business or stock and used or consumed by any person so withdrawing the tangible personal property, except property which has been previously withdrawn from such business or stock and so used or consumed and with respect to which property the tax has been paid because of such previous withdrawal, use or consumption, and except property which enters into and becomes an ingredient or component part of tangible personal property or products manufactured or compounded for sale and not for the personal and private use or consumption of any person so withdrawing, using or consuming the same.

In this city or *in the city:* Within the corporate limits of the city.

Person: Any natural person, firm, partnership, association, corporation, receiver, trust, estate or any other entity, or any other group or combination of any thereof acting as a unit, and the plural as well as the singular number, unless the intention to give a more limited meaning is disclosed by the context.

Retail sale or *sale at retail:* All sales of tangible personal property except wholesale sales. The quantities of goods sold, or prices at which sold, are immaterial in determining whether or not a sale is at retail. Sales of building materials to contractors, builders or landowners for resale or use in the form of real estate are retail sales in whatever quantity sold. Sales of building materials, fixtures or other equipment to a manufacturer or builder of modular buildings for use in manufacturing, building or equipping a modular building, ultimately becoming a part of real estate situated in the city, are retail sales, and the use, sale or resale of such building shall not be subject to the tax. Sales of tangible personal property to undertakers and morticians are retail sales and subject to the tax at the time of purchase, but are not subject to the tax on resale to the consumer. Sales of tangible personal property or products to manufacturers, quarry operators, mine operators or compounders, which are used or consumed by them in manufacturing, mining, quarrying or compounding and do not become an ingredient or component part of the tangible personal property manufactured or compounded, are retail sales. The term "retail sale" or "sale at retail" shall also mean and include the withdrawal, use or consumption of any tangible personal property by anyone who purchases such tangible personal property at wholesale, except property which has been previously withdrawn from the business or stock and so used or consumed with respect to which property the tax has been paid because of such previous withdrawal, use or consumption, and except property which enters into and becomes an ingredient or component part of tangible personal property or products manufacture or compounded for sale and not for the personal and private use or consumption of any person so withdrawing, using or consuming the same. Such wholesale purchaser shall report and pay the taxes thereon.

Sale or *sales:* Installment and credit sales and the exchanges of properties, as well as the sale thereof for money, and every closed transaction constituting a sale; provided, however, that a transaction shall not be closed or a sale completed until the time and place when and where title is transferred by the seller or seller's agent to the purchaser or purchaser's agent, and for the purpose of determining transfer of title, a common carrier or the U.S. Postal Service shall be deemed to be the agent of the seller, regardless of any F.O.B. point and regardless of who selects the method of transportation, and regardless of by whom or the method by which freight, postage or other transportation charge is paid; provided further that where billed as a separate item to and paid by the purchaser, the freight, postage or other transportation charge paid to a common carrier or the U.S. Postal Service is not a part of the selling price.

Tax year or *taxable year:* The calendar year.

Taxpayer: Any person liable for taxes levied under this article.

Treasurer: The city treasurer of the city.

Wholesale sale or *sale at wholesale:* Any one of the following:

(1) A sale of tangible personal property by wholesalers to licensed retail merchants, jobbers, dealers, or other wholesalers for resale and does not include a sale by wholesalers to users or consumers, not for resale;

(2) A sale of tangible personal property or products, including iron ore, to a manufacturer or compounder which enters into and becomes an ingredient or component part of the tangible personal property or products which such manufacturer or compounder manufactures or compounds for sale, whether or not any such tangible personal property or product used in manufacturing or compounding a finished product is used with the intent that it becomes a component of the finished product; provided, however, that it is the intent of this

section that no capital equipment, machinery, tools or product, except for those materials essential for the reaction process and in direct contact with the intermediate and finished product used for the production of the finished product shall be exempt, and the furnished container and label thereof;

(3) A sale of containers intended for one-time use only, and the labels thereof, when such containers are sold without contents to persons who sell or furnish such containers along with the contents placed therein for sale by such persons;

(4) A sale of pallets intended for one-time use only when such pallets are sold without contents to persons who sell or furnish such pallets along with the contents placed thereon for sale by such persons;

(5) A sale to a manufacturer or compounder of crowns, caps and tops intended for one-time use, employed and used upon the containers in which such manufacturer or compounder markets his product;

(6) A sale of containers to persons engaged in selling or otherwise supplying or furnishing baby chicks to growers thereof where such containers are used for the delivery of such chicks or a sale of containers for use in the delivery of eggs, even though such containers used for delivery of baby chicks or eggs may be recovered for reuse;

(7) A sale of bagging and ties used in preparing cotton for market;

(8) A sale to meatpackers, manufacturers, compounders or processors of meat products of all casings used in molding or forming wieners and vienna sausages even though such casings may be recovered for reuse;

(9) A sale of commercial fish feed including concentrates, supplements and other feed ingredients when such substances are used as ingredients in mixing and preparing feed for fish raised to be sold on a commercial basis;

(10) A sale of tangible personal property to any person engaging in the business of leasing or renting such tangible personal property to others, if such tangible personal property is purchased for the purpose of leasing or renting it to others under a transaction, subject to the privilege or license tax levied by article II of this chapter, against any person engaging in the business of leasing or renting tangible personal property to others; and

(11) A purchase or withdrawal of parts or materials from stock by any person licensed under this article where such parts or materials are used in repairing or reconditioning the tangible personal property of such licensed person, which tangible personal property is a part of the stock of goods of such licensed person, offered for sale by him and not for use or consumption of such licensed person;

(12) The use in this city of tangible personal property for the manufacturer thereof, as building materials in the performance of a construction contract, shall, for the purposes of this article, be considered as a retail sale thereof by such manufacturer, who shall also be construed as the ultimate consumer of such materials or property, and who shall be required to report such transaction and pay the sales tax thereon, based upon the reasonable and fair market price thereof at the time and place where same are used or consumed by him or it. Where the contractor is the manufacturer or compounder of ready-mix concrete or asphalt plant mix which manufactured or compounded at the job site or at a fixed or permanent plant location, the tax applies only to the cost of the ingredients that become a component part of the ready-mix concrete or asphalt plant mix. The provisions of this subsection shall not apply to any tangible personal property which is specifically exempted from the tax imposed by this article;

(13) The sale of lumber by a lumber manufacturer to a trucker for resale is a sale at

wholesale where the trucker is either a licensed dealer in lumber or, if a resident of the state, has registered with the department of revenue, and has received therefrom a certificate of such registration or, if a nonresident of this state purchasing lumber for resale outside the state, has furnished to the lumber manufacturer his name, address and the vehicle license number of the truck in which the lumber is to be transported, which name, address and vehicle license number shall be shown on the sale invoice rendered by the lumber manufacturer. The certificate provided for in this subsection shall be valid for the calendar year of its issuance and may be renewed from year to year on application to the department of revenue on or before January 31 of each succeeding year; provided that, if not renewed, the certificate shall become invalid for the purpose of this article on February 1;

(14) The dispensing or transferring of ophthalmic materials, including lenses, frames, eyeglasses, contact lenses and other therapeutic optic devices, to a patient by a licensed ophthalmologist or optometrist, as a part of his professional service, shall not, for purposes of this article, be deemed or considered to constitute a sale, subject to the city sales tax. Such licensed ophthalmologist or optometrist shall be considered the ultimate consumer of the ophthalmic materials and shall have no responsibility or duty pursuant to this article for the collection of the city sales tax. The sale of the ophthalmic materials to a licensed ophthalmologist or optometrist by a supplier thereof shall be considered a retail sale subject to the city sales tax, and the supplier shall be responsible for collecting such sales tax from the licensed ophthalmologist or optometrist. In no event shall the providing of professional services in connection with the dispensing or transferring of ophthalmic materials by a licensed ophthalmologist or optometrist be considered a sale subject to the city sales tax. All transfers of ophthalmic materials by opticians shall be considered retail sales subject to the city sales tax. The term "supplier" shall include, but not be limited to, optical laboratories, ophthalmic material wholesalers or anyone selling ophthalmic materials to ophthalmologists and optometrists.

(Ord. No. 1990-15, § 1, 8-6-90)

Cross reference—Definitions and rules of construction generally, § 1-2.

Sec. 13-102. Levy of tax.

There is hereby levied and imposed, in addition to all other taxes of every kind now imposed by law, a privilege or license tax against the person on account of the business activities and in the amount to be determined by the application of rates against gross sales or gross receipts, as the case may be, as follows:

(1) Upon every person, including the state, the University of Alabama, Auburn University, and all other institutions of higher learning in the state, whether such institutions are denominational, state, county or municipal institutions, any association or other agency or instrumentality of such institutions, but excluding the alcoholic beverage control board of the state in the sale of alcoholic beverages of all kinds, engaged or continuing in this city in the business of selling at retail any tangible personal property whatsoever, including merchandise and commodities of every kind and character, not including, however, bonds or other evidences of debts or stocks, nor sales of material and supplies to any person for use in fulfilling a contract for the painting, repair or reconditioning of vessels, barges, ships and other watercraft of over fifty (50) tons burden, an amount equal to two and one-half (2½) percent of the gross proceeds of sales of the business except where a different amount is expressly provided in this section. Any person engaging or continuing in business as a retailer and wholesaler or jobber shall pay the tax required on the gross proceeds of retail sales of such busi-

ness at the rates specified, when his books are kept so as to show separately the gross proceeds of sales of each business, and, when his books are not so kept, he shall pay the tax as a retailer on the gross sales of the business. Where any used part, including tires, or an automotive vehicle or truck trailer, semitrailer or house trailer is taken in trade, or in a series of trades, as a credit or part payment on the sale of a new or rebuilt part, or tire, the tax levied in this article shall be paid on the net difference, that is, the price of the new or used part or tire sold less the credit for the used part or tire taken in trade; provided, however, that this subsection shall not be construed to include batteries.

(2) Upon every person engaged or continuing in this city in the business of conducting or operating places of amusement or entertainment, billiard and pool rooms, bowling alleys, amusement devices, musical devices, theatres, opera houses, moving picture shows, vaudevilles, amusement parks, athletic contests, including wrestling matches, prize fights, boxing and wrestling exhibitions, football and baseball games, including athletic contests conducted by or under the auspices of any educational institution within this state, or any athletic association thereof, or other association whether such institution or association is a denominational, a state, county or municipal institution or association or a state, county or city school, or other institution, association or school, skating rinks, race tracks, golf courses or any other place at which any exhibition, display, amusement or entertainment is offered to the public or place or places where an admission fee is charged, including public bathing places, public dance halls of every kind and description in the city, an amount equal to two and one-half (2½) of the gross receipts of any such business.

(3) Upon every person engaged or continuing in this city in the business of selling at retail machines used in mining, quarrying; compounding, processing and manufacturing of tangible personal property, an amount equal to one (1) percent of the gross proceeds of the sale of such machines, provided that the term "machines," as used in this section, shall include machinery which is used for mining, quarrying, compounding, processing or manufacturing tangible personal property, and the parts of such machines, attachments, and replacements therefor, which are made or manufactured for use or in the operation of such machines and which are necessary to the operation of such machines and are customarily so used.

(4) Upon every person engaged or continuing within this city in the business of selling at retail any automotive vehicle or truck trailer, semitrailer or house trailer, or mobile home set-up materials and supplies including but not limited to steps, blocks, anchoring, cable pipes and other materials pertaining thereto, an amount equal to one (1) percent of the gross proceeds of sale of the automotive vehicle or truck trailer, semitrailer or house trailer, or mobile home set-up materials and supplies; provided, however, that where a person subject to the tax provided for in this subsection withdraws from his stock in trade any automotive vehicle or truck trailer, semitrailer or house trailer for use by him or by his employee or agent in the operation of such business, there shall be paid, in lieu of the tax levied in this section, a fee of five dollars ($5.00) per year or part thereof during which such automotive vehicle, truck trailer, semitrailer or house trailer shall remain the property of such person. Each such year or part thereof shall begin with the day or anniversary date, as the case may be, of such withdrawal and shall run for the twelve (12) succeeding months or parts thereof during which such automotive vehicle, truck trailer, semitrailer or house trailer shall remain the property of such person. Where any used automotive vehicle or truck trailer, semitrailer or house

trailer is taken in trade or in a series of trades, as a credit or part payment on the sale of a new or used vehicle, the tax levied in this section shall be paid on the net difference, that is, the price of the new or used vehicle sold less the credit for the used vehicle taken in trade. Sales of automobiles, motorcycles, trucks, truck trailers or semitrailers that will be registered or titled outside the state, that are exported or removed from the state within seventy-two (72) hours by the purchaser or his agent for first use outside the state are not subject to the city sales tax. Sales of other vehicles such as mobile homes, motor bikes, all-terrain vehicles and boats do not qualify for the export exemption provision and are taxable unless the dealer can provide factual evidence that the vehicle was delivered outside of the state or to a common carrier for transportation outside the state. In order for the sale to be exempt from the city sales tax, the information relative to the exempt sale must be documented on forms approved by the department of revenue.

(5) Upon every person engaged or continuing in this city in the business of selling at retail any machinery or equipment which is used in planting, cultivating and harvesting farm products, or used in connection with the production of agricultural produce or products, livestock or poultry on farms, and the parts of such machines, machinery or equipment, attachments and replacements therefor which are made or manufactured for use on or in the operation of such machine, machinery or equipment, and which are necessary to and customarily used in the operation of such machine, machinery or equipment, an amount equal to one (1) percent of the gross proceeds of the sale thereof, provided that the one (1) percent rate prescribed in this subsection with respect to parts, attachments and replacements shall not apply to any automotive vehicle or trailer designed primarily for public highway use, except farm trailers used primarily in the production and harvesting of agricultural commodities. Where any used machine, machinery or equipment which is used in planting, cultivating and harvesting farm products, or used in connection with the production of agricultural produce or products, livestock or poultry on farms is taken in trade or in a series of trades as a credit or part payment on a sale of a new or used machine, machinery or equipment, the tax levied in this section shall be paid on the net difference, that is, the price of the new or used machine, machinery or equipment sold, less the credit for the used machine, machinery or equipment taken in trade.

(6) Upon every person engaged or continuing in this city in the business of selling through coin-operated dispensing machines, food and food products of human consumption, not including beverages other than coffee, milk, milk products and substitutes therefor, an amount equal to two and one-half (2½) percent of the cost of such food, food products and beverages sold through such machines, which cost for the purpose of this subsection shall be the gross proceeds of sales of such business.

(Ord. No. 1990-15, § 2, 8-6-90; Ord. No. 1990-26, § I, 10-15-90)

Sec. 13-103. Exemptions.

There are exempted from the provisions of this article and from the computation of the amount of the tax levied, assessed or payable under this article the gross proceeds of sales of tangible personal property or the gross receipts of any business which are exempted from taxation under the provisions of Code of Ala. 1975, tit. 40, ch. 23, art. 1 (Code of Ala. 1975, § 40-23-1 et seq.) entitled "Sales Tax," as the same is now or hereafter amended and all acts supplemental thereto except where inapplicable or where otherwise provided in this article.

(Ord. No. 1990-15, § 3, 8-6-90)

Sec. 13-104. Licensee required to engage in business.

If any person, on or after October 1, 1990, shall engage in or continue in any business for which a

privilege tax is imposed by section 13-102 or 13-103, as a condition precedent to engaging or continuing in such business, he shall apply for and obtain from the city a license to engage in and to conduct such business for the current tax year upon the condition that he shall pay the taxes accruing to the city under the provisions of this article, provided that no license shall be issued under the provisions of this article to any person who has not complied with the provisions of this article. No provision of this article shall be construed as relieving any person from the payment of any license or privilege tax now or hereafter imposed by law.
(Ord. No. 1990-15, § 4, 8-6-90)

Sec. 13-105. Taxes due monthly; filing of reports.

The taxes levied under the provisions of this article, except as otherwise provided, shall be due and payable in monthly installments on or before the twentieth day of the month next succeeding the month in which the tax accrues. On or before the twentieth day of each month after this article shall have taken effect, every person on whom the taxes levied by this article are imposed, shall render to the city on a form prescribed by the city, a true and correct statement showing the gross sales, the gross proceeds of sale or gross receipts of his business, as the case may be, for the next preceding month; the amount of gross proceeds or gross receipts which are not subject to the tax, or are not used as a measurement of the taxes due by such person, and the nature thereof; together with such other information as the city may demand and require, or at his election he may attach thereto an executed copy of his sales tax return used for reporting sales to the State of Alabama, provided the return shall reveal all information required on the form prescribed by the city, and at the time of making such monthly report such person shall compute the taxes due and shall pay to the city the amount of taxes shown to be due thereon.

Notwithstanding the provisions of the preceding paragraph, when the total tax for which any person liable under this article averages less than two hundred dollars ($200.00) per month during the preceding calendar year, a quarterly return and remittance in lieu of the monthly returns may be made on or before the twentieth day of the month next succeeding the end of the quarter for which the tax is due, when specially authorized by the city comptroller and under such rules and regulations as may be prescribed. The city comptroller, for good cause, may extend the time for the making of any return required under the provisions of this article, but the time for filing any such return shall not be extended for a period greater than thirty (30) days from the date such return is due to be made.
(Ord. No. 1990-15, § 5, 8-6-90; Ord. No. 1998-12, § 1, 6-15-98)

Sec. 13-106. Cash and credit sales.

Any person taxable under this article having cash and credit sales may report such cash sales, and the taxpayer shall thereafter include in each monthly report all credit collections made during the month preceding and shall pay the taxes due thereon at the time of filing such report, but in no event shall the gross proceeds of credit sales be included in the measure of the tax to be paid until collections of such credit sales shall have been made.
(Ord. No. 1990-15, § 6, 8-6-90)

Sec. 13-107. Records.

It shall be the duty of every person engaging or continuing in this city in any business for which a privilege tax is imposed by this article, to keep and preserve suitable records of the gross sales, gross proceeds of sales and gross receipts of sales of such business and such other books or accounts as may be necessary to determine the amount of tax for which he is liable under the provisions of this article. It shall be the duty of every person to keep and preserve, for a period of three (3) years, all invoices of goods, wares, and merchandise purchased, for resale or otherwise, and all such books, invoices and other records shall be open for examination at any time by the city or its duly authorized agents. Any person selling both at wholesale and retail shall keep his books so as to show separately the gross proceeds of wholesale sales and the gross proceeds of retail sales.
(Ord. No. 1990-15, § 7, 8-6-90)

Sec. 13-107.1. Discounts allowed on payments of sales tax made before delinquency.

A sales tax discount is allowed for city sales taxes due and payable to the City of Daphne by person licensed under Ordinance No. 1993-28. This discount shall not exceed five percent of the first one hundred dollars ($100.00) of sales taxes levied and two percent of the sales taxes levied over one hundred dollars ($100.00), and further, is limited to a total maximum discount of nine hundred dollars ($900.00) per month to any license holder and shall be limited to that amount for each location of that license holder doing business in the City of Daphne. No discount is authorized or allowed upon any taxes which are not paid before delinquency.
(Ord. No. 1998-12, § 2, 6-15-98)

Sec. 13-108. Reports under oath.

The monthly reports required in this section to be made are not required to be made on oath but wherever in this article any report is required to be sworn to, the report shall be sworn to by the taxpayer or his agent before some officer authorized to administer oaths. Any false statement of a material fact made with intent defraud shall constitute perjury, and, upon conviction thereof, the person so convicted shall be punishable as provided by law.
(Ord. No. 1990-15, § 9, 8-6-90)

Sec. 13-109. Penalty for failure to make reports or keep records.

Any person subject to the provisions of this article who shall fail to make the reports or any of them, as required in this article, or who shall fail to keep the records as required in this article, shall, upon conviction, be fined not less than twenty-five dollars ($25.00) nor more than two hundred dollars ($200.00) for each offense. Each month of such failure shall constitute a separate offense.
(Ord. No. 1990-15, § 10, 8-6-90)

Sec. 13-110. Penalty for willful refusal to make reports or permit examination of records.

Any person subject to the provisions of this article willfully refusing to make the reports required in this article or who shall refuse to permit the examination of his records by the city, or its duly authorized agents, shall, upon conviction, be punished as provided in section 1-8, but the fine shall be not less than fifty dollars ($50.00). Each month of failure to make such reports shall constitute a separate offense, and each refusal of a written demand by the city to examine, inspect or audit such records shall constitute a separate offense.
(Ord. No. 1990-15, § 11, 8-6-90)

Sec. 13-111. Examination of returns; excesses; deficiencies.

As soon as practicable after the return is filed, the city shall examine it and ascertain the proper amount of the tax due as shown by the return. If the amount paid is greater than the amount due, as shown by the return, the excess shall be refunded to the taxpayer, or credited on any deficiency previously due by the taxpayer, in accordance with law and under such rules and regulations as the city may adopt and promulgate. If the amount paid is less than the amount due, as shown by the return, the city shall immediately notify the taxpayer of such deficiency and shall add thereto a penalty of ten (10) percent of the amount due, and if such deficiency is not paid within thirty (30) days from the date of such notice, the amount due shall bear interest at the rate of one (1) percent per month, or fraction thereof, from the date the amount was due, which shall be collected as a part of the tax. The city comptroller, if a good and sufficient reason is shown, may waiver or remit the ten (10) percent penalty or a portion thereof.
(Ord. No. 1990-15, § 11, 8-6-90)

Sec. 13-112. Penalty for failure to pay tax; interest.

Any person who fails to pay the tax levied within the time required by this article shall pay, in addition to the tax, a penalty of ten (10) percent of the amount of tax due, together with interest thereon at the rate of one (1) percent per month, or fraction thereof, from the date at which the tax levied in this article became due and payable, such penalty and interest to be assessed and collected as part of the tax. The city comptroller, if

a good and sufficient reason is shown, may waive or remit the ten (10) percent penalty or a portion thereof.
(Ord. No. 1990-15, § 12, 8-6-90)

Sec. 13-113. Failure to timely file returns.

If a taxpayer fails to file any return required to be filed with the City of Daphne on or before the date prescribed therefor, there shall be assessed as a penalty the greater of ten (10) percent of any additional tax required to be paid with such return or fifty dollars ($50.00). If a taxpayer fails to pay to the City of Daphne the correct amount of tax due on or before the date prescribed for payment of such tax, there shall be added as a penalty one (1) percent of the amount of such tax due if the failure to pay is for not more than one (1) month, with an additional one (1) percent for each additional month or fraction thereof during which such failure to pay continues, not exceeding twenty-five (25) percent in the aggregate. However, in lieu of the penalty provided in the immediately preceding sentence, for any tax for which a monthly or quarterly return is required, or for which no return is required, the City of Daphne shall assess a failure to timely pay penalty of ten (10) percent of the delinquent tax.
(Ord. No. 1990-15, § 13, 8-6-90; Ord. No. 1998-12, § 3, 6-15-98)

Sec. 13-114. Procedures governing incorrect payments.

Whenever the city, in examining and auditing the records of any taxpayer, or from other information, shall ascertain that the amount previously paid by any taxpayer for any period is incorrect, the city shall compute the correct amount of tax due, and if it appears that the amount paid by the taxpayer is in excess of the correct amount due, such excess shall be refunded to the taxpayer in accordance with law and under the rules and regulations of the city. If it appears that the amount paid by such taxpayer is less than the amount due, the city shall compute the amount of such deficiency and shall notify the taxpayer, and shall demand payment therefor. If the amount demanded is not paid within ten (10) days from the date of such demand, or if the taxpayer does not request an extension of time within ten (10) days from the date of such demand, the city comptroller shall make an assessment against the taxpayer of the amount due and shall add a penalty of one (1) percent per month from the date such taxes or any part thereof become due. The city comptroller, if a good and sufficient reason is shown, may waive or remit the penalty or a portion thereof. If within ten (10) days from the date of notice of a deficiency the taxpayer requests in writing an extension of time, the city comptroller may grant an extension of not more than thirty (30) days. If at the end of such extended period the deficiency has not been paid, the city comptroller shall proceed with the assessment. If the city comptroller is of the opinion that there was a willful and fraudulent intent by the taxpayer to evade the tax due, the city comptroller may assess a penalty of twenty-five (25) percent of the tax, provided that upon appeal such action shall be reviewable.
(Ord. No. 1990-15, § 14, 8-6-90)

Sec. 13-115. Notice of assessments; hearings; finality of assessments.

Whenever the city shall make an assessment against a taxpayer as provided in this section, the city shall notify the taxpayer by registered or certified mail, or written notice delivered by the city's authorized agent, of the amount of such assessment, and shall notify the taxpayer to appear before the city on a day named not less than twenty (20) days from the date of such notice and show cause why such assessment should not be made final. Such appearance may be made by agent or attorney. If no showing is made on or before the date fixed in such notice, or if such showing is not sufficient in the judgment of the city, such assessment shall be made final in the amount originally fixed or in such other amount as is determined by the city to be correct. If upon such hearing the city finds the amount due to be different from that originally assessed, it shall make the assessment final in the current amount and in all cases shall notify the taxpayer of the assessment as finally fixed. A notice by the United States mail addressed to the taxpayer's last known place of business shall be sufficient. Any assessment made by the city shall be prima facie correct upon appeal.
(Ord. No. 1990-15, § 15, 8-6-90)

Sec. 13-116. Appeals from assessments; limitation of actions; agreements for extension of time for collection or refund.

(a) Whenever any taxpayer, who has duly appeared and protested an assessment by the city, is dissatisfied with the assessment as finally made, he may appeal to the circuit court of the county in the same manner provided by Code of Ala. 1975, § 40-2A-7. No appeal shall lie in cases where the taxpayer has failed to appear and protest the assessment.

(b) Any notice provided for by this article of any amount due under this article shall be given or any action in court for the collection of such amount shall be begun within three (3) years of the due date of such amount, provided that in the case of a false or fraudulent return with intent to evade payment of taxes imposed by this article or a failure to file a return, the tax may be assessed or a proceeding in court for the collection of such tax may be begun at any time. The city comptroller and the taxpayer, before the expiration of the time prescribed in this section, may agree in writing to an extension of the time during which such proceedings may begin. The period so agreed upon may be extended by subsequent agreements in writing made before the expiration of the period previously agreed upon. The city comptroller shall also be authorized in such agreement to extend the period within which the taxpayer may file a claim for refund of such taxes where such agreement is entered into before a claim for refund is barred because of the lapse of time. The city comptroller shall adopt such rules and regulations as it deems necessary for the proper administration of this section.
(Ord. No. 1990-15, § 16, 8-6-90)

Sec. 13-117. Tax a lien on property.

The tax, together with interest and penalties imposed by this article, shall be a lien upon the property of any person subject to the provisions of this article, and the provisions of the revenue laws of the state applying to liens for license taxes shall apply fully to the taxes levied in this article.
(Ord. No. 1990-15, § 17, 8-6-90)

Sec. 13-118. Execution, levy and sale for taxes.

(a) If any final assessment of taxes levied in this article is not paid within thirty (30) days after such assessment becomes final if no appeal has been taken, in cases where an appeal is authorized, the city shall issue an execution therefor directed to any sheriff of the state commanding him to levy upon and sell the real and personal property of the person against whom such execution is directed, found in his county, together with all penalties assessed. The sheriff shall, within five (5) days after the receipt thereof, file with the clerk of the circuit court of his county a copy thereof, and thereupon the circuit clerk shall enter in the judgment roll, in the column of judgment debtors, the name of the taxpayer named in the execution, the amount of the tax and damages and penalties for which the execution is issued and the day when such copy is filed. Thereupon, the amount of such execution so docketed shall become a lien upon the real and personal property of the person against whom it is issued in the same manner as judgments duly enrolled from the circuit court or court of like jurisdiction.

(b) The sheriff thereupon shall levy upon any property of the taxpayer with like effect and in the manner prescribed by law in respect to execution issued upon judgments of the circuit court or court of like jurisdiction, and the remedies of attachment and garnishment shall apply fully to such execution. The officer shall be entitled to the same fees for his services as now allowed by law for like services to be collected in the same manner as now provided by law for like services. The sheriff shall make due return of such execution within sixty (60) days of the issuance thereof to the department and upon such return, alias or pluries executions may be issued by the city which shall be executed in the same manner. Such lien shall not be valid against any mortgagee, purchaser or judgment creditor until notice has been filed in the office of the judge of probate, as provided for under Code of Ala. 1975, § 40-1-2.
(Ord. No. 1990-15, § 18, 8-6-90)

Sec. 13-119. Tax collectible by civil suit.

This tax levied in this article shall constitute a debt due the city and may be collected by civil suit brought at any time within three (3) years after the tax has become due and payable.
(Ord. No. 1990-15, § 19, 8-6-90)

Sec. 13-120. Examination of taxpayer and his books.

(a) The city may summon before it any taxpayer and any officer or employee of any taxpayer, liable for taxes under this article or any other witnesses, swear and examine them with regard to any facts showing the amount of taxes levied by this article due by such persons, and the city or its duly authorized representative and agents shall be allowed to examine any books, papers or documents of the taxpayer. If any taxpayer shall refuse to allow such examination to be made in his main office or principal place of business in Alabama, the city may require the production, before it at the courthouse in the county in the state where the taxpayer has his main office or principal place of business, of any books, papers, invoices or documents. The summons of witnesses to appear before it, or the notice to the taxpayer to produce books, papers, invoices or documents before it, may be issued by the city, signed by the city clerk, and such summons or notice shall be directed to any sheriff of the state, and must be served by any sheriff to whom such summons or notice is delivered by the city for service.

(b) The city or its authorized agent is given full authority to inspect or examine, during business hours at the office of the taxpayer where his books are kept, or if such books are kept outside of the city, that at the office outside of the city where such books are kept by the taxpayer, all books, papers, invoices, or documents of the taxpayer shedding any light on the amount of taxes levied by this article due by such person.

(c) Any person who willfully fails to appear before the city after having been summoned as a witness or, having appeared, refuses to testify as to any material matters required of him by the city, or any taxpayer or his agent who refuses to produce before the city, after notice given to him, any books, papers, invoices, or documents required to be produced, or any taxpayer or agent thereof in custody of the books, papers, invoices or documents, and any taxpayer who refuses to allow the city or any authorized agent thereof to inspect or examine such books, papers, invoices or documents at the office of such taxpayer, where such books are kept during business hours, shall be guilty of contempt. Upon a certificate of the facts to a circuit judge of the county where the taxpayer has his principal place of business or where his books are kept, it shall be the duty of such circuit judge to adjudge such taxpayer or his agent in contempt, and shall subject such taxpayer or his agent to a fine not exceeding fifty dollars ($50.00) and imprisonment in the city jail for a period not exceeding five (5) days, provided that each refusal to appear or, upon appearance, each refusal to testify, or each refusal to produce books, papers, invoices or documents required, or each refusal to allow the examination of such books, records, invoices or documents, either or all, shall constitute a separate offense.
(Ord. No. 1990-15, § 20, 8-6-90)

Sec. 13-121. Jeopardy assessments.

If the city finds that a person liable for tax under any provisions of this article designs quickly to depart from the city or to remove his property therefrom, or to conceal himself or his property therein, or to do any other act tending to prejudice or to render wholly or partly ineffectual proceedings to collect such tax unless such proceedings are brought without delay, the city shall cause notice of such findings to be given such person, together with a demand for an immediate return and immediate payment of such tax. Thereupon, such tax shall become immediately due and payable. If such person is not in default in making such return or paying any tax prescribed by this article and furnishes evidence satisfactory to the city that he will duly return and pay the tax to which the city's finding relates, then such tax shall not be payable prior to the time otherwise fixed from payment. If such person fails to appear and make such showing, then the city shall make such assessment final.
(Ord. No. 1990-15, § 21, 8-6-90)

Sec. 13-122. Itinerant vendors required to file bond.

For the purpose of securing the payment of any tax, penalties or interest due or which may be-

come due under the provisions of this article, every itinerant vendor engaged in the business of selling tangible personal property at retail in the city shall be required to file a bond with the city comptroller, conditioned upon the payment of any tax, penalty or interest due or to become due under this article and upon faithful observance of the provisions of this article. Such bond shall be effective for a period of one (1) year from date of issuance and shall be fixed by the city comptroller in an amount equal to the tax estimated due or to become due under the provisions of this article, but not less than one hundred dollars ($100.00) nor more than one thousand dollars ($1,000.00), and shall have a surety satisfactory to the city comptroller. If such itinerant vendor fails to make any return due under this article or to pay any taxes or penalties due under this article, or to keep books and records as required by this article, or fails to perform any other duty or obligation imposed on him under this article, such bond shall thereupon be forfeited, and the city may institute suit upon such bond for the entire amount of such bond and costs.
(Ord. No. 1990-15, § 22, 8-6-90)

Sec. 13-123. Person selling out or quitting business to file return; part of purchase money to be withheld.

Any person subject to the provisions of this article who shall sell out his business or stock of goods, or shall quit business, shall be required to make out the return provided for under section 13-106 within thirty (30) days after the date he sold out his business or stock of goods, or quit business, and his successor in business shall be required to withhold a sufficient amount of the purchase money to cover the amount of the taxes due and unpaid until such time as the former owner shall produce a receipt from the city showing that the taxes have been paid, or a certificate that no taxes are due. If the purchaser of a business or stock of goods shall fail to withhold the purchase money as provided in this section, the taxes shall be due and unpaid after the thirty-day period and shall be personally liable for the payment of the taxes accrued and unpaid on account of the operation of the business by the former owner. If in such cases the city deems it necessary in order to collect the taxes due the city, it may make an assessment as provided in section 13-121.
(Ord. No. 1990-15, § 23, 8-6-90)

Sec. 13-124. Tax to be added to purchase price; refund unlawful; tax a direct tax on retail consumer.

(a) Every person engaged in or continuing in any business for which a license or privilege tax is required by this article shall, except as otherwise provided in this section, add to the sales price and collect from the purchaser on all sales upon the gross receipts of gross proceeds of which there is levied by this article a sales tax at the rate of two and one-half (2½) percent of the sales price. Upon sales, the gross receipts or gross proceeds of which are taxed by this article at a rate of less than three (3) percent, there shall be added to the sales price and collected from the purchaser by such person described in this section an amount equal to the prescribed percentage of such sale price.

(b) It shall be unlawful for any person described this section to fail or refuse to add to the sales price and collect from the purchaser the amount required by this section to be so added to the sales price and collected from the purchaser; and it shall likewise be unlawful to refund or offer to refund all or any part of the amount collected, or to absorb or advertise directly or indirectly the absorption or refund of the amount required to be added to the sales price and collected from the purchaser, or any portion of such amount. Any person violating any of the provisions of this section shall, upon conviction, be fined in a sum of not less than fifty dollars ($50.00) nor more than one hundred dollars ($100.00), or may be imprisoned in the city jail for not more than six (6) months, or may be punished by both such fine and imprisonment. Each act in violation of the provisions of this section shall constitute a separate offense.

(c) The provisions of this section that there shall be added to the sales price and collected from the purchaser the amounts provided in this section shall in no way relieve the person de-

scribed in this section of the tax levied by this article, nor shall the inability, impracticability, refusal or failure to add to the sales price and collect from the purchaser the amounts provided in this section relieve such person from the tax levied by this article. All taxes paid in pursuance to this article shall conclusively be presumed to be a direct tax on the retail consumer, precollected for the purpose of convenience and facility only.

(d) If any sum is collected from a consumer that purports to be collected because of this article, whether or not the amount is actually provided for under this article, then any such sum, except such as is collected solely because of rounding the correct amount of tax upward to the nearest cent, shall be paid to the city.
(Ord. No. 1990-15, § 24, 8-6-90)

Sec. 13-125. Sales tax an additional tax.

The tax imposed by this article shall be in addition to all other licenses and taxes levied by law as a condition present to engaging in any business taxable under this article, except as otherwise specifically provided in this article.
(Ord. No. 1990-15, § 25, 8-6-90)

Sec. 13-126. Disclosure of contents of returns.

(a) Unless in accordance with a judicial order or as provided in this section, the city, its agents, clerks or stenographers shall not divulge the gross receipts, gross proceeds of sales or the amount of tax paid by any person as shown by the reports filed under the provisions of this article, except to employees of the city for the purpose of checking, comparing and correcting returns, or any other legal representative of the city in any action in respect to the amount of tax due under the provisions of this article.

(b) Any duly authorized agent of the tax collecting authority of any municipality or county of the state or the state shall have access at any reasonable time, upon the written request by the governing body of such municipality or county, or by the commissioner of revenue of the state, to the information contained in the sales tax returns, statements or information secured by city officials or employees for the purpose of arriving at the amount of any tax due from any person, if such person is liable for, or if there is probable cause for believing such person might be liable for, the payment of any tax to the municipality, county or state.

(c) Any duly authorized tax collecting authority of any municipality or county of this state desiring to secure the information as set out in subsection (b) of this section shall petition the governing body of such municipality or county to secure such information. Such governing body, after the passage of a proper resolution requesting such information, or the commissioner of revenue of the state shall make written request to the city for the required information and, with respect to a request by a municipality or county, shall attach to such written request a copy of such resolution.

(d) It shall be unlawful for any person to use the information obtained in accordance with subsection (b) of this section for any purpose other than ascertaining the amount of the taxes due the municipality, county or state.
(Ord. No. 1990-15, § 26, 8-6-90)

Sec. 13-127. Violator may be restrained from continuing in business.

Any taxpayer who shall violate any of the provisions of this article may be restrained from continuing in business, and the proper prosecution shall be instituted by and in the name of the city until such person shall have complied with the provisions of this article.
(Ord. No. 1990-15, § 27, 8-6-90)

Sec. 13-128. Administration and enforcement of article.

The administration of this article is vested in and shall be exercised by the city comptroller, except as otherwise provided in this article, and the enforcement of any of the provisions of this article in the courts of the state shall be under the jurisdiction and supervision of the city comptroller. The city comptroller may require the assistance of, and act through the city attorney or legal counsel appointed by the city comptroller. The city comptroller, with the approval of the city council, shall appoint as needed such agents,

clerks and stenographers as may be necessary to enforce the provisions of this article, who shall perform such duties as may be required, and such duly appointed and qualified agents are authorized to act for the city as he may direct and as is authorized by law.
(Ord. No. 1990-15, § 28, 8-6-90)

Sec. 13-129. Rules and regulations.

The city shall from time to time promulgate such rules and regulations for making returns and for ascertainment, assessment and collection of the sales tax imposed by this article as it may deem necessary to enforce its provisions and, upon request, shall furnish any taxpayer with a copy of such rules and regulations. The city may adopt rules and regulations providing for the issuance of permits to manufacturers to purchase tangible personal property without the payment to the vendor of the sales tax, and providing for such manufacturer to report and pay such tax directly to the city, in instances where the city determines that it is practically impossible at the time of purchase for such manufacturer or vendors to determine with any degree of certainty the applicability of such tax, and that such provisions will facilitate and expedite the collection of the tax which may be due from such consumer. Such provisions may also be made applicable to persons engaged in the business of mining, quarrying, compounding or processing tangible personal property, railroads, transportation companies and others.
(Ord. No. 1990-15, § 29, 8-6-90)

Sec. 13-130. Sales tax.

(a) If a sales tax equal to or greater than the amount of the city sales tax is paid to another city under a requirement of law, the property which is the subject of such tax, when imported for use or consumption in the city, is not subject to the sales tax, which is required to be paid by section 13-102. If the amount of tax to the other city is less than the city tax, then the difference between the out-of-city tax and the city tax must be paid. No credit will be allowed for taxes paid on tangible personal property in any city which does not give credit for taxes paid on similar property in the city. The city comptroller shall require such proof of payment of tax to another city as he deems to be necessary and proper.

(b) The city comptroller may adopt such rules and regulations as he deems necessary for the proper administration of this section.
(Ord. No. 1990-15, § 30, 8-6-90)

Sec. 13-131. Proceeds of tax.

The proceeds derived from the sales tax levied in this article shall be placed in the general fund for the city, subject to appropriation by the city council for any lawful purpose of the city.
(Ord. No. 1990-15, § 31, 8-6-90)

Sec. 13-132. Overpayments.

If, upon examination by the city comptroller, it is determined that an amount of tax has been paid in excess of that properly due, then the amount in excess shall be credited against any amount thereof due from the taxpayer, and any balance of such excess shall be refunded to the taxpayer. Any taxes recovered by suit by any taxpayer shall be refunded in like manner, but shall be accompanied by a copy of the order or decree of the court issuing such order or decree.
(Ord. No. 1990-15, § 32, 8-6-90)

Sec. 13-133. Reliance on exemption number.

(a) Any law to the contrary notwithstanding, any making retail sales otherwise taxable under this article, who relies in good faith on any state sales tax exemption certificate that has been authorized by the department of revenue, and the exemption claim has been made on a form provided or approved for use by the department of revenue, when a state tax exemption certificate holder violates the tax exempt privilege or uses such certificate illegally, he shall not subsequently be liable to the city for the sales tax on purchases.

(b) The city is authorized to use its powers and responsibilities, in accord with the general laws of the state, to collect or recover any sales taxes due on purchases made illegally with state tax exempt numbers from the party using such certificate

and the person who benefited from such illegal use of the tax exempt certificate, if the person making such retail sale acted in good faith and reasonably believed the purchase was legal.
(Ord. No. 1990-15, § 33, 8-6-90)

Sec. 13-134. Existing sales tax.

Nothing contained in this article shall be construed to relieve any person from any tax liability, penalty, interest or forfeiture incurred under any laws or ordinances of the city prior to the effective date of the ordinance from which this article is derived.
(Ord. No. 1990-15, § 34, 8-6-90)

Secs. 13-135—13-149. Reserved.

ARTICLE VIII. USE TAX

Sec. 13-150. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Automotive vehicle: A power shovel, dragline, crawler, crawler crane, ditcher or any similar machine which is self-propelled, in addition to self-propelled machines which are used primarily as instruments of conveyance.

Business: All activities engaged in, with the object of gain, profit, benefit or advantage, either direct or indirect, and not expecting subactivities producing marketable commodities used or consumed in the main business activity each of which subactivities shall be considered business engaged in, taxable in the class in which it falls.

City comptroller: The administrative division chief of the city.

Department of revenue: The department of revenue of the state.

In this city or *in the city:* Within the corporate limits of the city.

Person: Any natural person, firm, partnership, association, corporation, receiver, trust, estate or any other entity, or any other group or combination of any thereof acting as a unit, and the plural as well as the singular number, unless the intention to give a more limited meaning is disclosed by the context.

Purchase: Acquired for a consideration, whether such acquisition was effected by a transfer of title, or of possession or of both, or a license to use or consume; whether such transfer shall have been absolute or conditional, and by whatsoever means the acquisition shall have been effected; and whether such consideration is a price or rental in money, or by way of exchange or barter.

Retail sale or *sale at retail:* All sales of tangible personal property except wholesale sales. The quantities of goods sold, or prices at which sold, are immaterial in determining whether or not a sale is at retail. Sales of building materials to contractors, builders or landowners for resale or use in the form of real estate are retail sales in whatever quantity sold. Sales of building materials, fixtures, or other equipment to a manufacturer or builder of modular buildings for use in manufacturing, building or equipping a modular building ultimately becoming a part of real estate situated in the city are retail sales, and the use, sale or resale of such building shall not be subject to the tax. Sales of tangible personal property to undertakers and morticians are retail sales and subject to the tax at the time of purchase, but are not subject to the tax on resale to the consumer. Sales of tangible personal property or products to manufacturers, quarry operators, mine operators or compounders, which are used or consumed by them in manufacturing, mining, quarrying or compounding and do not become an ingredient or component part of the tangible personal property manufactured or compounded, are retail sales. The term "retail sale" or "sale at retail" shall also mean and include the withdrawal, use or consumption of any tangible personal property by anyone who purchases such tangible personal property at wholesale, except property which has been previously withdrawn from the business or stock and so used or consumed with respect to which property the tax has been paid because of such previous withdrawal, use or consumption, and except property which enters into and becomes an ingredient or component part of tangible personal property or products manufactured or compounded

of resale and not for the personal and private use or consumption of any person so withdrawing, using or consuming the same. Such wholesale purchaser shall report and pay the taxes thereon.

The term "retail sale" or "sale at retail" shall also mean and include the sale of tangible personal property previously purchased at wholesale for the purpose of leasing or renting under a transaction subject to the privilege or license tax levied by article II of this chapter, regardless of whether such sale is to the person who theretofore leased or rented the tangible personal property or to some other person.

Sale price: The total amount for which tangible personal property is sold, including any services, including transportation, that are a part of the sale, valued in money, whether paid in money or otherwise, and includes any amount for which credit is given to the purchaser by the seller, without any deduction therefrom on account of the cost of the property sold, the cost of the materials used, labor or service cost, interest charged, losses or any other expenses whatsoever, provided that cash discounts allowed and taken on sales shall not be included and sales price shall not include the amount charged for property returned by customers when the entire amount charged therefor is refunded either in cash or by credit.

Storage means any keeping or retention in this city for any purpose except sale in the regular course of business or subsequent use solely outside this city of tangible personal property purchased at retail.

Taxpayer: Any person liable for taxes under this article.

Use: The exercise of any right or power over tangible personal property incident to the ownership of that property, or by any transaction where possession is given, except that it shall not include the sale of that property in the regular course of business.

Wholesale sale or *sale at wholesale:* Any one (1) of the following:

(1) A sale of tangible personal property by wholesalers to licensed retail merchants, jobbers, dealers or other wholesalers for resale and does not include a sale by wholesalers to users or consumers, not for resale;

(2) A sale of tangible personal property or products, including iron ore, to a manufacturer or compounder which enters into and becomes an ingredient or component part of the tangible personal property or products which such manufacturer or compounder manufactures or compounds for sale, and the furnished container and label thereof;

(3) A sale of containers intended for one-time use only, and the labels thereof, when such containers are sold without contents to persons who sell or furnish such containers along with the contents placed therein for sale by such persons;

(4) A sale of pallets intended for one-time use only when such pallets are sold without contents to persons who sell or furnish such pallets along with the contents placed thereon for sale by such persons;

(5) A sale to a manufacturer or compounder of crowns, caps and tops intended for one-time use, employed and used upon the containers in which such manufacturer or compounder markets his products;

(6) A sale of containers to persons engaged in selling or otherwise supplying or furnishing baby chicks to growers thereof where such containers are used for the delivery of such chicks or a sale of containers for use in the delivery of eggs by the producer thereof to the distributor or packer of such eggs, even though such containers used for delivery of baby chicks or eggs may be recovered for reuse;

(7) A sale of bagging and ties used in preparing cotton for market;

(8) A sale of commercial fish feed including concentrates, supplements and other feed ingredients when such substances are used as ingredients in mixing and preparing feed for fish raised to be sold on a commercial basis;

(9) A sale of tangible personal property to any person engaging in the business of leasing or renting such tangible personal property to others, if such tangible personal property is purchased for the purpose of leasing or renting it to others under a transaction subject to the privilege or license tax levied by article II of this chapter against any person engaging in the business of leasing or renting tangible personal property to others;

(10) A purchase or withdrawal of parts or materials from stock by any person licensed under this article where such parts or materials are used in repairing or reconditioning the tangible personal property of such licensed person, which tangible personal property is a part of the stock of goods of such licensed person, offered for sale by him and not for use or consumption of such licensed person; and

(11) A sale to meatpackers, manufacturers, compounders or processors of meat products of all castings used in molding or forming wieners and Vienna sausages even though such casings may be recovered for reuse.

(Ord. No. 1990-16, § 1, 8-6-90)

Cross reference—Definitions and rules of construction generally, § 1-2.

Sec. 13-151. Levy of tax.

(a) There is hereby levied and imposed an excise tax on the storage, use or other consumption in this city of tangible personal property, not including, however, materials and supplies bought for use in fulfilling a contract for the painting, repairing or reconditioning of vessels, barges, ships and other watercraft of more than fifty (50) tons burden, purchased at retail, for storage, use or other consumption in this city at the rate of two and one-half (2½) percent of the sales price of such property or the amount of tax collected by the seller, whichever is greater; provided, however, when the seller follows the city's suggested use tax brackets and his records prove that his following such brackets resulted in a net undercollection of tax for the month, he may report the tax due or tax collected, whichever is less, except as provided in subsections (b), (c) and (d) of this section.

(b) There is hereby levied and imposed an excise tax on the storage, use or other consumption in this city of any machines used in mining, quarrying, compounding, processing and manufacturing of tangible personal property, purchased at retail, at the rate of one (1) percent of the sale price of any such machine or the amount of tax collected by the seller, whichever is greater; provided, however, that when the seller follows the city's suggested use tax brackets and his records prove that his following such brackets resulted in a net undercollection of tax for the month, he may report the tax due or tax collected, whichever is less, provided that the term "machine" as used in this section shall include machinery which is used for mining, quarrying, compounding, processing or manufacturing tangible personal property, and the parts of such machines, attachments and replacements therefor, which are made or manufactured for use on or in the operation of such machines and which are necessary to the operation of such machines and are customarily so used.

(c) There is hereby levied and imposed an excise tax on the storage, use or other consumption in this city of any automotive vehicle or truck trailer, semitrailer or house trailer, and mobile home set-up materials and supplies including but not limited to steps, blocks, anchoring, cable pipes and any other materials pertaining thereto, purchased at retail, for storage, use or other consumption in this city at the rate of one (1) percent of the sales price of such automotive vehicle, truck trailer, semitrailer or house trailer, and mobile home setup materials and supplies, as specified in this subsection, or the amount of tax collected by the seller, whichever is greater; provided, however, that when the seller follows the city's suggested use tax brackets and his records prove that his following such brackets resulted in a net undercollection of tax for the month, he may report the tax due or tax collected, whichever is less. Where any used automotive vehicle or truck trailer, semitrailer or house trailer is taken in trade, or in a series of trades, as a credit or part payment on the sale of a new or used vehicle, the tax levied in this

section shall be paid on the net difference, that is, the price of the new or used vehicle sold less the credit for the used vehicle taken in trade.

(d) There is hereby levied and imposed an excise tax on the storage, use or other consumption in this city of any machine, machinery or equipment which is used in planting, cultivating and harvesting farm products, or used in connection with the production of agricultural produce or products, livestock or poultry on farms, and the parts of such machines, machinery or equipment, attachments and replacements therefor which are made or manufactured for use on or in the operation of such machine, machinery or equipment, and which are necessary to and customarily used in the operation of such machine, machinery or equipment, which is purchased at retail, for storage, use or other consumption in this city at the rate of one (1) percent of the sales price of such property regardless of whether the retailer is or is not engaged in the business in this city; provided, however, that the one (1) percent rate prescribed in this section with respect to parts, attachments and replacements shall not apply to any automotive vehicle or trailer designed primarily for public highway use, except farm trailers used primarily in the production and harvesting of agricultural commodities. Where any used machine, machinery or equipment which is used in planting, cultivating and harvesting farm products, livestock and poultry on farms is taken in trade or in a series of trades as a credit or part payment on a sale of a new or used machine, machinery or equipment, the tax levied in this section shall be paid on the net difference, that is, the price of the new or used machine, machinery or equipment sold, less the credit for the used machine, machinery or equipment taken in trade.

(e) Every person storing, using or otherwise consuming in this city tangible personal property purchased at retail shall be liable for the tax imposed by this article, and the liability shall not be extinguished until the tax has been paid to this city, provided that a receipt from a retailer maintaining a place of business in this city or a retailer authorized by the city, under such rules and regulations as it may prescribe, to collect the tax imposed hereby and who shall for the purpose of this article be regarded as a retailer maintaining a place of business in this city, given to the purchaser in accordance with the provisions of section 13-156, shall be sufficient to relieve the purchaser from further liability for tax to which such receipt may refer.

(f) There is hereby levied and imposed an excise tax on the classes of tangible personal property, and at the rates imposed on such classes, specified in subsections (a), (b), (c) and (d) of this section, on the storage, use or other consumption in the performance of a contract in this city, of any such tangible personal property, new or used, the tax to be measured by the sales price or the fair and reasonable market value of such tangible personal property when put into use in this city, whichever is less, provided that the tax imposed by this subsection shall not apply where the taxes imposed by subsections (a), (b), (c), and (d) of this section apply.
(Ord. No. 1990-16, § 2, 8-6-90; Ord. No. 1990-25, § I, 10-5-90)

Sec. 13-152. Exemptions.

There are exempted from the provisions of this article and from the computation of the amount of the tax levied, assessed or payable under this article the storage, use or consumption of tangible personal property which are exempted from taxation under the provisions of Code of Ala. 1975, title 40, ch. 23, art. 2 (Code of Ala. 1975, § 40-23-60 et seq.), entitled "Use Tax," as the same is now or hereafter amended and all acts supplemental thereto except where inapplicable or where otherwise provided in this article.
(Ord. No. 1990-16, § 3, 8-6-90)

Sec. 13-153. Credit for sales or use tax paid to another municipality.

If a sales or use tax is paid to another state municipality under a requirement of law, the property which is the subject of such tax when imported for use, storage or consumption in the city is not subject to the use tax which is required to be paid by section 13-151 or 13-152. If the amount of tax paid to the other city is less than the Daphne tax, then the difference between the out-of-city tax and the Daphne tax must be paid. No credit will be allowed for taxes paid on tangi-

ble personal property in any city which does not give credit for taxes paid on similar property in Daphne. The city comptroller shall require such proof of payment of tax to another state municipality as it deems to be necessary and proper. The city comptroller shall adopt such rules and regulations as he deems necessary for the proper administration of this section.
(Ord. No. 1990-16, § 4, 8-6-90)

Sec. 13-154. Retail sellers to register and give information; exceptions.

Every seller engaged in making retail sales of tangible personal property for storage, use or other consumption in this city, who: (1) maintains a place of business, (2) qualifies to do business, (3) solicits and receives purchases or orders by agent or salesman, or (4) distributes catalogs or other advertising matter and by reason thereof receives and accepts orders from residents, within the city, shall within thirty (30) days after the effective date of the ordinance from which this article is derived register with the city and give the name and address of each agent operating in this city, the location of any and all distribution or sales houses or offices or other places of business in this city, the number of persons in the city to whom catalogs are delivered by mail or otherwise, the number of persons in the city from whom orders are received by mail or otherwise, together with the amount of the purchase price charged and received, and such other information as the city may require with respect to matters pertinent to the enforcement of this article; provided that this section shall not apply to a seller holding a license obtained pursuant to the provisions of article VII of this chapter.
(Ord. No. 1990-16, § 5, 8-6-90)

Sec. 13-155. Seller to collect tax; seller not to assume or absorb tax.

Every such seller making sales of tangible personal property for storage, use or other consumption in this city, not exempted under the provisions of section 13-153, shall at the time of making such sales or, if the storage, use or other consumption of the tangible personal property is not then taxable under this article, at the time such storage, use or other consumption becomes taxable under this article, collect the tax imposed by this article from the purchaser, and give to the purchaser a receipt therefor in the manner and form prescribed by the city. The tax required to be collected by the seller from the purchaser shall be displayed separately from the list, advertised in the premises, marked or other price on the sales check or other proof of sale. It shall be unlawful for any such seller to advertise or hold out or state to the public or any customer, directly or indirectly, that the tax or any part thereof imposed by this article will be assumed or absorbed by the seller or that it will not be added to the selling price of the property sold or if added then it or any part thereof will be refunded. Any person violating any of the provisions of this section shall upon conviction be punished as provided by law. The tax required in this article to be collected by the seller shall constitute a debt owed by the seller to this city.
(Ord. No. 1990-16, § 6, 8-6-90)

Sec. 13-156. Taxes due quarterly; filing of returns.

(a) The tax imposed by this article shall be due and payable to the city quarterly on or before the twentieth day of the month next succeeding each quarterly period during which the storage, use or other consumption of tangible personal property becomes taxable under this article, the first of such periods being the period commencing October 1, 1990, and ending December 31, 1990. Thereafter, such returns shall be due for each calendar quarter. Every seller engaged in making retail sales of tangible personal property for storage, use or other consumption in this city, who: (1) maintains a place of business, (2) qualifies to do business, (3) solicits and receives purchases or orders by agent or salesman, or (4) distributes catalogs or other advertising matter and by reason thereof receives and accepts orders from residents within the city shall, on or before the twentieth day of the month following the close of the first quarterly period, and on or before the twentieth day of the month following each subsequent quarterly period of three (3) months, file with the city a return for the preceding quarterly period in such form as may be prescribed by the city showing the total sales price of the tangible

personal property sold by such seller, the storage, use or consumption of which became subject to the tax imposed by this article, during the preceding quarterly period and such other information as the city may deem necessary for the proper administration of this article. The return shall be accompanied by a remittance of the amount of tax required in this article to be collected by the seller during the period covered by the return. The city comptroller, if he deems it necessary in order to ensure payment to the city of the amount of tax required to be collected by sellers in this article, may require returns and payment of such amount of tax for other than quarterly periods. Returns shall be signed by the seller or his duly authorized agent but need not be verified by oath.

(b) Every person purchasing tangible personal property, the storage, use or other consumption of which is subject to the tax imposed by this article, and who has not paid the tax due with respect thereto to a seller required or authorized under this article to collect the tax, shall on or before the twentieth day of the month following the close of the first quarterly period, and on or before the twentieth day of the month following each subsequent period of three (3) months, file with the city a return for the preceding quarterly period in such form as may be prescribed by the city comptroller showing the total sales price of the tangible personal property purchased by such person, the storage, use or other consumption of which became subject to the tax imposed by this article during the preceding quarterly period, and with respect to which the tax was not paid to a seller required or authorized under this article to collect the tax, and such other information as the city may deem necessary for the proper administration of this article. The return shall be accompanied by a remittance of the amount of tax imposed in this article and not paid to a seller required or authorized under this article to collect the tax during the period covered by the return. The city comptroller, if he deems it necessary in order to ensure payment to the city of the amount of such tax, may require returns and payment for other than quarterly periods. Returns shall be signed by the person liable for the tax or his duly authorized agent, but need not be verified by oath.

(c) For the purpose of the proper administration of this article, and to prevent evasion of the tax and the duty to collect the tax imposed in this article, it shall be presumed that tangible personal property sold by any person for delivery in this city is sold for storage, use or other consumption in this city unless the person selling such property shall have taken from the purchaser a certificate signed by and bearing the name and address of the purchaser to the effect that the property was purchased for resale, and it shall be further presumed that tangible personal property shipped to this city by the purchaser thereof was purchased from a retailer on and after October 1, 1990, for storage, use or other consumption in the city may report such cash sales and shall thereafter include in each quarterly report all credit collections made during the preceding quarter and shall pay the taxes due thereon at the time of filing such report, but in no event shall the gross proceeds of credit sales be included in the measure of the tax to be paid until collections of such credit sales shall have been made.
(Ord. No. 1990-16, § 7, 8-6-90)

Sec. 13-157. Penalty for failure to pay tax; interest.

Any person failing to pay any tax to the city or any amount of tax required to be collected and paid to the city pursuant to this article, except amounts determined to be due by the city under the provisions of sections 13-158 and 13-159, within the time required by this article, shall pay, in addition to the tax or the amount of tax required to be collected pursuant to this article, a penalty of ten (10) percent thereof plus interest at the rate of one (1) percent per month, or fraction thereof, from the date at which the tax or the amount of tax required to be collected in this article became due and payable to the city. The city comptroller, if good and sufficient reason is shown, may waive and remit the ten (10) percent penalty or a portion thereof.
(Ord. No. 1990-16, § 8, 8-6-90)

Sec. 13-158. City authorized to determine true amount of tax due; penalties.

If the city is not satisfied with the return and payment of the tax or the amount of the tax

required to be paid to the city by any person pursuant to this article, it is hereby authorized and empowered to compute and determine the amount required to be paid based upon the facts contained in the return or upon any information within its possession or that shall come into its possession. All amounts determined to be due under the provisions of this section shall bear interest at the rate of one (1) percent per month, or fraction thereof, from the twentieth day after the close of the period, as the case may be, for which such amounts were required to be reported to the city until paid. If any part of the deficiency for which a determination of an additional amount due is made is due to negligence or intentional disregard of this article or authorized rules and regulations, a penalty of ten (10) percent of such amount shall be added thereto. If any part of the deficiency for which a determination of an additional amount is made is due to fraud or an intent to evade this article or authorized rules and regulations, a penalty of twenty-five (25) percent of such amount shall be added thereto. The city comptroller shall give to the retailer or person storing, using or consuming tangible personal property written notice of its determination. Such notice may be served personally or by mail. If by mail, such notice shall be addressed to the retailer or person storing, using or consuming tangible personal property at his address as the address appears in the records of the city and sent by registered mail, return receipt requested.
(Ord. No. 1990-16, § 9, 8-6-90)

Sec. 13-159. Estimate of tax due where no return made; penalties.

If any person neglects or refuses to make a return required to be made by this article, the city shall make an estimate for the period in respect to which such person failed to make a return, based upon any information in its possession, of the amount of the total sales price of tangible personal property sold or purchased by such person, the storage, use or other consumption of which in this city is subject to the tax imposed by this article, and upon the basis of such estimate compute and determine the amount required to be paid to the city, adding to the sum thus arrived at a penalty equal to ten (10) percent thereof. All amounts determined to be due under the provisions of this section shall bear interest at the rate of one (1) percent per month, or fraction thereof, from the twentieth day after the close of the period, as the case may be, for which such amounts were required to be reported to the city until paid. If the neglect or refusal of any person to file a return as required by this article was due to fraud or an intent to evade this article or rules and regulations pursuant to this article, a penalty of twenty-five (25) percent of the amount required to be paid by such person shall be added thereto in addition to the ten (10) percent penalty as provided in this section. Promptly thereafter, the city comptroller shall give to such person written notice of such estimate, determination and penalty, the notice to be served personally or by mail in the same manner as prescribed for service of notice by the provisions of section 13-158. The city comptroller, if good and sufficient reason is shown, may waive and remit the ten (10) percent penalty or a portion thereof.
(Ord. No. 1990-16, § 10, 8-6-90)

Sec. 13-160. Jeopardy determination.

If the city comptroller believes that the collection of any tax or any amount of tax required to be collected and paid to the city pursuant to this article will be jeopardized by delay, it shall thereupon make a determination of such tax or the amount of tax required to be collected pursuant to this article, noting that fact upon such determination and the amount thereof shall be immediately due and payable. If the amount specified in the determination is not paid within ten (10) days after the service upon the person against whom the determination is made of notice thereof, such amount becomes final at the expiration of such ten (10) days, unless a petition for redetermination is filed with such ten (10) days, and the delinquency penalty and the interest provided in section 13-157 shall attach to the amount of the tax required to be collected specified therein. The person against whom a jeopardy determination is made under this article may petition for the redetermination thereof pursuant to section 13-161; provided, however, that such petition for redetermination must be filed with the city comptroller within ten (10) days after the service upon

such person of notice of the determination; and provided further that such person must within such ten-day period deposit with the city such security as the city comptroller may deem necessary to ensure compliance with the provisions of this article. Such security may be sold by the city in the manner prescribed in section 13-163.
(Ord. No. 1990-16, § 11, 8-6-90)

Sec. 13-161. Procedure for redetermination; appeal.

Any person from whom an amount is determined to be due under the provisions of section 13-158 or 13-159 may petition for a redetermination thereof within thirty (30) days after service upon such person of notice thereof. If a petition for redetermination is not filed within such thirty-day period, the amount determined to be due becomes final at the expiration thereof. If a petition for redetermination is filed within the thirty-day period, the city shall reconsider the amount determined to be due, and if such person has so requested in his petition, shall grant such person, his agent or attorney, an oral hearing and shall give such person ten (10) days' notice of the time and place thereof. The city shall have power to continue the hearing from time to time as may be necessary. The order or decision of the city upon a petition for redetermination shall become final thirty (30) days after service upon such person of notice thereof. All amounts determined to be due by the city under the provisions of section 13-158 or 13-159 shall become due and payable at the time they become final and, if not paid when due and payable, there shall be added thereto a penalty of ten (10) percent of the amount determined to be due. Any notice required by this section shall be served personally or by mail in the same manner as prescribed for service of notice by the provisions of section 13-158. From the final determination, as is provided for in this article, any taxpayer who has filed a petition for redetermination may appeal to the county circuit court, as provided by Code of Ala. 1975, § 40-2A-7. On such appeal the court may, in its discretion, determine as to whether or not the penalty provided for in this section is to be imposed upon the taxpayer.
(Ord. No. 1990-16, § 12, 8-6-90)

Sec. 13-162. Extension of time for making return.

The city for good cause may extend for not to exceed thirty (30) days the time for making any return required under the provisions of this article.
(Ord. No. 1990-16, § 13, 8-6-90)

Sec. 13-163. Deposit of security.

The city, whenever it deems it necessary to ensure compliance with the provisions of this article, may require any person subject thereto to deposit with it such security as the city may determine. The security may be sold by the city at public auction if it becomes necessary so to do in order to recover any tax, or any amount required by this article to be collected, interest or penalty due. Notice of such sale may be served upon the person who deposited such security personally or by registered mail. If served by mail, service shall be made by registered notice, return receipt requested, addressed to the person at his address as the address appears in the records of the city. Upon any such sale, the surplus, if any, above the amounts due under this article shall be returned to the person who deposited the security.
(Ord. No. 1990-16, § 14, 8-6-90)

Sec. 13-164. Notice of additional amount due to be mailed.

Except in the case of a fraudulent return, or neglect or refusal to make a return, every notice of a determination of an additional amount due shall be mailed within three (3) years after the return is filed.
(Ord. No. 1990-16, § 15, 8-6-90)

Sec. 13-165. Interest.

All taxes or amounts required in this article to be collected not paid to the city on the date when the taxes or amounts become due and payable shall bear interest at the rate of one (1) percent per month, or a fraction thereof, from and after the date when the taxes or amounts became due and payable until paid.
(Ord. No. 1990-16, § 16, 8-6-90)

Sec. 13-166. Overpayments.

If, upon examination, it is determined by the city that an amount of tax or an amount required to be collected has been paid to the city in excess of the amount properly due, then the amount in excess shall be credited against any tax or amount required to be collected then due from such person, and any balance of such excess shall be refunded to such person by whom such overpayment was made, in accordance with law and under such rules and regulations as the city comptroller may adopt and promulgate.
(Ord. No. 1990-16, § 17, 8-6-90)

Sec. 13-167. Penalty for fraud or evasion.

If fraud or evasion on the part of any person is discovered by the city, it shall determine the amount by which the city has been defrauded, shall add to the amount so determined a penalty equal to twenty-five (25) percent thereof, and shall determine the amount to be due from such person. All amounts determined to be due from any person under the provisions of this section shall bear interest at the rate of one (1) percent per month, or fraction thereof, from the fifteenth day after the close of the period, as the case may be, from which such amounts shall have been paid. The amount so determined shall be immediately due and payable and, if not paid within ten (10) days after the service upon such person of notice of the amount determined to be due, the delinquency penalty and interest provided in section 13-157 shall attach thereto.
(Ord. No. 1990-16, § 18, 8-6-90)

Sec. 13-168. Tax a lien on property.

The tax or any amount required to be collected under this article, together with interest and penalties imposed by this article, shall be a lien upon the property of the person required to pay such tax or other amount to the city, and the provisions of the revenue laws of the state applying to liens for license taxes shall apply fully to the taxes levied in this article.
(Ord. No. 1990-16, § 19, 8-6-90)

Sec. 13-169. Person selling out or quitting business to file return; part of purchase money to be withheld.

If any retailer liable for an amount of tax required in this article to be collected shall sell out his business or stock of goods or shall quit the business, he shall make a final return and payment within fifteen (15) days after the date of selling or quitting the business. His successors or assigns, if any, shall be required to withhold a sufficient amount of the purchase money to cover the amount of such taxes required by this article to be collected and interest or penalties due and unpaid until such time as the former owner shall produce a receipt from the city showing that they have been paid or a certificate stating that no amount is due. If the purchaser of a business or stock of goods shall fail to withhold the purchase money as provided in this section, he shall be personally liable for the payment of the amount of taxes required by this article to be collected by the former owners, interest and penalties accrued and unpaid by any former owner, owners or assignors.
(Ord. No. 1990-16, § 20, 8-6-90)

Sec. 13-170. Examination of records; administration and enforcement.

(a) Every seller and every person storing, using or otherwise consuming in this city tangible personal property purchased from a retailer shall keep such records, receipts, invoices and other pertinent papers in such form as the city may require. The city or any person authorized in writing by it is hereby authorized to examine the books, papers, records and equipment of any person selling tangible personal property and any person liable for the tax imposed by this article and to investigate the character of the business of any such person in order to verify the accuracy of any return made, or if no return was made by such person, to ascertain and determine the amount required to be paid pursuant to this article.

(b) The city comptroller is hereby charged with the enforcement of the provisions of this article, and he is hereby authorized and empowered to enforce rules and regulations adopted by the city council relating to the administration and enforcement of the provisions of this article, and, with the approval of the city council, to employ such accountants, auditors, investigators, assistants and clerks as may be determined to be necessary for the efficient administration of this article.
(Ord. No. 1990-16, § 21, 8-6-90)

Sec. 13-171. Disclosure of contents of returns.

It shall be unlawful for any person having an administrative duty under this article to divulge or to make known in any manner whatever the business affairs, operations or information obtained by an investigation of records and equipment of any retailer or any other person visited or examined in the discharge of any official duty, or the amount or sources of income, profits, losses, expenditures or any particular thereof, set forth or disclosed in any return, or to permit any return or copy thereof or any book containing any abstract or particulars thereof to be seen or examined by any person except as provided by law; provided, however, that the city comptroller may authorize examination of such returns by other tax officers of the state or federal government. Any violations of the provisions of this section shall, upon conviction, be punishable by a fine not exceeding one hundred dollars ($100.00) or by imprisonment in the city jail not exceeding six (6) months, or both, at the discretion of the court.
(Ord. No. 1990-16, § 22, 8-6-90)

Sec. 13-172. Proceeds of tax.

The proceeds derived from the use tax levied in this article shall be placed in the general fund of the city, subject to appropriation by the city council for any lawful purpose of the city.
(Ord. No. 1990-16, § 23, 8-6-90)

Sec. 13-173. Tax collectible by civil suit.

(a) At any time within three (3) years after any amount required by this article to be collected has become due and payable and any time within three (3) years after the delinquency of any tax, the city may bring action in any appropriate court to collect the amount delinquent, together with penalties and interest. In such action a writ of attachment may issue, and no bond or affidavit previous to the issuing of such attachment is required. In such action a certificate by the city showing the delinquency shall be prima facie evidence of the determination of the amount due under this article, of the delinquency and of the compliance by the city with all the provisions of this article in relation to the computation and determination of such amount.

(b) In any action brought under the provisions of this article, process may be served as in other cases or may be served upon any agent or clerk in the state, employed by any seller in a place of business maintained by such seller in the state, or upon any agent of any seller soliciting business or accepting orders within the state, in which case a copy of the process shall forthwith be sent by certified or registered mail to the seller at his principal or home office.
(Ord. No. 1990-16, § 24, 8-6-90)

Sec. 13-174. Declaratory judgments fixing tax liability.

No injunction or writ of mandate or other process shall issue in any suit, action or proceeding in any court against this city or against any officer thereof to prevent or enjoin under this article the collections of any tax or any amount of tax required to be collected by this article, but after payment of any such tax or any such amount of tax required to be collected by this article under protest, duly verified and setting forth the grounds of objection to the legality thereof, the retailer or person making the payment may bring an action against the city in the county circuit court, praying a declaratory judgment determining his tax liability for the amount so paid or high rights to a refund thereof. Upon the rendition of any final judgment declaring that the person making the payment is entitled to a refund thereof, either in whole or in part, then it shall be the duty of the proper officer of the city, upon presentation of a certified copy of such final decree, to issue his warrant in favor of such person for the sum determined to be due, together with interest at six (6) percent per annum. No such action may be instituted more than two (2) years after the tax or the amount required by this article to be collected and paid to the city becomes due and payable. Failure to bring suit within two (2) years shall constitute waiver of any and all demands against the city on account of alleged overpayments pursuant to this article. In no case shall any judgment be rendered in favor of the plaintiff in any action brought against the city to recover any

amount paid pursuant to this article when such action is brought by or in the name of an assignee of the seller or other person paying such amount, or by any person other than the person who has paid such amount.
(Ord. No. 1990-16, § 25, 8-6-90)

Sec. 13-175. Penalties for violation.

Any seller or other person failing or refusing to furnish any return hereby required to be made, or failing or refusing to furnish a supplemental return or other data required by the city, or rendering a false or fraudulent return, shall, upon conviction, be subject to a fine of not exceeding one hundred dollars ($100.00) for each such offense. Any person required to make, render, sign or verify any report who makes any false or fraudulent return, with intent to defeat or evade the determination of an amount due as required by law to be made, shall for each such offense, upon conviction, be fined not less than one hundred dollars ($100.00) and not more than one thousand dollars ($1,000.00) or be imprisoned not exceeding six (6) months in the city jail, or be subject to both fine and imprisonment in the discretion of the court. Any violation of the provisions of this article, except as otherwise provided in this article, shall be punishable as provided by law.
(Ord. No. 1990-16, § 26, 8-6-90)

Sec. 13-176. Use tax an additional tax.

The tax imposed by this article shall be in addition to all other licenses and taxes levied by law as a condition precedent to engaging in any business taxable pursuant to this article, except as in this article otherwise specifically provided.
(Ord. No. 1990-16, § 27, 8-6-90)

Sec. 13-177. Existing use tax.

Except as otherwise provided, nothing otherwise contained in this article shall be construed to relieve any person from any tax liability, penalty, interest or forfeiture incurred under any laws or ordinances of the city prior to the effective date of the ordinance from which this article is derived.
(Ord. No. 1990-16, § 28, 8-6-90)

Secs. 13-178—13-189. Reserved.

ARTICLE IX. MASSAGE PARLORS

DIVISION 1. GENERALLY

Sec. 13-190. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Employee: Any person over eighteen (18) years of age, other than a masseur, who renders any service in connection with the operation of a massage business and receives compensation from the operator of the business or patrons.

Massage: Any method of pressure on or friction against or stroking, kneading, rubbing, tapping, pounding, vibrating, or stimulating of the external soft parts of the body with the hands or with the aid of any mechanical or electrical apparatus or appliance, with or without such supplementary aids as rubbing alcohol, liniments, antiseptics, oils, powder, creams, lotions, ointments or other similar preparations commonly used in this practice.

Masseur: Any person who engages in the practice of massage. The use of the masculine gender shall include in all cases the feminine gender as well.

Patron: Any person over eighteen (18) years of age who receives a massage under such circumstances that it is reasonable expected that he will pay money or give any other consideration therefor.

Recognized school: Any school or institution of learning which has for its purpose the teaching of the theory, method, profession, or work of massage, which school requires a resident course of study of not less than seventy (70) hours before the student shall be furnished with a diploma or certificate of graduation from such school following the successful completion of such course of study or learning.
(Ord. No. 1991-12, § 1, 11-4-91)

Cross reference—Definitions and rules of construction generally, § 1-2.

Sec. 13-191. Applicability of article.

The provisions of this article shall not apply to hospitals, nursing homes, sanitariums, or persons holding an unrevoked certificate to practice the healing arts under the laws of the state, or persons working under the direction of any such persons or any such establishment, nor shall this article apply to barbers or cosmetologists lawfully carrying out their particular profession or business and holding a valid, unrevoked license or certificate of registration issued by the state.
(Ord. No. 1991-12, § 14, 11-4-91)

Sec. 13-192. Supervision of business.

A permittee shall have the premises supervised at all times when open for business. Any business rendering massage services shall have one person who qualifies as a masseur on the premises at all times while the establishment is open. The permittee shall personally supervise the business, and shall not violate, or permit others to violate, any applicable provision of this article. The violation of any such provision by any agent or employee of the permittee shall constitute a violation by the permittee.
(Ord. No. 1991-12, § 11, 11-4-91)

Sec. 13-193. Keeping of appointment book; inspection.

Every person that operates a massage business shall at all times keep an appointment book in which the name of each and every patron shall be entered together with the time, date, place of service, and the service provided. Such appointment book shall be available at all times for inspection by the police chief or his authorized representatives.
(Ord. No. 1991-12, § 9, 11-4-91)

Sec. 13-194. Presence of minors.

No person shall permit any person under the age of eighteen (18) years to come or remain on the premises of any massage business establishment, as masseur, employee, or patron, unless the person is on the premises on lawful business.
(Ord. No. 1991-12, § 12, 11-4-91)

Sec. 13-195. Alcoholic beverages prohibited.

No person shall give, sell, dispense, provide or keep or cause to be sold, given, dispensed, provided or kept, any alcoholic beverage on the premises of any massage business.
(Ord. No. 1991-12, § 13, 11-4-91)

Sec. 13-196. Penalty for violation of article.

Any person violating any of the provisions of this article shall be fined not less than twenty-five dollars ($25.00) nor more than five hundred dollars ($500.00) for each offense; and a separate offense shall be deemed committed on each day during which the violation occurs or continues.
(Ord. No. 1991-12, § 15, 11-4-91)

Sec. 13-197. Violation of article declared nuisance; application for relief.

Any violation of this article is declared to be a nuisance. In addition any other relief provided by this article, the city attorney or the police chief or his designee may apply to a court of competent jurisdiction for an injunction to prohibit the continuation of any violation of this article. Such application for relief may include seeking a temporary restraining order, preliminary injunction and permanent injunction.
(Ord. No. 1991-12, § 16, 11-4-91)

Secs. 13-198—13-209. Reserved.

DIVISION 2. PERMIT

Sec. 13-210. Required.

No person shall engage in or carry on the business of massage unless he has a valid massage business permit issued by the city pursuant to the provisions of this article for each and every separate office or place of business conducted by such person. No person shall practice massage as a masseur, employee, or otherwise unless he has a valid and subsisting masseur's permit issued to him by the city pursuant to the provisions of this article.
(Ord. No. 1991-12, § 2, 11-4-91)

Sec. 13-211. Application; additional requirements.

Any person desiring a massage business permit shall file a written application with the police chief on a form to be furnished by the police chief. The applicant shall accompany the application with a tender of the correct permit fee as provided in section 13-196 and shall, in addition, furnish the following:

(1) The type of ownership of the business, i.e., whether individual, partnership, corporation, or otherwise;

(2) The name, style and designation under which the business or practice is to be conducted;

(3) The business address and all telephone numbers where the business is to be conducted;

(4) A complete list of the names and addresses of all masseurs and employees in the business and the name and residence address of the manager or other person principally in charge of the operation of the business;

(5) The following personal information concerning the applicant, if an individual; and concerning each stockholder holding more than ten (10) percent of the stock of the corporation, each officer and each director, if the applicant is a corporation; and concerning the partners, including limited partners, if the applicant is a partnership; and concerning the manager or other person principally in charge of the operation business:

a. Name, complete residence address and residence telephone number;

b. The two previous addresses immediately prior to the present address of the applicant;

c. Written proof of age;

d. Height, weight, color of hair and eyes, and sex;

e. The massage or similar business history and experience, including but not limited to whether or not such person in previously operating in this or another city or state under license or permit has had such license or permit denied, revoked, or suspended and the reason therefor, and the business activities or occupations subsequent to such action of denial, suspension or revocation;

f. All criminal convictions other than misdemeanor traffic violations, fully disclosing the jurisdiction in which convicted, and the offense for which conviction and the circumstances thereof;

g. Diploma, certificate, or other written proof of graduation from a recognized school by the person who shall be directly responsible for the operation and management of the massage business.

(6) Authorization for the city, its agents and employees to seek information and conduct an investigation into the truth of the statements set forth in the application and the qualifications of the applicant for the permit.

(7) Written declaration by the applicant, under the penalty of perjury, that the foregoing information contained in the application is true and correct, and such declaration being duly dated and signed in the city.

(Ord. No. 1991-12, § 3, 11-4-91)

Sec. 13-212. Investigation of applicant.

Upon receiving the application for a massage business permit, the chief of police shall conduct an investigation into the applicant's character and personal and criminal history. The chief may, in his discretion, require a personal interview of the applicant, and such further information, identification, and physical examination of the person as shall bear on the investigation. The police chief further may cause to be conducted an investigation of premises where the massage business is to

be carried on. Before any such permit shall issue under this article, the police chief shall first sign his approval of the application.
(Ord. No. 1991-12, § 4, 11-4-91)

Sec. 13-213. Issuance; conditions.

The city revenue officer shall issue a massage business permit within forty-five (45) days of receipt of the application unless the officer finds that:

(1) The correct permit fee has not been tendered to the city, and the case of a check or bank draft, honored with payment upon presentation;

(2) The operation, as proposed by the applicant, if permitted, would not comply with all applicable laws, including but not limited to, the city's building, zoning, and health regulations;

(3) The applicant has been convicted of any crime involving dishonesty, fraud, or deceit unless such conviction occurred at least five (5) years prior to the date of the application;

(4) The applicant has knowingly made any false, misleading, or fraudulent statement of fact in the permit application or in any document required by the city in conjunction therewith;

(5) The applicant has had a massage business, masseur, or other similar permit or license denied, revoked, or suspended for any of the above causes by the city or any other state or local agency within five (5) years prior to the date of the application;

(6) The applicant is not over the age of eighteen (18) years; or

(7) The manager or other person principally in charge of the operation of the business has not successfully completed a residence course of study or learning of not less than seventy (70) hours from a recognized school where the theory, method, profession, or other work of massage is taught.

(Ord. No. 1991-12, § 5, 11-4-91)

Sec. 13-214. Display.

The massage business permittee shall display his permit in an open and conspicuous place on the wall of the massage business.
(Ord. No. 1991-12, § 6, 11-4-91)

Sec. 13-215. Fee.

The permit fee for a massage business permit shall be seventy-five dollars ($75.00) per year or any part thereof.
(Ord. No. 1991-12, § 7, 11-4-91)

Sec. 13-216. Suspension or revocation.

Any massage business permit issued under this article shall be subject to suspension or revocation by the police chief for violation for any provision of this article or for any grounds that would warrant the denial of issuance of such permit in the first place.
(Ord. No. 1991-12, § 8, 11-4-91)

Sec. 13-217. Transferability.

No massage business permit is transferable, and such authority as a permit confers shall be conferred only on the permittee named therein.
(Ord. No. 1991-12, § 10, 11-4-91)

Secs. 13-218—13-220. Reserved.

ARTICLE X. SOLICITORS

Sec. 13-221. License or permit required.

Each and every person doing door-to-door, or house-to-house solicitation within the city must obtain a license or permit for such solicitation.
(Ord. No. 1995-01, § 1, 1-18-95; Ord. No. 1995-08, § 1, 4-17-95)

Sec. 13-222. Application.

(a) Before such license may be issued, applicant for such license shall provide complete information concerning the applicant and the business represented including, but not limited to: goods to be sold, description of vehicle, employer's name and address, record of any convictions of any law

violation, identifying pictures, finger printing, and any other information which may be required by the chief of police or his designee.

(b) Said license shall be issued subject to the provisions of this section and inquiry of pertinent information to be made by the mayor, chief of police, or their designee after receipt of an application.
(Ord. No. 1995-01, § 2, 1-18-95; Ord. No. 1995-08, § 2, 4-17-95; Ord. No. 2010-47, § I, 8-2-10)

Sec. 13-223. Fees.

Upon filing of the application for permit, the following fees shall be collected from the applicant:

(1) License fee of seventy-five dollars ($75.00) for each solicitor.

(2) A deposit against sales tax in the amount of one hundred dollars ($100.00), which deposit shall be held by the city and for each solicitor credited to any sales tax owing, returned to the licensee if the city determines that all sales tax due has been paid, or applied by the licensee as his or her deposit for licenses issued in future years.

(3) In the event the permit or license is denied, the applicant shall be entitled to receive a refund of one hundred sixty-five dollars ($165.00), and the remaining ten dollars ($10.00) will be retained by the city as reimbursement for the expenses involved in making inquiries pursuant to section 13-222 hereinabove.

(Ord. No. 1995-01, § 3, 1-18-95; Ord. No. 1995-08, § 3, 4-17-95)

Sec. 13-224. Violation.

Solicitation within the city by persons not holding a valid license or permit shall be considered a violation of this section, and any persons convicted of such violation shall be fined the sum of not less than one hundred dollars ($100.00), nor more than five hundred dollars ($500.00). Each solicitation of a household or business establishment within the city shall be considered a separate offense.
(Ord. No. 1995-01, § 4, 1-18-95; Ord. No. 1995-08, § 4, 4-17-95)

Sec. 13-255. Exceptions.

This section shall not apply to persons employed or representing an established merchant, business, firm or corporation located in and regularly licensed to do business in the city; nor shall this section apply to persons, organizations or entities which are otherwise exempt from the city business license ordinance or which are exempt from payment for such business license or city sales tax.
(Ord. No. 1995-01, § 5, 1-18-95; Ord. No. 1995-08, § 5, 4-17-95)

Secs. 13-226—13-230. Reserved.

ARTICLE XI. LODGING TAXES

Sec. 13-231. Definitions.

Unless the context clearly indicates a different meaning, the words, terms and phrases used in this article shall have the following respective meanings:

City shall mean the City of Daphne in the State of Alabama.

City revenue agent shall mean the revenue agent of the city.

Fiscal year shall mean the period commencing on October 1 of any calendar year and ending on September 30, of the then next succeeding calendar year.

Person shall mean any person firm, corporation, partnership, association, administrator, trustee, or other fiduciary.

Transient shall mean a person to whom rooms or lodgings are rented for a period of less than thirty (30) continuous days.
(Ord. No. 1995-15, § 1, 8-7-95)

Sec. 13-232. Levy of tax in city.

There is hereby levied and imposed in addition to all other taxes of every kind now imposed by law, a privilege or license tax upon every person engaging in:

(1) The business of renting or furnishing any room or rooms or lodgings to transients in any hotel, motel, inn, tourist cabin, or any other place in which rooms or lodgings are regularly furnished to transients for a consideration, said tax to be in an amount equal to the four (4) percent of the charge for such room, rooms, or lodgings, including the charge for use or rental of personal property and services furnished in such rooms; provided, that charges for property sold or services furnished which are required to be included in the computation of the tax levied by Alabama Sales Tax Statutes, shall not be included in computing the tax herein levied; or

(2) The business of renting or furnishing space for accommodation of trailers for a consideration, said tax to be in an amount equal to four (4) percent of the charge for such trailer space; provided, however, that charges made by persons in the business of renting trailer space for use of washing machines, electric power, garbage collection, water supply, and other such charges shall not be included in the measure of said tax, but only the charge for trailer space proper shall be so included.

The amount of the taxes specified in this section shall be in addition to the applicable amount of taxes and license fees provided for in any other ordinance of the city. The tax referred to in subsection (1) of this section shall apply only to, and be measured only by the charges for, the rental of rooms or lodgings supplied to transients, and shall not apply to, or be measured by the charges for, the rental of rooms or lodgings supplied for a period of thirty (30) continuous days, or longer. The tax levied in subsection (2) of this section shall apply to and be measured only by the charges for the rental of trailer space, and shall not apply to, or be measured by the charges for the rental of trailer space for a period of thirty (30) continuous days, or longer.
(Ord. No. 1995-15, § 2, 8-7-95; Ord. No. 1997-28, § I, 12-8-97)

Sec. 13-233. Due date of taxes and monthly reports.

The taxes levied under the provisions of this article, except as otherwise provided, shall be due and payable in monthly installments on or before the twentieth day of the month next succeeding the month in which the tax accrues. On or before the twentieth day of each month commencing with the month of November, 1995, every person on whom the taxes herein levied are imposed, shall render to the city revenue agent on a form prescribed by the city revenue agent, a true and correct statement showing the gross proceeds of the business subject to said tax for the then next preceding month, together with such other information as the city revenue agent may demand and require, and at the time of making such monthly report the tax payer shall compute the taxes due and shall pay to the city revenue agent the amount of taxes shown to be due.
(Ord. No. 1995-15, § 3, 8-7-95)

Sec. 13-234. Credit collections.

Any person subject to the taxes herein levied who conducts business on a credit basis may defer reporting credit rental and charges until after their collection, and in the event he so defers reporting them, he shall thereafter include in each monthly report all credit collections made during the then proceeding month and shall pay the amount of taxes measured thereby at the time of filing such report.
(Ord. No. 1995-15, § 4, 8-7-95)

Sec. 13-235. Annual returns.

On or before thirty (30) days after the end of each fiscal year, each person subject to the taxes as herein levied shall file with the city revenue agent a return, verified by oath, showing the gross proceeds of business done during such fiscal year, shall compute the amount of tax chargeable against such person in accordance with the pro-

visions of this article, shall deduct the amount of monthly payments made as hereinbefore provided, if any have been made, and pay to the city revenue agent with said report the residue of the taxes herein levied that are chargeable against such person.
(Ord. No. 1995-15, § 5, 8-7-95)

Sec. 13-236. Maintenance of records.

It shall be the duty of every person engaging or continuing in any business subject to the taxes herein levied to keep and preserve suitable records of the gross proceeds of such business and such other books or accounts as may be necessary to determine the amount of tax for which he or it is liable under the provisions of this article. Such records shall be kept and preserved for a period of two (2) years and shall be open for examination at any time by the city revenue agent or other duly authorized representative of the city.
(Ord. No. 1995-15, § 6, 8-7-95)

Sec. 13-237. Oaths, when required.

The monthly reports herein required to be made are not required to be made on oath; but the annual returns provided for in section 13-235 hereof shall be sworn to by the taxpayer or his agent before some officer authorized to administer oaths; and any false statement of a material fact made with intent to defraud shall constitute perjury, and upon conviction thereof the person so convicted shall be punishable as provided by law.
(Ord. No. 1995-15, § 7, 8-7-95)

Sec. 13-238. Violation a misdemeanor.

(a) Any person subject to the provisions of this article who fails for any reason to make the reports or any of them as herein required, or who fails to keep the records as herein required, shall be guilty of a misdemeanor and upon conviction shall be fined not less than twenty-five dollars ($25.00), nor more than one hundred dollars ($100.00), for each offense. Each month of such failure shall constitute a separate offense.

(b) Any person subject to the provision of this article who wilfully refuses to make the reports herein required or who refuses to permit the examination of his or its records by the city revenue agent, or other duly authorized agent of the city, shall be guilty of a misdemeanor, and upon conviction shall be fined not less than fifty dollars ($50.00), or more than one hundred dollars ($100.00), for each offense, and in addition may be imprisoned in the municipal jail for a period not to exceed six (6) months. Each month of failure to make such report shall constitute a separate offense, and each refusal of a written demand of the city revenue agent to examine, inspect or audit such records shall constitute a separate offense.
(Ord. No. 1995-15, § 8, 8-7-95)

Sec. 13-239. Interest and penalty.

Any person who fails to pay the tax herein levied within the time required herein shall pay, in addition to the tax, a penalty of ten (10) percent of the amount of tax due, together with interest thereon at the rate of one-half of one percent per month, or fraction thereof, from the date at which the tax herein levied became due and payable, such penalty and interest to be assessed and collected as part of the tax; provided that the governing body of the city may, if a good and sufficient reason is shown, waive or remit the penalty or any portion thereof.
(Ord. No. 1995-15, § 9, 8-7-95)

Sec. 13-240. Use of proceeds.

The proceeds derived from the taxes herein levied shall be placed in a separate account and designated for use for the purposes as herein setforth:

(a) The use of taxes collected for the period of October 1, 2000, through September 30, 2004, are hereby divided as follows:

(1) Ninety-five (95) percent shall be used for the purpose of purchasing, developing, and maintaining beachfront property for the City of Daphne.

(2) Five (5) percent shall be used to the purpose of providing funding to the IDB for the implementation of strategies, action items, and tactics included in the Strategic Economic Development Plan as approved and

adopted in Resolution 2000-31 by the Daphne City Council, June 19, 2000.

Provided, however, that shall the IDB be instrumental in the issuance of industrial development revenue bonds and/or provide some other form of financing that leads to a tourism related project being located in Daphne, the IDB shall receive eighty-five (85) percent of lodging taxes attributable to such project. The city shall remit amounts due to the IDB on a quarterly basis.

(b) Fiscal accountability. The IDB is limited to the powers, projects, and activities stipulated under its jurisdiction pursuant to Code of Ala. 1975, § 11-20-37. Therefore, the IDB shall use funds received from the City of Daphne only for the furtherance of such powers, projects, and activities which are authorized by Code of Ala. 1975, § 11-20-37. As a board of the City of Daphne that is fiscally dependent on the city for funding, the board shall provide financial information to the city as required so that the city may meet the financial reporting requirements of the Governmental Accounting Standards Board.

(Ord. No. 1995-15, § 10, 8-7-95; Ord. No. 2000-25, § 1(10), 7-17-00; Ord. No. 2000-34, § 1, 10-2-00)

Sec. 13-241. Severability.

If any section, subsection, clause, provision or part of this article shall be held to be invalid or unconstitutional in a court of competent jurisdiction, such holding or holding shall not affect any other section, subsection, clause, provision or part of this ordinance which is in itself and of itself valid and constitutional.

(Ord. No. 1995-15, § 11, 8-7-95)

Sec. 13-242. Effective date.

This article shall become effective at 12:01 a.m. on September 1, 1995, and the first payment of taxes hereunder shall become delinquent unless paid on or prior to October 20, 1995.

(Ord. No. 1995-15, § 12, 8-7-95)

Sec. 13-243. Information may not be divulged.

It shall be unlawful for any person connected with the administration of this article to divulge any information obtained by him in the course of inspection and examination of the books of account, invoices, bank statements, sales tax records, state and federal income tax records, or other reports and memoranda or the taxpayer made pursuant to the provisions hereof, except to the mayor, the city council, the city revenue agent, the city attorney, or their agents or representative connected with the administration of this Code, or pursuant to court proceedings or process.

(Ord. No. 1995-15, § 13, 8-7-95)

Secs. 13-244—13-250. Reserved.

ARTICLE XII. BUSINESS LICENSES AND FEES

Sec. 13-251. Levy of tax.

Pursuant to the Code of Alabama, the following is hereby declared to be and is adopted as the business license code and schedule of licenses for the municipality for the year beginning January 1, 2003, and for each subsequent year thereafter. There is hereby levied and assessed a business license tax for the privilege of doing any kind of business, trade, profession or other activity in the municipality.

(Ord. No. 2002-26, § 1, 9-3-02; Ord. No. 2004-11, 4-19-04)

Sec. 13-252. Definitions.

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

Business. Any commercial or industrial activity or any exhibition, enterprise, trade, profession, vocation, occupation, or livelihood, including the lease or rental of residential or nonresidential real estate, whether or not carried on for gain or profit, and whether or not engaged in as a principal or as an independent contractor, which is engaged in, or caused to be engaged in, within the

city or the police jurisdiction. The term shall include, without limitation, all individuals engaged in the activity and conduct for which state law authorizes or empowers the city to levy and collect a business license.

Business license. An annual license issued by the municipality for the privilege of doing any kind of business, trade, profession or other activity in the municipality, by whatever name called.

Business license remittance form. Any business license return, renewal reminder notice, or other writing on which the taxpayer calculates the business license tax liability for all or part of the license year and remits the amount so calculated with the form.

Corporate limits. Corporate limits mean the corporate limits of the municipality.

Designee. An agent or employee of the municipality authorized to administer and/or collect the municipality's business license taxes, which may include another taxing jurisdiction, the department of revenue, or a "private auditing firm" as defined in Code of Ala. 1975, § 40-2A-3.

Fee. The terms "fee" and "tax" are used interchangeably and shall mean the same for purposes of all sections herein.

Gross receipts. The gross amount received on the use, sale or exchange of property or capital or for the performance of services, from any transaction involving a business, any and all receipts of a business from whatever source derived, to the maximum extent permitted by applicable laws and constitutional provisions to be used in calculating the amount due for a business license. Provided, however, that:

(a) Gross receipts shall not include:

(1) Any of the taxes collected by the business on behalf of any taxing jurisdiction or the federal government: sales or seller's use tax; utility gross receipts taxes levied pursuant to Article 3, Chapter 21, Title 40, Code of Alabama (Code of Ala. 1975, § 40-21-80 et seq.); license taxes levied pursuant to Article 2, Chapter 21, Title 40, Code of Alabama (Code of Ala. 1975, § 40-21-50 et seq.); state, county or municipal excise or sales taxes on the sale of gasoline or other motor fuels; or municipal sales or excise taxes on the sale of tobacco or tobacco products or liquor or alcoholic beverages.

(2) Revenue that this state is prohibited from taxing pursuant to the Constitution or laws of the United States or State of Alabama Constitutions.

(3) Revenue received by a nonprofit organization that qualifies as a tax-exempt organization pursuant to 26 U.S.C. § 501(c), as membership fees or dues or as a result of its fund-raising activities.

(b) A different basis for calculating the business license may be used with respect to certain categories of taxpayers as prescribed herein.

(c) Gross receipts of those entities subject to levy and assessment of municipal license taxes under Code of Ala. 1975, § 11-51-129, shall be limited to the gross receipts derived from the furnishing of utility services within the municipality during the preceding year. The term "gross receipts" for purposes of this clause (c) shall be defined, and construed, in accordance with Code of Ala. 1975, § 40-21-80(3).

(d) Gross receipts as it applies to professionals shall include, but is not limited to, insurance agencies, real estate brokers, attorneys, doctors, accountants and/or any other profession which provides a service for a fee and/or a commission and shall be calculated on the gross sales, professional fees and/or charges, including only; salaries, retainers, fees, commissions and other payments for services rendered or property sold.

(e) Gross receipts as it applies to automobile dealerships and/or any other professions that hold stock, goods, merchandise, or any property on a floor plan design, shall be calculated on gross receipts only as

defined hereinabove and shall not include any amounts for any property being held on the floor plan.

(f) Gross receipts are calculated only on that portion of business or services performed or sold within the corporate limits of the City of Daphne, Alabama.

Licensee. Any taxpayer or other persons issued a business license under this article and/or the person responsible for the payment of the license tax.

License form. Any business license application form, renewal reminder notice, business license remittance form, or business license return by whatever name called.

License year. License year means the calendar year.

Other terms. Other capitalized or specialized terms used in this artricle, and not defined herein, shall have the same meanings ascribed to them in Code of Ala. 1975, § 40-2A-3, unless the context therein otherwise specifies.

Person. Person means an individual, a corporation, a partnership, an association, a joint stock company, a business trust, an unincorporated organization, or any other legal entity.

Revenue officer. The municipal employee charged by the municipality with the primary responsibility of administering the municipality's business license tax ordinance and related matters thereto.

Schedule of licenses. Schedule of licenses or schedule refers to the classifications included herewith, which describes the various business activities subject to this business license ordinance and specifies the applicable license tax rate for each activity.

Taxpayer. Taxpayer means any person, firm, corporation, or other legal entity liable under this ordinance for any business license tax levied by the municipality.

Willfully. An act is done willfully when it is done voluntarily, with a conscious motion of the will. Willfulness does not require knowledge that the conduct was unlawful.
(Ord. No. 2002-26, § 2, 9-3-02; Ord. No. 2004-11, 4-19-04; Ord. No. 2011-45, § I, 6-6-11)

Sec. 13-253. License term; minimum license.

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

(a) *Full year.* Every person who commences business before the first day of July shall be subject to and shall pay the annual license for such business in full. Unless otherwise specified in the enclosed schedules, the minimum annual license shall be one hundred dollars ($100.00). Any business which previously existed in the municipality that reincorporates, restructures or obtains a new federal identification number and otherwise maintains the same or similar business shall not constitute a new business and shall be subject to the enclosed schedules.

(b) *Half year.* Every person who commences business on or after July 1 shall be subject to and shall pay one-half (½) the annual license for such business for that calendar year.

(c) *Issue fee.* For each license issued there shall be an issue fee collected of five dollars ($5.00) and said issue fee shall be collected in the same manner as the license tax.

(d) *Annual renewal.* Except as provided in subsections (1) or (2), the business license shall be renewed annually on or before the thirty-first day of January each year.

(1) If the due date for payment of any business license falls on a weekend or a holiday recognized by the municipality from time to time, the due date shall automatically be extended until the next business day.

(2) Insurance company annual license renewals shall be renewed in accordance with Code of Ala. 1975, § 11-

51-122, which states that each year, each insurance company shall furnish the municipality a statement in writing duly certified showing the full and true amount of gross premiums received during the preceding year and shall accompany such state-

ment with the amount of license tax due according to the licensing schedule. Failure to furnish such statement or to pay such sum shall subject the company and its agents to those penalties as prescribed for doing business without a license as provided for in the municipal code.

(3) On or before December 31 of each year, a renewal reminder shall be mailed to each licensee that purchased a business license during the current year. Said renewal notice shall be mailed via regular U.S. mail to the licensee's last known address of record with the municipality. Licensees are required to furnish the municipality any address changes for their business prior to December 1 in order for them to receive their notice.

(4) Business license renewal payments received by the municipality shall be applied to the current renewal only when any and other debts the licensee owes to the municipality are first paid in full. No business license shall be issued if the current renewal payment does not meet said prior obligations and the current renewal. Failure to pay such sums shall subject the licensee and its agents to those penalties as prescribed for doing business without a license provided for in the Municipal Code.

(Ord. No. 2002-26, § 3, 9-3-02; Ord. No. 2004-11, 4-19-04)

Sec. 13-254. License shall be location specific.

(a) For each place at which any business is carried on, a separate license shall be paid, and any person desiring to engage in any business for which a license is required shall designate the place at which business is carried on, and the license to be issued shall designate such place, and such license shall authorize the carrying on of such business only at the place designated.

(b) Every person dealing in two (2) or more of the articles, or engaging in two (2) or more of the businesses, vocations, occupations or professions scheduled herein, shall take out and pay for a license for each line of business.

(c) A taxpayer subject to the license authorized by this article that is engaged in business in other municipalities, may account for its gross receipts so that the part of its gross receipts attributable to its branch offices will not be subject to the business license imposed by this article. To establish a bona fide branch office, the taxpayer must demonstrate proof of all following criteria:

(1) The taxpayer must demonstrate the continuing existence of an actual facility located outside the police jurisdiction in which its principal business office is located, such as a retail store, outlet, business office, showroom, or warehouse, to which employees and/or independent contractors are assigned or located during regular normal working hours.

(2) The taxpayer must maintain books and records, which reasonably indicate a segregation or allocation of the taxpayer's gross receipts to the particular facility of facilities.

(3) The taxpayer must provide proof that separate telephone listings, signs, and other indications of its separate activity are in existence.

(4) Billing and/or collection activities relating to the business conducted at the branch office or offices are performed by an employee or other representative, of the taxpayer who has such responsibility for the branch office.

(5) All business claimed by a branch office or offices must be conducted by and through said office or offices.

(6) The taxpayer must supply proof that all applicable business licenses with respect to the branch office or offices have been issued.

(7) The facility or facilities claiming to be classified as a branch office or offices must have been operating continuously

on a monthly basis for the twelve (12) months prior to the date on which business licenses are due and payable.
(Ord. No. 2002-26, § 4, 9-3-02)

Sec. 13-255. Restriction on transfer of license.

No license shall be transferred except with the consent of the municipal governing body and no license shall be transferred to reflect a change of address of the taxpayer within the municipality more than once and never from one business to another business. Provided that a mere change in the name or ownership of a taxpayer that is a corporation, partnership, limited liability company or other form of legal entity now or hereafter recognized by the laws of Alabama shall not constitute a transfer for the purposes of this section, unless the change requires the taxpayer to obtain a new federal employer identification number or department of revenue taxpayer identification number.
(Ord. No. 2002-26, § 5 9-3-02)

Sec. 13-256. Unlawful to do business without a license.

It shall be unlawful for any person to willfully engage in any business within the corporate limits unless such person has been issued and holds a current business license that has not been revoked or suspended. Each day that a person does business without such a license shall constitute a separate offense.
(Ord. No. 2002-26, § 6, 9-3-02)

Sec. 13-257. License must be posted.

Every license shall be posted in a conspicuous place, where said business, trade or occupation is carried on, and the holder of the license shall immediately show same to the designee of the municipality upon being requested so to do. If the business, trade or occupation incorporates the use of vehicles in its normal course of business including, but not limited to, lawn care and maintenance businesses or delivery carriers, each vehicle shall have clearly displayed the name of the business, trade or occupation and the telephone number of its main office or contact person.
(Ord. No. 2002-26, § 7, 9-3-02; Ord. No. 2004-11, 4-19-04)

Sec. 13-258. Duty to file report.

(a) It shall be the duty of every person subject to such license tax to render to the municipality on such forms as may be required, a sworn statement showing the total business done, amount of sales, gross receipts and gross sales, stock, value of furniture and other equipment, capital invested, number of helpers or employees, amount of space occupied, or other factor described in the schedule, one or several, as the case may require, for the ascertainment of the classification of such person for license taxation purposes and the correct amount of license tax to which he is subject.

(b) If the municipality determines that the amount of business license tax reported on or remitted with any business license remittance form is incorrect, if no business license remittance form is filed within the time prescribed, or if the information provided on the form is insufficient to allow the taxing jurisdiction to determine the proper amount of business license tax due, the municipality shall calculate the correct amount of the tax based on the most accurate and complete information reasonably obtainable and enter a preliminary assessment for the correct amount of business license tax, including any applicable penalty and interest.

(c) If the amount of business license tax remitted by the taxpayer is undisputed by the municipality, or if the taxpayer consents to the amount of any deficiency or preliminary assessment in writing, the municipality shall enter a final assessment for the amount of the tax due, plus any applicable penalty and interest.

(d) The municipality shall promptly mail a copy of any preliminary assessment to the taxpayer's last known address by either first class U.S. mail or certified U.S. mail with return receipt requested, or, in the sole discretion of the municipality, deliver the preliminary assessment to the taxpayer by personal delivery.

(e) 1) If a taxpayer disagrees with a preliminary assessment as entered by the taxing jurisdiction, the taxpayer shall file a petition for review with the revenue officer within thirty (30) days from the date of entry of the preliminary assessment setting out the specific objections to the preliminary assessment. If a petition for review is timely filed, the revenue officer of the municipality shall schedule a conference with the taxpayer for the purpose of allowing the taxpayer or its representatives and the representatives of the municipality to present their respective positions, discuss any omissions or errors, and to attempt to agree upon any changes or modifications to the assessment. The revenue officer shall issue findings of fact and law within sixty (60) days following the conference, which shall promptly upon issuance be mailed or delivered to the taxpayer, consistent with the procedures set forth in subsection (d) above.

(2) If the taxpayer disagrees with the revenue officer's findings of fact and law, the taxpayer may appeal to the municipal governing body, by filing a notice of appeal with the revenue officer within thirty (30) days after the findings have been issued. The appeal shall be in writing and shall set forth in reasonable detail the grounds on which the taxpayer disagrees with the revenue officer's findings of fact and law.

(3) If a petition for review: (i) is not timely filed, or (ii) is timely filed, and upon further review the revenue officer, or the finance director or city council, as the case may be, determines that the preliminary assessment is due to be upheld in whole or in part, the taxing jurisdiction shall make the assessment final in the amount of business license tax due as computed by the taxing jurisdiction, with applicable penalty and interest.

(4) A copy of the final assessment shall promptly be mailed to the taxpayer's last known address (i) by either first class U.S. mail or certified U.S. mail with return receipt requested in the case of assessments of business license tax of five hundred dollars ($500.00) or less, or (ii) by certified U.S. mail with return receipt requested in the case of assessments of business license tax of more then five hundred dollars ($500.00). In either case, at the option of the taxing jurisdiction a copy of the final assessment may be delivered to the taxpayer by personal delivery.

(Ord. No. 2002-26, § 8, 9-3-02)

Sec. 13-259. Duty to permit inspection and produce records.

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

(a) Permit the designee of the municipality to enter the business premises by giving not less than twenty-four (24) [hours] prior notice and to inspect all portions of his place or places of business for the purposes of enabling said municipal designee to gain such information as may be necessary or convenient for determining the proper license classification, and determining the correct amount of license tax.

(b) To furnish information during reasonable business hours, at the licensee's place of business, in the municipality, all books of account, invoices, papers, reports and memoranda containing entries showing amount of purchases, sales receipts, inventory and other information from which the correct license tax classification of such person may be ascertained and the correct amount of license tax to which he is subject may be determined, including exhibiting of bank deposit books, bank statements, copies of sales tax returns to the State of Alabama, copies of Alabama income tax returns and federal income tax returns.

(c) Inspection of all such materials may, at the option of the licensee, be produced in compiled form with the omission of any personal customer or client or patient information including, but not limited to,

phone numbers, addresses, names. In a case of a medical provider, deletion to all reference to treatment or diagnosis.

(Ord. No. 2002-26, § 9, 9-3-02; Ord. No. 2004-11, 4-19-04)

Sec. 13-260. Unlawful to obstruct.

It shall be unlawful for any person, or for any agent, servant or employee of such person, to fail or refuse to perform any duty imposed by this article; nor shall any person, agent, servant or employee of such person obstruct or interfere with the designee of the municipality in carrying out the purposes of this article.

(Ord. No. 2002-26, § 10, 9-3-02)

Sec. 13-261. Privacy.

(a) It shall be unlawful for any person connected with the administration of this article to divulge any information obtained by him/her in the course of inspection and examination of the books, papers, reports and memoranda of the taxpayer made pursuant to the provisions of this article, except to the mayor, the municipal attorney or others authorized by law to receive such information described herein.

(b) It shall be unlawful for any person to print, publish, or divulge, without the written permission or approval of the taxpayer, the license form of any taxpayer or any part of the license form, or any information secured in arriving at the amount of tax or value reported, for any purpose other than the proper administration of any matter administered by the taxing jurisdiction, or upon order of any court, or as otherwise allowed in this article.

(c) Nothing herein shall prohibit the disclosure of the fact that a taxpayer has or has not purchased a business license. Statistical information pertaining to taxes may be disclosed to the municipality council upon their written request through the mayor's office. It shall be unlawful for any person to violate the provisions of this section.

(Ord. No. 2002-26, § 11, 9-3-02)

Sec. 13-262. Failure to file assessment.

(a) In any case where a person subject to paying a license tax as provided herein fails to do so, the municipal designee shall be authorized to assess and determine the amount of license taxes due using the best information available either by return filed or by other means.

(b) The taxpayer shall be notified by registered or certified mail, or by personal service, of the amount of any such assessment, and of his right to appear before the municipal governing body on a day named not less than twenty (20) days from the date of notice and to show cause why such assessment shall not be made final. Such appearance may be made by agent or attorney.

(c) If no showing is made on or before the date fixed in such notice, or if such showing is not sufficient in the judgement of the municipality, such assessment shall be made final in the amount originally fixed, or in such other amount as is determined by the municipality to be correct. If upon such hearing the municipal designee finds a different amount due than that originally assessed, he/she shall make the assessment final in the correct amount, and in all cases shall notify the taxpayer of the assessment as finally fixed.

(d) A notice by the United States mail, addressed to the taxpayer's last known place of business, shall be sufficient. Any assessment made by the designee of the municipality shall be prima facie correct upon any appeal.

(Ord. No. 2002-26, § 12, 9-3-02)

Sec. 13-263. Lien for nonpayment of license tax.

On all property, both real and personal, used in the business, the municipality shall have a lien for such license, which lien shall attach as of the date when the license is due, as allowed by Code of Ala. 1975, § 11-51-44.

(Ord. No. 2002-26, § 13, 9-3-02)

Sec. 13-264. Criminal penalties.

Any person found guilty of violating any of the provisions of this article shall be fined in an amount not less than fifty dollars ($50.00) and not more than five hundred dollars ($500.00), and

may also be sentenced to imprisonment for a period of not exceeding six (6) months, in the discretion of the court trying the case, and violations on separate days shall each constitute a separate offense.
(Ord. No. 2002-26, § 14, 9-3-02)

Sec. 13-265. Civil penalties.

In addition to the remedies provided by Code of Ala. 1975, § 11-51-150 et seq., the continued or recurrent performance of any act or acts within the corporate limits for which a license may be revoked or suspended under this article is hereby declared to be detrimental to the health, safety, comfort and convenience of the public and is a nuisance. The municipality, as an additional or alternative remedy, may institute injunctive proceedings in a court of competent jurisdiction to abate the same.
(Ord. No. 2002-26, § 15, 9-3-02)

Sec. 13-266. Penalties and interest.

(a) All licenses not paid within thirty (30) days from the date they fall due shall be increased by fifteen (15) percent for the first thirty (30) days they shall be delinquent, or fraction thereof, and shall be measured by an additional fifteen (15) percent for a delinquency of sixty (60) or more days, but this provision shall not be deemed to authorize the delay of thirty (30) days in the payment of the license due, which may be enforced at once.

(b) In the case of persons who began business on or after the first day of the calendar year, the license for such "new business" shall be increased by fifteen (15) percent for the first fifteen (15) days they shall be delinquent, and shall be measured by an additional fifteen (15) percent for a delinquency of forty-five (45) days or more.

(c) All delinquent accounts (both license taxes and penalties) shall also be charged simple interest at the rate of one (1) percent per month.
(Ord. No. 2002-26, § 16, 9-3-02)

Sec. 13-267. Prosecutions unaffected.

The adoption of this article shall not in any manner affect any prosecution of any act illegally done contrary to the provisions of any ordinance now or heretofore in existence, and every such prosecution, whether begun before or after the enactment of this article shall be governed by the law under which the offense was committed; nor shall a prosecution, or the right to prosecute, for the recovery of any penalty or the enforcement of any forfeiture be in any manner affected by the adoption of this article; nor shall any civil action or cause of action existing prior to or at the time of the adoption of this article be affected in any manner by its adoption.
(Ord. No. 2002-26, § 17, 9-3-02)

Sec. 13-268. Procedure for denial of new applications.

(a) The municipal designee shall have the authority to investigate all applications and may refer any application to the municipal governing body for a determination of whether such license should or should not be issued.

(b) If the municipal governing body denies the issuance of any license referred to it, the revenue officer shall promptly notify the applicant of the municipal governing body's decision.

(c) If said applicant desires to appear before the municipal governing body to show cause why said license should be issued, he shall file a written notice with the revenue officer, said notice to be filed within two (2) weeks from the date of mailing by the revenue officer of the notice of the denial of such license by the municipal governing body.

(d) Upon receipt of said notice the revenue officer shall promptly schedule a hearing, to be held within fifteen (15) days from the date of receipt of such notice, before the municipal governing body and shall give the notice of the date, time and place of said hearing to the applicant.

(e) The applicant shall be given the opportunity to appear personally, or through his counsel, or both, and the municipal governing body shall proceed to hear any evidence which may be presented both for and against the issuance of said license.

(f) If the municipal governing body determines from the evidence presented that in order to either provide for the safety, preserve the health, promote the prosperity, or improve the morals, order, comfort and convenience of the inhabitants of the municipality said license should not be granted, it shall enter an order to that effect; otherwise, said license shall be ordered issued upon payment of any required license fees.
(Ord. No. 2002-26, § 18, 9-3-02)

Sec. 13-269. Procedure for revocation or suspension of license.

(a) Any lawful license issued to any person to conduct any business shall be subject to revocation by the municipal governing body for the violation by the licensee, his agent, servant, or employee of any provision of this article or of any ordinance of the municipality, or any statute of the State of Alabama relating to the business for which such license is issued; and shall also be subject to revocation by the municipal governing body if the licensee, his agent, servant, or employee under color of such license violates or aids or abets in violating or knowingly permits or suffers to be violated any penal ordinance of the municipality or any criminal law of the State of Alabama; and shall also be subject to revocation by the municipal governing body if, in connection with the issuance or renewal of any license, the licensee or his agent filed or caused to be filed any application, affidavit, statement, certificate, book, or any other data containing any false, deceptive or other misleading information or omission of material fact.

(b) The conditions hereinabove set forth as grounds for the revocation of a license shall also constitute grounds for refusing to renew a license.

(c) The municipal governing body shall set a time for hearing on the matter of revoking or refusing to renew a license; and a notice of such hearing shall be given to the licensee, or the applicant for renewal, as the case may be, at least ten (10) days before the day set for said hearing. At the hearing the municipal governing body shall hear all evidence offered by any party and all evidence that may be presented bearing upon the question of revocation or the refusal of renewal, as the case may be.
(Ord. No. 2002-26, § 19, 9-3-02)

Sec. 13-270. Refunds on overpayments

(a) Any taxpayer may file a petition for refund with the municipality for any overpayment of business license tax erroneously paid to the municipality. If a final assessment for the tax has been entered by the municipality, a petition for refund of all or a portion of the tax may be filed only if the final assessment has been paid in full prior to or simultaneously with the filing of the petition for refund.

(b) A petition for refund shall be filed with the municipality within two (2) years from the date of payment of the business license tax, which is the subject of the petition.

(c) The municipality shall either grant or deny a petition for refund within six (6) months from the date the petition is filed, unless the period is extended by written agreement of the taxpayer and the municipality. The taxpayer shall be notified of the municipality's decision concerning the petition for refund by first class U.S. mail or by certified U.S. mail, return receipt requested, sent to the taxpayer's last known address. It the municipality fails to grant a full refund within the time provided herein, the refund petition shall be deemed to be denied.

(d) If the petition is granted or the municipality or a court otherwise determines that a refund is due, the overpayment shall be promptly refunded to the taxpayer by the municipality, together with interest to the extent provided for in the Code of Alabama. If the municipality determines that a refund is due, the amount of overpayment plus any interest due thereon may first be credited by the municipality against any outstanding tax liabilities due and owing by the taxpayer to the municipality, and the balance of any overpayment shall be promptly refunded to the taxpayer. If any refund or part thereof is credited to any other tax by the municipality, the taxpayer shall be provided with a written detailed

statement showing the amount of overpayment, the amount credited for payment to other taxes, and the resulting amount of the refund.

(e) A taxpayer may appeal from the denial in whole or in part of a petition for refund by filing a notice of appeal with the clerk of the circuit court of the county in which the municipality denying the petition for refund is located. Said notice of appeal must be filed within two (2) years from the date the petition was denied. The circuit court shall hear the appeal according to its own rules and procedures and shall determine the correct amount of refund due, if any. If an appeal is not filed with the appropriate circuit court within two (2) years of the date the petition was denied, then the appeal shall be dismissed for lack of jurisdiction.
(Ord. No. 2002-26, § 20, 9-3-02)

Sec. 13-271. Delivery license.

(a) In lieu of any other type of license, a taxpayer may at its option purchase for one hundred dollars ($100.00) plus the issuance fee, a delivery license for the privilege of delivering its merchandise in the municipality if the taxpayer meets all of the following criteria:

(1) Other than deliveries, the taxpayer has no other physical presence within the municipality;

(2) The taxpayer conducts no other business in the municipality other than delivering merchandise and performing the requisite set-up and installation of said merchandise;

(3) Such delivery and set-up and installation is performed by the taxpayer's employees or agents, concerns the taxpayer's own merchandise in that municipality, and is done by means of delivery vehicles owned, leased, or contracted by the taxpayer;

(4) The gross receipts derived from the sale and any requisite set-up or installation of all merchandise so delivered shall not exceed seventy-five thousand dollars ($75,000.00) during the license year;

(5) Any set-up or installation shall relate only to (i) that required by the contract between the taxpayer and the customer or as may be required by state or local law, and (ii) the merchandise so delivered;

(6) If at any time during the current license year the taxpayer fails to meet any of the above stated criteria, then within ten (10) days after any of said criteria have been violated or exceeded, the taxpayer shall purchase all appropriate business licenses from the municipality for the entire license year and without regard to this section.

(g) Mere delivery of the taxpayer's merchandise by common carrier shall not allow the municipality to assess a business license tax against the taxpayer, but the gross receipts derived from any sale and delivery accomplished by means of a common carrier shall be counted against the seventy-five thousand dollar ($75,000.00) limitation described in the preceding section if the taxpayer also during the same license year sells and delivers into the taxing jurisdiction using a delivery vehicle other than a common carrier.

(h) A common carrier, contract carrier, or similar delivery service making deliveries on behalf of others shall not be entitled to purchase a delivery license.

(i) The delivery license shall be calculated in arrears, based on the related gross receipts during the preceding license year.

(j) The purchase of a delivery license shall not, in and of itself, establish nexus between the taxpayer and the municipality for purposes of the taxes levied by or under the authority of Code of Ala. 1975, title 40, or other provisions of law, nor does the purchase of a delivery license conclusively determine that nexus does not exist between the taxpayer and the municipality.
(Ord. No. 2002-26, § 21, 9-3-02)

Sec. 13-272. License classifications.

Code	*NAICS Title and Suggested License Grouping*	*Schedule*
111998	Farming: agriculture, crop production, nursery, fruit, growers	F
112990	Animals: dairy, cattle, ranching, sheep, raising chickens, poultry	F
113110	Forestry: logging, forestry, timber track operations, timber management	D
114119	Fishing and hunting: hunting and trapping, finfish, shellfish, supplies	E
115114	Agriculture support: cotton gins, farm management, post-harvest activities	F
211111	Oil and gas extraction: natural gas liquid extraction, crude extraction	C
212299	Mining: (except for oil and gas) all related mining activities	C
213112	Mining support services: for oil and gas mining activities, oil/gas wells	C
221122	Utilities: electric power or light company, state regulated	G
221210	Utilities: natural gas company, state regulated	G
221310	Utilities: water, sewage treatment, steam, and other	G
233320	Contractors (general contractors): commercial building, residential, subdivisions	D
233321	Contractors (general contractors): itinerant, residential/commercial builder	T
234990	Contractors: repairs and maintenance	E
234991	Contractors (heavy construction): itinerant not local, steel work	T
235110	Contractors (specialty trade): plumbing	E
235111	Contractors (specialty trade): heating and air conditioning	E
235210	Contractors (specialty trade): painting and wall covering	E
235310	Contractors (specialty trade): electrical contractors	E
235410	Contractors (specialty trade): masonry and stone contractors	E
235420	Contractors (specialty trade): drywall, acoustical and insulation	E
235430	Contractors (specialty trade): tile, marble, terrazzo and mosaic	E
235510	Contractors (specialty trade): carpentry contractors	E
235520	Contractors (specialty trade): floor coverings/all types	E
235610	Contractors (specialty trade): roofing, siding and sheet metal	E
235710	Contractors (specialty trade): concrete contractors	E
235810	Contractors (specialty trade): water well drilling and irrigation	E
235910	Contractors (specialty trade): structural steel erection	E
235920	Contractors (specialty trade): glass and glazing contractors	E
235930	Contractors (specialty trade): excavation and site development	E
235940	Contractors (specialty trade): wrecking and demolition	E
235950	Contractors (specialty trade): building equipment and mechanical install	E
235990	Contractors (specialty trades contractors): nongeneral and nonheavy	E
235991	Contractors (specialty trades subcontractors): itinerant not local	T
311991	Food manufacturing: meat, seafood, grain, fruit, dairy, animal, poultry processing	F
312100	Beverage manufacturing: all types of soft drinks, bottled water, breweries, ice	E
312121	Beer (off-premises): state regulated through ABC	H
312122	Beer (on-premises): state regulated through ABC	H
312131	Wine: state regulated through ABC	H
312132	Beer and wine: wholesale distributor	H
312141	Alcohol: state regulated through ABC	H

Code	*NAICS Title and Suggested License Grouping*	*Schedule*
313112	Textile manufacturing: fabric, yarn, carpet, canvas, rope, twine, fabric mills	E
314129	Other manufacturing: mill operations not covered in 313, rugs, linen, curtains	E
315999	Apparel manufacturing: women, men, children, hosiery, outerwear, accessories	D
316993	Leather manufacturing: shoes, luggage, handbag, related products, all footwear	D
321999	Wood manufacturing: sawmills, wood preservation, veneer, trusses, millwork	F
322229	Paper manufacturing: pulp, paper, and converted products, stationary, tubes, cores	E
323112	Printing: screen, quick, digital, books, lithographic, commercial	D
324199	Petroleum and coal manufacturing: asphalt, grease, roofing, paving products	C
325998	Chemical manufacturing: fertilizer, wood, pesticide, paint, soap, resin, plastic	C
326291	Plastic and rubber manufacturing: tires, pipe, hoses, belts, bottles, sheet, wrap, film	D
327331	Nonmetallic manufacturing: glass, cement, lime, pottery, ceramic, brick, tile	C
331528	Primary metal manufacturing: iron, steel, aluminum, wire, copper, foundries	C
332999	Metal fabrication: cutlery, structural, ornamental, machine shops	D
333990	Machinery manufacturing: office machinery, industrial, engines, farm, HVAC	C
334419	Computer and electronic manufacturing: audio, video, circuit boards, peripherals	C
335211	Appliance manufacturing: small appliance, lighting, electrical, battery, freezer	C
336112	Transportation manufacturing: auto, truck, trailer, motor home, boat, ship	D
337129	Furniture manufacturing: cabinets, office, household, beds, medical, kitchen	C
339999	Miscellaneous manufacturing: specialty manufacturing not defined in separate categories	B
421990	Wholesale trade: durable, vehicle, machinery, equipment, furniture	E
422720	Wholesale trade: wholesale gasoline distributor	F
422990	Wholesale trade: nondurable, paper, apparel, grocery, beverages, dairy	E
441310	Motor vehicle and parts: auto, motorcycles, boats, parts, accessories	C
441311	Motor vehicles (new and/or used): dealerships and lots	D
442290	Furniture: furniture, home furnishings, stores, floor coverings, window	C
443112	Electronic and appliance store: household, radio, television, computers	B
444130	Building materials: hardware, paint, wallpaper, nursery	C
444110	Home centers: super home centers	B
445120	Food and beverage stores: grocery, convenience store, markets	F
445310	Package stores: selling beer, wine and liquor plus general merchandise	D
446199	Health care stores: drug, pharmacy, cosmetic, optical, health food	C
447110	Gasoline retail: selling gasoline with or without convenience stores	E

Code	*NAICS Title and Suggested License Grouping*	*Schedule*
448190	Clothing and accessories: men, women, children, infant, shoe, jewelry	B
451120	Sporting goods and hobbies: toy, fish, gun, books, games	B
452110	Department store: department, warehouse clubs	B
453310	Used merchandise stores: books, miscellaneous, consignment, flea market	F
453998	Miscellaneous retailers: florist, gift, novelty, pet, tobacco, used merchandise	B
454329	Concession stand (food) yearly license: There shall be allowed no more than two (2) concession stands to be operated in front of any freestanding business provided that the owner or operator of the concession stand obtains written consent and permission from the business owner or operator. There shall be no more than three (3) concessions stands to be operated in any strip mall or shopping mall provided, provided that said vendor shall first obtain written permission from the mall management office plus the owner/operator of the individual store in front of where the vendor will operate. In any event, said vendor shall comply with all local ordinances and state laws applicable to the operation of it's business and present proof of compliance prior to the issuance of the requested business license.	T
454329 A, B & C	Temporary vendors (less than one (1) year):	W

Code	*NAICS Title and Suggested License Grouping*	*Schedule*
	(a) *Definition:* "Temporary vendor" shall mean any seller or provider of goods or services operating out of a nonpermanent structure, or out of a trailer, vehicle, cart or other described apparatus capable of being transported from one location to another. (b) No temporary structure will be granted a full-year license, and in no event shall a temporary license be granted for a period of time greater than six (6) months in duration. There shall be allowed no more than two (2) concession/vendor stands allowed in front of any freestanding business provided that the owner or operator of the concession/vendor stand obtains prior written consent and permission from the business owner or operator. There shall be no more than three (3) concession/vendor stands allowed in any strip mall or shopping mall. Said concession/vendor operator shall first obtain written permission from the mall management office plus the owner/operator of the individual store in front of where the vendor will operate. (c) All concession/vendor operators shall comply with all local ordinances and state laws applicable to the operation of it's business and present proof of compliance prior to the issuance of the requested business license. (d) All temporary concession/vendor operators must obtain prior written approval from the City of Daphne Community Development Department and written permission from any store owner upon whose property said Vendor is to operate. In the event said vendor desires to set up in front of a store located in a strip mall or other similar style shopping center, said vendor shall first obtain written permission from the mall management office plus the owner/operator of the individual store where the operation will take place, in addition to compliance with any and all local ordinances and applicable state laws. Proof of such compliance must first be presented prior to the issuance of said requested license. (e) Signage for such temporary vendors shall be attached to the vendor's vehicle or trailer.	
454390	Nonstore retailers: vending mach operators, direct selling, mail order	D
454391	Nonstore retailer: temporary vendors/commercially promoted special events	W
454392	Nonstore retailer: temporary vendors/concession stands/souvenir	W
454395	Nonstore retailer: temporary vendors/solicitor	Ord 1995-08
481111	Air transportation: airline tickets, shipping, freight, charters service	B
482110	Rail transportation: transportation, ticket offices, state regulated	11-51-124
483212	Water transportation: coastal, freight forwarders, inland, passenger	B
484122	Truck transportation: local, long-distance, freight, moving, and storage	C
484230	Truck transportation terminal: state regulated	37-3-33
485113	Passenger transportation: charter and other vehicle transit services	B
485114	Passenger transportation: bus terminals state regulated	37-3-33
485320	Passenger transportation: taxi cabs, limousine service, buggy, charters	J
485321	Passenger transportation: number of taxis, cabs, limousines, or buggys	J
487990	Sightseeing: scenic and sightseeing, land, air, water, special transportation	A
488410	Wrecker services: wreckers services	C

Code	*NAICS Title and Suggested License Grouping*	*Schedule*
492210	Deliveries: couriers, local messengers, services, local delivery services	C
493110	Warehousing and storage: distribution, household, refrigerated, special	F
511199	Publishing industries: newspaper, book, periodical, databases, software	B
512131	Motion pictures: theatres, videos, recording, drive-ins, sound studios	A
513100	Broadcasting: radio and television stations	B
513310	Telecommunications: telephone local per 11-51-128	K
513320	Telecommunications: telephone long distance per 11-51-128	K
513322	Telecommunications: cellular and other wireless, paging	K
513330	Telecommunications: resellers of service, retailer	A
514190	Information services: all types of information services	A
521110	Bank main office: not branch location or ATM	U
521111	Bank branch or ATM: not main office of bank	U
522120	Savings and loans: not branch location or ATM	U
522121	Savings and loans branch or ATM: not main office of savings and loans	U
522298	Pawn shop: whether title pawn or merchandise	A
522390	Credit services: check cashing, finance company	B
523999	Securities, commodity: brokerage, portfolio, investment, other	A
524126	Insurance company: casualty, fire, and/or marine premiums	11-51-120/123
524128	Insurance company: health, allied and all other premiums	11-51-120/123
524292	Agent office: administration of third parties, pension funds, annuities, etc.	B
525990	Funds, trusts, other financial agencies: agents, agencies, investments	A
531390	Real estate: offices, agents, brokers, management, appraisers	B
532490	Rental and leasing: auto, truck, trailer, RV, all tangible property	C
532230	Rental and leasing: movie and video rental	D
541110	Attorney/lawyers: individual and/or firm professional license	A
541211	Accountant/CPAs: individual and/or firm professional license	A
541310	Architect: individual and/or firm professional license	A
541330	Engineer: individual and/or firm professional license	A
541360	Surveyor: individual and/or firm professional license	A
541511	Computer programmer: software engineer, networking, CAD	A
541921	Photographer: studios, portrait, commercial, services	A
541940	Veterinarian: individual and/or firm professional license	A
541990	Professional services not elsewhere classified: scientific, technical	A
551110	Management companies: offices, enterprises, regional, corporate	B
561439	Administrative services: answering, employment, office, secretarial, travel	C
561621	Alarm companies: sprinklers and security-monitoring and installation	E
561710	Exterminating services: exterminating company and its services	E
561720	Janitorial firm: janitorial cleaning services including carpet	F
561730	Landscaping: tree removal, irrigation sprinkler	E
561731	Lawn maintenance: tree trimming, lawn maintenance, pressure washing	E
562998	Waste management: companies, trucks, septic tanks, landfill, services	F
611699	Educational services: technical, computer, sports, services, business	D
621111	Physician: individual and/or firm professional license	A
621200	Dentist: individual and/or firm professional license	A
621310	Chiropractor: individual and/or firm professional license	A
621320	Optometrist: individual and/or firm professional license	A

Code	*NAICS Title and Suggested License Grouping*	*Schedule*
621491	HMO: medical centers and services	B
621498	Outpatient care centers: all other types of services	C
623110	Nursing care: residential care facility, day care, assisted living	C
623312	Nursing home: care for elderly and continuing care facilities	D
624229	Social assistance: shelters, vocational, child care, abuse, emergency	E
711219	Arts and sports: dance, musical, artist, gymnastics	B
711310	Special events (promoter or activity): see schedule for rates	L
712190	Museums: museums and historical sites, zoos, botanical gardens, parks	C
713990	Amusement: arcades, golf clubs, marinas, fitness, bowling centers	B
721110	Accommodations: hotels, motels and similar facilities	C
721191	Accommodations: bed and breakfast inns and services	D
721214	Accommodations: trailer parks, RV parks, and travel parks	E
721310	Accommodations: rooming houses and boarding houses	E
722110	Restaurant: full service restaurant facility	D
722211	Restaurant: limited facility or service	D
722320	Caterers: mobile food service/ice cream trucks	C
722330	Caterers: food service	C
722410	Drinking establishment: club, lounge, bar or other	B
811118	Repairs and maintenance: auto, paint/body, carwash, other vehicular	C
811219	Repairs and maintenance: all electronic equipment	B
811412	Repairs and maintenance: all appliances, home and garden equipment	D
812199	Personal services: hair, skin, barber, beautician, diet, nail, tanning	B
812990	Fortune teller or clairvoyant: individual reader license	M
910001	Category for number of: vending machines for all types vending	N
910002	Category for number of: pool tables	O
910003	Category for number of: amusement devices and/or games	P
910004	Category for number of: buses, taxis, trucks, or other equipment	Q
910005	Category for number of: employees as a basis for calculating license	R
910006	Category for number of: square feet used for calculating license amount	S
999111	Unclassified miscellaneous business services not elsewhere classified	C
999222	Unclassified miscellaneous personal services not elsewhere classified	B

(Ord. No. 2002-26, § 22, 9-3-02; Ord. No. 2004-16, § I(22), 4-19-04; Ord. No. 2004-44, § 1(A), 12-15-04; Ord. No. 2005-25, § 1, 5-17-05)

Sec. 13-273. License fee schedules.

Schedule "A"

IF GROSS RECEIPTS ARE BETWEEN

0	99,999	$100	Minimum License Fee		
100,000	199,999	$277	$2.18	per M in excess of	$100,000.00
200,000	299,999	$494	$1.88	per M in excess of	$200,000.00
300,000	399,999	$682	$1.77	per M in excess of	$300,000.00
400,000	499,999	$859	$1.73	per M in excess of	$400,000.00
500,000	599,999	$1,032	$1.69	per M in excess of	$500,000.00
600,000	699,999	$1,201	$1.64	per M in excess of	$600,000.00

IF GROSS RECEIPTS ARE BETWEEN

700,000	799,999	$1,365	$1.60	per M in excess of	$700,000.00
800,000	899,999	$1,525	$1.56	per M in excess of	$800,000.00
900,000	999,999	$1,681	$1.51	per M in excess of	$900,000.00
1,000,000	1,099,999	$1,832	$1.47	per M in excess of	$1,000,000.00
1,100,000	1,199,999	$1,819	$1.43	per M in excess of	$1,100,000.00
1,200,000	1,299,999	$2,122	$1.38	per M in excess of	$1,200,000.00
1,300,000	1,399,999	$2,261	$1.34	per M in excess of	$1,300,000.00
1,400,000	1,499,999	$2,395	$1.30	per M in excess of	$1,400,000.00
1,500,000	1,999,999	$2,526	$1.28	per M in excess of	$1,500,000.00
2,000,000	2,499,999	$3,166	$1.26	per M in excess of	$2,000,000.00
2,500,000	2,999,999	$3,794	$1.24	per M in excess of	$2,500,000.00
3,000,000	3,499,999	$4,414	$1.19	per M in excess of	$3,000,000.00
3,500,000	3,999,999	$5,010	$1.15	per M in excess of	$3,500,000.00
4,000,000	4,999,999	$5,586	$1.11	per M in excess of	$4,000,000.00
5,000,000	5,999,999	$6,698	$1.06	per M in excess of	$5,000,000.00
6,000,000	7,999,999	$7,762	$1.02	per M in excess of	$6,000,000.00
8,000,000	10,999,999	$9,810	$0.98	per M in excess of	$8,000,000.00
11,000,000	13,999,999	$12,762	$0.94	per M in excess of	$11,000,000.00
14,000,000	57,999,999	$15,570	$0.90	per M in excess of	$14,000,000.00
58,000,000	91,999,999	$54,994	$0.81	per M in excess of	$58,000,000.00
92,000,000	Over 92 MIL	$81,664	$0.64	per M in excess of	$92,000,000.00

Schedule "B"

IF GROSS RECEIPTS ARE BETWEEN

0	99,999	$100	Minimum License Fee		
100,000	199,999	$240	$1.93	per M in excess of	$100,000.00
200,000	299,999	$433	$1.64	per M in excess of	$200,000.00
300,000	399,999	$597	$1.55	per M in excess of	$300,000.00
400,000	499,999	$752	$1.51	per M in excess of	$400,000.00
500,000	599,999	$903	$1.47	per M in excess of	$500,000.00
600,000	699,999	$1,050	$1.44	per M in excess of	$600,000.00
700,000	799,999	$1,194	$1.40	per M in excess of	$700,000.00
800,000	899,999	$1,334	$1.36	per M in excess of	$800,000.00
900,000	999,999	$1,470	$1.33	per M in excess of	$900,000.00
1,000,000	1,099,999	$1,603	$1.29	per M in excess of	$1,000,000.00
1,100,000	1,199,999	$1,732	$1.25	per M in excess of	$1,100,000.00
1,200,000	1,299,999	$1,857	$1.22	per M in excess of	$1,200,000.00
1,300,000	1,399,999	$1,978	$1.18	per M in excess of	$1,300,000.00
1,400,000	1,499,999	$2,096	$1.14	per M in excess of	$1,400,000.00
1,500,000	1,999,999	$2,210	$1.12	per M in excess of	$1,500,000.00
2,000,000	2,499,999	$2,770	$1.10	per M in excess of	$2,000,000.00
2,500,000	2,999,999	$3,322	$1.08	per M in excess of	$2,500,000.00
3,000,000	3,499,999	$3,862	$1.05	per M in excess of	$3,000,000.00
3,500,000	3,999,999	$4,386	$1.01	per M in excess of	$3,500,000.00

IF GROSS RECEIPTS ARE BETWEEN					
4,000,000	4,999,999	$4,890	$0.97	per M in excess of	$4,000,000.00
5,000,000	5,999,999	$5,858	$0.94	per M in excess of	$5,000,000.00
6,000,000	7,999,999	$6,794	$0.90	per M in excess of	$6,000,000.00
8,000,000	10,999,999	$8,586	$0.86	per M in excess of	$8,000,000.00
11,000,000	13,999,999	$11,154	$0.82	per M in excess of	$11,000,000.00
14,000,000	57,999,999	$13,626	$0.78	per M in excess of	$14,000,000.00
58,000,000	91,999,999	$48,122	$0.71	per M in excess of	$58,000,000.00
92,000,000	Over 92 MIL	$72,330	$0.56	per M in excess of	$92,000,000.00

Schedule "C"

IF GROSS RECEIPTS ARE BETWEEN					
0	99,999	$100	Minimum License Fee		
100,000	199,999	$207	$1.64	per M in excess of	$100,000.00
200,000	299,999	$371	$1.41	per M in excess of	$200,000.00
300,000	399,999	$512	$1.33	per M in excess of	$300,000.00
400,000	499,999	$645	$1.30	per M in excess of	$400,000.00
500,000	599,999	$774	$1.26	per M in excess of	$500,000.00
600,000	699,999	$901	$1.23	per M in excess of	$600,000.00
700,000	799,999	$1,024	$1.20	per M in excess of	$700,000.00
800,000	899,999	$1,144	$1.17	per M in excess of	$800,000.00
900,000	999,999	$1,261	$1.14	per M in excess of	$900,000.00
1,000,000	1,099,999	$1,374	$1.10	per M in excess of	$1,000,000.00
1,100,000	1,199,999	$1,485	$1.07	per M in excess of	$1,100,000.00
1,200,000	1,299,999	$1,592	$1.04	per M in excess of	$1,200,000.00
1,300,000	1,399,999	$1,696	$1.01	per M in excess of	$1,300,000.00
1,400,000	1,499,999	$1,797	$0.98	per M in excess of	$1,400,000.00
1,500,000	1,999,999	$1,894	$0.96	per M in excess of	$1,500,000.00
2,000,000	2,499,999	$2,374	$0.94	per M in excess of	$2,000,000.00
2,500,000	2,999,999	$2,686	$0.93	per M in excess of	$2,500,000.00
3,000,000	3,499,999	$3,310	$0.90	per M in excess of	$3,000,000.00
3,500,000	3,999,999	$3,758	$0.86	per M in excess of	$3,500,000.00
4,000,000	4,999,999	$4,190	$0.83	per M in excess of	$4,000,000.00
5,000,000	5,999,999	$5,022	$0.80	per M in excess of	$5,000,000.00
6,000,000	7,999,999	$5,822	$0.77	per M in excess of	$6,000,000.00
8,000,000	10,999,999	$7,358	$0.74	per M in excess of	$8,000,000.00
11,000,000	13,999,999	$9,566	$0.70	per M in excess of	$11,000,000.00
14,000,000	57,999,999	$11,678	$0.67	per M in excess of	$14,000,000.00
58,000,000	91,999,999	$41,118	$0.61	per M in excess of	$58,000,000.00
92,000,000	Over 92 MIL	$61,918	$0.48	per M in excess of	$92,000,000.00

Schedule "D"

IF GROSS RECEIPTS ARE BETWEEN

0	99,999	$100		Minimum License Fee	
100,000	199,999	$169	$1.38	per M in excess of	$100,000.00
200,000	299,999	$306	$1.18	per M in excess of	$200,000.00
300,000	399,999	$424	$1.10	per M in excess of	$300,000.00
400,000	499,999	$534	$1.08	per M in excess of	$400,000.00
500,000	599,999	$642	$1.06	per M in excess of	$500,000.00
600,000	699,999	$748	$1.02	per M in excess of	$600,000.00
700,000	799,999	$850	$1.00	per M in excess of	$700,000.00
800,000	899,999	$950	$0.98	per M in excess of	$800,000.00
900,000	999,999	$1048	$0.94	per M in excess of	$900,000.00
1,000,000	1,099,999	$1142	$0.92	per M in excess of	$1,000,000.00
1,100,000	1,199,999	$1234	$0.90	per M in excess of	$1,100,000.00
1,200,000	1,299,999	$1324	$0.86	per M in excess of	$1,200,000.00
1,300,000	1,399,999	$1410	$0.84	per M in excess of	$1,300,000.00
1,400,000	1,499,999	$1494	$0.82	per M in excess of	$1,400,000.00
1,500,000	1,999,999	$1576	$0.80	per M in excess of	$1,500,000.00
2,000,000	2,499,999	$1976	$0.78	per M in excess of	$2,000,000.00
2,500,000	2,999,999	$2368	$0.76	per M in excess of	$2,500,000.00
3,000,000	3,499,999	$2756	$0.74	per M in excess of	$3,000,000.00
3,500,000	3,999,999	$3128	$0.72	per M in excess of	$3,500,000.00
4,000,000	4,999,999	$3488	$0.70	per M in excess of	$4,000,000.00
5,000,000	5,999,999	$4184	$0.66	per M in excess of	$5,000,000.00
6,000,000	7,999,999	$4848	$0.64	per M in excess of	$6,000,000.00
8,000,000	10,999,999	$6128	$0.62	per M in excess of	$8,000,000.00
11,000,000	13,999,999	$7976	$0.58	per M in excess of	$11,000,000.00
14,000,000	57,999,999	$9728	$0.56	per M in excess of	$14,000,000.00
58,000,000	91,999,999	$34368	$0.50	per M in excess of	$58,000,000.00
92,000,000	Over 92 MIL	$51504	$0.40	per M in excess of	$92,000,000.00

Schedule "E"

IF GROSS RECEIPTS ARE BETWEEN

0	99,999	$100		Minimum License Fee	
100,000	199,999	$136	$1.06	per M in excess of	$100,000.00
200,000	299,999	$242	$0.94	per M in excess of	$200,000.00
300,000	399,999	$336	$0.89	per M in excess of	$300,000.00
400,000	499,999	$425	$0.86	per M in excess of	$400,000.00
500,000	599,999	$511	$0.84	per M in excess of	$500,000.00
600,000	699,999	$595	$0.82	per M in excess of	$600,000.00
700,000	799,999	$678	$0.80	per M in excess of	$700,000.00
800,000	899,999	$758	$0.78	per M in excess of	$800,000.00
900,000	999,999	$835	$0.76	per M in excess of	$900,000.00
1,000,000	1,099,999	$911	$0.74	per M in excess of	$1,000,000.00

IF GROSS RECEIPTS ARE BETWEEN

1,100,000	1,199,999	$985	$0.71	per M in excess of	$1,100,000.00
1,200,000	1,299,999	$1,056	$0.70	per M in excess of	$1,200,000.00
1,300,000	1,399,999	$1,126	$0.67	per M in excess of	$1,300,000.00
1,400,000	1,499,999	$1,193	$0.65	per M in excess of	$1,400,000.00
1,500,000	1,999,999	$1,258	$0.64	per M in excess of	$1,500,000.00
2,000,000	2,499,999	$1,578	$0.63	per M in excess of	$2,000,000.00
2,500,000	2,999,999	$1,894	$0.62	per M in excess of	$2,500,000.00
3,000,000	3,499,999	$2,202	$0.60	per M in excess of	$3,000,000.00
3,500,000	3,999,999	$2,502	$0.58	per M in excess of	$3,500,000.00
4,000,000	4,999,999	$2,790	$0.55	per M in excess of	$4,000,000.00
5,000,000	5,999,999	$3,342	$0.54	per M in excess of	$5,000,000.00
6,000,000	7,999,999	$3,878	$0.51	per M in excess of	$6,000,000.00
8,000,000	10,999,999	$4,902	$0.49	per M in excess of	$8,000,000.00
11,000,000	13,999,999	$6,366	$0.47	per M in excess of	$11,000,000.00
14,000,000	57,999,999	$7,782	$0.45	per M in excess of	$14,000,000.00
58,000,000	91,999,999	$27,494	$0.41	per M in excess of	$58,000,000.00
92,000,000	Over 92 MIL	$41,366	$0.32	per M in excess of	$92,000,000.00

Schedule "F"

IF GROSS RECEIPTS ARE BETWEEN

0	99,999	$100	Minimum License Fee		
100,000	199,999	$103	$0.82	per M in excess of	$100,000.00
200,000	299,999	$186	$0.70	per M in excess of	$200,000.00
300,000	399,999	$256	$0.66	per M in excess of	$300,000.00
400,000	499,999	$322	$0.65	per M in excess of	$400,000.00
500,000	599,999	$387	$0.63	per M in excess of	$500,000.00
600,000	699,999	$450	$0.62	per M in excess of	$600,000.00
700,000	799,999	$512	$0.60	per M in excess of	$700,000.00
800,000	899,999	$572	$0.58	per M in excess of	$800,000.00
900,000	999,999	$630	$0.57	per M in excess of	$900,000.00
1,000,000	1,099,999	$687	$0.55	per M in excess of	$1,000,000.00
1,100,000	1,199,999	$750	$0.54	per M in excess of	$1,100,000.00
1,200,000	1,299,999	$796	$0.52	per M in excess of	$1,200,000.00
1,300,000	1,399,999	$848	$0.50	per M in excess of	$1,300,000.00
1,400,000	1,499,999	$898	$0.49	per M in excess of	$1,400,000.00
1,500,000	1,999,999	$947	$0.48	per M in excess of	$1,500,000.00
2,000,000	2,499,999	$1,187	$0.47	per M in excess of	$2,000,000.00
2,500,000	2,999,999	$1,423	$0.46	per M in excess of	$2,500,000.00
3,000,000	3,499,999	$1,655	$0.45	per M in excess of	$3,000,000.00
3,500,000	3,999,999	$1,879	$0.43	per M in excess of	$3,500,000.00
4,000,000	4,999,999	$2,095	$0.42	per M in excess of	$4,000,000.00
5,000,000	5,999,999	$2,511	$0.40	per M in excess of	$5,000,000.00
6,000,000	7,999,999	$2,911	$0.38	per M in excess of	$6,000,000.00
8,000,000	10,999,999	$3,679	$0.37	per M in excess of	$8,000,000.00

IF GROSS RECEIPTS ARE BETWEEN					
11,000,000	13,999,999	$4,783	$0.35	per M in excess of	$11,000,000.00
14,000,000	57,999,999	$5,839	$0.34	per M in excess of	$14,000,000.00
58,000,000	91,999,999	$20,623	$0.30	per M in excess of	$58,000,000.00
92,000,000	Over 92 MIL	$30,959	$0.24	per M in excess of	$92,000,000.00

Schedule "G" — Electric Company and Gas Company:

For selling or distributing electrical current or natural gas, an amount equal to three (3) percent of the gross receipts of the business transacted in the municipality for the previous year for the sale or distribution of electrical current or natural gas from any point in or into the municipality.

Schedule "H" — Beer, Wine and Liquor:

State of Alabama Code	*Classification*	*Amount*	*Licensing Notes*
040 (Beer On/Off Premises)	312121	75.00	
050 (Beer Off Premises Only)	312122	50.00	
060 (Table Wine On/Off Premises)	312131	75.00	
070 (Table Wine Off Premises Only)	312131	75.00	
010 (Lounge Retail Liquor Class I)	312121	75.00	All three (3) codes are part of the
	312141	650.00	package plus the business license
	312131	75.00	code.
011 (Package Store Liquor Class II)	312122	75.00	All three (3) codes are part of the
	312141	650.00	package plus the business license
	312131	75.00	code.
020 (Restaurant Retail Liquor)	312121	75.00	All three (3) codes are part of the
	312141	650.00	package plus the business license
	312131	75.00	code.
032 (Club Liquor Class II)	312121	75.00	All three (3) codes are part of the
	312141	650.00	package plus the business license
	313131	75.00	code.
110 (Wholesale Table Wine and Beer)	312132	275.00	Distributors license

Schedule "I" — Peddlers:

See Ordinance No. 2004-16.

Schedule "J" — Taxi Cabs and Limousines:

In addition to the license thereto, there shall be a license fee for each taxi cab or limousine and the cost of said fee shall be according to the following table:

One (1) taxi cab or limousine, per vehicle	$ 50.00
All taxi cabs or limousines over one (1), per vehicle	25.00

Schedule "K" — Telephones and Telecommunications:

Each city or town must apply Code of Ala. 1975, § 11-51-128, for telephones and establish other rates and/or schedules for various other telecommunications businesses.

Schedule "L" — Special Events Licenses:

See Ordinance No. 2000-39.

Schedule "M" — Fortune Tellers:

Annual license rate is one thousand dollars ($1,000.00) and rate is reduced by twenty-five dollars ($25.00) each year until such time as the annual rate reaches five hundred dollars ($500.00) and that becomes the minimum rate thereafter.

Schedule "N" — Vending Machines:

In addition to the license thereto, there shall be a decal affixed to each machine and the cost of said decals shall be according to the following table:

One (1) to five (5) machines vending any type merchandise or product, per decal	$ 20.00
Five (5) to ten (10) machines vending any type merchandise or product, per decal	10.00
All over ten (10) machines vending any type merchandise or product, per decal	5.00

Schedule "O" — Billiard and/or Pool Tables:

In addition to the license thereto, there shall be a decal affixed to each machine and the cost of said decals shall be according to the following table:

For one (1) to two (2) billiard or pool tables, per decal	$ 50.00
All billiard or pool tables over two (2), per decal	25.00

Schedule "P" — Amusement Devices:

In addition to the license thereto, there shall be a decal affixed to each machine and the cost of said decals shall be according to the following table:

For the first ten (10) machines, per decal	$ 25.00
All machines over ten (10), per decal	10.00

Schedule "Q" — Buses, Trucks and Other Equipment:

In addition to the license thereto, there shall be a decal affixed to each piece of equipment and the cost of said decals shall be according to the following table:

From one (1) to two (2) buses, trucks or other equipment, per decal	$ 50.00
From two (2) to five (5) buses, trucks or other equipment, per decal	25.00
Over five (5) buses, trucks or other equipment, per decal	10.00

Schedule "R" — Number of Employees:

R-1	Where personnel are from 1 to 2 people	$ 100.00
R-2	Where personnel are from 3 to 5 people	250.00
R-3	Where personnel are from 6 to 10 people	400.00
R-4	Where personnel are from 11 to 20 people	550.00
R-5	Where personnel are from 21 to 50 people	700.00
R-6	Where personnel are from 51 to 75 people	850.00
R-7	Where personnel are from 76 to 100 people	1,000.00
R-8	Personnel over 100 to be $1,000.00 + $50.00 per person over 100	

Schedule "S" — Square Feet:

S-1	From zero to 5,000	$ 100.00
S-2	From 5,000 to 10,000	200.00
S-3	From 10,000 to 20,000	300.00
S-4	From 20,000 to 30,000	400.00
S-5	From 30,000 to 40,000	500.00
S-6	From 40,000 to 50,000	600.00
S-7	From 50,000 to 60,000	700.00
S-8	From 60,000 to 70,000	800.00
S-9	From 70,000 to 80,000	900.00
S-10	From 80,000 to 90,000	1,000.00
S-11	From 90,000 to 100,000	1,200.00
S-16	From 100,000 up: $1,200.00 + $0.01 per square foot over 100,000	

Schedule "T" — Itinerants:

Itinerant businesses operating within the jurisdiction but located outside the jurisdiction, shall pay the itinerant rate for a business license and that rate shall be five hundred dollars ($500.00).

Peddlers license/itinerant license (See Ordinance No. 2004-16).

Schedule "U" — Banks/Savings and Loans:

Bank ATM Location	$ 10.00
Bank Branch Location	10.00
Bank Main Office Facility	125.00
Savings and Loan ATM Location	10.00
Savings and Loan Branch Location	10.00
Savings and Loan Mail Office Facility	125.00

Schedule "V" — Delivery License:

The rate for the delivery license is established in section 13-271 and is, for the first $75,000.00 $100.00

Above $75,000.00 refer to Schedule "B"

Schedule "W" — Temporary Vendors:

A. Commercial promoted special events (i.e., rodeo, wrestling, boat show, car shows, etc.). Each event requires a separate license, limited to four (4) per calendar year.

One (1) day	$250.00
Two (2) days	350.00
Three (3) to seven (7) days	500.00

B. Concession stands (food, plants, souvenir, etc.). Each event requires a separate license, limited to four (4) per calendar year.

(1) *Definition.* "Temporary vendor" shall mean any seller or provider of goods or services operating out of a non-permanent structure, or out of a trailer, vehicle, cart or other described apparatus capable of being transported from one location to another.

(2) Each temporary vendor shall deposit against sales tax, the amount of one hundred dollars ($100.00) (nonrefundable) to the city in addition to the license fee prescribed herein, and for each solicitor or vendor, said deposit shall be credited to any sales tax owing, and subsequently

returned to the licensee if the city determines that all sales tax due has been paid, or applied by the licensee as his or her deposit for licenses issued in future months.

One month	$50.00
C. Mardi Gras Parade Cart, Vendors (per cart)	$250.00
Mardi Gras Vendor Trailers, Tents, street side (i.e., food, memorabilia, t-shirts, etc.)	500.00

NOTE: Said business license shall be in lieu of any sales tax due, and shall be valid during the Mardi Gras parade season.

(Ord. No. 2002-26, § 23, 9-3-02; Ord. No. 2004-16, § II(23), 4-19-04; Ord. No. 2004-44, § 1(B), 12-15-04; Ord. No. 2005-25, § 2, 5-17-05)

Sec. 13-274. Exchange of information.

(a) The revenue officer may exchange tax returns, tax forms and other documents used in the preparation thereof secured by the municipality, with other municipalities adopting similar ordinances for the exchange of taxpayer information, or with county or state authorities. The revenue officer may charge a reasonable fee for providing such information or documents. Any tax returns, tax forms or other documents used in the preparation thereof so exchanged shall remain subject to the confidentiality provisions, restrictions, and criminal penalties for unauthorized disclosure as provided under state or municipal law.

(b) Any such exchange shall be for one (1) or more of the following purposes:

(1) Collecting taxes due.

(2) Ascertaining the amount of taxes due from any person.

(3) Determining whether a person is liable for, or whether there is probable cause for believing a person might be liable for, the payment of any tax to a state, county, or municipal agency.

(c) Nothing herein shall prohibit the use of tax returns or tax information by the municipality in the proper administration of any matter administered by the revenue officer. The revenue officer may also divulge to a purchaser, prospective purchaser as defined pursuant to the regulations of the Alabama Department of Revenue, or successor of a business or stock of goods the outstanding sales, use, or rental tax liability of the seller for which the purchaser, prospective purchaser as defined pursuant to the regulations of the Alabama Department of Revenue, or successor may be liable pursuant to the Code of Ala. 1975, § 40-23-25, 40-23-82, or 40-12-224.

(Ord. No. 2002-26, § 24, 9-3-02; Ord. No. 2004-11, 4-19-04)

Sec. 13-275. License fees in police jurisdiction.

Any person, firm, association, or corporation engaged in any business outside the municipality but within the police jurisdiction hereof shall pay one-half (½) of the amount of the license imposed for like business within the municipality.

(Ord. No. 2002-26, § 25, 9-3-02)

Secs. 13-276—13-300. Reserved.

ARTICLE XIII. GOING OUT OF BUSINESS AND OTHER SIMILAR SALES

Sec. 13-301. Definitions.

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

Applicant is any person applying for a license under this chapter, including its principal, if such person is the agent of another who is the true owner, notwithstanding whether that other is an individual, partnership, association, firm or corporation and notwithstanding whether the name of the true owner appears on the application or not.

Distressed merchandise sale is any offer to sell to the public or a sale to the public of goods, wares or merchandise on the implied or direct representation that such sale is being held other than in

the ordinary course of business and not otherwise defined herein. Without limiting the generality of the above, "distress merchandise sales" shall include, but not be limited to, any sale advertised either specifically or in substance to be any one of the following:

(1) Fire sale;

(2) Smoke damage sale;

(3) Water damage sale;

(4) Adjustment sale;

(5) Insurance salvage sale;

(6) Mortgage sale;

(7) Adjuster's sale;

(8) Re-organization sale; or

(9) Other sale of similar intent or terminology to any of the above.

Fire and other altered goods sale means a sale held out in such a manner as to reasonably cause the public to believe that the sale will offer goods damaged or altered by fire, smoke, water or other means.

Going out of business sale means any sale held out in such a manner as to reasonably cause the public to believe that upon the disposal of the stock of goods on hand, the business will cease and be discontinued including, but not be limited to, the following sales: alteration, assignee's, bankrupt, benefit of administrator's, benefit of creditor's, benefit of trustee's, building coming down, closing, creditor's committee, creditor's end, executor's final days, forced out of business, insolvents, last days, lease expires, liquidation, loss of lease, receiver's, trustee's, quitting business, forced out.

Goods means goods, wares, merchandise or other property capable of being the object of a sale regulated under this article.

Inventory is a list of the goods, wares or merchandise, on hand, which the applicant intends to offer for sale at such sale. The inventory shall show the quantity, kind and grade of each item, the wholesale cost thereof, the price at which each item is proposed to be sold and the total wholesale and retail value of the inventory based on the foregoing.

Person is any individual, partnership, association, firm, corporation or organization of any kind.

Removal of business sale means a sale held out in such a manner as to reasonably cause the public to believe that the person conducting the sale will cease and discontinue business at the place of sale upon disposal of the inventory on hand and will then move to and resume business at a new or other existing location in the city. (Ord. No. 2010-02, § I, 1-4-10)

Sec. 13-302. License.

(a) *License requirement.* A license issued by the city finance director, or her designee, shall be obtained by any person before selling or offering for sale any goods at a sale to be advertised or held out by any means to be one (1) of the following kinds:

(1) Going out of business sale.

(2) Removal of business sale.

(3) Fire and other altered stock sale.

(b) *Application; written information required.* A person desiring to conduct a sale regulated by this article shall make a written application to the city finance director, or her designee, setting forth and containing the following information:

(1) The true name and address of the owner of the goods to be the object of the sale.

(2) A sworn statement by the legal owner of the business, stating that no additional inventory will be added to the existing inventory during the sale.

(3) A description of the place where such sale is to be held.

(4) The nature of the occupancy, whether by lease or sublease, and the effective date of termination of such occupancy.

(5) The dates and period of time in which the sale is to be concluded.

(6) The full and complete statement of the facts in regard to the sale, including the reason for the urgent and expeditious disposal of goods thereby and the manner in which the sale will be conducted.

(7) The means to be employed in advertising such sale, together with the proposed content of any advertisement.

(c) *Conditions; fee.* A license shall be issued under this article on the following terms:

(1) *Licensing period and fee.* The license shall authorize the sale described in the application for a period of time and for a license fee as described in this subsection:

(a)	No more than thirty (30) consecutive calendar days following issuance	$150.00
(b)	No more than sixty (60) consecutive calendar days following issuance	300.00

The city council may authorize that sales continue for an additional thirty (30) consecutive calendar-day period beyond the sixty-day period above, upon receipt of a written request stating the reasons for the request. Upon said authorization from the city council, the applicant shall incur an additional one hundred fifty dollars ($150.00) mandatory fee.

(2) *Nature of sale.* The license shall authorize only the one (1) type of sale described in the application at the location named therein.

(3) *Saleable goods.* The license shall authorize only the sale of goods in inventory at the beginning of the sale.

(4) *Surrender of general license.* Upon being issued a license under this article for a going out of business sale, the licensee shall surrender to the city finance director, or her designee, all other business licenses they may hold at that time applicable to the location and goods covered by the application for a license under this article.

(5) *Non-transferability.* Any license provided for in this article shall not be assignable or transferable.

(d) *Duties of licensee.* It shall be the duty of the licensee to:

(1) *Adhere to inventory.* During any going out of business sale or distress merchandize sale, a licensee may sell, offer for sale or advertise for sale goods, wares or merchandise which were not included in the inventory filed with his application. Should any inventory be added to the stock of merchandise set forth in the certified inventory attached to the application for the license, the licensee shall file an amendment with the city finance director, or her designee, listing the additional inventory and when it was received by the licensee. Failure to adhere to this provision shall result in immediate revocation of the license to conduct an out of business sale or distress merchandise sale in addition to any penalties pursuant to section 13-304.

(2) *Advertise properly.* Refrain from employing any untrue, deceptive or misleading advertising.

(3) *Adhere to advertising.* The licensee shall conduct the licensed sale in strict conformity with any applicable advertising regulations or holding out incident thereto.

a. A licensee shall not advertise a going out of business sale or distress merchandise sale earlier than seven (7) days prior to the date on which the sale is licensed to begin. Advertising of such sales shall state the date when the sale is to begin and, during the last fifteen (15) days of such sale, shall clearly and prominently state the date the sale shall end. However, licensees are not authorized to use the City of Daphne's name or the number of the license issued pursuant to this article in conjunction with advertising the sale.

(Ord. No. 2010-02, § II, 1-4-10)

Sec. 13-303. Restrictions.

(a) *Interval between sales.* Any person who has held a sale, as regulated under this article, at the location stated in the application, within one (1) year last past from the date of such application shall not be granted a license.

(b) *Restricted location.* Where a person applying for a license under this article operates more than one (1) place of business, the license issued shall apply only to the one (1) store, or branch specified in the application, and no other store or branch shall advertise or represent that it is cooperating with it, or in any way participating in the license sale, nor shall the store or branch conducting the licensed sale advertise or represent that any other store or branch is cooperating with it, or participating in any way in the licensed sale unless a separate license is obtained for each location.

(c) *Sales to be held only at regular store hours.* No going out of business sale or distress merchandise sale shall be held at times other than regular store hours of the applicant, except that the city council may make reasonable provision for extra evening hours upon good cause shown by the applicant.

(d) *False bidders prohibited.* No person who is not a bona fide potential purchaser shall act at any going out of business sale or distress merchandise sale as bidder, or what is commonly known as a "capper," "booster" or "shiller," or offer to make any false bid to buy any article sold or offered for sale at any going out of business sale or distress merchandise sale.

(e) *Exceptions and exemptions.*

(1) *Exception for survivors of businessmen.* Upon the death of a person doing business in the city, his heirs, devisees or legatees shall have the right to apply at any time for a license under this article.

(2) *Persons exempted.* The provisions of this article shall not apply to nor affect the following persons:

a. Lay persons acting pursuant to an order or process of a court of competent jurisdiction; or

b. Persons acting in accordance with their powers and duties as public officials.

(Ord. No. 2010-02, § III, 1-4-10)

Sec. 13-304. Penalties.

(a) A person convicted of a willful violation of any of the provisions of this article shall be fined not more than five hundred dollars ($500.00) and may be imprisoned for not more than six (6) months, or both, at the discretion of the court trying the case.

(b) Each separate sale, offering for sale or advertising for sale at a going out of business sale or distress merchandise sale of any goods, wares or merchandise in violation of the provisions of this article constitutes a separate offense.
(Ord. No. 2010-02, § IV, 1-4-10)

Sec. 13-305. Construction.

The provisions of this article are intended to augment and be in addition to the general licensing ordinances of the city. Where this article imposes a greater restriction upon persons, premises, business or practices than is imposed by the general licensing ordinances of the city, this article shall control.
(Ord. No. 2010-02, § V, 1-4-10)

Secs. 13-306—13-320. Reserved.

ARTICLE XIV. PEDDLERS

Sec. 13-321. Definitions.

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

Aggressive panhandling: The act of panhandling through intimidation, accosting, unwanted coercing, or threatening passersby to obtain money, food, or other items of value.

Panhandling: The act of begging or entreating others on or near city streets, parks, or other property.

Passive panhandling: The act of panhandling through a peaceful, non-threatening, or non-intimidating manner to obtain money, food, or other items of value.

Vagrancy: The state or condition of wandering from place to place without a home, job, or means of support or to encamp in or on private or city property.
(Ord. No. 2010-25, § I, 5-3-10)

Sec. 13-322. Aggressive panhandling.

Any person who panhandles in an aggressive manner, or any person who goes about from door to door of private homes or commercial or business establishments or places himself in or upon city property to panhandle in an aggressive manner shall be punished as provided in section 13-325.

The city council finds that panhandling is a content neutral form of speech. The city's prohibition on aggressive panhandling is purposed to serve the significant government interest of safety of the city's citizens and prevention of hostile or potentially hostile actions.
(Ord. No. 2010-25, § II, 5-3-10)

Sec. 13-323. Passive panhandling.

Any person panhandling in a passive manner within twenty-five (25) feet of any public roadway within the City of Daphne shall be punished as provided in section 13-325.
(Ord. No. 2010-25, § III, 5-3-10)

Sec. 13-324. Vagrancy.

(a) Any person wandering abroad and occupying, lodging, or sleeping in any vacant or unoccupied barn, garage, shed, shop, or other building or structure, or in any automobile, truck, railroad car or other vehicle without owning the same or without permission of the owner or person entitled to the possession of the same, or sleeping in any vacant private lot, or upon city property, during the hours of darkness and not giving a satisfactory account of himself, shall be punished as provided in section 13-325.

(b) Any personal property not removed by the owner or custodian of such from the premises mentioned in subsection (a) of this section therein shall be deemed abandoned personal property, and shall be handled in accordance with the provisions of applicable law.

The city council finds that vagrancy is generally considered a course of conduct or a manner of living rather than a single act.
(Ord. No. 2010-25, § IV, 5-3-10)

Sec. 13-325. Penalties.

Any person who violates the provisions of this article shall, upon conviction thereof, be punished by fine not to exceed two hundred fifty dollars ($250.00) or shall be imprisoned for a period not to exceed six (6) months, or both, in the discretion of the municipal judge.

Violations of this article are to be construed as continuing in nature and each days' violation of the same is to be construed as a separate offense.
(Ord. No. 2010-25, § V, 5-3-10)

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Chapter 14

OFFENSES AND MISCELLANEOUS PROVISIONS*

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ARTICLE I. IN GENERAL

Sec. 14-1. Adoption of state offenses laws.

(a) *Misdemeanor.* Any person, firm or corporation committing an offense within the corporate limits of the City of Daphne, Alabama, or within the police jurisdiction thereof, which is declared by law or laws of the State of Alabama now existing or hereafter enacted to be a misdemeanor, shall be guilty of an offense against the City of Daphne, Alabama.

(b) *Violation.* Any person, firm or corporation committing an offense within the corporate limits of the City of Daphne, Alabama, or within the police jurisdiction thereof, which is declared by the law or laws of the State of Alabama now existing or hereafter enacted to be a violation, shall be guilty of an offense against the City of Daphne, Alabama.

(c) *Offense.* Any person, firm or corporation committing an offense, as defined by Code of Ala. 1975, § 13A-1-2(10), within the corporate limits of the City of Daphne, Alabama, or within the police jurisdiction thereof, which is not declared by a law or laws if the State of Alabama now existing or hereafter enacted to be a felony, misdemeanor or violation, shall be guilty of an offense against the City of Daphne, Alabama.

(d) *Penalty.* Any person, firm or corporation found to be in violation of subssection (a), (b), or (c) of this section shall, upon conviction, be punished in accordance with the provisions of Code of Ala. 1975, § 11-45-9, as amended or may be amended from time to time hereafter.

(e) *Penalty for offense defined in section 32-5A-191.* Any person found to be in violation of this ordinance for the commission of an offense as defined in Code of Ala. 1975, § 32-5A-191, as amended or may be amended from time to time hereafter, shall, upon conviction, be punished in accordance with the provisions of Code of Ala. 1975, § 32-5A-191, as amended or may be amended.

(f) *Penalty for offense defined in section 32-5A-191.3.* Any person found to be in violation of this ordinance for the commission of an offense as defined in Code of Ala. 1975, § 32-5A-191.3, as amended or may be amended from time to time hereafter, shall, upon conviction, be punished in accordance with the provisions of Code of Ala. 1975, § 32-5A-191.3, as amended or may be amended.

(Ord. No. 1987-8, §§ 1—3, 3-16-87; Ord. No. 2002-18, §§ I—VI, 8-5-02; Ord. No. 2003-18, §§ I—VI, 7-21-03)

Sec. 14-2. Failure to obey a police officer.

(a) *Failing to obey direction or order of police officer.* It shall be unlawful and an offense against the City of Daphne for any person to fail to obey the lawful direction or lawful order of a sworn officer of the police department of the City of Daphne, Alabama, while such officer is acting in an official capacity and/or is carrying out his/her lawful duties within the city limits and/or police jurisdiction thereof.

(b) *Resisting or interfering with officer; assisting in escape.* It shall be unlawful for any person to resist a sworn officer of the City of Daphne, Alabama, police department, in the lawful discharge of his/her lawful duty or shall in any way interfere with or hinder or prevent said officer from discharging his/her lawful duty as an officer. It shall be unlawful to offer or endeavor to do or assist any person in the custody of any policeman to escape or attempt to escape from such custody or rescue or attempt to rescue any person so in custody, and such act occurs within the city limits and/or lawful police jurisdiction of the City of Daphne, Alabama.

(c) *Punishment.* A violation of this section 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 in the municipal jail for a period not exceeding six (6) months, or both, or in the alternative, may be sentenced to community service or any other lawful remedial action which the municipal judge may deem appropriate.

(Ord. No. 1979-7, § 1, 10-6-79; Ord. No. 2004-43, §§ I, II, 12-6-04)

Sec. 14-3. Reserved.

Editor's note—Section 4 of Ord. No. 1998-29, adopted Aug. 17, 1998, repealed Ord. No. 1989-05 from which § 14-3, discharging weapons, derived.

Sec. 14-4. Illegal noises—Loud, disturbing or unnecessary prohibited.

(a) No person shall make, continue or cause to be made or continued any noise which either annoys, disturbs, injures or endangers the comfort, repose, health, peace or safety of others in the city. It shall also be unlawful and a nuisance for any person to permit any such noise to be made in any house or upon any premises owned or possessed by him or under his management or control.

(b) The following acts, and the causing thereof, are declared to be in violation of this section, but such enumeration shall not be deemed to be exclusive:

(1) *Horns, signaling devices, etc.*

a. The sounding of any horn or signal device on any automobile, motorcycle, bus or other vehicle, except as a danger warning when and as required by ordinances of the City of Daphne or by the Code of Alabama;

b. The sounding of such signaling device for any period of time exceeding that in which the warned person or persons are alerted thereto;

c. The use of any such signaling device when traffic is held up for any reason;

d. The use of any horn, whistle or other device operated by engine exhaust.

(2) *Animals, birds, etc.* The keeping of any animal or bird which causes repeated noise which is plainly audible to any person inside a commercial, residential, multifamily dwelling or public place between the hours of 10:00 p.m. and 7:00 a.m.

(3) *Stationary nonemergency, signaling devices.*

a. The sounding or permitting the sounding of any signal from any stationary bell, chime, siren, whistle or similar device intended primarily for nonemergency purposes, from any place, for more than one minute in any hourly period;

b. Any such bell, chime and similar device used in conjunction with places of religious worship shall be exempt from the operation of this provision.

(4) *Exhausts.* The discharge into the open air of the exhaust of any steam engine or internal combustion engine of any motor boat or motor vehicle except through a muffler or other in good working order and in constant operation. The sound therefrom such shall not be plainly audible outside a radius of fifty (50) feet.

(5) *Fireworks.* The explosion of firecrackers, skyrockets, roman candles, pinwheels or any other form of fireworks, except the display of fireworks in public parks or other open places within the city under a permit issued by the fire marshal pursuant to the fire prevention code of the city or as provided in Ordinance No. 1994-09.

(6) *Loudspeakers, amplifiers, etc. for commercial advertising purpose.* The use, operation or permitting the use or operation of any drum, bell, horn, musical, instrument, stereo, loud speaker, amplifier, public address system or other instrument or device or the production or reproduction of sound which casts sound upon the public streets for the purpose of commercial advertising or intending to attract attention to any building, structure, performance, show, sale or display of merchandise, or for any other commercial advertising purposes.

(7) *Radios, stereos, television sets, musical instruments, etc.*

a. The operating, playing or permitting the operation or playing of any device, radio, television, stereo, drum, musical instrument, sound amplifier or similar device which produces, reproduces or amplifies sound in such a manner as to create any sound or noise which exceed sixty (60) dB (during the hours of 10:00 p.m. until 7:00 a.m.) at any property line within a residential district or upon any public street of right-of-way within,

or bordering upon any residential district within the corporate limits of the City of Daphne.

b. The operating, playing or permitting the operation or playing of any device, radio, television, stereo, drum, musical instrument, sound amplifier or similar device which produces, reproduces or amplifies sound in such a manner as to be plainly audible outside a radius of twenty-five (25) feet to any person inside a commercial, residential, multifamily dwelling or public place (during the hours of 10:00 p.m. until 7:00 a.m.). This includes, but is not limited to, any low level rhythmic base component of music sufficient to constitute a violation thereof.

c. The operation of any device, radio, television, personal stereo, cassette player, compact disc player, digitally stored audio or video player, musical instrument, sound amplifier or similar device which produces, reproduces or amplifies sound by a passenger on a common carrier or by a pedestrian on the street without the use of an external ear plug speaker in such a manner as to be plainly audible to any person other than the player or operator of the devise at a distance of twenty-five (25) feet.

(8) *Unreasonable sound amplification from a vehicle.*

a. The operation or permitting of the operation of, any sound amplification system which is plainly audible outside a radius of twenty-five (25) feet when the vehicle is on a public highway or on premises open to the public, unless that system is being operated to request assistance or warn of a hazardous situation.

b. This section does not apply to:

1. Emergency vehicle.

2. Vehicles operated by utilities.

3. Sound systems of vehicles used for advertising in parades, political or other, special events or when properly permitted by the city council.

(9) *Defect in vehicle or load.* The use or operation of any automobile, motorcycle or other vehicle which by its physical state of repair, physical state of disrepair or by the manner in which it is loaded creates any grating, grinding, rattling or other noise which is plainly audible outside a radius of fifty (50) feet when the vehicle is on a public highway or on premises open to the public.

(10) *Emergency signaling devices.* Sounding or permitting the sounding of any exterior burglar alarm or any motor vehicle burglar alarm unless such alarm is automatically terminated within fifteen minutes of activation unless there has been an attempted or actual entry of the premises or vehicle.

(11) *Domestic power tools.* The operating or permitting the operation out of doors of any mechanically powered saw, sander, drill, grinder, lawn or garden tool or similar device between the hour of 10:00 p.m. and 7:00 a.m. in a residential area.

(12) *Construction.*

a. Any and all activity incidental to the erection, demolition, assembling, altering, repairing, installing, or equipping of buildings, structures, roads, or appurtenances thereto, including land clearing, grading, excavating and filling between the hours of 10:00 p.m. and 7:00 a.m. in a residential area.

b. Emergency repair or maintenance of public roads and highways parks, sewers, water, electric, gas or telephone systems at any time or any such private construction necessary to restore property to a safe condition following a public calamity or work required to protect persons or

property from eminent exposure to danger shall be exempt from the operation of this provision.

(13) *Noises near schools, courts, churches or hospitals.* The creation of any noise on any street adjacent to any school, institution of learning, church or court which the same is in use, or adjacent to any hospital, nursing home or similar facility which is plainly audible within said school, institution of learning, church or court which the same is in use, or any hospital, nursing home or similar facility, provided that construction signs are displayed in such street indication that the same is a school, hospital church or court street and specifying the hours and days of which such regulation is to be effective.

(c) The provisions of subsection (b) heretofore shall not apply to:

(1) Any bell or chime from any clock, school or church.

(2) Any siren, whistle, horn or bell used by emergency vehicles or any other alarm systems used in case of fire, collision, civil defense, burglary, police activity, except as otherwise provided herein.

(3) Any construction equipment operated upon residential, commercial, industrial or public premises during the time period between 6:00 a.m. and 9:00 p.m.; provided however, that operation of construction equipment between the hours of 9:00 p.m. and 6:00 a.m. shall not exceed the maximum sound levels specified heretofore, and further provide that such equipment shall be equipped with a properly installed muffler in good working order.

(4) Any domestic power equipment operated upon any residential, commercial, industrial or public premises during the time period between 6:00 a.m. and 9:00 p.m., provided that such equipment does not exceed a sound level of eighty (80) dB when measured at a minimum of twenty-five (25) feet from the noise source, and further provided that between the hours of 9:00 p.m. and 6:00 a.m., such equipment does not exceed the maximum sound levels specified herein above.

(5) Any recreational or educational activity including, but not limited to, school bands and neighborhood ball games, provided that between the hours of 10:00 p.m. and 7:00 a.m. such activity does not exceed the maximum sound levels specified herein above.

(6) Licensed refuge collection vehicles operating during the time period between 6:00 a.m. and 9:00 p.m.; provided, however, sound omitted from license refuge collection vehicles operated upon or within one hundred fifty (150) feet of any residential premises between the hours of 9:00 p.m. and 6:00 a.m. shall not exceed the maximum sound levels specified herein above.

(7) The emission of sound for the purpose of alarming persons to the existence of an emergency; or

(8) The emission of sound in the performance of emergency work.

(d) Except as provided hereinbelow, the mayor shall have the right to waive any or all of the requirements of subsection (b) in cases of emergency where the welfare of persons or property may be jeopardized by their strict enforcement, or on such special occasions as the governing body may determine; exemptions from the requirements of subsection (b)(7)a. relating to the time periods during which radios, phonographs, television sets, musical instruments, etc. may be operated and may only be granted:

(1) During weekends, legal holidays (or eve thereof), or school vacations;

(2) After due consideration of the factors set forth in subsection (b)(5); and

(3) Upon approval of the council representative for the district where the event is to be held approval of administrative staff.

(e) Penalty.

(1) Any person found guilty of violating any provision of this section 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, in the discretion of the municipal judge.

(2) This section shall also be subject to enforcement by the issuance of a summons and complaint pursuant to the provisions of Ordinance No. 1993-02, as the same may be from time to time amended.

(Ord. No. 1993-15, §§ 1—3, 7-7-93; Ord. No. 1993-20, § 1, 9-8-93; Ord. No. 1994-15, §§ 1, 2, 9-28-94; Ord. No. 1997-11, §§ 1, 2, 6-2-97; Ord. No. 1998-13, 7-20-98; Ord. No. 1999-27, § 1, 8-16-99; Ord. No. 2002-07, §§ 1—3, 2-18-02; Ord. No. 2003-32, §§ I—III, 12-15-03)

Cross reference—Noisy animals, § 4-5.

Sec. 14-5. Discharging firearms, pneumatic powered weapons within city limits.

(a) It shall be unlawful for any person to discharge a firearm or pneumatic powered weapon within the city limits of the City of Daphne, Alabama; provided that this section shall not be construed to prohibit any officer of the law from discharging a firearm in the performance of his duty; nor to prohibit any citizen from discharging a firearm when lawfully defending himself or others; nor to prohibit the discharging of firearms within an indoor firing range which has been certified by an architect or engineer to have been constructed in substantial compliance with the design and specifications issued the National Rifle Association or other nationally recognized organization.

Exception: This section shall not apply to the discharge of recreational pneumatic powered paint ball guns.

(b) Any person violating this section shall be guilty of a misdemeanor, and upon conviction shall be fined not less than one dollar ($1.00) and no more than five hundred dollars ($500.00), and/or up to six (6) months in the city jail, or both, at the discretion of the court.

(Ord. No. 1999-32, §§ 1, 2, 9-20-99; Ord. No. 2006-06, §§ I, II, 2-20-06)

Editor's note—Section 5 of Ord. No. 1999-32, adopted Sept. 20, 1999, repealed Ord. No. 1998-29 from which § 14-5 derived. Sections 1 and 2 enacted similar provisions set out as § 14-5.

Sec. 14-6. Fireworks.

(a) *Prohibited.* The manufacture, storage, sale, and discharge of any type of fireworks is prohibited within the city except as provided for in (b), (c) and (d) of this section.

(b) *Permit required.* The city council may grant special permission for fireworks displays upon written application for said permit, submitted fifteen (15) days prior to the scheduled date of each such event.

(c) *Permit approval.* The granting of such special permit by the city council shall be conditioned upon the approval of the fire official of the city, and any such special fireworks display permitted hereunder shall comply with Code of Ala. 1975, § 8-17-210 et seq., and with all rules, regulations and requirements set forth by the fire police officials of the city.

(d) *Exceptions from permit.* A permit from the city shall not be required for the display of the following exceptions:

(1) *Dipped stick, sparkler.* Stick or wire coated with pyrotechnic composition that produces a shower of sparks upon ignition. Total pyrotechnic composition may not exceed 100 g per item. Those devices containing any perchlorate or chlorate salts may not exceed 5 g of pyrotechnic composition per item. Wire sparklers that contain no magnesium and that contain less than 100 g of composition per item are not included in this category, in accordance with DOT regulations.

(2) *Cylindrical fountain.* Cylindrical tube not more than three-quarter-inch (19 mm) inside diameter, containing up to 75 g of pyrotechnic composition. Upon ignition, a shower of colored sparks, and sometimes a whistling effect, is produced. This device may be provided with a spike for insertion into the ground (spike foundation), a wood or plastic base for placing on the ground (base fountain), or a wood or cardboard handle, if intended to be hand-held (handle fountain).

(3) *Cone fountain.* Cardboard or heavy paper cone containing up to 50 g of pyrotechnic composition. The effect is the same as that of a cylindrical fountain.

(4) *Illuminating torch.* Cylindrical tube containing up to 100 g of pyrotechnic composition. Upon ignition, colored fire is produced. May be spike, base, or hand-held.

(5) *Wheel.* Pyrotechnic device attached to a post or tree by means of a nail or string. Each wheel may contain up to six (6) "driver" units: tubes not exceeding one-half-inch (12.7 mm) inside diameter and containing up to 60 g of pyrotechnic composition. Upon ignition, the wheel revolves, producing a shower of color and sparks and sometimes a whistling effect.

(6) *Ground spinner.* Small device similar to a wheel in design and effect and placed on the ground and ignited. A shower of sparks and color is produced by the rapidly spinning device.

(7) *Flitter sparkler.* Narrow paper tube filled with pyrotechnic composition that produces color and sparks upon ignition. This device does not have a fuse for ignition. The paper at one end of the tube is ignited to make the device function.

(8) Any items or devices not classified as common fireworks by the U.S. Department of Transportation:

a. *Snake, glow worm.* Pressed pellet of pyrotechnic composition that produces a large, snake-like ash upon burning. The ash expands in length as the pellet burns. These devices may not contain mercuric thiocyanate.

b. *Smoke device.* Tube or sphere containing pyrotechnic composition that, upon ignition, produces white or colored smoke as the primary effect.

c. *Wire sparkler.* Wire coated with pyrotechnic composition that produces a shower of sparks upon ignition. These items may not contain magnesium and must not exceed 100 g of composition per item. Devices containing any chlorate or perchlorate salts may not exceed 5 g of composition per item.

d. *Trick noisemaker.* Item that produces a small report intended to surprise the user. These devices include:

1. *Party popper.* Small plastic or paper item containing not more than 16 mg of explosive composition that is friction-sensitive. A string protruding from the device is pulled to ignite it, expelling paper streams and producing a small report.

2. *Booby trap.* Small tube with string protruding from both ends, similar to a party popper design. The ends of the string are pulled to ignite the friction-sensitive composition, producing a small report.

3. *Snapper.* Small, paper-wrapped item containing a minute quantity of explosive composition coated on small bits of sand. When dropped the device explodes, producing a small report.

4. *Trick match.* Kitchen or book match that has been coated with a small quantity of explosive or pyrotechnic composition. Upon ignition of the match, a small report or a shower of sparks is produced.

5. *Cigarette load.* Small wooden peg that has been coated with a small quantity of explosive composition. Upon ignition of a cigarette containing one of the pegs, a small report is produced.

6. *Auto burglar alarm.* Tube that contains pyrotechnic composition that produces a loud whistle and/or smoke when ignited. A small quantity of explosive, not exceeding 50 mg, also may

be used to produce a small report. A squib is used to ignite the device.

Exception No. 1: Toy pistols, toy canes, toy guns, or other devices in which paper and/or plastic caps, manufactured in accordance with DOT regulations, Title 49, Code of Federal Regulations, Part 173.100(p), and par-

cel and shipped according to said regulations, and are not considered to be fireworks and shall be allowed to be used and sold at all times.

Exception No. 2: Unmanned rockets and rocket motors designed, sold, and used in compliance with NFPA 1122, Code for Unmanned Rockets, are not considered fireworks. (See NFPA 1122, Code for Unmanned Rockets.)

Exception No. 3: Propelling or expelling charges consisting of a mixture of sulfur, charcoal, and potassium nitrate are not considered as being designed for producing audible effects.

(e) The fire official and any police officer is hereby empowered to enforce any and all regulations pertaining to the exploding of fireworks for special events authorized herein, and to revoke any permit granted hereunder when conditions warrant and, in his discretion, the activity is not carried out in a safe manner, or for violation of any regulations and requirements set forth.
(1994-09, §§ 1—5, 8-15-94)

Sec. 14-7. Rollerskating, rollerblading or skateboarding upon public property.

(a) It shall be unlawful for any person to rollerskate, rollerblade, or use a skateboard on any public place which shall be clearly posted with the signage stating "no rollerskating, rollerblading or skateboarding."

(b) This section shall be punishable by a fine of not less than twenty-five dollars ($25.00) nor more than two hundred fifty dollars ($250.00).
(Ord. No. 1998-07, §§ 1, 2, 5-12-98)

Sec. 14-8. Public indecency.

(a) *Definitions.* As used in this section, the following words and terms shall have the following meanings:

Adult bookstore. An establishment having as a preponderance of its stock in trade or its dollar volume in trade, books, magazines, periodicals or other printed matter, or photographs, films, motion pictures, videocassettes, slides, tapes, records, compact disks or other form of visual or audio representations which are distinguished or characterized by their emphasis on matters depicting, describing or relating to nudity.

Adult cabaret. A nightclub, bar, theater, restaurant or similar establishment which, having as a preponderance of its entertainment or staff, live performances or appearances by topless females.

Adult entertainment establishment. Adult bookstores, adult cabarets or adult novelty store.

Adult novelty store. An establishment having as a preponderance of its stock in trade or its dollar value in trade, books, magazines, periodicals or other printed matter, or photographs, films, motion pictures, videocassettes, slides, tapes, records, compact disks or other form of visual or audio representations or instruments, devices or paraphernalia which are distinguished or characterized by their emphasis on matter depicting, describing or relating to nudity.

Nude (nudity). The showing, display or appearance of:

(1) All or any part of the human male or female genitals, pubic area or anus with less than a fully opaque covering;

(2) More than two-thirds (2/3) of the buttocks of the human male or female with less than a fully opaque covering;

(3) Any portion of the human female areola or nipple with less than a fully opaque covering; or

(4) The covered male genitals in a discernibly turgid state.

Public place. Means any location which is frequently by the public, or where the public is present or likely to be present, or where a person may reasonably be expected to be observed by members of the public or is otherwise visible to members of the public. Public places include, but are not limited to, streets, sidewalks, parks, beaches, business and commercial establishments (whether for profit or not-for-profit and whether open to the public at large or whether entrance is limited by age restrictions, cover

charges, or membership requirements), bottle clubs, hotels, motels, restaurants, night clubs, country clubs, cabarets and meeting facilities utilized by any religious, social, fraternal, charitable or other organizations. Premises used solely as a private residence, whether permanent or temporary in nature, shall not be deemed a public place. Public place shall not include enclosed single sex public restrooms, enclosed single sex functional showers, locker and/or dressing room facilities, enclosed motel rooms and hotel rooms designed and intended for sleeping accommodations, doctor's offices, portions of hospitals and similar places in which nudity or exposure is necessarily and customarily expected outside of the home and the sphere of privacy constitutionally protected herein.

Topless. The exposing of any portion of the human female breast below a horizontal line across the top or the areola at its highest point or simulation thereof excluding any portion of the cleavage of the human female breast exhibited by a dress, blouse, shirt, leotard, bathing suit or outerwear apparel.

(b) *Public indecency.* It shall be unlawful for any person in a public place in the corporate limits or police jurisdiction of the City of Daphne to knowingly, intentionally or recklessly:

(1) Engage in actual or simulated sexual intercourse, masturbation, sodomy, bestiality, oral copulation, flagellation, excretory functions;

(2) Appear or suffer or permit another person to appear nude or in a state of nudity;

(3) Fondle, touch or otherwise come in direct or indirect contact with the genitals of himself, herself, or another person; or

(4) Fondle, touch or otherwise come in direct or indirect contact with the female breasts of another person or to permit another person fondling, touching or otherwise coming in direct or indirect contact with a female's breasts.

(c) *Public indecency in establishment dealing in alcoholic beverages.*

(1) No person shall expose, show or display to public view his or her genitals, pubic area, vulva, anus, anal clef or cleavage or any simulation of such act in an establishment dealing in alcoholic beverages.

(2) No female person shall appear topless in an establishment dealing in alcoholic beverages.

(3) No person maintaining, owning or operating an establishment dealing in alcoholic beverages shall suffer or permit any person to expose, show or display to the public view his or her genitals, pubic area, vulva, anus, anal clef or cleavage or simulation of such act within the establishments dealing in alcoholic beverages.

(4) No person maintaining, owning or operating an establishment dealing in alcoholic beverages shall suffer or permit any female person to appear topless within the establishment dealing in alcoholic beverages.

(5) No person shall engage in and no person maintaining, owning or operating an establishment dealing in alcoholic beverages shall suffer or permit any sexual intercourse, masturbation, sodomy, bestiality, oral copulation, flagellation, any sexual act which is prohibited by law, touching, caressing or fondling of the breasts, buttocks, anus or genitals or the simulation of such acts within an establishment dealing in alcoholic beverages.

(6) No person shall cause and no person maintaining, owning or operating an establishment dealing in alcoholic beverages shall suffer or permit the exposition of any graphic representation, including, but not limited to, pictures or the projection of film or image, which depicts human genitals, pubic area, vulva, anus, anal cleft or cleavage, topless female(s), sexual intercourse, masturbation, sodomy, bestiality, oral copulation, flagellation, any sexual act prohibited by law, touching, caressing or fondling of the breasts, buttocks, anus or genitals or any simulation of such acts within any establishment dealing in alcoholic beverages.

(d) *Adult entertainment establishments located near churches, schools, parks or residential property.*

(1) Adult entertainment establishments are prohibited:

a. Within one thousand (1,000) feet of any residential zone or any single family or multiple-family residential use.

b. Within one thousand (1,000) feet of any public or private elementary or secondary school.

c. Within one thousand (1,000) feet of any family day care, day care center for children, nursery, or preschool.

d. Within one thousand (1,000) feet of any church or other facility or institution used primarily for religious purposes.

e. Within one thousand (1,000) feet of any public park.

(2) The distances provided in this section shall be measured by following a straight line, without regard to intervening buildings, from the nearest point of the property parcel upon which the proposed use is to be located, to the nearest point of the parcel of property or the land use district boundary line from which the proposed land use is to be separated.

(e) *City or state regulation.* Nothing in this section is intended to authorize, legalize or permit the establishment, operation or maintenance of any business, building or use which violates any city regulation or statute of the State of Alabama regarding public nuisances, sexual conduct, lewdness or obscene or harmful matter or the exhibition or public display thereof.

(f) *Penalty.* 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, in the discretion of the municipal judge.
(Ord. No. 2003-09, §§ I—VI, 4-10-03

Secs. 14-9—14-19. Reserved.

ARTICLE II. PARADES

DIVISION 1. GENERALLY

Sec. 14-20. Definitions.

As used in this article, the following terms shall have the respective meanings ascribed to them:

Parade: Any formal public procession, march, ceremony, show, exhibition, pageant, or a group of persons or of vehicles containing persons moving forward in an orderly, ceremonious, or solemn procession, or any similar display in or upon any street, park or other public place in the city.

Parade permit: A permit as required by this article.
(Ord. No. 1968-7, § 2, 7-15-68)
Cross reference—Definitions and rules of construction generally, § 1-2.

Sec. 14-21. Permit required; exceptions.

(a) *Required:* No person shall engage in, participate in, aid, form or start any parade, unless a parade permit shall have been obtained from the city council.

(b) *Exceptions:* This article shall not apply to:

(1) Funeral processions;

(2) Students going to and from school classes or participating in educational activities, providing such conduct is under the immediate direction and supervision of the proper school authorities;

(3) A governmental agency acting within the scope of its functions.
(Ord. No. 1968-7, § 3, 7-15-68)

Sec. 14-22. Filing permit application; contents; fee.

(a) *Application:* A person seeking issuance of a parade permit shall file an application with the city clerk on forms provided by the city clerk.

(1) *Filing period:* An application for a parade permit shall be filed with the clerk not

less than ten (10) days, nor more than thirty (30) days, before the date on which it is proposed to conduct the parade.

(2) *Contents:* The application for a parade permit shall set forth the following information:

a. The name, address and telephone number of the person seeking to conduct such parade;

b. If the parade is proposed to be conducted for, on behalf of, or by any organization, the name, address, and telephone number of the headquarters of the organization, and of the authorized and responsible heads of such organization;

c. The name, address and telephone number of the persons who will be the parade chairman and who will be responsible for its conduct;

d. The date the parade is to be conducted;

e. The route to be traveled, the starting point and the termination point;

f. The approximate number of persons, who, and animals and vehicles which, will constitute such parade; the types of animals, and description of the vehicles;

g. The hours such parade will start and terminate;

h. A statement as to whether the parade will occupy all or only a portion of the width of the streets proposed to be traversed;

i. The location by streets of any assembly areas for such parade;

j. The time at which units of the parade will begin to assemble at any such assembly areas;

k. The interval of space to be maintained between such units of such parade;

l. If the parade is designed to be held by, and on behalf of or for, any person other than the applicant, the application for such permit shall file with the clerk a communication in writing from the person proposing to hold the parade, authorizing the applicant to apply for the permit on such person's behalf;

m. Any additional information which the clerk shall find reasonably necessary to a fair determination as to whether a permit should be issued.

(b) *Late applications:* The city council, where good cause is shown therefor, shall have the authority to consider any application hereunder which is filed less than ten (10) days before the date such parade is proposed to be conducted.

(c) *Fee:* There shall be paid at the time of filing the application for a parade permit a fee of five dollars ($5.00).
(Ord. No. 1968-7, § 4, 7-15-68)

Sec. 14-23. Standards of issuance of permit.

The city council shall issue a permit as provided for hereunder when, from a consideration of the application and from such other information as may otherwise be obtained, it finds that:

(1) The conduct of the parade will not substantially interrupt the safe and orderly movement of other traffic contiguous to its route;

(2) The conduct of the parade will not require the diversion of so great a number of police officers of the city to properly police the line of movement and the areas contiguous thereto as to prevent normal police protection of the city;

(3) The conduct of such parade will not require the diversion of so great a number of ambulances as to prevent normal ambulance service to portions of the city other than to be occupied by the proposed line of march and areas contiguous thereto;

(4) The concentration of persons, animals and vehicles at assembly points of the parade will not unduly interfere with proper fire

and police protection of, or ambulance service to, areas contiguous to such assembly areas;

(5) The conduct of such parade will not interfere with the movement of firefighting equipment en route to a fire;

(6) The conduct of the parade is not reasonably likely to cause injury to persons or property, to provoke disorderly conduct or create a disturbance;

(7) The parade is scheduled to move from its point of origin to its point of termination expeditiously and without unreasonable delays en route;

(8) The parade is not to be held for the sole purpose of advertising any product, goods or event, and is not designed to be held purely for private profit.

(Ord. No. 1968-7, § 5, 7-15-68)

Sec. 14-24. Notice of rejection of applicant.

The city council shall act upon the application for a parade permit within five (5) days after the filing thereof. If the council disapproves the application, the clerk shall mail to the applicant, within six (6) days after the date upon which the application was filed, a notice of the council's action, stating the reasons for denial of the permit.

(Ord. No. 1968-7, § 6, 7-15-68)

Sec. 14-25. Alternative permit.

The city council, in denying an application for a parade permit, shall be empowered to authorize the conduct of the parade on a date, at a time, or over a route different from that named by the applicant. An applicant desiring to accept an alternate permit shall, within three (3) days after notice of the action of the council, file a written notice of acceptance with the council. An alternate parade permit shall conform to the requirements of, and shall have the effect of, a parade permit under this article.

(Ord. No. 1968-7, § 7, 7-15-68)

Sec. 14-26. Notice to town and other officials.

Immediately upon the issuance of a parade permit, the city clerk shall send a copy thereof to the following:

(1) Chief of police,

(2) The fire chief,

(3) The general manager or responsible head of each public transportation utility,

the regular routes of whose vehicles will be affected by the route of the proposed parade.

(Ord. No. 1968-7, § 8, 7-15-68)

Sec. 14-27. Contents of permit.

Each parade permit shall state the following information:

(1) Starting time;

(2) Minimum speed;

(3) Maximum speed;

(4) Maximum interval of space to be maintained between the units of the parade;

(5) The portions of the streets to be traversed that may be occupied by the parade;

(6) The maximum length of the parade in miles or fractions thereof;

(7) Such other information as the city council shall find necessary to the enforcement of this article.

(Ord. No. 1968-7, § 9, 7-15-68)

Sec. 14-28. Duties of permittee.

(a) A permittee hereunder shall comply with all permit directions and conditions and with all applicable laws and ordinances.

(b) The parade chairman or other person heading or leading such activity shall carry the parade permit upon the person during the conduct of the parade.

(Ord. No. 1968-7, § 10, 7-15-68)

Sec. 14-29. Public conduct during parade.

(a) *Interference:* No person shall unreasonably hamper, obstruct, or impede, or interfere with any parade or parade assembly or with any person, vehicle or animal participating or used in a parade.

(b) *Driving through parades:* No driver of a vehicle shall drive between the vehicles or persons or animals comprising a parade when such vehicles or persons or animals are in motion and are conspicuously designated as a parade.

(c) *Parking on parade route:* The city council shall have the authority, when reasonably necessary, to prohibit or restrict the parking of vehicles along the highway or part thereof constituting a part of the route of a parade. The city council shall cause the chief of police to post signs to such effect, and it shall be unlawful for any person to park or leave unattended any vehicle in violation thereof.
(Ord. No. 1968-7, § 11, 7-15-68)

Sec. 14-30. Revocation of permit.

The city council shall have the authority to revoke a parade permit issued hereunder upon failure of the applicants or participants to comply with the standards for issuance and the provisions herein set forth and such authority may be delegated to the officer or such other person designated by the council to supervise the parade.
(Ord. No. 1968-7, § 12, 7-15-68)

DIVISION 2. MARDI GRAS PARADES*

Sec. 14-31. Permit.

All Mardi Gras mystic societies shall be shall be allowed to parade on the streets of the city after properly acquiring a parade permit from the Daphne city clerk's office. Permits shall be obtained at least thirty (30) days prior to the date of the parade. Liability insurance of at least two million dollars ($2,000,000.00) shall be obtained by the Mardi Gras mystic society and proof thereof must be submitted to the city clerk before the permit will be issued. The City of Daphne shall be named and covered by said insurance as a co-insured against any liability for personal injury, death and/or property damage. A copy thereof shall be attached to the permit and given to the City of Daphne finance director. A parade fee of one thousand seven hundred fifty dollars ($1,750.00) per parade shall be charged for each permit. The mayor, where good cause is shown therefor, shall have the authority to consider any application under the provisions of this division which is filed less than thirty (30) days before the date such parade is proposed to be conducted.
(Ord. No. 2003-17, § 1, 8-4-03)

Sec. 14-32. Coordinator.

Each Mardi Gras mystic society shall designate a parade coordinator who will maintain contact with the City of Daphne's designated coordinator of activities prior to, during and after each parade. It shall be the duty of the coordinator to instruct all floats or units not keeping pace or causing problems with the normal progression of the parade to pull out of the parade.
(Ord. No. 2003-17, § 2, 8-4-03)

Sec. 14-33. Parade route.

The Daphne Police Department, in coordination with the Daphne Public Works Director, shall establish the parade route and the time for the parade to commence and end. "No Parking on Parade Route" signs shall be placed along the parade route. Barricades shall be placed along the parade route as the Daphne Police Department deems necessary for public safety and protection.
(Ord. No. 2003-17, § 3, 8-4-03)

Sec. 14-34. Maskers.

All maskers shall be assigned a position on the float and shall not move about the float unless necessary for sanitary or emergency purposes. All maskers shall leave their floats within thirty (30) minutes after their float completes the parade route. It shall be unlawful for any masker or any person involved in the parade to present the public display of alcohol consumption during the

*Editor's note—Section 10 of Ord. No. 2003-17, adopted Aug. 4, 2003, repealed Ord. No. 2002-03, from which §§ 14-31—14-39 derived, in its entirety. Similar provisions were enacted by Ord. No. 2003-17 and included as §§ 14-31—14-39.1.

period of time beginning one (1) hour prior to the commencement of a Mardi Gras parade and ending one (1) hour after the end of such parade.
(Ord. No. 2003-17, § 4, 8-4-03)

Sec. 14-35. Floats.

(a) No float or other vehicle, self-propelled or otherwise, exceeding sixteen (16) feet in height above the center of any public street shall be permitted to be a part of any parade to be conducted within the city. All floats must have at least one (1) five-pound fire extinguisher for each float level. Each float must be accompanied by at least two (2) off-duty police officers, sheriff's deputies or other security personnel and shall be coordinated with and approved by the Daphne Chief of Police to walk along each side of the float to keep spectators away from the floats. The off-duty officers shall wear a reflector type safety vest. No alcohol, coolers, ice chests or containers containing alcohol shall be allowed on or in any float or vehicle involved in the parade. Each float shall have a sanitary device for collection and disposal of human waste.

(b) Each parading Mardi Gras mystic society shall submit to the city's designated coordinator a diagram of each float. The diagram shall contain and the name and location of each masker or person on that float and shall indicate the name of the float captain and co-captain. A copy of this diagram, not smaller than eleven (11) inches in height and eight and one-half (8½) inches in width, shall be affixed to the rear of the float and shall be clearly visible. Each float shall also have affixed thereto a sign on each side, not smaller than two (2) feet in height and two (2) feet in width, indicating the number of the float.

(c) Upon completion of the parade, each float shall be cleaned and all trash removed therefrom. All trash shall be placed in a proper trash receptacle. No float shall be allowed to leave the designated area of the Daphne Civic Center until all trash is removed and placed in a proper trash receptacle. Organizations failing to properly clean a float, the surrounding area or failing to place trash in a proper receptacle shall be fined five hundred dollars ($500.00). Each float shall constitute a separate offense.
(Ord. No. 2003-17, § 5, 8-4-03)

Sec. 14-36. Throws.

(a) Throws shall be limited to the following:

(1) *Trinkets.*

a. Doubloons (plastic, wood, or aluminum).

b. Beads (no glass beads allowed).

c. Plastic air inflated items such as frogs, hand grenades, billy clubs, cigars, toothbrushes, etc.

d. Soft stuffed toys.

e. Frisbees, coasters, and skimmer rings (8" or less).

f. Empty plastic cups.

g. Stemmed roses.

h. Clothing items approved by the Mardi Gras organization such as caps, garters, sun visors, etc.

i. Serpentine.

(2) *Candies/foodstuffs.*

a. Any type of soft candy wrapped in plastic or twist wrapper.

b. Bubble gum must be twist wrapped.

c. Peanut butter and taffy kisses.

d. Peanuts, popcorn, crackers and crackerjacks must be in bags.

(3) *Moon pies.* All moon pies made in compliance with the rules, regulations and standards applicable thereto established by the United States Food and Drug Administration, regardless of place of manufacture.

(b) The following throws are strictly prohibited:

(1) *Trinkets.*

a. Rubber balls or other hard type balls.

b. Hard or heavy bean bags.

c. Glass products of any type.

(2) *Moon pies.* Moon pies not made or manufactured in compliance with the rules, regulations and standards of the United States Food and Drug Administration, and so indicated on its packaging.

(3) *Candies/foodstuffs.*

a. Candies or foodstuffs in pasteboard boxes of any type.

b. Kool pops.

c. Candy apples.

d. Bubble gum that is not twist wrapped.

e. Candy canes or stick candies.

f. Frozen candy bars or any of the above listed allowable foodstuffs frozen.

(c) The handing of throws directly from the floats is strictly prohibited.
(Ord. No. 2003-17, § 6, 8-4-03; Ord. No. 2005-03, § 1(6), 1-19-05)

Sec. 14-37. Animals.

Any animal used in the parade must wear an appropriate fitting diaper or other similar devise or be followed by cleanup personnel who shall remove all waste and excrement from the streets during the course of the parade. Cleanup personnel shall follow immediately behind all animals or grouping thereof and shall remove all waste and excrement to prevent same from being spread about the street. Any animal not properly fitted with a diaper or followed by cleanup personnel shall not be allowed to participate in the parade. Any organization found to be in violation of this section shall be fined two hundred dollars ($200.00) for each violation. Each animal not properly fitted with a diaper or followed by cleanup personnel shall constitute a separate offense.
(Ord. No. 2003-17, § 7, 8-4-03)

Sec. 14-38. Public conduct during parades.

(a) During the period of time beginning one (1) hour prior to the commencement of the Mardi Gras parade and ending one (1) hour after the end of the Mardi Gras parade, it shall be unlawful for any person to run upon or across any portion of the right-of-way, including, but not limited to, the sidewalk and neutral ground thereon, of any street being used as the route of a Mardi Gras parade.

(b) It shall be unlawful for any person to unreasonably hamper, obstruct, impede or interfere with any parade or parade assembly or with any person, vehicle or animal participating in or used in a parade. No driver of a vehicle of any type shall drive between the vehicles, floats, or persons comprising a parade when such vehicles or persons are in motion and are conspicuously designated as a parade.

(c) It shall be unlawful for any person to carry or drink from any opened glass container in public at or near a Mardi Gras parade during the period of time beginning one (1) hour prior to the commencement of a Mardi Gras parade and ending one (1) hour after the end of such Mardi Gras parade.
(Ord. No. 2003-17, § 8, 8-4-03)

Sec. 14-39. Trash.

All trash shall be kept on the float until the end of the parade. The float shall be clean and free of debris prior to transporting said float to its place of storage, but in not event, less than one (1) hour after the end of the parade. Maskers shall not throw trash from the float before or during the parade. Each masker shall be fined twenty-five dollars ($25.00) for throwing trash from the float. Each instance shall constitute a separate offense.
(Ord. No. 2003-17, § 9, 8-4-03; Ord. No. 2005-03, § 1(9), 1-19-05)

Sec. 14-39.1. Fines and penalties.

(a) Any person found to be in violation of any provision of this division shall, unless otherwise provided herein, be subject to a fine of not less than one undred dollars ($100.00) and not more than five hundred dollars ($500.00) for each violation or for a term of incarceration not more than three (3) months or both at the discretion of the municipal judge.

(b) Should fines, levied pursuant to the provisions of section 14-35(c), 14-37 or 14-39, not be satisfied by either the offending individual(s) or the mystic society for which the permit is issued, then said mystic society shall be prohibited from receiving a parade permit for the subsequent year.
(Ord. No. 2003-17, § 11 8-4-03)

ARTICLE III. POLITICAL SIGN CONTROL

Sec. 14-40. Purpose.

The purpose of this article is to establish rules and regulations for sign control during political campaigns.
(Ord. No. 1989-04, § 1, 3-20-89)

Sec. 14-41. Enactment.

The city, in order to promote the health, safety, convenience, order, prosperity, and general welfare of the residents, to ensure equal opportunity to political candidates during the election process, and to maintain the beauty and natural attraction of the local environment, hereby ordains and enacts into law a sign control ordinance applicable to political campaigns. The requirements of this article shall be supplementary to any other ordinances, rules and regulations of the city and the state currently in force and effect.
(Ord. No. 1989-04, § 2, 3-20-89)

Sec. 14-42. Authority.

This article is hereby adopted pursuant to authority granted by Code of Ala. 1975, §§ 11-52-1—11-52-84.
(Ord. No. 1989-04, § 3, 3-20-89)

Sec. 14-43. Applicability.

Political signs are exempt from the permit requirements of the land use and development ordinance of the city, but are subject to the regulatory controls of this article.
(Ord. No. 1989-04, § 4, 3-20-89)

Sec. 14-44. Painting on or attaching to public property, or utility property.

Political signs shall not be erected, constructed, posted or painted on any public right-of-way, utility pole, tree, bench, fence, awning, or stand pipe; nor attached to any city, county, state or federal roadway marker, directional sign or informational sign.
(Ord. No. 1989-04, § 4.1, 3-20-89)

Sec. 14-45. Attaching to business or commercial establishment signs.

Political signs shall not be attached to any existing identification, announcement or pricing sign for any business or commercial establishment.
(Ord. No. 1989-04, § 4.2, 3-20-89)

Sec. 14-46. Impeding traffic.

Political signs shall not be located in such a manner as to materially impede the view of any street or highway intersection or to adversely affect ingress or egress from parking lots or driveways.
(Ord. No. 1989-04, § 4.3, 3-20-89)

Sec. 14-47. Districts in which authorized, nonilluminated.

Two (2) nonilluminated political signs per lot or parcel may be placed on private property in any zoning district in the city.
(Ord. No. 1989-04, § 4.4, 3-20-89)

Sec. 14-48. Maximum size in residential districts.

Political signs in residential districts shall not exceed four (4) square feet in area or four (4) feet in height.
(Ord. No. 1989-04, § 4.41, 3-20-89)

Sec. 14-49. Maximum size in business, commercial and industrial districts.

Political signs in business, commercial and industrial districts shall not exceed fifteen (15) square feet in area or eight (8) feet in height.
(Ord. No. 1989-04, § 4.42, 3-20-89)

Sec. 14-50. Attachment to vehicles.

Political signs not more than four (4) square feet in area may be attached to private or commercial vehicles used for transportation or business purposes.
(Ord. No. 1989-04, § 4.5, 3-20-89)

Sec. 14-51. Use of party balloons.

Customary size party balloons imprinted with a political ad may be tethered to any political sign, provided such balloons do not rise more than four (4) feet above the sign to which they are attached and that not more than two (2) such balloons are attached to any one (1) sign.
(Ord. No. 1989-04, § 4.6, 3-20-89)

Sec. 14-52. Period of placement.

Political signs may be placed only after a candidate qualifies to run for office and must be removed within five (5) days after the election.
(Ord. No. 1989-04, § 4.7, 3-20-89)

Sec. 14-53. Failure to remove—Fining of candidate.

If political signs are not removed within five (5) days after the election, candidates whose names appear on such signs shall be subject to a fine of twenty-five dollars ($25.00) per sign and each day such sign shall continue to be left after the election shall constitute a new offense.
(Ord. No. 1989-04, § 4.8, 3-20-89)

Sec. 14-54. Same—Removal by city.

Any sign found not to be in compliance with the requirements of this article shall be removed by city personnel and the candidate whose name appears on such sign shall be subject to a fine of twenty-five dollars ($25.00), for each nonconforming sign.
(Ord. No. 1989-04, § 4.9, 3-20-89)

Secs. 14-55—14-60. Reserved.

ARTICLE IV. ALARM SYSTEMS

DIVISION 1. BURGLAR ALARMS

Sec. 14-61. Definitions.

(a) *Alarm system.* Any mechanical or electrical device which is designed for the detection of a fire or an unauthorized entry into a building, structure or a facility, or when emergency assistance is needed, and which emits a sound or transmits a signal to, or activities a sensor in an agency of the city or an alarm company prompting an emergency response.

(b) *False alarm.* The activation of an alarm system through mechanical failure, malfunction, improper installation, or the negligence of the owner, user, custodian, or lessee of an alarm system or of its employees requiring an emergency response when, in fact, an emergency does not exist; or the intentional activation of an alarm system when the activator knows an emergency does not exist.

(c) *Act of God.* An unusual, extraordinary, sudden and unexpected manifestation of the process of nature which cannot be prevented by reasonable human care, skill, or foresight. Such manifestations include hurricanes, tornadoes, earthquakes or other conditions not within the control of humans.
(Ord. No. 1994-21, § 1, 12-19-94)

Sec. 14-62. Permit requirements.

All burglar alarm systems which require the emergency response of municipal services including, but not limited to, the city police department or the city fire department in operation within the city limits of the city, or hereinafter installed within the city limits of the city, shall be registered with the city police department within thirty (30) days after the enactment of this article, or alternatively, within thirty (30) days after date of installation, if installation occurs after the date of this article. Registration shall include the following information:

(1) The name, home address, and phone number, and business address and phone number of the owner or occupant of the premises upon which such system is installed.

(2) The name, address, and phone number of at least one other person to contact in the event the person designated in (1) above is unavailable.

(3) The name, address, and phone number of the business, firm, or individual who installed alarm system.

(4) Any other reasonable information required by the chief of police, who is hereby authorized to provide forms for registration as required herein.

(Ord. No. 1994-21, § 2, 12-19-94)

Sec. 14-63. Permit.

Upon registration, as set out in section 14-62 and approval thereof by the chief of police or his designee, the city will issue a permit to said applicant at no charge.

(Ord. No. 1994-21, § 3, 12-19-94)

Sec. 14-64. Maintenance required.

All burglar alarm systems installed upon real property within the city limits of the city shall be maintained in proper working order by the person in possession of such real property. It shall be unlawful for any person in possession of real property to have a burglar alarm system activated upon such premises which causes a false alarm. For the purpose of this section, a false alarm shall not occur if solely caused by an act of God.

(Ord. No. 1994-21, § 4, 12-19-94)

Sec. 14-65. Revocation of permit.

Permits are a privilege and not a right of the permittee. Failure of the permittee to properly maintain the alarm system so as not to cause false alarms will necessitate the revocation or cancellation of the permit and discontinuance of service by the city upon due notice of the permittee.

(Ord. No. 1994-21, § 5, 12-19-94)

Sec. 14-66. Testing.

Any installation or testing of equipment that may possibly activate an emergency response from the city must be approved in advance by the chief of police or his designee, or otherwise it shall constitute a false alarm.

(Ord. No. 1994-21, § 6, 12-19-94)

Sec. 14-67. Deactivation of system.

All alarm systems installed within the municipality shall possess an automatic shut-off feature that disables the audible alarm after a ten-minute period, or the permittee must deactivate or cause to deactivate the audible system within ten (10) minutes after its activation. The permittee shall conspicuously place on the premises where the alarm system is situated a notice or system for notifying the person or persons to call when an alarm system has been activated.

(Ord. No. 1994-21, § 7, 12-19-94)

Sec. 14-68. Penalties.

(a) Upon the first and second violation of this article, the owner or person in possession of such property shall be issued a warning citation requiring the owner or occupant of the premises to take corrective measures. Upon further violation of this article concerning the same premises within one (1) year after the second false alarm, the owner or occupant shall be subject to a civil citation and a fee in an amount as follows:

(1)	Third false alarm violation .	$50.00
(2)	Fourth false alarm violation	100.00
(3)	Fifth and subsequent false alarm violation (each violation)	200.00

(b) Any violation in excess of the fifth false alarm shall give the city the right to revoke the permit and to terminate any response to alarm activation, as set out in section 14-6 above.

(Ord. No. 1994-21, § 8, 12-19-94)

DIVISION 2. FIRE/MEDICAL ALARMS

Sec. 14-69. Purpose.

(a) *Purpose.* The purpose of this division is to encourage owners and fire and/or medical alarm businesses to properly use and maintain the operational effectiveness of fire and/or medical alarm systems in order to improve the reliability of fire or medical alarm systems to reduce or eliminate false fire and/or medical alarms or nuisance fire and/or medical alarms.

(b) *Scope.* This division governs fire or medical alarm systems intended to summon fire department personnel and requires registration, assessment of fines for excessive false fire and/or med-

ical alarms or nuisance fire and/or medical alarms, provides procedures for repeat offenders, provides for the severability of the parts hereof if declared invalid and provides an effective date.
(Ord. No. 2003-03, § I, 1-6-03)

Sec. 14-69.1. Definitions.

As used in this division, the following words and terms shall have the following meanings:

Adopted code(s). The term "adopted fire code(s)" shall mean code adopted by the City of Daphne, Alabama.

Alarm initiating device. The term "alarm indicating device" shall mean a device that is designed to respond either manually or automatically to smoke, fire, activation of a fire suppression system or activation of a medical alert system.

False fire or medical alarm. The term "false fire or medical alarm" shall mean the activation of any fire or medical alarm system which results in a response by the fire department and which is caused by the negligence or intentional misuse of the fire or medical alarm system by the owner, its employees, agents or any other activation of a fire or medical alarm system not caused by heat, smoke, fire or medical emergency, exclusive of a nuisance fire or medical alarm.

Fine. The term "fine" shall mean the assessment of a monetary charge payable to the city, pursuant to this division, to defray the expenses of responding to a false fire and/or medical alarm or nuisance fire and/or medical alarm.

Fire alarm business. The term "fire alarm business" shall mean any individual, partnership, corporation or other entity that is appropriately licensed in the state/jurisdiction and installs, causes to be installed, permits to be installed, alters, maintains, repairs, replaces or services (including runner services) any fire or medical alarm system.

Fire alarm system. The term "fire alarm system" shall mean a system or portion of a combination system consisting of components and circuits arranged to monitor and/or exterior annunciate the status of a fire alarm or supervisory signal-initiating devices and to initiate the appropriate response to those signals.

Fire official. The term "fire official" shall mean the fire inspector, fire chief or a representative designated by the fire chief.

Fire watch. The term "fire watch" shall mean the assignment of a person or persons, approved by the fire official, to an area for the express purpose of notifying the fire department and/or building occupants of an emergency, preventing a fire from occurring, extinguishing small fires or protecting the public from fire or life safety dangers. A fire watch may involve at least some special action beyond normal staffing, such as assigning an additional security guard(s) to walk the premises, who has been specially trained in fire prevention and in the use of fire extinguishers, in notifying the fire department, in sounding the fire alarm system located on the premises, and in understanding the particular fire safety situation. During a fire watch, the assigned person or persons shall be solely responsible for and shall serve no other function than is necessary for conducting a fire watch.

Medical alarm business. The term "medical alarm business" shall mean any individual, partnership, corporation or other entity that is appropriately licensed in the state/jurisdiction and installs, causes to be installed, permits to be installed, alters, maintains, repairs, replaces or services (including runner services) any medical alarm system.

Medical alarm system. The term "medical alarm system" shall mean a system or portion of a combination system consisting of components and circuits arranged to monitor and/or exterior annunciate the status of a medical alarm or supervisory signal-initiating devices and to initiate the appropriate response to those signals.

Monitored system. The term "monitored system" shall mean the process by which a fire or medical alarm business receives signals from a fire or medical alarm system and notifies emergency forces.

Nuisance fire alarm. The term "nuisance fire alarm" shall mean the activation of any fire alarm

system, which results in a response by the fire department, caused by mechanical failure, malfunction, improper installation, lack of proper maintenance or any other response for which the fire department personnel are unable to determine the apparent cause of the alarm activation.

Nuisance medical alarm. The term "nuisance medical alarm" shall mean the activation of any medical alarm system, which results in a response by the fire department, caused by mechanical failure, malfunction, improper installation, lack of proper maintenance or any other response for which the fire department personnel are unable to determine the apparent cause of the alarm activation.

Owner. The term "owner" shall mean any person who owns the premises in which a fire or medical alarm system is installed or the person or persons who lease, operate, occupy or manage the premises.

Premises. The term "premises" shall mean any building, structure or combination of buildings and structures which serve as dwelling units such as single-family, multifamily or any other area within a building, structure or combination thereof which is used for any purpose, wherein a fire or medical alarm system is installed.

Qualified fire or medical alarm technician. The term "qualified fire or medical alarm technician" shall mean any person who inspects, installs, repairs or performs maintenance on fire or medical alarm systems. this person shall be manufacturer trained and certified or National Institute for Certifying Engineering Technology (NICET) certified.

Report of service/repair. The term "report of service/repair" shall mean appropriate documentation in a format acceptable to the fire official that verifies proper repairs or maintenance have been performed by both the fire or medical alarm business and the owner.

Runner service. The term "runner service" shall mean the service provided by a runner at the protected premises, including resetting and silencing of all equipment transmitting fire or medical alarms or supervisory signals to an off-premises location.

Serve. The term "serve" shall mean hand-delivery of written notification by a representative of the jurisdiction to the owner or authorized representative who responded to the premises. In the event the Owner or authorized representative fails to respond to the premises within one (1) hour. Serve shall mean placing the form or other matter in the United States mail, postage prepaid, addressed to the owner or authorized representative.

Violation notice. The term "violation notice" shall mean a document issued by the fire official indicating that the activation was deemed to be the result of a false fire or medical alarm or nuisance fire or medical alarm.
(Ord. No. 2003-03, § II, 1-6-03)

Sec. 14-69.2. Registration of fire or medical alarm system, notification.

Every fire and/or medical alarm business shall notify the fire official of the existence of a fire and/or medical alarm system prior to the fire and/or medical alarm system being put into operation. It shall be the responsibility of the installing fire and/or medical alarm business to provide the owner with notice of the existence of this division and a copy of the fire and/or medical alarm system operation instructions in accordance with adopted codes, and the manufacturer's instructions.
(Ord. No. 2003-03, § III, 1-6-03)

Sec. 14-69.3. System certification.

All newly installed or recertified commercial fire and/or medical alarm systems shall be reviewed by the fire official. the certification, issued by the fire and/or medical alarm business, shall indicate that the fire and/or medical alarm system is in compliance with applicable state and local codes. The certification shall be signed by a qualified fire or medical alarm technician.
(Ord. No. 2003-03, § IV, 1-6-03)

Sec. 14-69.4. Inspection, testing and maintenance.

(a) *Inspection.* The owner shall ensure that all fire and/or medical alarm systems are inspected and tested at least once per year.

(b) *Maintenance.* The owner shall ensure that all fire and/or medical alarm systems are periodically maintained per manufacturer specifications and adopted codes.
(Ord. No. 2003-03, § V, 1-6-03)

Sec. 14-69.5. Fire and/or medical alarm activation; response.

(a) *Responsibility.* The owner shall be responsible for the activation of a fire and/or medical alarm system.

(b) *Response.* A response to the activation of a fire and/or medical alarm system shall result when any officer or member of the fire department is dispatched to the premises where the fire and/or medical alarm system has been activated.

(1) At the time of response, the fire official shall notify the owner, lessee, operator, manager, person in possession or other person as deemed appropriate by the fire official of the activation of the fire and/or medical alarm system and shall require such person to respond to the premises.

(2) In the event the fire and/or medical alarm system is a monitored system, it is the responsibility of the company monitoring the fire and/or medical alarm system to notify any person identified in the registration at the request of the fire official.

(3) In the event the household fire and/or medical alarm system is a monitored system, it is the responsibility of the fire and/or medical alarm business to offer the owner the option to verify the fire and/or medical alarm signal before dispatch, as allowed by adopted code.

(4) In the event the household fire and/or medical alarm system is a monitored system, it is the responsibility of the fire and/or medical alarm business to forward cancellation of a fire and/or medical alarm signal to the fire department.
(Ord. No. 2003-03, § VI, 1-6-03)

Sec. 14-69.6. False fire and/or medical alarms.

In the event the activation of a fire and/or medical alarm system is deemed by the fire official to be a false fire and/or medical alarm, the owner shall be served with a violation notice by an officer or member of the fire department, indicating that the activation was a false fire and/or medical alarm.

(1) No fine shall be assessed for the first false fire or medical alarm responded to by the fire department within a one-year period. Thereafter, the owner shall pay a fine for false fire or medical alarms responded to by the fire department at the same premises within a one-year period, except when the fire or medical alarm business is responsible for the false fire or medical alarm.

(2) The fire or medical alarm business shall be assessed a fine of five hundred dollars ($500.00) if a fire official determines that a false fire or medical alarm was directly caused by an onsite employee or representative of the fire or medical alarm business. In this event, no false fire or medical alarm shall be counted against the owner.

(3) False fire or medical alarms activated by any components connected to the fire or medical alarm system shall be included in computing the total number of false fire or medical alarms for purposes of this subsection.

(4) The activation of a fire or medical alarm system will not be considered a false fire or medical alarm if the alarm is activated due to malicious causes beyond the control of the owner.

(5) The following fines shall be assessed for false fire or medical alarms:

a. No fine shall be imposed for the first false fire or medical alarm within a one-year period.

b. A fine of fifty dollars ($50.00) shall be imposed for the second false fire or medical alarm within a one-year period.

c. A fine of one hundred dollars ($100.00) shall be imposed for the third false fire or medical alarm within a one-year period.

d. A fine of two hundred dollars ($200.00) shall be imposed for the fourth false fire or medical alarm within a one-year period.

e. A fine of five hundred dollars ($500.00) shall be imposed for the fifth and subsequent false fire or medical alarms within a one-year period.

(Ord. No. 2003-03, § VII, 1-6-03)

Sec. 14-69.7. Nuisance fire and/or medical alarms.

In the event the activation of a fire and/or medical alarm system is deemed by the fire official to be a nuisance fire and/or medical alarm, the owner shall be served with a violation notice by an officer or member of the fire department, indicating that the activation was deemed to be the result of a nuisance fire and/or medical alarm.

(1) This shall require the owner to return a completed report of service/repair within fifteen (15) days of receipt of the violation notice to verify, to the reasonable satisfaction of the fire official, that:

a. The fire and/or medical alarm system has actually been examined by a qualified fire and/or medical alarm technician; and

b. A bona fide attempt has been made to identify and correct any defect of design, installation or operation of the fire and/or medical alarm system which was identifiable as the cause of the nuisance fire and/or medical alarm.

(2) Failure to return a report of service/repair within said fifteen-day period, which is reasonably satisfactory to the fire official, shall result in assessment against the owner of a fine of five hundred dollars ($500.00).

(3) The following fines shall be assessed for nuisance and/or medical fire alarms:

a. No fine shall be imposed for the first two (2) nuisance fire or medical alarms within a one-year period.

b. A fine of fifty dollars ($50.00) shall be imposed for the third nuisance fire or medical alarm within a one-year period.

c. A fine of one hundred dollars ($100.00) shall be imposed for the fourth nuisance fire or medical alarm within a one-year period.

d. A fine of two hundred dollars ($200.00) shall be imposed for the fifth nuisance fire or medical alarm within a one-year period.

e. A fine of five hundred dollars ($500.00) shall be imposed for the sixth and subsequent fire or medical alarms within a one-year period.

(Ord. No. 2003-03, § VIII, 1-6-03)

Sec. 14-69.8. Service fees.

(a) *Newly installed systems.* The provisions of this section shall not apply to any newly installed fire and/or medical alarm system for a period of forty-five (45) days from the date of installation, but shall apply from and after the expiration of the initial forty-five-day period following installation.

(b) *Late fee.* Should any fine assessed pursuant to this division remain unpaid in excess of ninety (90) days from the date fine is billed, a late fee in the amount of twenty-five dollars ($25.00) shall be assessed and shall be payable by the owner of the premises in addition to the original fine.
(Ord. No. 2003-03, § IX, 1-6-03)

Sec. 14-69.9. Remedies and penalties.

(a) *Notice to disconnect or deactivate.* The fire official has the authority to order that a fire and/or medical alarm system be disconnected or deactivated due to repetitive false fire and/or medical alarm or nuisance fire and/or medical alarm by providing written notice to the owner. The written notice to disconnect or deactivate

shall be mailed by certified mail, return receipt requested to the owner and shall specify the date on which the owner shall be required to disconnect or deactivate the fire and/or medical alarm system. This date shall be at least fifteen (15) days after the notice is mailed to the owner. The owner may appeal the order of the fire official.

(b) *Fire watch.* The fire official has the authority to order a fire watch in accordance with adopted codes, due to repetitive false fire alarms and/or nuisance fire alarms, until corrective action is taken, or to revoke the occupancy certificate for the premises by written notice to the owner of the premises, for any of the following reasons:

(1) Failure to meet all requirements or pay the fines provided for in this division within fifteen (15) days after the notice is mailed to the owner;

(2) Failure of the owner to provide a written report of service/repair required by this division;

(3) A fourth false fire alarm or nuisance fire alarm at a premises for which a fine is charged pursuant to this division as a result of the failure of the owner to take corrective action to eliminate the cause of the false fire alarm or nuisance fire alarm; or

(4) The failure of a person notified pursuant to section 14-69.5(b)(1) of this division to appear within one (1) hour after being notified to respond, if such failure to timely response occurs four or more times within a calendar year.

(c) *Affected buildings.* Each building affected because the signal from the fire alarm system has been disconnected or deactivated shall be required to establish a fire watch until the fire alarm system has been returned to service. Duties of the fire watch may include notifying the fire department and building occupants of an emergency, preventing a fire from occurring, or extinguishing small fires.

(d) *Cost.* The owner is responsible for paying all costs associated with establishing a fire watch.

(e) *Temporary suspension.* The fire official has the authority to temporarily suspend the occupancy certificate of the premises until all outstanding repairs are made on the fire alarm system or if the fire watch is not maintained to the satisfaction of the fire official.

(f) *Silence of alarm.* The fire official shall have the authority to direct the owner of the premises to silence an activated fire and/or medical alarm system, have corrective action taken and thereafter reset it.

(g) *Falsifying reports.* Anyone convicted of falsifying reports as required under this division shall be guilty of an offense against the City of Daphne, Alabama, and shall be subject to a fine of five hundred dollars ($500.00).
(Ord. No. 2003-03, § X, 1-6-03)

Sec. 14-69.10. Appeals.

(a) *Appeal of fines.* An owner or fire and/or medical alarm business may appeal the assessment of fines to the board of adjustment and appeals. An appeal fee of twenty-five dollars ($25.00) will accompany the appeal. Appeal fees will be returned to the owner or fire and/or medical alarm business if the appeal is upheld. The filing of an appeal with the board of adjustment and appeals stays the assessment of the fine until the board of adjustment and appeals makes a final decision. The owner or fire and/or medical alarm business shall file a written appeal to the board of adjustment and appeals by setting forth the reasons for the appeal within fifteen (15) days after notice is mailed.

(b) *Appeal of notice to disconnect or deactivate.* An owner to whom a notice to disconnect or deactivate a fire and/or medical alarm system was mailed, pursuant to section 14-69.9(a), shall be entitled to appeal the order to the board of adjustment and appeals. An appeal must be in writing, stating the reasons why the order to disconnect or deactivate should be withdrawn. The appeals shall be made within fifteen (15) days after notice to disconnect is mailed to the owner. The board of adjustment and appeals shall review the facts and circumstances and shall determine whether the owner has shown good cause why the order should be withdrawn. If the board of adjustment

and appeals affirms the order to disconnect or deactivate a fire and/or medical alarm system, the owner shall have fifteen (15) days after the written decision is mailed to the owner to comply with the order. The appeal of an order to disconnect or deactivate shall suspend the effective date of the order until the appeal has been acted upon by the board of adjustment and appeals.

(c) *Responsibility for fines and reimbursement of cost.* In the event the appeal is not upheld, the owner or fire and/or medical alarm business shall also be responsible for any fee assessed to reimburse the City of Daphne for any legal fees or costs incurred by the fire official in enforcement of this division.
(Ord. No. 2003-03, § XI, 1-6-03)

Sec. 14-69.11. Reconnection of fire and/or medical alarm system.

(a) *Reactivation.* A fire and/or medical alarm system may be reactivated upon a finding by the fire official that the owner of the premises has taken corrective action to remedy the cause of the false fire and/or medical alarms or nuisance fire and/or medical alarms at the premises.

(b) *Burden of showing corrective measures.* In making a request for such a reactivation, the owner shall have the burden of showing what corrective action has been taken.

(c) *Right to inspect.* The fire official shall have the right to inspect the fire and/or medical alarm system and test it prior to approving a new order to reconnect or reactivate the fire and/or medical alarm system.

(d) *Reconnection fee.* A reconnection fee of twenty-five dollars ($25.00) shall be assessed to the owner before any reconnection of a fire and/or medical alarm system may be made.

(e) *Approval of order to reconnect.* The fire official shall not approve a new order to reconnect or reactivate if the owner has failed to pay any fee pursuant to this division.
(Ord. No. 2003-03, § XII, 1-6-03)

Sec. 14-69.12. Confidentiality.

Any information supplied to the fire official shall be held in confidence by all employees or representatives of the fire official and by any third-party administrator or employees of a third-party administrator with access to such information.
(Ord. No. 2003-03, § XIII, 1-6-03)

Sec. 14-69.13. Government immunity.

Registration of a fire and/or medical alarm system is not intended to, nor will it, create a contract, duty or obligation, either expressed or implied, of response. Any and all liability and consequential damage resulting from the failure to respond to a notification is hereby disclaimed and governmental immunity as provided by law is retained. When registering a fire and/or medical alarm system, the owner acknowledges that fire department response may be based on factors such as: availability of fire department units, priority of calls, weather conditions, traffic conditions, emergency conditions, and staffing levels. The city, its officers, employees and agents shall not assume any duty or responsibility for the installation, maintenance, operation, repair or effectiveness of any privately owned fire and/or medical alarm system, those duties or responsibilities being solely those of the owner of the premises.
(Ord. No. 2003-03, § XIV, 1-6-03)

Sec. 14-70. Reserved.

ARTICLE V. FAIR HOUSING

Sec. 14-71. Policy of city.

It is the policy of the city to implement programs to ensure equal opportunity in housing for all persons regardless of race, color, religion, national origin, sex, handicap or familial status.
(Ord. No. 1997-09, § 1, 5-22-97)

Sec. 14-72. Filing complaint.

Within the available resources of the city, all persons who feel that they have been discriminated against in any housing or real estate pur-

chase, conveyance, or transaction because of race, color, religion, national origin, sex, handicap or familial status, will be assisted to seek equity under federal and state laws by filing a complaint with the Atlanta Office of Regional Fair Housing and Equal Opportunity or the US Department of Housing and Urban Development.
(Ord. No. 1997-09, § 2, 5-22-97)

Sec. 14-73. Publicizing of policy.

The city shall publicize this article and through this publicity shall cause owners of real estate, builders, developers, and mortgage lenders to become aware of their respective responsibilities and rights under Federal Fair Housing Legislation, and all other applicable state or local laws or ordinances.
(Ord. No. 1997-09, § 3, 5-22-97)

Sec. 14-74. Purpose.

The purpose of this article is, at a minimum, to provide for (a) the publication of this policy and other applicable fair housing information through local media, community organizations, and businesses engaged in the sale, lease, financing or development of housing; and (b) the distribution of posters, flyers, and any other means which will bring to the attention of those affected the knowledge of their respective responsibilities and rights concerning equal opportunity in housing.
(Ord. No. 1997-09, § 4, 5-22-97)

Secs. 14-75—14-80. Reserved.

ARTICLE VI. DAPHNE CIVIC CENTER*

Sec. 14-81. Definitions.

For the purpose of this article 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.

Lessor: The City of Daphne and Daphne Civic Center.

Lessee: Signer of City of Daphne Civic Center Lease Agreement.

Facility: Daphne Civic Center.

Event: The purpose for which facility is leased.
(Ord. No. 2011-08, § I, 2-7-11)

Sec. 14-82. Rules and regulations—General.

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 twenty-one (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) 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.

(5) City personnel will inspect the facility after each event. If damage is found, les-

*Editor's note—Ord. No. 2011-08, §§ I—XXX, adopted Feb. 7, 2011, repealed Art. VI, §§ 14-81—14-110, and enacted a new Art. VI to read as set out herein. Former Art. VI pertained to similar subject matter and derived from Ord. No. 2004-20, §§ I—XXX, adopted June 7, 2004.

Cross reference—Rules for fee waiver requests by schools and city departments, § 15-8.

see 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 fourteen (14) 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 fourteen (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 five thousand dollars ($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 five thousand dollars ($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 article.

(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 per-

sonal 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 there from 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 article.

(Ord. No. 2011-08, § II, 2-7-11)

Sec. 14-83. 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.
(Ord. No. 2011-08, § III, 2-7-11)

Sec. 14-84. 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.
(Ord. No. 2011-08, § IV, 2-7-11)

Sec. 14-85. Concession.

The lessor relinquishes all food and beverage concession rights to the lessee. All city, county, and state taxes and fees apply.
(Ord. No. 2011-08, § V, 2-7-11)

Sec. 14-86. 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 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 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.
(Ord. No. 2011-08, § VI, 2-7-11)

Sec. 14-87. 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.
(Ord. No. 2011-08, § VII, 2-7-11)

Sec. 14-88. 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 lessees 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 one million dollars ($1,000,000.00) 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 fourteen (14) days prior to event.
(Ord. No. 2011-08, § VIII, 2-7-11)

Sec. 14-89. 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.
(Ord. No. 2011-08, § IX, 2-7-11)

Sec. 14-90. 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.
(Ord. No. 2011-08, § X, 2-7-11)

Sec. 14-91. 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 five (5) percent 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. to 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 twenty (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.
(Ord. No. 2011-08, § XI, 2-7-11)

Sec. 14-92. 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.
(Ord. No. 2011-08, § XII, 2-7-11)

Sec. 14-93. 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.
(Ord. No. 2011-08, § XIII, 2-7-11)

Sec. 14-94. 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.
(Ord. No. 2011-08, § XIV, 2-7-11)

Sec. 14-95. 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.
(Ord. No. 2011-08, § XV, 2-7-11)

Sec. 14-96. 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.
(Ord. No. 2011-08, § XVI, 2-7-11)

Sec. 14-97. 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: Twenty dollars ($20.00) per hour for each hour of usage with a minimum of four (4) hours required and fifty dollars ($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 article's fee schedule.

(c) Lease rates for the Daphne Civic Center are based on the prevailing rates as set forth in this article. 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 three hundred-dollar ($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 three hundred dollars ($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 five hundred plus (500+) attendees will be required to pay an additional cleaning fee of three hundred dollars ($300.00).
(Ord. No. 2011-08, § XVII, 2-7-11)

Sec. 14-98. Cancellations.

Cancellations must be in writing, dated and signed by the lessee. Reimbursements for cancelled events will be refunded as follows: Seventy-five (75) percent refund for cancellations received at least nine (9) months prior to the day of start of event; fifty (50) percent refund for cancellations received at least six (6) months prior to the day of start of event; no refunds will be made for cancellations received under six (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 one hundred (100) percent refund will be issued. Refunds will be issued by check.
(Ord. No. 2011-08, § XVIII, 2-7-11)

Sec. 14-99. Cleaning fees.

Cleaning fees are mandatory and are based on the prevailing rates as prescribed in this article. Any event having five hundred (500) or more attendees will be required to pay an additional cleaning fee of three hundred dollars ($300.00).
(Ord. No. 2011-08, § XIV, 2-7-11)

Sec. 14-100. 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 three hundred dollars ($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 one hundred thousand dollars ($100,000.00) per off-duty officer.
(Ord. No. 2011-08, § XX, 2-7-11)

Sec. 14-101. 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 (1) of the following forms:

(1) 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 twenty-one (21) years of age or older and must possess any and all then applicable licensing pursuant to local, state, and federal law.

(2) 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 one million dollars ($1,000,000.00) must be purchased. All insurance certificates and proof of requisite licensing must be on file at least fourteen (14) days prior to the event.

(f) Alcohol shall not be served or sold to anyone under twenty-one (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.
(Ord. No. 2011-08, § XXI, 2-7-11)

Sec. 14-102. Smoking.

All City of Daphne buildings are smoke free twenty (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 cleaning fine shall be imposed on the lessee if smoking has occurred in the Daphne Civic Center.
(Ord. No. 2011-08, § XXII, 2-7-11)

Sec. 14-103. 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.
(Ord. No. 2011-08, § XXIII, 2-7-11)

Sec. 14-104. Building access.

The city will provide reasonable access according to the Americans with Disabilities Act.
(Ord. No. 2011-08, § XXIV, 2-7-11)

Sec. 14-105. 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.
(Ord. No. 2011-08, § XXV, 2-7-11)

Sec. 14-106. 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 three million dollars ($3,000,000.00). 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 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 one million dollars ($1,000,000.00) 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 (1) week prior of the event.

(9) House lights are not allowed to go dark. A minimum of twenty (20) percent 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.

(Ord. No. 2011-08, § XXVI, 2-7-11)

Sec. 14-107. 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.

(Ord. No. 2011-08, § XXVII, 2-7-11)

Sec. 14-108. 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 and 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.

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. and 5:00 p.m. Any usage over four (4) hours and any hours used after 5:00 p.m. will be charged an additional twenty dollars ($20.00) per hour. If requested, the City of Daphne, Daphne Civic Center shall be listed as a sponsor of the event. Any Monday, Tues-

day, 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 and 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 twenty-dollar 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 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 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.*

Current City of Daphne employees will be entitled to a twenty (20) percent 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 article 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.

(Ord. No. 2011-08, § XXVIII, 2-7-11)

Sec. 14-109. 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 (2) 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 seven (7) days after the second year event for the following two (2) years, along with the fees for the next two

(2) years. Future bookings will also be secured using the same guidelines. All bookings are on a first come first serve basis.
(Ord. No. 2011-08, § XXIX, 2-7-11)

Sec. 14-110. Penalty.

(a) Any person found guilty of violating any provision of this article 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 article shall also be subject to enforcement by the issuance of a summons and complaint.
(Ord. No. 2011-08, § XXX, 2-7-11)

Sec. 14-111. Use of facilities in emergency situations.

When a request is made for use of the Daphne Civic Center and Bayfront Park in emergency situations and for the public good, the mayor shall review the request from the director or others for fee waiver determination. The mayor shall make such determination whether the fee should be waived and shall complete and return to the Daphne Civic director a completed "Special Fee Waiver" form prior to the function or at the first opportunity. The director shall include the "Special Fee Waiver" form in the next city council meeting packet after receiving said form from the mayor for council review. If the mayor is not available, the president of the city council shall have the authority to approve or deny said request.
(Ord. No. 2004-49, § 1, 12-6-04)

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Chapter 15

PARKS AND RECREATION

Sec. 15-1.	Parking in May Day Park.
Sec. 15-2.	Municipal pier—Vehicles thereon.
Sec. 15-3.	Same—Jumping or diving therefrom.
Sec. 15-4.	Same—Alcoholic beverages thereon.
Sec. 15-5.	Same—Littering, etc.
Sec. 15-6.	Bayfront Park and Richard Scardamalia Pavilion.
Sec. 15-7.	Bayfront Park rules and regulations.
Sec. 15-8.	Bayfront Park and Daphne Civic Center—Rules for fee waiver requests by schools and city departments.
Sec. 15-9.	Reserved.
Sec. 15-10.	City park rules and regulations.
Sec. 15-11.	Daphne Dog Park rules and regulations.

greater) will be added to the rental rates. An exemption to this requirement is provided for nonprofit 501(c)3 organizations. Proof of this status must be provided.

(7) Any other requests for waived fees must be approved by the city council. The city, its departments, and city-sponsored functions shall be exempt from rental fees.

(8) The city shall apply rental proceeds to the operating requirements of the facility.

(d) *Cleaning.*

(1) Renter shall be responsible for cleaning the facility after the event. This includes but is not limited to:

a. The removal of all debris, including cups, plates, napkins, cans, and decorations from tables, kitchen, and grounds.

b. The removal of cigarette butts.

c. The floor must be swept clean of debris.

d. All pots, pans, trays, plates, saucers, cups, serving dishes, glasses, and silverware must be washed before and after use.

e. All utensils must be cleaned and properly stored.

f. Tables, stoves, ovens, sinks, etc. must be cleaned.

g. All garbage and debris must be removed from the building and placed in the outside trash receptacle.

(2) The city will provide inside garbage cans, trash bags, rest room supplies, and outside trash receptacle.

(3) A fee of fifty dollars ($50.00) will be assessed after inspection of the facility if utensils and equipment have not been properly cleaned and stored.

(4) All decorations must be removed from the building after an event. Decorations left in the facility will become the property of the city. The city reserves the right to dispose of said decorations.

(e) *Security.* Renter shall provide security if the city's police department determines that security is necessary for any event. Security must be approved by the police department no later than (5) days prior to an event.

(f) *Alcohol.* Consumption of alcohol will be allowed inside the facility only during the time of function. Consumption of alcohol is not allowed in the parking lot or on the grounds of the facility. The city is not liable for accidents, deaths, or injuries that may occur as a result of the consumption of alcohol. No alcohol will be "sold" on the grounds of the Bayfront Park or in the Richard Scardamalia Pavilion.

(g) *Smoking.* All city buildings are smoke free. There will be no smoking in the Richard Scardamalia Pavilion.

(h) *Building access.* The city will provide reasonable access according to the Americans with Disabilities Act.

(i) *Theft.* The city is not responsible for theft of property on the grounds of the Bayfront Park, in automobiles, in the facility of the Richard Scardamalia Pavilion, or any other structure on the property.

(j) *Restrictions on property use.* Renters shall adhere to all signs posted at location. 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 facilities.

(k) *Fines.* Any person or group which is guilty of violating the provisions of this section or violations of any rules and regulations hereunder shall be subject to a fine not to exceed five hundred dollars ($500.00), or may be imprisoned for a period not to exceed six (6) months.
(Ord. No. 1997-27, §§ I—XI, 12-22-97; Ord. No. 1998-32, I, II, 10-19-98)

Sec. 15-7. Bayfront Park rules and regulations.

(1) *Definitions.* For the purpose of this section 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.

Event: The purpose for which facility is leased.

Facility: Bayfront Park Pavilion.

Lessee: Signer of City of Bayfront Park Pavilion Lease Agreement.

Lessor: The City of Daphne and Bayfront Park Pavilion.

(2) *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 serve basis.
2. The lease agreement must be executed by persons twenty-one (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. 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.
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 setups.
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 fourteen (14) days prior to the event. Exceptions may be made for state, county, and those approved by the director.

Sec. 15-1. Parking in May Day Park.

(a) *Definitions:* As used in this section, the following terms shall have the respective meanings ascribed to them:

Motor vehicle: Any vehicle of any type, powered or partly powered by an internal combustion engine, including automobiles, trucks, motorcycles, mopeds, buses, etc.

Parking: The stopping or standing of a motor vehicle and/or trailer for any length of time exceeding that necessary only to launch or retrieve a boat.

Trailer: Any device used for the transport of boats by a motor vehicle.

(b) *Prohibition:* It shall be unlawful for any person to park a motor vehicle or trailer in that portion of May Day Park located adjacent to the eastern shore of Mobile Bay below the bluff line in the boat launch and pier area. It shall not be unlawful to stop a motor vehicle or motor vehicle and trailer in the boat launch area of May Day Park solely for the purpose of launching and retrieving boats. Other parking is prohibited to reserve the space available and beach for the use of the general public.
(Ord. No. 1980-1, §§ 1, 2, 7-7-80)

Cross reference—Parking regulations generally, § 19-40 et seq.

Sec. 15-2. Municipal pier—Vehicles thereon.

It shall be unlawful to enter, roll or drive any vehicle, other than wheelchairs and baby carriages, on the municipal pier adjoining May Day Park in the city.
(Ord. No. 1982-1, § 1, 1-4-82)

Sec. 15-3. Same—Jumping or diving therefrom.

It shall be unlawful for any person to jump or dive from the municipal pier adjoining May Day Park in the city.
(Ord. No. 1982-1, § 2, 1-4-82)

Sec. 15-4. Same—Alcoholic beverages thereon.

It shall be unlawful to bring onto or consume alcoholic beverages upon the municipal pier adjoining May Day Park in the city.
(Ord. No. 1982-1, § 3, 1-4-82)

Sec. 15-5. Same—Littering, etc.

It shall be unlawful to litter, leave upon or throw trash, refuse, cans or bottles from the municipal pier adjoining May Day Park in the city.
(Ord. No. 1982-1, § 4, 1-4-82)

Sec. 15-6. Bayfront Park and Richard Scardamalia Pavilion.

(a) *Definitions.* For purposes of this section the following definitions will apply:

Event: The purpose for which facility is rented.

Facility: Bayfront Park and Richard Scardamalia Pavilion.

Local: Individual living within the corporate limits of the City of Daphne with a Daphne address.

Persons or groups: Individuals, groups of individuals, firms, civic clubs, social clubs, professional associations, organizations, corporations, service groups.

(b) *Rules and regulations, general.*

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

(2) Reservations will not be considered "booked" prior to the completion of a City of Daphne Bayfront Park and Richard Scardamalia Pavilion rental application and payment of applicable fees.

(3) Cancellations must be in writing and received by the city's rental agent no later than thirty (30) days prior to day of event. Refunds will be issued by check less fifteen dollars ($15.00) processing fee or twenty-five (25) percent, whichever is

larger. All cancellations made with less than thirty (30) days notice will forfeit fifty (50) percent of all fees paid.

(4) Groups reserving space on a regular basis for annual events will be considered for advance bookings. All advance same day bookings must be approved by the city council.

(5) City personnel will inspect the facility after each event.

(6) The number of guests attending will be included on the City of Daphne Bayfront Park and Richard Scardamalia Pavilion set-up form. The maximum seating and/or crowd capacity as established by the city fire department are as follows:

a. *Sunset:* Maximum six hundred twenty (620) with chairs; two hundred forty-one (241) with tables and chairs.

b. *Jubilee:* Maximum one hundred five (105) with chairs; forty-nine (49) with tables and chairs.

(7) 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, screens, kitchen utensils, pots, pans, silverware, dishes, etc.

(8) Nothing shall be used in the facility that will deface the property, including but not limited to, nails, tacks, brackets, or tape. These items will not be allowed on or in the walls, ceilings, floors, or any surface.

(9) No organization will be allowed to use any part of the facility as a regular place of meeting or conducting business. Organizations may use the facility for special meetings, conventions, dinners, etc.

(10) All personal property must be removed at the end of the event. Any personal property not removed shall become the property of the city. The city 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.

(11) City functions must portray the city in the best light for the good and benefit of the citizens of Daphne. City departments will be held responsible for clean up and security responsibilities.

(12) All requests for waived fees must be approved by the city council.

(c) *Rental fees.*

(1) A seventy-five dollar ($75.00) refundable damage deposit is required for all rentals.

(2) Base rental rates are determined according to the following schedule:

a. Bayfront Park (entire facility and grounds) shall rent for three hundred fifty dollars ($350.00). This will necessitate the park being closed to any other group or individual other than the group renting the facility.

a. Grounds only shall rent for one hundred dollars ($100.00). This does not include the Richard Scardamalia Pavilion and will necessitate the park being closed to any other group or individuals other than the group renting the grounds.

c. Richard Scardamalia Pavilion, Sunset (large room): one hundred seventy-five dollars ($175.00).

d. Richard Scardamalia Pavilion, Jubilee: seventy-five dollars ($75.00).

(3) In addition to the base rental fees the following hourly rates shall apply: fifteen dollars ($15.00) per hour for each hour of use; thirty-seven dollars and fifty cents ($37.50) per hour for each hour of use on recognized city holidays.

(4) A fee of thirty dollars ($30.00) will be charged for the use of the kitchen.

(5) All noncity residents will be charged applicable rates as scheduled above plus one hundred dollars ($100.00).

(6) If admission is collected by renter for attendance of the event a fee in the amount of fifty dollars ($50.00) or ten (10) percent of admission collected (whichever is

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 seven (7) days after the event date. All accounts that are not paid within the seven (7) days will be turned in for collection.

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 five thousand dollars ($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 five thousand dollars ($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 section.

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 section.

(3) *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.

(4) *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.

(5) *Concession.* The lessor relinquishes all food and beverage concession rights to the lessee. All city, county, and state taxes and fees apply.

(6) *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 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 thirty (30) feet from the building; absolutely 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 two (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.

(7) *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 setup, 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

(8) *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 [and] 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 ap-

proved 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 photostatic 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 one million dollars ($1,000,000.00) 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.

(9) *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.

(10) *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.

(11) *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 five (5) percent 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. to 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.

(12) *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.

(13) *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.

(14) *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.

(15) *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.

(16) *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.

(17) *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: Fifteen dollars ($15.00) per hour for each hour of usage with a minimum of four (4) hours required and fifty dollars ($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 section's fee schedule.

(c) Lease rates for the Bayfront Park Pavilion are based on the prevailing rates as set forth in this section. 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 one hundred fifty-dollar ($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 one hundred fifty dollars ($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 nonrental or off-limit areas. Any damaged or broken items caused from lack of supervision will be the lessee's responsibility.

(18) *Cancellations.* Cancellations must be in writing, dated and signed by the lessee. Reimbursements for cancelled events will be refunded as follows: seventy-five (75) percent refund for cancellations received at least nine (9) months prior to the day of start of event; fifty (50) percent refund for cancellations received at least six (6) months prior to the day of start of event; no refunds will be made for cancellations received under six (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 one hundred (100) percent refund will be issued. Refunds will be issued by check.

(19) *Cleaning fees.* Cleaning fees will be waived if and only if lessee does own cleanup—Bayfront will provide all necessary cleaning supplies and checklist as reference. Should lessee choose to forego this option, then the two hundred dollars ($200.00) is mandatory.

(20) *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 three hundred dollars ($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 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 one hundred thousand dollars ($100,000.00) per off-duty officer.

(21) *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 twenty-one (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 (1) 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 twenty-one (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 one million dollars ($1,000,000.00) must be purchased. All insurance certificates and proof of requisite licensing must be on file at least fourteen (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.

(22) *Smoking.* All City of Daphne buildings are smoke free twenty (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 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 thirty (30) feet from the building.

(23) *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.

(24) *Building access.* The city will provide reasonable access according to the Americans with Disabilities Act.

(25) *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.

(26) *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 one million dollars ($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 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 one million dollars ($1,000,000.00) 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 (1) week prior of the event.

9. House lights are not allowed to go dark. A minimum of twenty (20) percent 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.

(27) *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.

(28) *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 and 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 fundraising 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. to 5:00 p.m. Any usage over four (4) hours and any hours used after 5:00 p.m. will be charged an additional fifteen dollars ($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 and 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 fundraising 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 fifteen-dollar ($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, 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 twenty (20) percent 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 section 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.

(29) *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 (2) 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 seven (7) days after the second year event for the following two (2) years, along with the fees for the next two (2) years. Future bookings will also be secured using the same guidelines. All bookings are on a first come first serve basis.

(30) *Penalty.*

(a) Any person found guilty of violating any provision of this section 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 section shall also be subject to enforcement by the issuance of a summons and complaint.

(Ord. No. 2000-06, §§ 1—4, 6, 2-2-00; Ord. No. 2000-35, § 1, 10-2-00; Ord. No. 2004-21, §§ I—XXX, 6-7-04; Ord. No. 2004-49, §§ 1, 2, 12-6-04; Ord. No. 2011-09, §§ I—XXX, 2-21-11)

Sec. 15-8. Bayfront Park and Daphne Civic Center—Rules for fee waiver requests by schools and city departments.

(a) *Waiver of fees.* The following schools shall each be entitled to use of the Civic Center and/or Bayfront Park on a first come first serve basis with base rental fees and percentages of ticket sales waived as follows:

(1) *Daphne High School, Daphne Middle School, Bayside Academy, and Christ the King:*

a. Total of three (3) weekdays (Monday—Thursday) per year.

b. Total of one (1) weekend day per year (Friday is considered a weekend day).

c. The school principals of Daphne High School, Daphne Middle School, Bayside Academy, and Christ the

King shall contact the Daphne Civic Center at the beginning of the school year via letter requesting the date(s) of use and further stating the name of the school organization and/or department requesting the use of the Civic Center or Bayfront Park. A follow-up telephone call shall be made to the Civic Center to ensure that the sales department received the notification and for any other provisions that may be necessary. (The Civic Center should receive this letter and confirmation call no later than thirty (30) days into the new school year. All bookings are on a first come first serve basis.)

(2) *Daphne Elementary School and Daphne Intermediate School*

a. Total of two (2) days per year with one (1) day which can be a weekend day (Friday is considered a weekend day).

b. The school principals of Daphne Elementary School and Daphne Intermediate School shall contact the Daphne Civic Center at the beginning of the school year via letter requesting the date(s) of use and further stating the name of the school organization and/or department requesting the use of the Civic Center or Bayfront Park. A follow-up telephone call shall be made to the Civic Center to ensure that the sales department received the notification and for any other provisions that may be necessary. (The Civic Center should receive this letter and confirmation call no later than thirty (30) days into the new school year. All bookings are on a first come first serve basis.)

(3) *Spanish Fort Public Schools:*

a. Total of two (2) days per year of which one (1) day is to be a weekday (Monday—Thursday) and the remaining day be a weekend day. (Friday is considered a weekend day).

b. The City of Spanish Fort School Board shall contact the Daphne Civic Center at the beginning of the school year via letter requesting the date(s) of use and further stating the name of the school organization and/or department requesting the use of the Civic Center or Bayfront Park. A follow-up telephone call shall be made to the Civic Center to ensure that the sales department received the notification and for any other provisions that may be necessary. (The Civic Center should receive this letter and confirmation call no later than thirty (30) days into the new school year. All bookings are on a first come first serve basis.)

(b) *City departments, boards and committees that are appointed by the city council for the purpose of conducting city business.* All city departments shall estimate their projected bookings for the Civic Center and Bayfront Park and budget any rental items, cleaning fees, and per hour charges needed for their facility functions. Base rental fees are waived for city departments, boards and committees appointed by the city council for the purpose of conducting city business. The city council shall provide the director of sales and marketing with a list of approved boards and committees. The Civic Center and Bayfront Park will invoice each department for billable usage by invoice. After receiving approval for invoices from departments, invoices will be routed to the finance department for journal entry. Departments, boards, and committees must submit a fee waiver form and letter of request to the director of sales and marketing. Such request shall include the exact date being requested and all facility needs. All bookings are first come first serve basis.

(c) *Booking policy.* If an organization or group desires to book the same date continually, year after year, such organizations must submit a letter to the director of sales and marketing 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 (2) 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 seven (7) days after the event for the following two (2) years, along with the fees for the next two (2) years. Future bookings will also be secured using the same guidelines. All bookings are on a first come first serve basis.

(d) *Not-for-profit civic and charitable organizations.*

(1) *Booking policy.* Not-for-profit civic and charitable organizations may reserve a date at the Civic Center by payment of a nonrefundable deposit equal to one (1) day's base rental fee. The balance of base rental fees and all other known fees shall be paid in full ten (10) days prior to the scheduled event date. All fees shall be paid no later than the last day of the event. Dates will be reserved on a first come, first serve basis.

(2) *Fee waiver requests.* Fee waiver requests for the year beginning October 1 and ending September 30 shall be requested by not-for-profit civic and charitable organizations annually in advance July 1 through 5:00 p.m. July 15. After July 15, the Civic Center director shall compile a schedule of all waiver requests for submission to the finance/buildings and property committee for review. The committee shall make recommendation of any approved fee waivers to the city council at the first council meeting in August. Dates will be reserved on a first come, first serve basis.

(Ord. No. 200-38, §§ A, I—III, 11-20-00; Ord. No. 2001-21, §§ I, II, 6-18-01; Ord. No. 2001-25, § I, 8-20-01; Ord. No. 2004-08, § I, 3-1-04; Ord. No. 2008-43, § I, 7-21-08)

Sec. 15-9. Reserved.

Editor's note—Section 4 of Ord. No. 2004-49, adopted Dec. 6, 20004, repealed Ord. No. 2001-17 from which § 15-9, Bayfront Park and Daphne Civic Center—Granting of full or partial fee waiver in case of emergency, derived. The user is directed to §§ 14-111 and 15-7(31) for similar provisions.

Sec. 15-10. Daphne city park rules and regulations.

(a) City parks will open at sunrise and close at sunset, with the exception of parks which have field lighting designed for athletic events or night fishing.

(b) No alcoholic beverages are allowed in any parks.

(c) No person shall possess a weapon or discharge any weapon or explosive in a park or into a park from beyond the park boundaries.

(d) No person shall deposit, drop or abandon garbage, rubbish, waste or any other kind of litter in or upon any waters or land within a park.

(e) It shall be unlawful for any person to bring into, use or discard any glass beverage container, including any soft drink, beer, water bottles, drinking glasses or drinking cups made of glass and any and all similar beverage containers in any park.

(f) Fires are allowed in cooking grills in designated areas only, Open "camp" fires are prohibited, unless permitted by the Daphne Fire Department.

(g) No person shall distribute or disseminate leaflets, pamphlets or other printed material or use any mechanical device in a park for soliciting or advertising, except upon prior written consent of the city. No person shall carry on or conduct any business or service within a park without the prior written approval of the city.

(h) All camping activities shall be confined to designated areas in a park.

(i) No person shall launch, land or leave unattended any boat, canoe, raft or other watercraft upon any water, lagoon, lake or pond within a park except at locations and times designated for that purpose. No person shall operate any watercraft in a designated swimming area or other prohibited area or in violation of Alabama State Law.

(j) No person shall wade or swim within a park except at beaches designated for that purpose and then only between sunrise and sunset or at such hours as may be designated by the city.

(j) No person shall fish in a park in violation of Alabama State Law or in any area designated as "no fishing".

(k) No person shall operate a bicycle except on designated bikeways and roadways in a park.

(l) No person shall operate any motorized vehicle within a park except on roadways, parking areas, or other designated locations. The speed limit shall be fifteen (15) miles per hour within the parks.

(m) No person shall intentionally kill, trap, hunt, pursue or in any manner disturb or cause to be disturbed any species of wildlife within a park, except that fishing will be permitted in designated areas.

(n) No person shall remove any animal, living or dead, from a park, and any animal so taken will be considered contraband and subject to seizure and confiscation.

(o) No person shall intentionally feed any species of wildlife within a park.

(p) No person shall bring a dog, cat or other pet into a park unless caged or kept on a leash not more than six (6) feet in length.

(q) No person shall tether any animal to a tree or other plant. No person shall bring a dog, cat, or other pet into a park designated as an unauthorized area (playgrounds, athletic event parks).
(Ord. No. 2007-37, § I, 8-20-07)

Sec. 15-11. Daphne Dog Park rules and regulations.

(a) The hours of the park shall be from sunrise to sunset.

(b) All dogs must be under the control and within sight of owners/custodians at all times.

(c) There is a limit of three (3) dogs per person. Owners/custodians must carry a leash for each dog and dogs may not be left unattended.

(d) All dogs must be on a leash until inside the park and upon leaving the park.

(e) There will absolutely be no female dogs in heat allowed inside the park.

(f) Each owner/custodian is responsible for cleaning up and properly disposing of dog excrement.

(g) All owners/custodians are legally and financially responsible for their dog's behavior. All users of the park do so at their own risk and assume all liability.

(h) A dog must be removed from the park at the first sign of aggression.

(i) All dogs must wear a collar displaying current vaccination tags and current registration.

(j) All choke chains, pronged training collars and studded collars are prohibited.

(k) All children must be supervised and accompanied by an adult at all times. Children must not play in the dog park. The Daphne Dog Park is designed expressly for the recreation of dogs and the City of Daphne is not responsible for injuries to children.

(l) No dogs under the age of four (4) months are allowed in the park.

(m) No food or treats—human or pet—shall be allowed inside the park.

(n) All owners/custodians must stop their dog(s) from digging and shall fill any holes made by their dog(s).

(o) The small dog area is reserved for dogs up to twenty-five (25) pounds. Small dogs are allowed in the large dog area, but no large dogs shall be allowed in the small dog area.

(p) No smoking is allowed inside the park.

(q) Any and all rules and regulations governing City of Daphne parks shall also apply to the City of Daphne Dog Park.
(Ord. No. 2007-38, § I, 8-20-07)

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Chapter 16

PERSONNEL*

Sec. 16-1. Adoption of personnel policies.
Sec. 16-2. Adoption of drug and alcohol policy.
Sec. 16-3. Adoption of post-retirement benefit plan.
Sec. 16-4. Adoption of pay and classification plan.
Sec. 16-5. Overtime compensation and administrative pay policy during state of emergency.

*Cross reference—Officers and employees, § 2-61 et seq.

Sec. 16-1. Adoption of personnel policies.

Pursuant to Resolution No. 1989-06, of the personnel policies, procedures and administrative provisions for the personnel management system, contained in the manual on file in the office of the city clerk, are hereby established for the city.

Sec. 16-2. Adoption of drug and alcohol policy.

The Drug and Alcohol Policy of the City of Daphne set out in Ordinance No. 1996-14 as Exhibit "A" is adopted by reference as if fully set out herein and available for inspection in the office of the city clerk. Said policy is effective June 1, 1996.
(Ord. No. 1996-14, 4-1-96)

Sec. 16-3. Adoption of post-retirement benefit plan.

Ordinance No. 1997-32 established a post retirement benefit plan, which is adopted by reference as if set out herein and on file in the office of the city clerk.
(Ord. No. 1997-32, 12-22-97)

Sec. 16-4. Adoption of pay and classification plan.

(a) *Adoption of pay plan table.*

(1) The pay table attached as Exhibit A to Ord. No. 2004-52 is hereby established as the City of Daphne pay table. Such pay table shall be amended from time to time as cost-of-living increases are approved and adopted by the city council.

(2) Future cost-of-living increases shall be granted at the discretion of the city council and approved with the adoption of the budget, or at any other such time as the council may determine. Any future cost-of-living adjustments as approved and adopted by the city council shall be applied uniformly to all job grades and steps and the pay table shall be adjusted accordingly.

(b) *Adoption of job classification schedule.* The job classification schedule as attached as Exhibit B to Ord. No. 2004-52 is hereby established as the City of Daphne job classification schedule. Subsequent revisions or amendments to such job classification schedule shall be approved by the city council.
(Ord. No. 2004-52, §§ 1, 2, 1-3-04)

Sec. 16-5. Overtime compensation and administrative pay policy during state of emergency.

(1) *Definitions.* For the purposes of this section the following definitions will apply:

(a) *Salaried-exempt employee.* An employee whose job duties are of such a nature that they are covered by exemptions of the overtime provisions of the Fair Labor Standards Act.

(b) *Administrative pay.* Administrative leave with pay as approved by the mayor and provided to employees during declared states of emergencies as described in this section.

(2) *Compensation of salaried-exempt employees for overtime work performed during states of emergency affecting the city.* In the event of an emergency affecting the City of Daphne as declared by the governor of the State of Alabama and ratified by the mayor of the City of Daphne and/or such other competent authority, the mayor may utilize salaried employees to aid the city during normal and extended work hours. In this event, salaried employees will be considered nonexempt (hourly) employees beginning when such state of emergency is declared and ending when such state of emergency is lifted. Exempt employees shall receive compensation at the rate of one and one-half (1½) times their "calculated hourly wage" for each hour worked in excess of forty (40) hours per week. "Calculated hourly wage" shall be determined by dividing the salaried employee's annual salary by two thousand eighty (2,080). Exempt employees will not receive overtime pay for work during any portion of the pay period that is not during a declared state of emergency (ie: a maximum of eight (8) hours will be recognized for work days not falling within the time of the declared emergency).

(3) *Administrative pay during states of emergency affecting the city.* Administrative time granted by the mayor to city employees during declared emergencies will not be counted as "hours worked" in the calculation of hours eligible for overtime compensation. Employees who work on days declared as administrative time will receive administrative time pay as authorized by the mayor as an addition to pay for the hours actually worked. Such administrative pay will be paid at the regular rate of pay.
(Ord. No. 2005-04, §§ I—III, 6-20-05)

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Chapter 17

PLANNING AND DEVELOPMENT*

Sec. 17-1. City planning commission—Created; composition.
Sec. 17-2. Same—Powers of commission as to master plan.
Sec. 17-3. Same—Authority of council.

*Cross reference—Land use and development ordinance, App. A.

Sec. 17-1. City planning commission—Created; composition.

Pursuant to the Code of Ala. 1975, §§ 11-52-1—11-52-84, there is hereby created a planning commission for the city, to consist of nine (9) members, to be appointed for the terms and in the manner set forth in such statute.
(Ord. No. 1965-3, § 1, 2-15-65)

Sec. 17-2. Same—Powers of commission as to master plan.

The city planning commission is authorized and empowered to make and adopt a master plan for the physical development of the city, including any areas outside its boundaries which, in the commission's judgment, bear relation to the planning of such municipality. Such plan, with the accompanying maps, plats, charts, and descriptive matter, shall show the commission's recommendations for the development of such territory, including among other things the general location, character, and extent of streets, viaducts, subways, bridges, waterways, waterfronts, boulevards, parkways, playgrounds, squares, parks, aviation fields, and other public ways, grounds and open spaces, the general location of public buildings and other public property, and the general location and extent of public utilities and terminals, whether publicly or privately owned or operated, for water, light, sanitation, transportation, communication, power and other purposes; also the removal, relocation, widening, narrowing, vacating, abandonment, change of use or extension of any of the foregoing ways, grounds, open spaces, buildings, property, utilities, or terminals as well as a zoning plan for the control of the height, area, bulk, location and use of the building and premises. As the work of making the whole master plan progresses, the commission may from time to time adopt and publish a part or parts thereof, any such part to cover one (1) or more major sections or divisions of the municipality, or one (1) or more of the aforesaid or other functional matters to be included in the plan. The commission is hereby authorized and empowered to exercise all powers and do all things authorized to such commission by Code of Ala. 1975, §§ 11-52-1—11-52-84, as it may deem necessary for its work. The commission is also authorized under the aforementioned statute with reference to subdivision of unimproved property within five (5) miles of the corporate limits of the city.
(Ord. No. 1965-3, § 2, 2-15-65)

Cross reference—Use of Robert's Rules of Order, agenda, quorum, App. A, § 5.3 et seq.

Sec. 17-3. Same—Authority of council.

The city council is hereby authorized to make all appointments and exercise all authority as authorized by Code of Ala. 1975, §§ 11-52-1—11-52-84.
(Ord. No. 1965-3, § 3, 2-15-65)

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Chapter 18

STREETS AND SIDEWALKS*

Article I. In General

Sec. 18-1. Accommodation of utilities on roads and streets.
Sec. 18-2. Operation of motor-driven vehicles upon sidewalks.
Secs. 18-3—18-20. Reserved.

Article II. Right-of-Way

Sec. 18-21. Definitions.
Sec. 18-22. Right-of-way administration.
Sec. 18-23. Right-of-way permits.
Sec. 18-24. Construction; restoration.
Sec. 18-25. Enforcement of permit obligation.
Sec. 18-26. Indemnification and liability.
Sec. 18-27. Penalty.
Sec. 18-28. Nonexclusivity.
Sec. 18-29. Schedule of fees.
Sec. 18-30. Construction standards for miscellaneous construction utility excavation, and right-of-way and pavement restoration.

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*__Cross references__—Restoration of surface, §§ 12-20(3), 12-23(3); consent required for use of streets, § 13-9.

ARTICLE I. IN GENERAL

Sec. 18-1. Accommodation of utilities on roads and streets.

The city council hereby formally adopts the state highway department standards for accommodating utilities on highway rights-of-way as standards (as written and future amendments thereto) for use by the city for accommodating utilities on roads and streets under the jurisdiction of the city, on those roads and streets which have or will involve the expenditure of state or federal highway funds.
(Ord. No. 1971-1, § 1, 7-6-71)

Sec. 18-2. Operation of motor-driven vehicles upon sidewalks.

(a) *Unlawful.* It shall be unlawful for any person to drive a motorcycle, moped, golf cart, or any other motor-driven vehicle upon any sidewalk within the City of Daphne.

(b) *Exceptions.* This section shall not prohibit the operation of motor-driven wheelchairs or any other device used by handicapped persons within the City of Daphne, nor shall it apply to any police or law enforcement officer during the discharge of his or her official duties.

(c) *Enforcement.* This section shall be subject to enforcement according to the Daphne Municipal Offense Ticket Ordinance, Ordinance No. 1998-33, which ordinance is incorporated by reference.

First violation shall be punishable by a fine of ten dollars ($10.00), plus applicable court cost.

Second violation shall be punishable by a fine of twenty dollars ($20.00), plus applicable court cost.
(Ord. No. 1999-05, §§ I—III, 3-1-99)

Secs. 18-3—18-20. Reserved.

ARTICLE II. RIGHT-OF-WAY

Sec. 18-21. Definitions.

For the purpose of this article the following terms, phrases, words and their derivations shall have the meaning given herein. When not inconsistent with the context the words used in the present tense include the future, words in the plural number include the singular number, and words in the singular number include the future, 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 derivative.

Applicant. Any person or entity requesting permission to obstruct or construct in a City of Daphne right-of-way.

City. The City of Daphne, Alabama.

Code enforcement officer. Any person authorized by the City of Daphne to enforce the codes of the city and issue municipal offense tickets for violations thereof.

Construct. To excavate, repair, rehabilitate, maintain, and install sanitary sewers, water mains, fire hydrants, valves, meters, manholes, service lines and connections, gas mains, telephone and electrical conduit and their miscellaneous service lines and connections, telecommunications facilities cables, wires, lines, wave guides, antennas, and other equipment or facilities, pedestals, and service cabinets, poles, guy wires, storm drains, manholes, inlets, catch basins, irrigation systems, driveways, sidewalks, pavement extensions, curbs, walks, steps, building canopies, balconies, overhead walkways, and temporary detour pedestrian walkways on, above, or under any part of the rights-of-way; provided, however, that "construct" shall not mean installation, repair, rehabilitation or maintenance of facilities that do not involve excavation of any portion of the rights-of-way.

Construction bond. A bond posted to ensure proper and complete construction and/or repair of a permitted site pursuant to a permit issued by the public works department.

Construction standards for miscellaneous construction, utility excavation, right-of-way and pavement restoration. The compilation of provisions and requirements that provide the technical specifications and details for the construction of facilities in the right-of-way.

Department. The City of Daphne Public Works Department.

Department inspector. Any person designated/authorized by the public works director to carry out inspections related to the provisions of this article.

Emergency. A condition that poses a clear and immediate danger to life or health, or of a significant loss of property or utility service. "Emergency" also includes requests for service which the applicant deems urgent and can be classified as small project types A and B.

Excavation. Any work on the surface or subsurface of the public right-of-way including but not limited to opening the right-of-way, installing, servicing, repairing, or repairing/modifying any facilities/sites in or under the surface or subsurface, and restoring the surface and subsurface of the public right-of-way.

Facilities. Any tangible thing located in any right-of-way; and shall include boulevard plantings or gardens planted and maintained in the right-of-way between a persons property and the street edge of pavement.

Geotechnical engineer. A professional engineer experienced in soils engineering and materials testing.

Geotechnical company. A professional engineering company that provides soils engineering and testing services, laboratory and field testing services, construction material testing, and possesses a certificate of authorization from the state board of registration for professional engineers and land surveyors.

In. When used in conjunction with "right-of-way", means over, above, in, within, on or under a right-of-way.

Landscape or *landscaping.* Trees, shrubs and other plantings of materials that are or may grow to a height of eighteen (18) inches or more, and irrigation systems (in unpaved areas), in the right-of-way.

Major project. Construction of water, sewer, gas, telephone, fiber optic, electrical power conduit, cable and duct, TV cable, jacking, boring, pushing and tunneling, retrofitting existing facilities/sites, storm drain and any other miscellaneous major facility construction projects that involve more than one continuous block or five hundred (500) linear feet of right-of-way.

Minor project. Construction of miscellaneous utility service lines, manhole installation not associated with major project construction, main line point repairs and installation, miscellaneous utility service line repair, storm drain and inlet repairs, vaults, irrigation systems and other miscellaneous construction and repair projects that involve less than one (1) block or five hundred (500) linear feet of right-of-way.

Municipal court. The part of the City of Daphne municipal court system designed to enforce local laws and ordinances relating to the physical appearance of the city, and the health and safety of the public.

Municipal offense ticket (M.O.T.). A citation issued for a violation of this article. A M.O.T. may require payment of a fine as defined by the municipal offense ticket system (M.O.T.) fine schedule, as may be amended from time to time, appearance in municipal court and if determined by the judge of said court, jail or community service.

Notice of violation. A written warning issued by the department, or the City of Daphne Code Enforcement Officer, for a violation or possible violation of this article.

Obstruct. To place any tangible object in a right-of-way so as to hinder free and open passage over, under or through that or any part of the right-of-way.

Permit fee. Money charged by the City of Daphne to cover the costs as provided in section 18-29 (Schedule of fees) of this article.

Permittee. Any person or company to whom a permit to construct or obstruct a right-of-way has been granted by the city.

Person. Any natural or corporate person, business association or other business entity including, but not limited to, a partnership, a sole proprietorship, a political subdivision, a public or private agency of any kind, a utility, a successor

or assign of any of the foregoing, or any other legal entity which has or seeks to have facilities/sites located in any right-of-way.

Restoration. The process by which a constructed or obstructed right-of-way is restored as specified in the constructed standards.

Right-of-way. The surface and space above and below any real property in which the city has an interest in law or equity, whether held in fee, or other estate or interest including easements, or as a trustee for the public, including, but not limited to any public street, boulevard, road, highway, freeway, lane, alley, court, sidewalk, parkway, river, tunnel, viaduct, bridge, park, or any other place, area, or real property owned by or under the control of the city.

Right-of-way permit. The permit which must be obtained before a person may construct in, or obstruct in a right-of-way as required by section 18-23 (Right-of-way permits) of this article.

Service or *utility service.* Services provided by utilities.

Sidewalk. The paved pedestrian walkway between the edge of the road and the street right-of-way line.

Small project (type A). The installation of equipment cabinets, junction boxes, terminal boxes, splice boxes, regulator stations, meters and valves in paved areas, utility poles, guy poles and appurtenances not associated with a major or minor project.

Small project (type B). The installation, repair and routine maintenance of miscellaneous utility drop lines, overhead wires and cables, traffic signal poles, light poles, traffic signs, meters, valves and other miscellaneous construction, repair, routine maintenance and inspection, that requires minimal excavation or right-of-way disruption.

Supplementary application. An application made to construct or obstruct more of the right-of-way than allowed in, or to extend, a permit that has already been issued.

Trenchless technology. The use of directional boring, horizontal drilling and microtunneling and other techniques in the construction of underground portions of facilities which result in the least amount of disruption and damage to right-of-way as possible.

Underground facilities. All lines, cables, conduits, posts, tanks and any other facilities owned or operated by persons other than the city which are located wholly or partially underneath right-of-way.

Utilities. Any water, sewer, gas, drainage, irrigation or culvert pipe and any electric power, telecommunication, signal, communication, or cable television conduit, fiber/fiber optic, wire, cable, or operator thereof.
(Ord. No. 2004-23, § I, 6-21-04)

Sec. 18-22. Right-of-way administration.

(a) *Administration.* The City of Daphne Public Works Director shall be the principal city official responsible for the administration of the right-of-way, right-of-way permits, and the ordinances related thereto. The public works director may amend from time to time, construction standards and other rules reasonable required to carry out the purposes of this article. Any requirement not specifically covered by this article or the construction standards shall be determined by the public works director. The public works director may delegate any or all of the duties hereunder.

(b) *Appeal procedure.* The public works director may grant a special exception to the requirements of this article if a permittee demonstrates, with written evidence, that:

(1) The exception will not create any threat to public health, safety or welfare.

(2) The permittee demonstrates that the increased economic burden and the potential adverse impact on the permittee's construction schedule resulting from the strict enforcement of this article actually, or effectively, prohibits the ability of the permittee to provide utility services in the city.

(3) The permittee demonstrates that the requirement unreasonably discriminates against the permittee in favor of another person.

(c) *Appeals.* Should any person be aggrieved by the decision of the public works director, such person may appeal by filing written notice with the public works department within fifteen (15) days from the date of such decision. The department shall send a copy of the appeal and all relevant documentation, within fifteen (15) days, to the city clerks office to be considered by the city council at a public hearing.
(Ord. No. 2004-23, § II, 6-21-04)

Sec. 18-23. Right-of-way permits.

(a) *Permit requirements.*

(1) *Type of right-of-way permits.* Except as otherwise provided in this article, no person may construct or obstruct any right-of-way without first having obtained one (1) of the following right-of-way permits from the public works department:

a. Major project;

b. Minor project;

c. Small projects;

1. Type A;

2. Type B; or

d. Landscape.

(2) *Right-of-way permit.* A right-of-way permit is a permit which allows the holder to construct, obstruct, or landscape in that part of the right-of-way described in such permit and to hinder free and open passage over the specified portion of the right-of-way by placing facilities described therein, to the extent and for the duration specified therein. A permit is valid only for the date(s) and the area(s) of right-of-way specified in the permit. No person may construct in or obstruct the right-of-way beyond the date or dates specified in the permit unless such person:

a. Makes a supplementary application for another right-of-way permit before the expiration of the initial permit; and

b. A new permit or permit extension is granted.

However, if no work is initiated within six (6) months or if the project lies dormant for a period of thirty (30) calendar days after being started, the Permit is rendered invalid.

(3) *Emergencies.* When the work must commence immediately because of an emergency, the permittee shall comply with the provisions in section 18-25(b)(1).

(4) *Exemptions.* No permits shall be required for the following activities:

a. Installation and repair of facilities by, or for, City of Daphne departments; and

b. Installation of landscaping materials which are, or may grow, to a height of not more than eighteen (18) inches.

(5) *Permit authorizing routine work.* Applicants may be allowed, if determined by the public works department, to obtain in advance, an annual, quarterly or semi-annual permit for minor projects outside roadway limits and some small projects that involve minimal excavation. Permit fees shall be calculated as an estimate of similar work conducted over the past twelve (12) months.

(b) *Permit applications.* Application for a permit is made to the public works director.

(1) All permit applications shall contain, and will be considered complete only upon compliance with the requirements of the construction standards, as appropriate.

(2) Tree and landscaping requirements of this article shall be administered and enforced by the director of community development, in cooperation with the director of public works.

(c) *Issuance of permit; conditions.*

(1) If the director of public works determines that the applicant has satisfied the requirements of this article, he may issue a permit or issue notification and reason for denial of same.

(2) The director of public works may impose reasonable conditions upon the issuance of the permit and the performance of the applicant thereunder in order to protect the public health, safety and welfare, to insure the structural integrity of the right-of-way, to protect the property of other users of the right-of-way, and to minimize the disruption and inconvenience to the traveling public, including notification to property owners.

(d) *Permit fees.*

(1) *Establishment of fees.* Permit fees shall be established by the city council upon recommendation by the director of public works. Said fees shall be in an amount sufficient to recover the following costs:

a. The city costs, including administration, inspection, and enforcement; and

b. The cost for obstructing the right-of-way, including costs associated with traffic management that results from street obstruction, lost tax revenues resulting from streets blocked and as an encouragement to minimize costs and to encourage timely, efficient use of the right-of-way.

c. The current schedule of permit fees is set forth in section 18-29 to this article.

(2) *Payment of permit fees.* No permit shall be issued without payment of such fees unless the public works director authorizes payment to be made thirty (30) days following billing. All changes in fees shall be approved by the city council.

(3) *Nonrefundable fees.* All permit fees are nonrefundable.

(4) *Joint applications.* Applicants are encouraged to make joint applications for permits to construct or obstruct the right-of-way at the same place and time.

(Ord. No. 2004-23, § III, 6-21-04)

Sec. 18-24. Construction; restoration.

(a) *Compliance with construction standards.* All construction or maintenance of facilities shall be in accordance with this article, the construction standards and such other conditions imposed on the permit by the public works director under section 18-23(c).

(b) *Location of facilities.* The public works director shall have the power to prohibit or limit the placement of new or additional facilities within the right-of-way if there is insufficient space to accommodate all of the requests or permittees to occupy and use the right-of-way. In making such decisions, the public works director shall strive to the extent possible to accommodate all existing and potential users of the right-of-way, but shall be guided primarily by considerations of public interest, the public's need for the particular utility service, the condition of the right-of-way, the protection of existing facilities/sites in the right-of-way, and future city plans for public improvements and development projects which have been determined to be in the public interest.

(c) *Least disruptive technology.* Applicants are encouraged to perform construction and maintenance of facilities in a manner resulting in the least amount of damage and disruption of the right-of-way. Applicants will be required to use trenchless technology for major and minor construction projects, within roadway limits, in arterial and other high volume streets constructed or resurfaced within the last five (5) years, unless otherwise approved by the director of public works and such approval shall not be unreasonably withheld. The director of public works may require trenchless technology in other locations, where extreme circumstances prevent or make open cut methods impractical. Applicants may use the open cut method or trenchless technology for major and minor projects outside roadway limits.

(d) *Right-of-way restoration.*

(1) The work to be done under the permit, and the restoration of the right-of-way as required herein, must be completed within the dates specified in the permit. In addition to its own work, the permittee must restore the general area of the work, in-

cluding all disturbed landscaping materials and the permitted areas including the paving and its foundations, per the City of Daphne construction standards.

(2) The permittee shall perform the work according to the standards and with the materials specified by the city of daphne public works director including but not limited to the construction standards.

(3) By restoring the right-of-way, the permittee guarantees its work for twenty-four (24) months following its completion. During this twenty-four month period, the permittee shall, upon notification from the public works director, correct all restoration work to the extent necessary using the method required by the director. Said work shall be completed within the time frame specified by the director of public works.

(e) *Installation requirements.* The excavating, backfilling, restoration, and all other work performed in the right-of-way shall be done in conformance with specifications set forth in the construction standards.

(f) *Inspection.* Except for routine work, when the work under any permit for major and minor projects hereunder is completed, the permittee shall notify the public works director.

(1) Permittee shall make the work site available to the public works director or his authorized representative and to all others as authorized by law for inspection at all reasonable times during the execution and upon completion of the work.

(2) At the time of the inspection, the director of public works or his authorized representative may order the immediate cessation of any work which poses a serious threat to the life, health, safety or well being of the public.

(3) The director of public works or his authorized representative may issue a notice of violation to the permittee for any work which does not conform to the applicable standards, conditions or codes. The order shall state that failure to correct the violation will be cause for issuance of a municipal offense ticket (M.O.T.) and/or a stop work order. Within the time frame indicated on the notice after issuance of the order, the applicant shall present proof to the director of public works that the violation has been corrected. If such proof has not been presented within the required time, the director of public works may issue a stop work order and/or have a municipal offense ticket (M.O.T.) issued.

(g) *Other obligations.* Obtaining a right-of-way permit does not relieve the permittee of its duty to obtain all other necessary permits, licenses, and authority and to pay all fees required by any other city, county, state, or federal rules, laws or regulations.

(1) A permittee shall comply with all requirements of local, state and federal laws, including a franchise duly adopted by the city council. Contact shall be made to the one call excavation notice system, Alabama Statutes @ 1-800-292-8525, or such other number which may be applicable.

(2) A permittee shall perform all work in conformance with all applicable codes and established rules and regulations, and is responsible for all work done in the right-of-way pursuant to its permit, regardless of who performs the work.

(3) Except in the case of an emergency, and with the approval of the director of public works, no right-of-way obstruction or excavation may be performed when seasonally prohibited or when conditions are unreasonable for such work.

(4) A permittee shall not so obstruct a right-of-way that the natural and free passage of water through the gutters or other waterways shall be interfered with.

(5) Private vehicles not owned by or under contract to permittee may not be parked within or adjacent to a permit area.

(Ord. No. 2004-23, § IV, 6-21-04)

Sec. 18-25. Enforcement of permit obligation.

(a) *Denial of permit.*

(1) *Mandatory denial.* Except in the case of emergency, no right-of-way permit will be granted:

a. To any person who has failed to comply with the requirements of this article;

b. To any person who is delinquent in paying a debt owed to the city;

c. If, in the discretion of the director of public works, the issuance of a permit for the particular date and/or time would cause a conflict or interfere with an exhibition, celebration, festival, or any other event. The director of public works, in exercising this discretion, shall be guided by the safety and convenience of ordinary travel of the public over the right-of-way, and by considerations relating to the public health, safety and welfare.

(2) *Permissive denial.* The director of public works may deny a permit in order to protect the public health, safety and welfare, to prevent interference with the safety and convenience of ordinary travel over the right-of-way, or when necessary to protect the rights-of-way and its users. The director of public works may consider one (1) or more of the following factors:

a. The extent to which the right-of-way space where the permit is sought is available;

b. The competing demands for the particular space in the right-of-way;

c. The availability of other locations in the right-of-way or in other right-of-way for the facilities of the particular company;

d. The applicability of other ordinances or other regulations of the right-of-way that affect location of facilities in the right-of-way;

e. The degree of compliance of the applicant with the terms and conditions of its franchise, this article, and other applicable ordinances and regulations; the degree of disruption to surrounding neighborhoods and businesses that will result from the use of that part of the right-of-way; and

f. The condition and age of the right-of-way, and whether and when it is scheduled for total or partial construction; and the balancing of the costs of disruption to the public and damage to the right-of-way, against the benefits to that part of the public served by the expansion into additional parts of the right-of-way.

(b) *Work done without a permit.*

(1) *Emergency situations.* Each permittee shall notify the director of public works (by telephone or in person) of any event regarding its facilities which it considers to be an emergency immediately upon its discovery of same. The applicant may proceed to take whatever actions are necessary in order to respond to the emergency. Within one (1) business day after the occurrence of the emergency, the applicant shall apply for the necessary permits, pay the fees associated therewith and fulfill the rest of the requirements necessary to bring itself into compliance with this article for the actions it took in response to the emergency.

(2) *Contact during emergency.* In the event that the director of public works becomes aware of an emergency regarding a permittees' facilities/site, the department shall attempt to contact the local representative of each permittee affected, if known, or potentially affected, by the emergency, who must comply with subsection (b)(1) of this section. In any event, the department may take whatever action deemed necessary in order to respond to the emergency.

(3) *Nonemergency situations.* Except in the case of an emergency, any person who

obstructs or excavates a right-of-way without a permit must subsequently obtain a permit, pay double the normal fee for said permit, pay double all the other fees required by city codes, is subject to the issuance of a notice of violation and/or a municipal offense ticket (M.O.T.), deposit with the Department the fees necessary to correct any damage to the right-of-way and comply with all requirements of this article.

(c) *Enforcement.*

(1) Permittee's hold permits issued pursuant to this article as a privilege and not as a right.

(2) If the director of public works determines that the permittee has violated a material term or condition of any statute, ordinance, rule, regulation or any condition of the permit, the director of public works shall issue a notice of violation to the permittee to remedy such violation. The demand shall state that continued violations may cause for the issuance of a stop work order and issuance of a municipal offense ticket (M.O.T.). Further, a substantial breach, as stated above, will allow the director of public works, at his or her discretion, to place additional or revised conditions on the permit.

(3) A material violation by permittee shall include, but shall not be limited to, the following:

a. The violation of any material provision of the permit;

b. An evasion or attempt to evade any material provision of the right-of-way permit, or the perpetration or attempt to perpetrate any fraud or deceit upon the city or its citizens;

c. Any material misrepresentation of fact in the application for a permit;

d. The failure to maintain the required bonds and/or insurance;

e. The failure to complete the work within a timely manner; or

f. The failure to correct a condition indicated on an order issued pursuant to section 18-24(f).

(4) Within forty-eight (48) hours of receiving a notice of violation, permittee shall contact the director of public works with a plan, acceptable to the director of public works, for its correction. permittee's failure to so contact the director of public works, or the permittee's failure to submit an acceptable plan, or permittee's failure to reasonably implement the approved plan, shall be cause for immediate issuance of a stop work order and issuance of a Municipal offense ticket (M.O.T.).

(5) From time to time, the director of public works may establish a list of conditions of the permit that will automatically warrant the issuance of a municipal offense ticket (M.O.T.) to the permittee.

(Ord. No. 2004-23, § V, 6-21-04)

Sec. 18-26. Indemnification and liability.

(a) *The city does not accept liability.* By reason of the grant of a right-of-way permit, the city does not assume any liability:

(1) For injuries to persons, damage to property, or loss of service claims by parties other than the applicant or the city; or

(2) For claims or penalties of any sort resulting from the installation, presence, maintenance, or operation of facilities by permittees or activities of permittees.

(b) *Applicant or permittee indemnifies the city.* By accepting a permit, a permittee is required to, indemnify and hold the city whole and harmless from all costs, liabilities, and claims for damages of any kind arising out of the construction, presence, installation, maintenance, repair or operation of its facilities/site, or out of any activity undertaken in or near a right-of-way, whether any act or omission complained of is authorized, allowed, or prohibited by a right-of-way. It further agrees that it will not bring, nor cause to be brought, any action, suit or other proceeding claiming damages, or seeking any other relief against the city for any claim nor for any award

arising out of the presence, installation, maintenance or operation of its facilities/site, or any activity undertaken in or near a right-of-way, whether the act or omission complained of is authorized, allowed or prohibited by a permit. The foregoing does not indemnify the city for its own negligence. This section is not, as to third parties, a waiver of any defense or immunity otherwise available to the applicant or to the city; and the applicant, in defending any action on behalf of the city, shall be entitled to assert in any action every defense or immunity that the city could assert on its own behalf.

(c) *Exceptions.* The provisions of subsection (b) of this section shall not apply to a permittee that has, as effective date of this article, a valid franchise duly granted by the city, and said franchise requires the permittee to hold harmless the city for damages occasioned by the presence, operations or maintenance of the permittee's facilities/site. This exemption shall not apply where said franchise does not afford the city at least the level of protection stated in subsection (b) of this section, unless the permittee agrees to provide the same or greater level of protection to the city.
(Ord. No. 2004-23, § VI, 6-21-04)

Sec. 18-27. Penalty.

(a) Any person found guilty of violating any provision of this article 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, in the discretion of the municipal judge.

(b) This article shall also be subject to enforcement by the issuance of a summons and complaint pursuant to the provisions of Ordinance No. 1993-02, as the same may be from time to time amended.
(Ord. No. 2004-23, § VII, 6-21-04)

Sec. 18-28. Nonexclusivity.

The remedies provided in this article are not exclusive or in lieu of other rights and remedies that the city may have at law or in equity. The city is hereby authorized to seek legal and equitable relief for actual or threatened injury to the public right-of-way, including damages to the right-of-way, whether caused by a violation of any of the provisions of this chapter or other provisions of this article.
(Ord. No. 2004-23, § VIII, 6-21-04)

Sec. 18-29. Schedule of fees.

RIGHTS-OF-WAY AND EXCAVATION PERMIT FEES

Description	*Permit Fee*
Longitudinal and traverse excavation for major utility projects (paved areas)	$0.50 per L.F. (minimum fee $100.00)
Longitudinal and traverse excavation for major utility projects (unpaved areas)	$0.10 per L.F. (minimum fee $25.00)
Longitudinal and traverse excavation for point repairs, service	$15.00 per square yard
Lines, storm drains, manholes, etc. (paved areas) and excavation for utility construction, point repairs (unpaved areas)	$6.00 per square yard
Boring and jacking operations, tunneling, retrofitting of existing $0.10 per L.F. (minimum fee $50.00 per block) utility lines, (pipe lining), etc. Irrigation systems (paved areas)	$0.40 per L.F. (minimum fee $25.00)
Utility poles (new installation) including guy and anchor	$2.00 per pole
Communication towers (new installation)	$25.00 per tower
Terminal boxes, junction boxes, equipment cabinets, splice boxes, regulator stations, meters and valves in paved areas, vaults	$5.00 each
Sidewalk, driveway, curb, gutter (new construction, replacement and repair):	
0 sq. yds. to 2 sq. yds.	$10.00

Description	*Permit Fee*
2 sq. yds. to 25 sq. yds.	$30.00
25 sq. yds. to 100 sq. yds	$40.00
100 sq. yds. to 500 sq. yds.	$50.00
500 sq. yds. or greater	$60.00
Steps	$50.00 per location
Monitoring wells	$50.00 each
Temporary pedestrian walkway	$50.00 per location
Balconies, Canopies	$10.00 per location

Note: Applicants may be allowed, if determined by the department to obtain, in advance, an annual, quarterly, or semi-annual permit for minor projects outside roadway limits and some small projects that involve minimal excavation. Permit fees shall be calculated as an estimate of similar work conducted over the past twelve (12) months.

No fee/permit shall be required for replacing existing poles of similar size or routine inspection.

Please note: All fees are nonrefundable.

OBSTRUCTION FEES

The following conditions shall apply in determining obstruction fees:

(1) The obstruction of commercial pedestrian walkways will be charged at the rate of five dollars ($5.00) per calendar day for each twenty (20) linear feet of length.

(2) Fees will not be charged for obstruction of less than eight (8) hours.

(Ord. No. 2004-23, App. A, 6-21-04)

Sec. 18-30. Construction standards for miscellaneous construction utility excavation, and right-of-way and pavement restoration.

(1) *Construction plan submittal requirements within public rights-of-way and easements.*

(a) *Major projects.*

1. *Major projects within roadway limits:*

a. Construction plan submittal. Applicants for right-of-way permits shall submit three (3) sets of construction plans and specifications, including the following information, for review and approval:

(i) The location of all topographic features affected by the project within the right-of-way.

b. Complete plan and profile sheets indicating the horizontal and vertical location of all components of the proposed project and other related information including, but not limited to, pipe and manhole flow line elevations, type and size of pipe, and other related structures, profile and other elevations necessary for roadway and right-of-way restoration, and the design details of the proposed construction and pavement and right-of-way restoration will be required for gravity flow systems including sanitary sewer, storm drain and related projects.

Note: Complete plan and profile sheets and other information currently required for gravity flow systems will be required for projects submitted after fu-

ture ordinance amendment to include provisions for implementation of GIS mapping requirements.

c. A plan indicating the location of the proposed project with respect to the centerline, edge of road, and right-of-way, tie-in to nearest street intersection, components and material type used, and dimensions and depth of the proposed installation, will be required for nongravity flow systems including water distribution systems, gas systems, communication, cable TV and electric power distribution systems, unless otherwise authorized by the director of public works.

d. An erosion control plan and best management practices (BMP's) complying with provisions of the city stormwater management ordinance.

e. A safety plan to include methods to be used to protect the general public from injury, and including the proposed use of barricades, signs, lights, fencing and other barriers.

f. A traffic control plan complying with all of the provisions of the Federal Manual on Uniform traffic Control Devices, current edition, shall be submitted to the director of public works.

g. A landscape plan complying with the tree landscaping and protection ordinance; and

h. Complete as-built construction plans of the construction project shall be submitted to the director of public works, after final inspection of the project. The as-built plans shall be submitted in hard copy medium as well as CAD files in DXF format.

2. *Major projects outside roadway limits:*

a. Construction plan submittal. Applicants for right-of-way permits shall submit three (3) sets of construction plans & specifications, including the following information for review and approval: The location of all visible topographic features within the right-of-way that will be impacted by the proposed project.

b. Anchor.

c. Complete plan and profile sheets indicating the horizontal and vertical location of all components of the proposed project and other related information including, but not limited to, pipe and manhole flow line elevations, type and pipe size, and other related structures, profile and other elevations necessary for right-of-way restoration and the design details of the proposed construction, including the right-of-way restoration will be required for gravity flow systems including sanitary sewer, storm drain and related projects.

Note: Complete plan and profile sheets and other information currently required for gravity flow systems will be required for projects submitted after ordinance amendment to include provisions for the implementation of GIS mapping requirements.

d. A plan indicating the location of the proposed project with respect to the centerline, edge of road, and right-of-way, tie-in to

nearest street intersection, components and type of material used, and dimensions and depth of the proposed installation, will be required for non-gravity flow systems including water distribution systems, gas systems, communication, cable TV and electric power distribution systems, unless otherwise authorized by the director of public works.

e. An erosion control plan with best management practices (BMP's) complying with the city's stormwater management ordinance.

f. A safety plan to indicate methods to be used to protect the general public from injury, and including the proposed use of barricades, signs, lights, fencing and other barriers.

g. A traffic control plan complying with all the provisions on the Manual on Uniform Traffic Control Devices, current edition, shall be submitted to the director of public works, if any roadway is affected.

h. A landscape plan complying with the tree landscaping and protection ordinance; and

i. Complete as-built construction plans of the construction project shall be submitted to the director of public works, after final inspection of the project. The as-built plans shall be submitted in hard copy form and CAD files in DXF format.

(b) *Minor projects.*

1. *Minor projects within roadway limits:*

a. Construction plan submittal. Applicants for right-of-way permits shall submit a plat of the proposed project including the following information:

(i) A plat prepared at a scale acceptable to the director of public works to indicate the plan view of the proposed project, location with respect to centerline, edge of roadway, and right-of-way, tie-in to nearest street subdivision lot corner or street intersection, components and type of material used for the project, and dimensions and depth of proposed installation.

(ii) An erosion control plan with best management practices (BMP's) complying with provisions of the city's stormwater management ordinance.

(iii) A safety plan to indicate methods to be used to protect the general public from injury, and including the proposed use of barricades, signs, lights, fencing and other barriers.

(iv) A traffic control plan complying with all the provisions of the Manual on Uniform Traffic Control Devices, current edition, shall be submitted to the director of public works, if any roadway traffic is affected; and

(v) Complete as-built construction plans of the construction project shall be submitted to the director of public works, after final inspection of the project. As-built plans shall be submitted in hard copy medium and CAD files in DXF format.

2. *Minor projects outside roadway limits:*

a. Construction plan submittal. Applicants for right-of-way permits shall submit a plat of the proposed project including the following information:

(i) A plat prepared at a scale acceptable to the director of public works to indicate the plan view of the proposed project, location with respect to edge of roadway, centerline, and right-of-way, tie-in to nearest street subdivision lot corner or street intersection, components and type of material used, dimensions and depth of proposed excavation.

(ii) An erosion control plan with best management practices (BMP's) complying with the city's stormwater management ordinance.

(iii) A safety plan to indicate methods to be used to protect the general public from injury, and including the proposed use of barricades, signs, lights, fencing and other barriers.

(iv) A traffic control plan complying with all the provisions of the Manual on Uniform Traffic Control Devices, current edition, shall be submitted to the director of public works, if any impact on traffic movement is involved.

(v) A landscape plan complying with the tree landscaping and protection ordinance.

(vi) Complete as-built construction plans of the construction project shall be submitted to the director of public works, after final inspection of the project. The as-built plans shall be submitted in hard copy medium and CAD files in DXF format.

(c) *Small projects.* The applicant will not be required to submit a construction plan or plat for small projects. However, a location sketch will be required for the approval of small projects (Type A). Any pavement or areas in the right-of-way that is disturbed, shall be restored in conformance with subsections (6) and (7) of this section.

(2) *Bond requirements.*

(a) Construction bond. The applicant shall be required to provide an irrevocable, unconditional letter of credit or bond to guarantee the proper construction and completion of right-of-way restoration. The amount of the bond shall be based on the estimated cost of the right-of-way restoration provided by the permittee and approved by the director of public works. A construction bond will not be required for small projects if no paved area or right-of-way is disturbed by the project. The director of public works may waive the requirement for the construction bond for permittees who evidence financial ability to pay the cost of the repairs to city rights-of-way resulting from their permittee activity.

(b) City departments performing installation of facilities/sites, routine maintenance and repair, and other agencies working in the right-of-way that are not involved in the installation, repair and maintenance of utilities, are exempt from the requirements of this subsection (2).

(3) *Notification procedures for major and minor projects.*

(a) Except for emergencies, the following notification procedures will be followed for

major and minor projects, prior to the commencement of any construction activities:

1. The one (1) call line location center will be notified forty-eight (48) hours prior to any excavation. The location of all utilities shall be verified before commencing construction.
2. The director of public works shall be notified twenty-four (24) hours prior to commencing any construction activity involving major and minor projects within roadway limits.
3. The public works director will be notified seventy-two (72) hours prior to the closure of any roadway or interruption in traffic flow.
4. A written notice will be distributed to each occupant of premises adjacent to the project site five (5) days prior to commencing construction activity relating to major projects.

(4) *Inspection.* City engineering department personnel will conduct periodic inspections of utility construction, right-of-way and pavement restoration. The contractor will schedule a final inspection for major and minor projects when construction is complete.

(5) *Trench excavation and general underground construction requirements for major and minor projects.*

(a) *Excavation.*

1. *Trench excavating methods.* Trench excavating methods (trench box, shoring, etc.) shall be used to keep the width of the trench to a minimum. Extra wide excavation to accommodate equipment will not be permitted. Sheeting, bracing, shoring, prefabricated steel trench boxes and other trench restraint system will be used to keep trench width to a minimum and to comply with OSHA regulations.
2. *Hazardous materials.* The applicant will comply with all federal, state and local laws, regarding hazardous material. For purposes of this section, hazardous material shall mean any material, substance or waste which, because of its quantity, concentration, or physical or chemical characteristics, is deemed to pose a present or potential hazard to human health, safety or to the environment.
3. *Utility construction.* The construction of utilities will be conformance with the plans which constitute a part of the permit approval process.
   a. Depth requirements for underground installation:
      (i) *Within roadway limits.* The minimum clear depth for open cut installation, and jacking, boring, and pushing operations shall be thirty-six (36) inches, unless otherwise authorized or directed by the director of public works.
      (ii) *Outside roadway limits and driveways.* The minimum clear depth for open cut installation and jacking, boring, and pushing operations shall be thirty (30) inches, unless otherwise authorized or directed by the director of public works.
4. *Housekeeping and excavated material.* The permittee shall keep the area surrounding the excavation clean (including trash, loose materials or other debris).

(b) *Backfill material.*

1. Backfill material for major projects will be select granular soil material approved by the geotechnical engineering company or the director of public works. Excavated material from the trench will not be used unless approved. Material excavated from utility poles, guy wire installa-

tion, replacing existing poles and routine pole inspections may be used for backfill.

2. Backfill material for minor projects within the roadway shall be comprised of crushed stone material up to subgrade elevation, unless otherwise approved by the director of public works. Backfill material for other areas will be select granular soil material approved by a geotechnical engineering company or the director of public works.

3. Installation of backfill material:

   a. Backfilling of the excavated area shall follow closely behind the installation project.

   b. The backfill material shall be compacted at near optimum moisture content, in layers not exceeding six (6) inches compacted thickness, to a density of not less than ninety-five (95) percent, unless otherwise approved by the geotechnical company. Mechanical tampers shall be used unless another method of compaction is approved. Jetting will not be permitted. The backfill material shall be installed uniformly and brought up evenly in layers for the full length of the trench.

4. Geotechnical testing and compaction for major and minor projects.

   a. *Major projects.* A geotechnical engineering company will perform compaction tests at intervals of no more than 200 feet along the main trench line. Tests will be conducted at the installation of service lines within these limits where directed by the director of public works or a contracted city engineer. The geotechnical engineering company will perform tests at as many levels of backfill installation, and at lateral locations to certify that compaction requirements have been achieved. Documented test reports will be prepared and submitted to the director of public works and the contracted city engineer before any right-of-way restoration proceeds.

   b. *Minor projects.* Compaction tests may be requested for minor projects at specific locations. In-house geotechnical engineers may be employed for performing compaction tests for minor projects.

5. General public safety. Every effort will be taken by the contractor to protect the safety and welfare of the general public, and to insure compliance with the safety and traffic plans submitted with the permit application.

6. Steel plates may be required by the director of public works, in congested or heavily traveled areas, to cover open trenches. Temporary patching will be required for any trench excavation in the roadway prior to opening the area to traffic. The director of public works may also require the temporary covering of any excavated area that will be left open overnight, if he so deems that not covering the excavated area will present a threat to public safety or health.

7. For major projects a construction sign will be placed adjacent to the utility construction area where traffic flow is to be obstructed. The signs will be placed seventy-two (72) hours prior to construction, at least every five hundred (500) feet along the project. The name of the utility/company involved and phone numbers that may be contacted on a twenty-four hour basis to be shown on the sign(s).

(6) *Right-of-way restoration within roadways.*

(a) All construction procedures and materials utilized will be in compliance with Alabama Department of Transportation Standard Specifications for Highway Construction, current edition. A geotechnical engineering company will be retained by the utility/company or permittee, to conduct field testing to document and certify that all materials and compaction efforts are in compliance with Alabama Department of Transportation Standard Specifications for Highway Construction, latest edition and procedures specified in the city engineering department's design details for right-of-way restoration.

(b) Major projects.

1. *Asphalt road surface.*

a. *Base construction.*

(i) Granular soil, sandy clay base. The base course of the affected lanes shall be reconstructed full width.

(ii) Bituminous base, stone base. The base course of the affected lanes be patched with equivalent base material if the structural integrity of the roadway has not been affected by the project, as determined by the geotechnical engineering company. Otherwise, the affected lanes shall be reconstructed full width.

b. *Wearing surface.* The full width of the roadway surface shall be resurfaced within the limits of the project. Existing traffic striping and markings will be replaced.

2. *Asphalt roadway surface overlay on existing concrete pavement.*

a. *Base construction.* The existing concrete street may be patched with concrete, if the structural integrity of the roadway has not been affected by the project, as determined by the geotechnical engineering company. Otherwise, the affected panels of the existing concrete street shall be reconstructed.

b. *Wearing surface.* The full width of the roadway surface shall be resurfaced within the limits of the project. Existing traffic striping and markings will be replaced.

3. *Concrete roadway surface.*

a. *Base construction.* The base course of the affected lanes shall be reconstructed full width as determined by the geotechnical engineering company.

b. *Concrete pavement.* The entire roadway panel sections of the affected lanes shall be reconstructed. If the structural integrity of the roadway has been significantly affected by the project, the director of public works may require the entire concrete surface, within the project limits, be reconstructed full width. Existing traffic striping and markings will be replaced.

4. *Unpaved roadway surface.* The entire roadway shall be surfaced with six (6) inches of stone within project limits.

(c) Minor projects.

1. *Asphalt roadway surface sixteen (16) square feet or greater.* For transverse service lines and miscellaneous installation and repair projects within excavated areas sixteen (16) square feet or greater, the entire width of the lane disturbed will be resurfaced from a point measured five (5) feet from the edge of the excavation each way longitudinally along the centerline of the roadway. If more

than one (1) lane is disturbed, the entire width of the disturbed lanes will be resurfaced. If the replacement pavement is more than seventy (70) feet long or more than ten (10) percent of the roadway area within a block is affected, the entire roadway will be resurfaced within the block. Existing traffic striping and markings will be replaced.

2. *Asphalt roadway surface less than sixteen (16) square feet.* For miscellaneous construction involving excavated areas less than sixteen (16) square feet, the area from the edge of the excavation extending one (1) foot outside the perimeter of the cut area will be resurfaced. If more than one (1) lane is disturbed, the entire width of the disturbed lanes will be resurfaced. If the replacement pavement is more than seventy (70) feet long or more than ten (10) percent of the roadway area within a block is affected, the entire roadway will be resurfaced within the block. Existing traffic striping and markings will be replaced.

3. *Concrete roadway surface.* The entire affected roadway panel sections, including base course, will be reconstructed joint to joint. Existing traffic striping and markings will be replaced.

4. *Unpaved roadway surface.* The entire roadway width will be resurfaced with six (6) inches of stone from a point five (5) feet measured longitudinally along the roadway from the center of the excavation each way.

(d) Jacking, boring, pushing, tunneling, retrofitting and pipe lining projects. Any pavement damage caused by these types of projects will be restored in conformance with provisions of subsections (5), (6) and (7) of this section. Any existing pavement damage relating to the replacement, retrofitting, or pipe lining of damaged utilities will be restored in conformance with subsections (5), (6) and (7) of this section.

(7) *Right-of-way and easement restoration outside roadway areas.*

(a) *Driveways.*

1. *Asphalt.*

a. Asphalt driveways affected by the construction project shall be Replaced from the right-of-way line to the curb or edge of road.

b. Construction of asphalt driveways will comply with Alabama Department of Transportation Standard Specifications for Highway Construction, current edition, section 416.

2. *Concrete.*

a. Construction of concrete driveways affected by the construction project shall be replaced to the nearest control joint.

b. Construction of concrete driveways will comply with the Alabama Department of Transportation Standard Specifications for Highway Construction, current edition, section 618.

(b) *Concrete sidewalks.*

1. Concrete sidewalks affected by the construction project shall be replaced to the nearest control joint in the affected construction area. Joints will be sawed unless at an expansion joint.

2. Construction of sidewalks will comply with the Alabama Department of Transportation Standard Specifications for Highway Construction, current edition, section 618.

(c) *Curb and gutter.*

1. Concrete curb and gutter, affected by the construction project, will be replaced from joint to joint in the affected area.

2. Concrete curb and gutter construction will comply with the Alabama Department of Transportation Standard Specifications for Highway Construction, current edition, section 623.

(d) *Miscellaneous structures.* All walls, steps, and other miscellaneous structures, affected by the construction, will be replaced as required by the Director of Public Works.

(e) *Drainage systems and structures.* All disturbed drainage channels, structures, and pipe systems affected by the construction will be replaced as required by the director of public works.

(f) *Unpaved areas.* All established lawn areas, affected by the construction project, will be replaced with similar landscaping materials which were existing prior to the project construction beginning, or upgraded at the discretion of the director of public works. Other areas will be restored with approved topsoil replacement, and or sodding or seeding.

(Ord. No. 2004-23, App. B, 6-21-04)

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Chapter 19

TRAFFIC*

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ARTICLE I. IN GENERAL

Sec. 19-1. Adoption of state traffic laws, rules and regulations.

In addition to all other provisions of law relating to the speed and operation of motor vehicles in the city, there is hereby adopted by the city all laws of the state and all rules and regulations of the state department of public safety now existing or hereafter enacted pertaining to the control of traffic and motor vehicles on highways that are misdemeanors under the laws of the state, and a violation of such laws, rules or regulations in the city or in the police jurisdiction thereof shall be a violation of this Code.
(Ord. No. 1986-1, 1-20-86)

Sec. 19-2. Blood alcohol tests.

(a) *Consent to be tested.* Any person, who shall have given his consent to be tested as provided in Code of Ala. 1975, § 32-5-192(a), as amended, or as may be amended, may be given the chemical test herein designated in order to determine the alcohol content of that persons blood.

(b) *Designation of Draeger 7110MKIII-C.* The Draeger Alcotest 7110MKIII-C is hereby designated as the official testing instrument or device for determining the alcohol content of ones blood pursuant to Code of Ala. 1975, § 32-5-192(a), as amended or as may be amended.

(c) *Subsequent approved instruments.* Any subsequent testing instrument or device, including, but not limited to the Draeger Alcotest 7110MKIII-C, approved by the Alabama Department of Forensic Sciences is hereby additionally designated as an official testing instrument or device for determining the alcohol content of ones blood pursuant to Code of Ala. 1975, § 32-5-192(a), as amended or as may be amended.

(d) *Administration of test.* Any officer administering a test as herein provided must first be approved by the state department of health pursuant to Code of Ala. 1975, § 32-5-194, as amended, or as may be amended, and shall administer the test in accordance with the rules and regulations of the state board of health now or hereinafter adopted and promulgated pertaining to the use, testing, maintenance and operation of this instrument employed for administering this test, as herein authorized.
(Ord. No. 1986-10, §§ 1—3, 10-6-86; Ord. No. 2002-19, §§ 1—4, 8-5-02; Ord. No. 2003-20, §§ 1—4, 8-4-03)

Sec. 19-3. Deposit of operator's license.

(a) Whenever any person lawfully possessed of a chauffeur's or driver's license issued by the department of public safety, or under the laws of any other state or territory, or the District of Columbia of the United States, shall be arrested and charged with any violation of the rules of the road within the jurisdiction of the city, the arresting officer of the city is authorized to accept the depositing of the chauffeur's license or driver's license in lieu of a written bond which may require such person's appearance in the municipal court to answer the charge lodged against such person.

(b) If the person elects to deposit such person's license as provided, the arresting officer or court shall issue such person a receipt for the license upon a form furnished and prescribed by the city and thereafter, such person shall be permitted to operate a motor vehicle upon the highways of this state as provided by Code of Ala. 1975, § 32-1-5, during the pendency of the case in which the license was deposited, unless such person's license or privilege is otherwise revoked, suspended or canceled.

(c) The clerk or judge of the court, in which the charge is lodged, shall immediately forward to the state department of public safety the license of the driver deposited in lieu of bail if the driver fails to appear in answer to the charge against such driver. The director of the department of public safety shall upon receipt of the license so forwarded by the court suspend the driver's license and driving privilege of the defaulting driver until notified by the court that the charges against the driver have been finally adjudicated.
(Ord. No. 1969-8, §§ A—C, 10-6-69)

Sec. 19-4. Careless driving.

Any person who shall, in the streets, parks, playgrounds or any public properties within the

city or its police jurisdiction, operate a motor vehicle or ride or drive any beast of burden, bicycle or vehicle of any kind or character, carelessly so as to endanger or be likely to endanger any property or the life or limb of any person, shall be guilty of a misdemeanor.
(Ord. No. 1987-10(2), § 1, 5-21-87)

Sec. 19-5. Driving near standing fire apparatus.

It shall be unlawful for any person to drive any motor or other vehicle closer than three hundred (300) feet to any of the fire trucks or fire apparatus while such truck or apparatus is standing at or near the source of fire.
(Ord. No. 1965-11, § 3, 12-6-65)

Cross reference—Parking near standing fire apparatus, § 19-48.

Sec. 19-6. Driving over fire hose or equipment; entering roped off area.

It shall be unlawful for any person to drive a motor vehicle or other vehicle over, across, or against any hose or other equipment of the fire department. When streets have been roped off in the vicinity of a fire it shall be unlawful for any person to enter the roped off enclosure except at the request of one (1) of the firefighters.
(Ord. No. 1965-11, § 4, 12-6-65)

Sec. 19-7. Helmet and shoes required on riders of motor-driven cycle.

Each driver, operator and passenger riding upon any motor-driven cycle shall, at all times while riding upon the same, wear upon such person's head a crash helmet, or similar protective head gear, and shall at all times while the motor-driven cycle is in motion, have shoes on with soles made of leather, or similar material.
(Ord. No. 1967-4, § 2, 7-17-67)

Sec. 19-8. Truck routes.

(a) As used in this section, the term "truck" shall include trucks over thirteen thousand (13,000) pounds, and truck-tractors with trailer attached.

(b) The following streets and parts thereof are hereby designated as through truck routes: That portion of the city streets within the city, along and upon which U.S. Highway 98 is located and traveled and that portion of the city streets within the city, along and upon which county highways numbered 11 and 64 are located and traveled.

(c) All trucks and trailers, including house trailers, entering the city, destined to any point outside of the city, and not taking on or discharging any goods, wares or merchandise within the city shall travel exclusively on the truck routes established in subsection (b) of this section, and over such part of such designated truck route established in subsection (b) at the point nearest to their destination and proceed by the most direct and shortest route to their given destination, and all trucks and trailers leaving a given point in the city, destined to any point outside the city, shall, after taking their destination into consideration, proceed from such leaving point by the most direct and shortest route as established in subsection (b) and shall then travel exclusively along such designated truck route through the city.

(d) The chief of police shall cause to be erected and maintained at points where through truck routes enter the city and at all junction points and turns where necessary, signs and such directions and at such locations as shall be approved by the chief, directing truck traffic in accordance with the provisions of subsections (b) and (c) of this section.
(Ord. No. 1978-7, §§ 1—4, 11-20-78)

Sec. 19-9. Avoiding traffic control devices or stop signs.

(a) *Turning to avoid traffic control devices or stop signs.* The operator of any motor vehicle approaching an intersection where vehicular traffic at such intersection is regulated by a traffic control device or stop signs shall not, prior to reaching such intersection, make any turn over or through private property in order to avoid such signal at such intersection.

(b) *Punishment.* A violation of this section shall be punished by a fine of not less than fifty dollars ($50.00) nor more than five hundred dollars

($500.00), or in the alternative, may be sentenced to community service as the municipal judge may deem appropriate.
(Ord. No. 2006-56, §§ I, II, 8-7-06)

Sec. 19-10. Restricted use of wireless communication devices while driving.

(a) *Definitions.* The following words, terms, and phrases when used in this section, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning. Except as may be otherwise provided in this section, all words and phrases used in this division which are defined in Code of Ala. 1975 § 32-1-1.1 shall have the meanings ascribed to them in that section.

Wireless communication device shall include a cellular, analog, wireless or digital device, computer or telephone, capable of accessing the internet or sending, receiving or downloading any electronic or digital data, including, but are not limited to, videos, pictures, or communications, such as electronic mail, instant messages and text messages. Such device may include telecommunication capabilities. Covered devices include, but are not limited to, devices commonly known as Blackberries, iPhones, iPads, Kindles, laptops, netbooks and other similarly equipped wireless devices. Covered devices shall not include voice radios, mobile radios, land mobile radios, commercial mobile radios or two-way radios with capability to transmit and receive voice transmission utilizing a "push to talk" or "press to transmit" function.

(b) *Restricted use of wireless communication devices while driving.* No person shall operate a vehicle upon any highway, roadway or street while using a wireless communication device to send, receive, download or view any electronic or digital content including music, video, picture or communication including, but not limited to, electronic mail, instant messaging or text messaging.

(c) *Exceptions.* Subsection (b) shall not apply only in the following instances:

(1) An emergency services professional using a wireless communication device while operating an authorized emergency vehicle in the due course of business; personal use of a wireless communication device shall remain subject to the provisions contained in subsection (b);

(2) An individual using a wireless communication device to make or receive a telephone call;

(3) An individual using a wireless communication device to obtain emergency services including, but not limited to, an emergency call to a law enforcement agency, health care provider, fire department, or other emergency services agency or entity;

(4) An individual using a wireless communication device while the motor vehicle is parked on the shoulder of the highway, roadway or street, or the vehicle is stopped due to normal traffic being obstructed and the vehicle transmission is in neutral or park;

(5) Global Positioning System (GPS) or navigation units that are permanently affixed to vehicle.

(d) *Stopping vehicle solely to verify violations of subsection (b) is prohibited.*

(1) No law enforcement officer shall stop a vehicle solely for the purpose of verifying a suspected violation of subsection (b);

(2) The provisions of subsection (b) shall not constitute probable cause for search of the vehicle involved.

(e) *Penalty.* Any person who violates any provision of this division shall upon conviction be punished, in addition to such other punishment as may be provided by the court, by fines and penalties as follows:

(1) For a first conviction, by a fine of one hundred dollars ($100.00) or by imprisonment of not more than ten (10) days;

(2) For a second conviction, by a fine of two hundred dollars ($200.00) or by imprisonment for not more than thirty (30) days;

(3) For a third or subsequent conviction, by a fine of five hundred dollars ($500.00) or

by imprisonment for not more than three (3) months or by both such fine and imprisonment.
(Ord. No. 2010-65, § 1, 11-1-10)

Secs. 19-11—19-19. Reserved.

ARTICLE II. SPEED LIMITS*

Sec. 19-20. Residential streets.

The speed limit on all residential streets located within the city limits of the City of Daphne, Alabama, excluding U.S. Highway 98, U.S. Highway 90, and Main Street is hereby fixed at thirty (30) m.p.h., unless otherwise posted.
(Ord. No. 2002-13, § 1, 7-1-02)

Sec. 19-21. School zones.

The speed limit in and through school zones is hereby fixed at twenty-five (25) m.p.h. as posted.
(Ord. No. 2002-13, § 2, 7-1-02)

Sec. 19-22. U.S. Highway 98(1).

The speed limit on U.S. Highway 98 from the north city limits of the City of Daphne to a point five hundred (500) feet south of the intersection of U.S. Highway 98 and Main Street is hereby fixed at forty-five (45) m.p.h.
(Ord. No. 2002-13, § 3, 7-1-02)

Sec. 19-23. U.S. Highway 98(2).

The speed limit on U.S. Highway 98 from a point five hundred (500) feet south of Main Street to the southern city limit of the City of Daphne is hereby fixed at fifty (50) m.p.h.
(Ord. No. 2002-13, § 4, 7-1-02)

Sec. 19-24. U.S. Highway 90(1).

The speed limit on U.S. Highway 90 from the intersection of U.S. Highway 90 and U.S. Highway 98 to a point five hundred (500) feet east of the intersection of Bayview Drive is hereby fixed at forty-five (45) m.p.h.
(Ord. No. 2002-13, § 5, 7-1-02)

Sec. 19-25. U.S. Highway 90(2).

The speed limit on U.S. Highway 90 from a point five hundred (500) feet east from the intersection of Bayview Drive to the said east city limits of the City of Daphne is hereby fixed at fifty-five (55) m.p.h.
(Ord. No. 2002-13, § 6, 7-1-02)

Sec. 19-26. Daphne Avenue(1).

The speed limit on Daphne Avenue between U.S. Highway 98 and Pollard Road is hereby fixed at forty-five (45) m.p.h.
(Ord. No. 2002-13, § 7, 7-1-02)

Sec. 19-27. Daphne Avenue(2).

The speed limit on Daphne Avenue between U.S. Highway 98, and Main Street is hereby fixed at thirty (30) m.p.h.
(Ord. No. 2002-13, § 8, 7-1-02)

Sec. 19-28. County Road 13.

The speed limit on County Road 13 between Whispering Pines Road and Lawson Road is hereby fixed at forty-five (45) m.p.h.
(Ord. No. 2002-13, § 9, 7-1-02)

Sec. 19-29. Main Street.

The speed limit on Main Street between U.S. Highway 98 and the southernmost point of the city limits of the City of Daphne is hereby fixed at thirty-five (35) m.p.h.
(Ord. No. 2002-13, § 10, 7-1-02)

Sec. 19-30. Whispering Pines Road.

The speed limit on Whispering Pines Road between Main Street and County Road 13 is hereby fixed at thirty-five (35) m.p.h.
(Ord. No. 2002-13, § 11, 7-1-02)

***Editor's note**—Section 15 of Ord. No. 2002-13, adopted July 1, 2002, repealed Ord. Nos. 1989-11, 1989-19, 1990-05, 1992-17, 1996-30, and 2002-09, from which former §§ 19-20—19-29 derived. Similar provisions were adopted by Ord. No. 2002-13 and set out herein as §§ 19-20—19-33.

Sec. 19-31. Pollard Road.

The speed limit on Pollard Road between Park Drive and the southernmost point of the city limit of the City of Daphne is hereby fixed at thirty-five (35) m.p.h.
(Ord. No. 2002-13, § 12, 7-1-02)

Sec. 19-32. Lakefront Drive.

The speed limit on Lakefront Drive is hereby fixed at twenty-five (25) m.p.h.
(Ord. No. 2002-13, § 13, 7-1-02)

Sec. 19-33. Penalty.

Any person who is convicted of speeding in excess of the speed limits as set forth in sections 19-20 through 19-32 above shall be fined in accordance with Code of Ala. 1975, § 32-5A-8, as amended or may be amended, and City of Daphne Ordinance No. 1987-8, as amended.
(Ord. No. 2002-13, § 14, 7-1-02)

Secs. 19-34—19-39. Reserved.

ARTICLE III. PARKING

DIVISION 1. GENERALLY*

Sec. 19-40. Definitions.

For the purposes of this division, the following words and phrases shall have the meaning respectively ascribed to them by this section unless taken specific exception to elsewhere in this article.

Public parking area. Any area designated for parking of vehicles whether or not located on public property or on private property if the area is open for public use.

Vehicle. The term vehicle shall mean any machine propelled by power other than human power designed to travel along the ground or through or upon water by use of wheels, treads, runners, slides, wings or hulls for the purpose of transporting persons or property or pulling nonself-propelled vehicles or machinery. This shall include, but not be limited to, automobiles, boats, trucks, trailers, motorcycles, motor driven cycles, motor scooters, mopeds, tractors, recreational vehicles and all terrain vehicles.
(Ord. No. 2006-66, § I, 9-5-06)

Sec. 19-41. Parking spaces for physically handicapped; regulation.

(a) The city street superintendent is hereby authorized to establish parking spaces on public property within any city block for the exclusive parking of motor vehicles of physically handicapped persons.

(b) On private property, the designation of exclusive parking for motor vehicles of handicapped persons shall be a voluntary action by the property owner or lessee. Where such parking is designated, and parking spaces shall be properly identified with signs which conform to the requirements of this section, violations by unauthorized persons shall be enforced by the police department. It shall be the responsibility of the property owner, lessee or designated agent to notify the police department by telephone or other appropriate means that enforcement is required when violation is observed or reported.

(c) Vehicles which bear current license plates of the state to which the authorized handicapped insignia decal is affixed are eligible to utilize those handicapped parking spaces created by this section. Additionally, vehicles which display the four-inch by eight-inch handicapped parking placard issued by the State of Alabama Department of Revenue, or by any other official state agency other than Alabama, on the dashboard are authorized to use parking spaces for physically handicapped persons. Either the handicapped license decal or the parking placard shall be acceptable identification for the use of designated handicapped parking spaces within the city.

(d) The handicapped parking permit shall in no way exempt the operator of motor vehicles from compliance with any other ordinance or law prohibiting the standing, stopping or parking of motor vehicles upon any public street.

***Editor's note**—Ord. No. 2006-66, §§ I—X, adopted Sept. 5, 2006, deleted the former Art. III, Div. 1, §§ 19-40—19-48, and enacted a new Art. III, Div. 1, as set out herein. The former Art. III, Div. 1, pertained to similar subject matter and derived from Ord. No. 2003-25, §§ I—IX, adopted Oct. 20, 2003.

(e) On public property, parking spaces reserved for handicapped use will be identified by a traffic control sign which conforms to the Manual on Uniform Traffic Control Devices, as revised, and also words "by permit only". To be eligible for enforcement provided by this section, property owners or lessees must display the approved sign on each parking space reserved for handicapped. Such signs shall be purchased from the city traffic engineer and shall be erected by the property owner or lessee.

(f) It shall be unlawful for any person to park any vehicle not displaying either the special permit provided for herein or the approved Alabama vehicular license plate in an area designated for handicapped parking.

(g) In any prosecution for any violation of the provisions of this section, it shall be prima facie evidence that the owner of such vehicle was operating the same at the time of such alleged violation, or, in the case of parking overtime, that the owner parked the vehicle and caused it to be parked overtime.

(h) Any violation of this section shall be punishable of a fine of not less than twenty-five dollars ($25.00), nor more than one hundred dollars ($100.00), plus cost of court, and in addition thereto, the motor vehicle may be towed at the vehicle owner's expense.
(Ord. No. 2006-66, § II, 9-5-06)

Sec. 19-42. Tow-away zones.

(a) There are hereby created on certain streets where no parking shall be allowed and designated as "tow-away zones".

(b) The city council shall establish the location of said "tow-away zones," by passage of appropriate ordinance.

(c) All "tow-away zones" shall be marked by signs at the beginning and end of said zones along said streets.

(d) Any violation of this section shall be punishable of a fine of not less than twenty-five dollars ($25.00), nor more than one hundred dollars ($100.00), plus cost of court, and in addition thereto, the motor vehicle may be towed at the vehicle owner's expense.
(Ord. No. 2006-66, § III, 9-5-06)

Sec. 19-43. No parking areas.

(a) There are hereby created areas on certain streets where no parking shall be allowed, and said areas shall be designated "no parking areas".

(b) The public works director or his designee shall establish the location of the "no parking areas".

(c) All "no parking areas" shall be marked by signs at the beginning and end of each area on each street.

(d) Any violation of this section shall be punishable of a fine of not less than twenty-five dollars ($25.00), nor more than one hundred dollars ($100.00), plus cost of court, and in addition thereto, the motor vehicle may be towed at the vehicle owner's expense.
(Ord. No. 2006-66, § IV, 9-5-06)

Sec. 19-44. Parking near intersections; exceptions; penalties.

(a) It shall be unlawful to park a vehicle on any city street parallel to the street centerline and nearer than twenty-five (25) feet to the corner of the intersection of any other street or alley.

(b) It shall be unlawful to park a vehicle in any such manner as to obscure the view of any other vehicle within one hundred (100) feet of the center of the intersection, provided, however, that the foregoing shall not apply to any intersection controlled by automated traffic signals while such signals are in operation, nor shall it apply to any vehicle properly parked in an officially designated, marked parking space.

(c) Any violation of this section shall be punishable of a fine of not less than twenty-five dollars ($25.00), nor more than one hundred dollars ($100.00), plus cost of court, and in addition thereto, the motor vehicle may be towed at the vehicle owner's expense.
(Ord. No. 2006-66, § V, 9-5-06)

Sec. 19-45. Parking near fire plugs.

(a) It shall also be unlawful for any person to park a vehicle on any public street, public parking area or public right-of-way within fifteen (15) feet of any fire plug located within the city limits of the City of Daphne.

(b) Any violation of this section shall be punishable of a fine of not less than twenty-five dollars ($25.00), nor more than one hundred dollars ($100.00), plus cost of court, and in addition thereto, the motor vehicle may be towed at the vehicle owner's expense.
(Ord. No. 2006-66, § VI, 9-5-06)

Sec. 19-46. No parking of vehicles for sale.

(a) It shall be unlawful for any business, corporation, partnership and/or individual to park a vehicle with any type of sign or marking which suggests or indicates that said vehicle is for sale, upon any right-of-way, median, street, public alley, public parking area or private parking area dedicated for public use located within the city limits of the City of Daphne.

(b) It shall be unlawful for any private property owner, tenant and/or lessee not otherwise exempted herein and who is not licensed as a car dealer to sell new or used vehicles within the City of Daphne to have or maintain more than one vehicle of any kind with a "for sale" sign on a said vehicle.

(c) Subject to the foregoing subsections (a) and (b), of this section, the following constitute exceptions to this division.

(1) Any dealer licensed to sell new and/or used vehicles in the City of Daphne shall have the right to keep such vehicles on their business premises with signs advertising the same for sale.

(2) Any vehicle may be parked unattended by the owner, lessee and/or driver thereof upon any premises, whether residential or commercial, for which the owner, lessee and/or driver thereof is an agent, employee, customer or invitee upon said premises and may leave said vehicle unattended upon the premises for any reasonable period of time for the purpose of employment or as a customer or invitee or for any other legitimate purpose provided that the same is not solely incident to or for the purpose of sale of said vehicle.

(3) Any private noncommercial owner or lessee of any real property within the city limits of the City of Daphne shall be limited to having no more than one (1) vehicle of any kind with a "for sale" sign or other sign placed on the vehicle which suggests or otherwise indicates that the said vehicle is for sale.

(d) Any vehicle found in violation of this section ordinance shall be towed at the vehicle owner's expense.

(e) Any violation of this section shall be punishable of a fine of not less than twenty-five dollars ($25.00) nor more than five hundred dollars ($500.00), plus cost of court and sentenced to not more than three (3) months in the municipal jail or both at the discretion of the municipal judge. Each day a violation occurs shall constitute a new and separate offense.
(Ord. No. 2006-66, § VII, 9-5-06)

Sec. 19-47. Fire lanes.

(a) There are hereby created areas on certain streets, public parking areas, and public rights-of-way within the city where no parking shall be allowed, and said areas shall be designated as "fire lanes".

(b) "Fire lanes" shall be established by the Daphne Fire Chief or his designee.

(c) All "fire lanes" shall be marked by signs at the beginning and end of said lanes.

(d) Any violation of this section shall be punishable of a fine of not less than twenty-five dollars ($25.00), nor more than one hundred dollars ($100.00), plus cost of court, and in addition thereto, the motor vehicle may be towed at the vehicle owner's expense.
(Ord. No. 2006-66, § VIII, 9-5-06)

Sec. 19-48. Medians.

(a) It shall be unlawful to park any vehicle on any median located in the City of Daphne, Alabama, whether such median is posted as such or not.

(b) It shall be unlawful for a vehicle to cross any median located in the city with exception being, the foregoing shall not apply to any vehicle crossing at a lawfully designated and maintained median cut.

(c) Any violation of this section shall be punishable of a fine not less than twenty-five dollars ($25.00), nor more than one hundred dollars ($100.00), plus cost of court, and in addition thereto, the motor vehicle may be towed at the vehicle owner's expense. Each day a violation occurs shall constitute a new and separate offense.
(Ord. No. 2006-66, § IX, 9-5-06)

Sec. 19-49. Penalty.

Any person charged with a violation of any section of this division may waive court appearance by paying the designated fine for said violations directly to the Municipal Court Magistrate of the City of Daphne, Alabama.
(Ord. No. 2006-66, § X, 9-5-06)

Secs. 19-50—19-59. Reserved.

DIVISION 2. IMPOUNDMENT OF VEHICLES

Sec. 19-60. Definitions.

As used in this article, the term "vehicle" shall include an automobile, motor bus, truck, wagon, tractor, farm machinery, or farm implements on wheels, and any other conveyance, implement or vehicle on wheels.
(Ord. No. 1989-07, § 1, 5-15-89)

Cross reference—Definitions and rules of construction generally, § 1-2.

Sec. 19-61. Declaration of nuisance; removal of vehicle authorized.

Any unoccupied vehicle parked upon a public street or any public alley or right-of-way, at a place, in a manner or for a length of time prohibited by any ordinance of the city is hereby declared to be an obstruction to traffic and a public nuisance, and any police officer of the city and the superintendent of streets is hereby authorized to remove such vehicle or to cause the same to be removed and impounded in a depository provided by the city for such purpose. Such removal may be done by driving the vehicle under its own power, or by hauling it by wrecker or otherwise, at the expense of the owner.
(Ord. No. 1989-07, § 2, 5-15-89)

Sec. 19-62. Removal by police officer required.

Whenever any police officer of the city shall find upon any public street of the city, or upon any street within the police jurisdiction of the city, any vehicle which such officer has reasonable cause to believe to be lost, stolen, or abandoned, or any vehicle which is, or is likely to become, an obstruction on a public way, or to be without proper protection by reason of the person in charge or control thereof having been arrested and incarcerated, or any vehicle which has remained parked on any public right-of-way continuously for a longer time than twenty-four (24) hours, such officer shall have authority immediately to remove such vehicle or cause the same to be removed to and impounded in a depository provided by the city for such purposes.
(Ord. No. 1989-07, § 3, 5-15-89)

Sec. 19-63. Collection of expenses.

The city shall have a lien upon each impounded vehicle for the amount of the cost of removing and impounding such vehicle, plus such reasonable amount as may be charged by the depository for storing such vehicle. If such vehicle is moved by the police or street department with its own equipment, the charge for moving it shall be forty-five dollars ($45.00). If such vehicle is stored at police headquarters, the storage charge shall be five dollars ($5.00) per day. All such charges are hereby declared to be reasonable and proper charges to cover the cost of hauling to the depository or police headquarters and storage therein. No vehicle impounded as provided in this article shall be released to any claimant without the

payment of the charges provided in this section, unless the chief of police is reasonably satisfied that such vehicle was improperly impounded. The payment of any charges prescribed by this section shall not have the effect of relieving the owner or the operator of the vehicle from any penalty prescribed by any other ordinance of the city, or from trial and conviction for the violation of any ordinance.
(Ord. No. 1989-07, § 4, 5-15-89)

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Chapter 20

TRAILERS AND MOBILE HOMES

Sec. 20-1. Definitions.
Sec. 20-2. Sales lot—License required.
Sec. 20-3. Same—Utilities connection.
Sec. 20-4. Permit to locate house trailer or mobile home.
Sec. 20-5. Park permit; inspection.
Sec. 20-6. Park sketch.
Sec. 20-7. Location of park.
Sec. 20-8. Lots; position of trailer or mobile home; roadway.
Sec. 20-9. Water supply.
Sec. 20-10. Toilets.
Sec. 20-11. Baths and lavatories.
Sec. 20-12. Liquid wastes.
Sec. 20-13. Trash and garbage.
Sec. 20-14. Sinks.
Sec. 20-15. Removal of wheels; affixing to real estate.
Sec. 20-16. Park caretaker.

Sec. 20-1. Definitions.

As used in this chapter, the following terms shall have the respective meanings ascribed to them:

House trailer, mobile home: Any structure intended for or capable of human habitation, designed to be mounted upon wheels and capable of being driven, propelled, or towed from place to place, without change in structure or design, by whatsoever name or title it is colloquially or commercially known; provided, that this definition shall not include transport trucks or vans equipped with sleeping places for drivers.

Trailer park, mobile home park: Any site, lot, field, or tract of land within the corporate limits of the city or its police jurisdiction, privately or publicly owned or operated, upon which two (2) or more house trailers or mobile homes, used for living, eating, or sleeping quarters, are, or are intended to be, located; such establishments being places where temporary residential accommodations are available whether operated for or without compensation, by whatsoever name or title they are colloquially or commercially termed.
(Ord. of 12-3-62, § 1)

Cross reference—Definitions and rules of construction generally, § 1-2.

Sec. 20-2. Sales lot—License required.

It shall be unlawful for any person to do business as a trailer or mobile home sales establishment without first obtaining a business license therefor from the city.
(Ord. of 12-3-62, § 9(3); Ord. of 2-5-73)

Sec. 20-3. Same—Utilities connection.

No mobile home sales establishment shall connect more than two (2) trailers or mobile homes to utilities or to septic tanks on or servicing such property, one (1) of which shall be allowed for use as a business office and the other of which shall be allowed for demonstration purposes.
(Ord. of 12-3-62, § 11; Ord. of 2-5-73)

Sec. 20-4. Permit to locate house trailer or mobile home.

No person shall park a house trailer or mobile home on any land within the city except in a licensed tourist court without first obtaining a permit therefor from the city clerk, or on the premises of a duly licensed mobile home sales establishment. The clerk shall issue no permit for parking use or occupancy of the house trailer or mobile home within the city unless such clerk is reasonably satisfied that the site upon which the house trailer or mobile home is to be located is within the limits of a duly licensed trailer park or mobile home park or on the premises of a relative of the occupant and that the occupant is on active duty in the armed forces of the United States, in which event such a permit may be issued for a period of not over ninety (90) days, or on the premises of a duly licensed mobile home sales establishment in which event no permit is necessary. A fee of two dollars ($2.00) shall be charged for the issuance of any permit under this section.
(Ord. of 12-3-62, § 11; Ord. of 2-5-73)

Sec. 20-5. Park permit; inspection.

(a) No person shall operate any trailer park or mobile home park without having a permit therefor issued by the city clerk, such permit to be issued only on compliance with this chapter, to the permittee and to be nontransferable with respect to persons or establishments. The permit shall be kept posted in a conspicuous place in the establishment; shall automatically expire on the date upon which city privilege licenses expire annually; and shall be renewable for sixty (60) days prior to that date each year.

(b) The issuance of every permit for the remainder of a license year and of every permit for a park or for the operation of a park in a new location shall be conditioned upon full compliance with this chapter as determined by one (1) or more inspections.
(Ord. of 12-3-62, § 11)

Sec. 20-6. Park sketch.

A sketch of the park site shall be submitted to the city clerk, and, when requested, to the county health officer before construction is begun, for advice and approval. The sketch shall be drawn to scale, showing the arrangement of house trailer or mobile home lots, roadways, water outlets,

location and type of sewage and liquid waste disposal, and the location of the buildings for toilets, baths, laundries and other facilities.
(Ord. of 12-3-62, § 3)

Sec. 20-7. Location of park.

No new trailer or mobile home park shall be licensed or permitted within five hundred (500) feet of any dwelling without the written consent of all residents and property owners within five hundred (500) feet thereof.
(Ord. of 12-3-62, § 10)

Sec. 20-8. Lots; position of trailer or mobile home; roadway.

(a) The lots for house trailers or mobile homes shall be plainly staked off or marked, and each lot shall contain not less than one thousand five hundred (1,500) square feet of area and shall be at least thirty-five (35) feet wide.

(b) Not more than one (1) house trailer or mobile home shall be located on any lot.

(c) In addition, at least a thirty-two-foot roadway shall be provided between each block of lots.

(d) No house trailer or mobile home shall be parked closer than ten (10) feet to the lot line.
(Ord. of 12-3-62, § 3)

Sec. 20-9. Water supply.

An adequate supply of water under pressure, from a source and of a quality approved by the state department of health, shall be provided. This should preferably be piped to each lot, but in lieu thereof, there shall be a water outlet within fifty (50) feet of every lot and in each bath house, wash room, laundry room, sink, and other water using facilities.
(Ord. of 12-3-62, § 4)

Sec. 20-10. Toilets.

Approved flush toilets connected to an approved sewer or septic tank shall be provided in the ratio of one (1) toilet seat for each sex for each six (6) house trailer or mobile home lots or fraction thereof. These toilets shall be located not more than two hundred (200) feet from any lot they are to serve. Individual sewer inlets may be provided for house trailers or mobile homes with water toilets, bath or sinks, with a hose connection to the sewer. When not in use, the sewer connection shall be covered with a fly-tight cap or screen.
(Ord. of 12-3-62, § 5)

Sec. 20-11. Baths and lavatories.

Showers or tub baths and lavatories shall be provided in the same ratio as toilets.
(Ord. of 12-3-62, § 6)

Sec. 20-12. Liquid wastes.

Liquid wastes from baths, sinks, laundry rooms, and lavatories, shall be piped to an approved sewer or septic tank, or shall be disposed of in compliance with the recommendations of the county health officer.
(Ord. of 12-3-62, § 7)

Sec. 20-13. Trash and garbage.

A fly-tight garbage can shall be provided for each house trailer or mobile home lot. All trash and garbage shall be collected and disposed of as required by law.
(Ord. of 12-3-62, § 8)
Cross reference—Garbage pickup, § 12-30 et seq.

Sec. 20-14. Sinks.

If cooking is done in any house trailer or mobile home which is not provided with sewer connections and sinks, a hopper kitchen, or laundry sink shall be provided within two hundred (200) feet of all such lots for the disposal of dish water. The facilities for disposal of dish water, and the hopper for the disposal of all other waste water, shall be separate.
(Ord. of 12-3-62, § 9)

Sec. 20-15. Removal of wheels; affixing to real estate.

No person shall remove or cause to be removed the wheels from any trailer or mobile home except for the purpose of repair; nor shall any person elevate, block or stabilize any trailer or mobile home other than with jacks designed, intended and provided for that purpose. No person shall

place or stabilize any trailer or mobile home upon a permanent foundation, or convert the same into a dwelling house, or otherwise affix the same to the real estate; provided, however, that such prohibition shall not apply to trailers or mobile homes already placed or stabilized upon permanent foundations, or converted into a dwelling house, or otherwise affixed to the real estate on December 3, 1962. Such converted trailers and mobile homes shall otherwise be subject to all the provisions of this chapter. No structure of any kind shall be added to or constructed on the same lot with a house trailer or mobile home except an open porch, covered with an awning.
(Ord. of 12-3-62, § 14)

Sec. 20-16. Park caretaker.

The trailer park or mobile home park shall be provided with a caretaker, who shall be responsible for the maintenance of physical equipment; for cleanliness of the grounds, surroundings, toilets, baths, and laundry facilities; and for the general conduct of the park operation.
(Ord. of 12-3-62, § 2)

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Chapter 21

VEHICLES FOR HIRE

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ARTICLE I. IN GENERAL

Secs. 21-1—21-20. Reserved.

ARTICLE II. TOWING AND RECOVERY ROTATION SERVICES REGULATIONS*

Sec. 21-21. Definitions.

For purposes of this article, the following terms, phrases, words, and their derivations shall have the meaning herein ascribed. When not consistent with the context, words used in the present tense include the future; words used in the singular number include the plural, and words used in the male gender include the female and neuter. The word "shall" is always mandatory and not merely directory.

Large tow truck: A class "C" or above tow truck as defined in this article.

Person: Any person, firm, partnership, association, corporation, company or organization of any kind.

Street: any public or private road, street, avenue, highway, or alley.

Tow truck or wrecker: Any vehicle operated by a person engaged in the business of vehicle towing, whereby vehicles are towed or otherwise removed from the place where they are disabled or parked by use of a tow truck so designed for that purpose.

Vehicle: Any device in, upon or by which any person or property is or may be transported upon a street.

Wrecker rotation call: A call for a towing company that is on a list maintained by the Daphne Police Department that is permitted to provide a towing service when called by the Daphne Police.
(Ord. No. 2006-65, § 1, 9-5-06)

*Editor's note—Ord. No. 2006-65 §§ 1—23, adopted Sept. 5, 2006, repealed Art. II, §§ 21-21—21-45, and enacted a new Art. II to read as set out herein. Former Art. II pertained to vehicle wrecker or towing service and derived from Ord. No. 1997-03, §§ 1—14, adopted Mar. 17, 1997.

Sec. 21-22. Permit and license required.

No tow truck service business shall offer such services within the City of Daphne or its police jurisdiction, without first obtaining both a permit from the chief of police, or his designee, and a license to operate the tow truck service business from the city as provided in this article.
(Ord. No. 2006-65, § 2, 9-5-06)

Sec. 21-23. Application for permits.

Applications for permits issued hereunder shall be made annually upon forms prepared and made available by the chief of police or his designee. All applicants shall include as much information as the applicant wishes to submit, but must provide the following to the Daphne Police Department:

(1) *Application for placement on rotation list.* This application will include the information on the business, the business owner(s), and the vehicle storage area.

(2) *Agreement of compliance form.* This form is an agreement by the applicant to meet all standards and follow all rules and regulations as set out in this article.

(3) Any other information as the chief of police or his designee shall find reasonably necessary to effectuate the purpose of this article and to arrive at a fair determination of whether the terms of this article have been complied with.

(Ord. No. 2006-65, § 3, 9-5-06)

Sec. 21-24. Standards for issuance of permit.

The chief of police or his designee shall issue a permit hereunder once he finds:

(1) Public convenience and necessity require the proposed tow truck service for which an application has been submitted;

(2) Insurance policies as required by this article have been procured;

(3) Applicant and applicant's employees are fit and proper persons to conduct the proposed tow truck service;

(4) Applicant's tow trucks appear to be in good mechanical condition and equipped

in accordance with the requirements herein so that the usual work of a tow truck can be accomplished;

(5) That the requirements of this article and all other governing laws and ordinances have been met; and

(6) That all other requirements for a tow truck and the tow truck service business promulgated from time to time by the State of Alabama have been met.

(Ord. No. 2006-65, § 4, 9-5-06)

Sec. 21-25. Promulgation of regulations.

The chief of police or his designee may from time to time promulgate and enforce reasonable rules and regulations for tow trucks.
(Ord. No. 2006-65, § 5, 9-5-06)

Sec. 21-26. Application for business license.

Upon issuance of a permit by the chief of police or his designee and prior to doing or soliciting any business in the city, the owner of the tow truck service business must make application for a City of Daphne business license and pay the required license fee at the office of the city clerk.
(Ord. No. 2006-65, § 6, 9-5-06)

Sec. 21-27. Permit term.

Unless sooner revoked, the aforementioned permit issued by the chief of police or his designee shall be valid for the remainder of the calendar year in which it was issued. Each permit must be reapplied for annually upon submitting an application on or after December 1st and no later than the first business day in January for each succeeding calendar year. It shall be unlawful to engage in business of a rotation wrecker within the city after the expiration date of the permit. Permits are non-transferable.
(Ord. No. 2006-65, § 7, 9-5-06)

Sec. 21-28. Insurance requirements.

(a) All tow trucks operating within the city or its police jurisdiction shall maintain a valid bond or insurance policy issued by a surety or an insurance company authorized to do business in the State of Alabama with coverage at the following minimum levels and containing an endorsement providing for thirty (30) days notice to the city, specifically to the officer designated by the police chief to monitor tow truck companies, prior to any material change therein or cancellation thereof.

(1) Two hundred fifty thousand dollars ($250,000.00) for bodily injury to any one (1) person;

(2) Five hundred thousand dollars ($500,000.00) for bodily injury in one (1) accident;

(3) One hundred thousand dollars ($100,000.00) for damage to property, other than the towed vehicle and its contents while being either towed or stored; and

(4) One hundred thousand dollars ($100,000.00) in garage keepers' legal liability, including but not limited to coverage for fire, explosion, theft, not and/or civil commotion, vandalism and collision with a deductible not greater than five hundred dollars ($500.00).

(b) Each tow truck service business in the City of Daphne who makes contact with any vehicle to be towed, assumes liability for injury to persons, property damage, fire, theft, or other acts of negligence stemming from the towing process.
(Ord. No. 2006-65, § 8, 9-5-06)

Sec. 21-29. Tow truck inspections.

Each wrecker company doing business in the city shall have a current ALDOT certificate of inspection for each vehicle and an ALDOT number must be displayed on the vehicle. A copy of these inspections will be maintained by the wrecker company and will be made immediately available to the police department upon request.
(Ord. No. 2006-65, § 9, 9-5-06)

Sec. 21-30. General requirements.

(a) Each wrecker company shall maintain twenty-four-hour wrecker service, seven (7) days a week, with a wrecker operator and wrecker on call at all times. Police dispatchers will telephone only one (1) number as provided by the wrecker

company. Wrecker companies may have this number forwarded to another number but no beepers or answering machines will be used.

(b) Each wrecker company will have adequate storage space to provide safe keeping for a minimum of fifteen (15) wrecked, disabled or impounded vehicles. This space shall be enclosed by six-foot chain link fence or wall with a gate under lock and key. All wrecker companies shall employ reasonable safeguards and procedures so that all personal belongings and contents in the vehicles are intact and returned to the vehicle's owner or agent upon release of the vehicles. This storage area shall be within the City of Daphne city limits.

(c) Each tow truck service business shall maintain a current list of drivers and furnish a copy of said list to the Daphne Police Department immediately upon request. This list shall contain current information on the owner(s) and drivers. This current information will include home address, home phone number(s), date of birth, driver's license numbers, dates of hire and any other personal information that may be requested by the Daphne Police Department.

(d) Each tow truck service business shall maintain a current list of tow trucks in their fleet and shall furnish a copy of said list to the Daphne Police Department immediately upon request. This list will include the make, model, year, VIN tag number, vehicle size, number of axles, and lift capacity.

(e) The rotation call list is to include one (1) listing per wrecker company, regardless of the number of company locations within the city, regardless of the number of trucks, and regardless of the fact that one (1) owner or group of owners shall own more than one (1) wrecker company within the city.

(f) No two (2) or more tow truck service businesses may share the same physical location, address, parcel of real estate, or telephone number.

(g) No employee of a tow truck service business may inquire to the police dispatcher as to rotation status or express grievances relating to other tow truck service businesses. Such matters shall instead be directed to the chief of police or his designee.
(Ord. No. 2006-65, § 10, 9-5-06)

Sec. 21-31. Tow trucks and drivers.

(a) No driver who has been convicted of any felony or any crime involving force, violence or moral turpitude shall operate a vehicle on the rotation list.

(b) All tow truck drivers shall be properly trained and have a valid driver's license for the type of tow truck they are operating. Additionally, all tow truck drivers must be properly trained to use any other equipment necessary to performing a tow truck service.

(c) Tow truck service businesses shall arrive to the location of the tow within fifteen (15) minutes from the time the call is dispatched by the Daphne Police Department, if within the Daphne city limits.

(d) The tow truck driver responding on behalf of the tow truck service business must have a certificate from a recognized hazardous materials class indicating an awareness level of hazardous materials training. This certificate of training shall be maintained by the wrecker company and a copy of it shall be furnished to the Daphne Police Department immediately upon request. When responding to a tow truck service call, all state and federal E.P.A. guidelines shall be followed.

(e) Each tow truck service business shall equip and maintain all tow trucks covered under this article in accordance with the provisions set forth in the Alabama Department of Transportation Handbook and consistent with industry standards.

(f) No wrecker shall proceed to the scene of an incident without being requested to do so by the police department or the owner or person in charge of the vehicle. No wrecker shall solicit business at the scene of an incident.

(g) Once a tow truck has arrived at the scene, the driver shall, without undue delay, move vehicles to a location where they do not impede or

obstruct traffic and remove any debris on the ground originating from the vehicles in accordance with Code of Ala. 1975, § 13A-7-29(4).

(h) No wrecker will be marked (color, decal, etc) as to resemble a Daphne Police vehicle or any other law enforcement vehicle.

(i) Tow trucks shall not display the words "Official Police Tow" or words to that effect, without prior written approval from the Daphne Police Department.

(j) The tow truck service shall respond to a wrecker rotation call without any undue delay Undue delays shall include but not be limited to delays caused by lack of knowledge or training of the tow truck driver to effectively operate the tow truck or its equipment, faulty equipment and/or the lack of necessary equipment or supplies to remove a vehicle.

(k) The tow truck service business shall maintain a minimum of one (1) driver on-duty at all times.

(l) In the event that any wrecker is canceled prior to or after arrival at the scene of any incident after being dispatched as a result of being listed on the rotation list, the wrecker company shall not be entitled to charge for the canceled call; however, the company shall be placed back on top of the rotation list cancellation may occur up to the time the wrecker actually begins towing the vehicle.

(m) Each tow truck shall be equipped with a flashing, revolving or strobe caution light, the color of amber or yellow, and mounted for three-hundred-sixty-degree visibility and properly installed. Said caution light shall be operated at the scene of a wreck/collision, but shall not be operated while proceeding to the scene of a wreck/collision or while in transport, unless such use is authorized by the police department in a particular case because of an emergency situation.

(n) The name of the tow truck service business will be kept prominently displayed on each tow truck.

(o) A rollback and/or a flatbed tow truck can be used for rotation wrecker calls unless the police department of the City of Daphne instructs that a conventional wrecker is needed or requested by the owner of the vehicle or the owner's representative. Therefore, having a rollback and/or a flatbed tow truck is not required to remain on the rotation list, however, having at least one (1) conventional wrecker in proper working order is required to remain on the rotation list.

(p) In the event a tow truck service business is unavailable to respond to a wrecker rotation call, the tow truck service business shall call the Daphne Police Department and advise of such. Being unable to respond to a wrecker rotation call will result in a loss of turn on the wrecker rotation list. Abusive use of unavailable wrecker rotation calls or refusals to respond will not be tolerated. (Ord. No. 2006-65, § 11, 9-5-06)

Sec. 21-32. Standard tow truck equipment.

Each tow truck service business shall maintain and keep in good working order the following standard equipment on each tow truck:

(1) Power winch — Winch line and/or boom with lifting capacity of not less than four (4) tons.

(2) Wheel-lift — Lift designed to transport vehicles by their tires without further damaging the towed vehicle.

(3) Proper the down straps for wheel-lift.

(4) Safety chains.

(5) Safety vest.

(6) Safety gloves.

(7) Fire extinguisher — properly charged.

(8) Pry bar capable of prying open doors.

(9) Push broom.

(10) Ax.

(11) Shovel.

(12) One (1) set of road flares/triangles.

(13) Four-way hazard emergency flashing lights.

(14) Tow lights.

(15) Three-hundred-sixty-degree visibility revolving or strobe light colored amber or yellow.

(16) Work lights designed to provide lighting on dark incident scenes.

(17) One (1) set of dollies (with tow truck service business' name permanently affixed to dollies).

(Ord. No. 2006-65, § 12, 9-5-06)

Sec. 21-33. Rollback/flatbed tow truck equipment.

Each rollback/flatbed tow truck shall maintain the standard tow truck equipment as well as the following additional equipment and this equipment shall be in good working order:

(1) Minimum nineteen-foot bed.

(2) Dual rear wheels.

(3) Minimum fifty (50) feet of three-eighth-inch cable (6×19 OEM).

(4) Brake lock device.

(5) Minimum of (4) tie downs.

(Ord. No. 2006-65, § 13, 9-5-06)

Sec. 21-34. Large tow truck equipment.

Each large tow truck shall maintain the standard tow truck equipment as well as the following additional equipment and this equipment shall be in good working order.

(1) Air control valve operable.

(2) Two (2) chock blocks or equivalent.

(3) Two hundred (200) feet (minimum five-eighth-inch cable or OEM).

(4) Automotive lock air brakes (parking brakes).

(5) Bolt cutters (minimum one-half-inch opening).

(6) Two (2) fire extinguishers (ten (10) pounds minimum)—properly charged.

(7) External air hookups and hoses.

(8) Six (6) safety cones.

(9) Six (6) safety triangles or road flares.

(10) Fifty (50) pounds of sand or equivalent.

(Ord. No. 2006-65, § 14, 9-5-06)

Sec. 21-35. Tow truck classifications.

There will be four (4) classes of tow trucks covered under this policy.

Class A — Light Duty:

(1) Tow trucks with a manufacturer's gross vehicle weight rating (GVWR) of ten thousand (10,000) to nineteen thousand five hundred (19,500) pounds with wheel-lift capabilities and may have a car carrier. Class A equipment must include a four-ton recovery equipment rating and one hundred (100) feet of three-eighth-inch 6×19 cable or OEM specifications.

(2) A towing company that has a car carrier may be exempted from the wheel-lift capability requirements, however, the car carrier must be an additional unit.

Class B — Medium Duty:

(1) Tow trucks with a manufacturer's gross vehicle weight rating (GVWR) of nineteen thousand five hundred one (19,501) to thirty-three thousand (33,000) pounds. The truck shall be capable of providing air to the towed vehicle. Class B equipment must include a nineteen thousand five hundred one (19,501) to thirty-three thousand (33,000) GVRW chassis and one hundred fifty (150) feet of seven-sixteenth-inch 6×19 cable or OEM specifications.

(2) These tow trucks may also have a car carrier, however, the car carrier must be an additional unit. A Class B (car carrier) must be equipped with a nineteen thousand five hundred one plus (19,501+) GVWR chassis and fifty (50) feet of three-eighth-inch 6×19 cable or OEM specifications.

Class C — Heavy Duty:

(1) Three-axle tow trucks with a manufacturer's gross vehicle weight rating (GVWR) of at least thirty-three thousand (33,000) pounds. The truck shall be capable of providing air to the towed vehicle. Class C equipment must include a thirty-three thousand (33,000) to fifty thousand (50,000) GVWR chassis, twenty-five (25) ton recov-

ery equipment rating, and two hundred (200) feet of five-eighth-inch cable or OEM specifications.

Class D — Super Heavy Duty:

(1) Three-axle tow trucks with a manufacturer's gross vehicle weight rating (GVWR) of at least fifty thousand (50,000) pounds. The truck shall be capable of providing air to the towed vehicle. Class D equipment must include a fifty thousand plus (50,000+) GVWR chassis, twenty-five (25) ton recovery equipment rating, and two hundred fifty (250) feet of three-quarter-inch cable or OEM specifications.

(Ord. No. 2006-65, § 15, 9-5-06)

Sec. 21-36. Maximum allowable towing/storage fees.

No tow truck service business on the Daphne Police Department's "wrecker rotation call" list shall charge a fee in excess of amounts set forth herein for tow truck service performed in response to wrecker rotation calls made by a police dispatcher. In addition to the fee caps set forth and provided herein, no other fees may be charged by the tow truck service business that are not expressly set forth by this article.

(1) The tow truck service business may not charge more than one hundred and five dollars ($105.00) for each vehicle towed from one (1) point in the Daphne city limits and police jurisdiction to another point therein, for any vehicle with a gross vehicle weight rating (GVWR) of ten thousand (10,000) pounds or less. In addition to the one-hundred-five-dollar charge for towing each car, any service call which requires more than one and one-half (1½) hours on scene, shall be permitted an additional sixty-five dollars ($65.00) per hour charge.

a. If any vehicle requires a dolly, tire change, or removal of a dislodged drive shaft there may be a thirty-five-dollar charge.

b. No added towing charges will be allowed for moving the towed vehicle to any destination required by owner within the Daphne city limits and police jurisdiction, but an additional two dollars and fifty cents ($2.50) per mile charge will be allowed for one-way towing outside the city limits, to tow a vehicle into the city from outside, or to tow a vehicle from the city to another destination as requested by the vehicle owner.

(2) A two-hundred-fifty-dollar charge for each vehicle towed from one (1) point in the city or police jurisdiction to another point therein, for any vehicle with a gross vehicle weight rating (GVWR) of ten thousand one (10,001) pounds or more. In addition to the two-hundred-fifty-dollar charge for towing each car, any service call which requires more than one and one-half (1½) hours on scene, shall be permitted an additional two hundred and fifty dollars ($250.00) per hour charge.

a. No added towing charges will be allowed for moving the towed vehicle to any destination required by owner within the Daphne city limits and police jurisdiction, but an additional three dollars and fifty cents ($3.50) per mile charge will be allowed for one-way towing outside the city limits, to tow a vehicle into the city from outside, or to tow a vehicle from the city to another destination as requested by the vehicle owner.

(3) Storage fees shall be charged as follows:

a. Fifteen dollars ($15.00) per day for each vehicle with up to one (1) ton gross weight.

b. Twenty dollars ($20.00) per day for each vehicle over one (1) ton in gross weight but less than (40) feet in length.

c. Twenty-five dollars ($25.00) per day for each vehicle in excess of forty (40) feet in length.

d. Any recovered stolen vehicles will be charged one-half (½) of the current impound fee applicable to said vehicle.

(Ord. No. 2006-65, § 16, 9-5-06; Ord. No. 2008-42, § 1, 7-7-08)

Sec. 21-37. Records.

Each tow truck operator shall document and maintain a record of all services performed in response to a wrecker rotation call. Said records shall include, but not be limited to, the following information:

(1) Date and time service was requested.

(2) Name of the person requesting service.

(3) Location of vehicle.

(4) Description, license and V.I.N. of towed vehicle.

(5) Vehicle owner or driver's name, if known.

(6) Service charges and fees.

a. All records required herein must be immediately available for inspection by officers or agents of the Daphne Police Department. Such inspections shall be conducted at a reasonable date and hour at the towing service business.

b. The tow truck service business shall maintain the required records for the current calendar year, and the calendar year immediately prior to the current calendar year.

c. A record of all abandoned motor vehicles shall be maintained by the tow truck company and the sale or disposal of any abandoned vehicle be in accordance with Code of Ala. 1975, title 32, ch. 13.

(Ord. No. 2006-65, § 17, 9-5-06)

Sec. 21-38. Selection of wrecker.

The owner of the vehicle or the owner's representative shall select, when practical, the wrecker to be used. The selected wrecker company shall be notified by the said owner or the owner's representative.

Insofar as it is feasible to do so, and unless otherwise instructed by the owner or the owner's representative, the tow truck service business will be notified by the City of Daphne's Police Department selected using the wrecker rotation call system. The police officer shall inform the owner or the owner's representative of the cost and charges and other pertinent information concerning the wrecker rotation services.

(Ord. No. 2006-65, § 18, 9-5-06)

Sec. 21-39. Complaints.

Complaints against towing companies will be documented by the Daphne Police Department complaints will be investigated by the Daphne Police Department in a timely manner. After the investigation, the towing company and complainant will then be notified of the disposition of the complaint. Any complaints and/or grievances from the wrecker companies will be put in writing from the company to the chief of police or his designee. The chief of police or his designee will respond back in writing within five (5) business days.

(Ord. No. 2006-65, § 19, 9-5-06)

Sec. 21-40. Revocation and suspension.

The business wrecker license or any wrecker permit issued under this article shall be subject to suspension or revocation by the chief of police or his designee if he/she finds.

(1) False information was provided or information withheld by the wrecker company, or an employee of the wrecker company, at the time the application for permit was received, if such false or withheld information would have constituted just cause for refusal to issue such license or permit.

(2) False information was provided or information was withheld at any time by the wrecker company, or an employee of the wrecker company, when information was requested by the chief of police or his designee regarding the rotation wrecker service.

(3) The wrecker company, or an employee of the wrecker company, conducted business in a fraudulent, unethical or questionable manner that would reflect unfavorably on the Daphne Police Department.

(4) The wrecker company's wrecker business license has expired.

(5) The wrecker company has any violations concerning insurance.

(6) Any tow truck driver is operating a wrecker with a suspended, revoked or cancelled driver's license.

(7) The wrecker company has missed two (2) consecutive call outs without acceptable justification. It is the wrecker companies' responsibility to notify the Daphne Police Department if they are unable to answer call outs. The notification shall contain the reason and the length of time they will be out of service.

(8) The wrecker company, or an employee of the wrecker company, violated any provisions of this article.

The length of suspension or revocation of the permit will be at the discretion of the chief of police or his designee, based in part on the severity of the violation(s) and/or the frequency of the violations. The wrecker company will have the right to appeal said revocation or suspension by filing with the city clerk a written notice of appeal within seven (7) calendar days from the date of permit suspension or revocation. The mayor and city council shall hold a public hearing on the appeal to determine whether to affirm said permit suspension or revocation.
(Ord. No. 2006-65, § 20, 9-5-06)

Sec. 21-41. Penalties.

Any person violating any provision of this article shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined an amount not exceeding five hundred dollars ($500.00) or be imprisoned in the city jail for a period not to exceed one hundred and eighty (180) days or be both so fined and imprisoned.
(Ord. No. 2006-65, § 21, 9-5-06)

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APPENDIX A

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***Editor's note**—Ord. No. 2011-54, § I, adopted July 18, 2011, repealed the former App. A and enacted a new App. A as set out herein. The former App. A, §§ 1-1—36-20, pertained to similar subject matter and derived from Ord. No. 2002-22, adopted Sept. 3, 2002; Ord. No. 2003-26, § I, adopted Nov. 3, 2003; Ord. No. 2004-50, § I, adopted Jan. 3, 2005; Ord. No. 2004-51, § 1, adopted Jan. 3, 2005; Ord. No. 2005-10, §§ 1—3, adopted Apr. 4, 2005; Ord. No. 2007-03, adopted Jan. 2, 2007; and Ord. No. 2008-54, adopted Nov. 3, 2008. Obvious misspellings and punctuation errors have been corrected without notation. For stylistic purposes, a uniform system of expression of numbers and capitalization has been used. Also, the appendices containing forms and the zoning map are omitted, the same being on file in the office of the city clerk.

Cross references—Exemption of political signs, § 14-43; city planning commission, § 17-1 et seq.

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ARTICLE I. PURPOSE, REPEALS, ENACTMENT AND SHORT TITLE

1-1 Purpose.

The City of Daphne, Alabama, pursuant to the authority granted by Title 11, Subtitle 2, Chapter 52, Articles 1 through 4, Code of Alabama, 1975 and 1986 Cumulative Supplement, in order to promote the health, safety, convenience, order, prosperity, and general welfare of the residents; to lessen congestion in the street; to secure safety from fire, panic, and other dangers; to provide adequate light and air; to prevent the overcrowding of land, to avoid undue concentration of population; to facilitate the adequate provision of transportation, water, sewerage, and parks; to facilitate initiation of the comprehensive plan, and other public requirements, hereby ordains and enacts into law an official Land Use and Development Ordinance in accordance with the laws of Alabama. In their interpretation and application, the provisions of this Ordinance shall be:

(a) Considered as minimum requirements.

(b) Liberally construed in favor of the governing body.

(c) Deemed to neither limit nor repeal any other powers granted under state statutes.

1-2 Repeals and enactment.

An Ordinance of the City of Daphne establishing rules and regulations for zoning, platting, and subdividing land which rules and regulations define the legal authority; classify land; establish zoning districts requirements; prescribe procedures for plat review; set standards and specifications for streets, utilities, and other public improvements in subdivisions; and, prescribe methods for enforcement, exceptions, and amendments.

1-3 Short title.

This Ordinance shall be known and may be cited as the "Land Use and Development Ordinance" for the City of Daphne.

ARTICLE II. LEGAL STATUS

2-1 Authority.

The rules and regulations set forth herein are hereby adopted in accordance with Title 11, Subtitle 2, Chapter 52, Articles 1 through 4 of the Code of Alabama, 1975, (as amended), and 1986 Cumulative Supplement are as follows:

(a) *Zoning:* Zoning authority is specifically contained in Title 11, Subtitle 2, Chapter 52, Articles 1 and 4 of the Code of Alabama, 1975, (as amended), and 1986 Cumulative Supplement.

(b) *Subdivisions:* Subdivision authority is specifically contained in Title 11, Subtitle 2, Chapter 52, Articles 1, 2, and 3 of the Code of Alabama, 1975, (as amended), and 1986 Cumulative Supplement.

2-2 Jurisdiction.

(a) *Zoning:* This Ordinance shall be in force and effect for zoning purposes within the corporate limits of the City of Daphne as presently or hereinafter established.

(b) *Subdivisions:* This Ordinance shall be in force and effect for the subdivision of all land which is situated inside the corporate limits of the City of Daphne, as well as, all land which lies in the extraterritorial planning jurisdiction of the City of Daphne, as presently or hereinafter established.

ARTICLE III. OFFICIAL PLANS AND MAPS

3-1 Implementation.

This Ordinance shall be implemented in accordance with the comprehensive plan. A copy of the plan is filed in the office of the city clerk and zoning administrator and/or director of community development.

3-2 Future land use map.

The future land use map as contained in the comprehensive plan shall serve as a guide for the

future development of Daphne. To the extent practical, it shall be followed in the administration of this Ordinance.

3-3 Official zoning district map.

The future land use map as contained in the comprehensive plan, as well as all official maps, are to be utilized and construed only as visual aids for the city and/or any of its departments, agencies, or commissions in the furtherance of city duties and goals and are not solely to be relied upon by any party.

The zoning district map, exhibit A, the latest edition, is hereby adopted and made a part of this Ordinance. It shall be filed in the office of the zoning administrator and/or director of community development and the city clerk to show thereon the date of adoption of said Ordinance. All official maps shall be used as a tool in determining the permissible use of land. Zoning should always be verified by zoning administrator or director of community development.

3-4 Amendments to the official zoning district map.

If, in accordance with the provisions herein, revisions are made in the zoning district boundaries or any other information portrayed on the zoning district map, changes shall be made on the map immediately following the amendment and upon approval of the city council. Unauthorized alterations to zoning district map shall be considered a violation of this Ordinance and subject to penalties as prescribed herein.

3-5 File of properties rezoned, variances granted, subdivisions approved.

The zoning administrator and/or director of community development shall maintain a file or registry of properties rezoned, variances granted, and subdivisions approved under the authority of this Ordinance in conjunction with all pertinent requirements and/or conditions thereto.

3-6 Official Olde Towne district map.

The Olde Towne district map, exhibit B, the latest edition, is hereby adopted and made a part of this Ordinance. This map shall be signed by the mayor and attested by the city clerk. It shall be filed in the office of the zoning administrator and/or director of community development and the city clerk to show thereon the date of adoption of said Ordinance.

3-7 Amendments to the official Olde Towne district map.

If, in accordance with the provisions herein, revisions are made in the district boundaries or any other information portrayed on the Olde Towne district map, changes shall be made on the map immediately following the amendment and upon approval of the city council. Unauthorized alterations to the Olde Towne district map shall be considered a violation of this Ordinance and subject to penalties as prescribed herein.

3-8 Other official maps.

The official street map, exhibit A-2, the latest edition, is hereby adopted and made a part of this Ordinance. The Village Overlay district map, exhibit C, the latest edition, is hereby adopted and made a part of this Ordinance. The official Eastern Shore district overlay map, exhibit D, the latest edition, is hereby adopted and made a part of this Ordinance. The Residential High-Rise district boundary map, exhibit E, latest edition, is hereby adopted and made a part of this Ordinance. The Jubilee Retail Overlay district map, exhibit F, latest edition, is hereby adopted and made a part of this Ordinance.

3-9 Amendments to the official maps.

If, in accordance with the provisions herein, revisions are made in the zoning district boundaries or any other information portrayed on the Village Overlay district map, the official Eastern Shore district overlay map, or the official street map, the Residential High-Rise district boundary map or the Jubilee Retail Overlay district map, changes shall be made on the individual map immediately following the amendment and upon official maps shall be considered a violation of this Ordinance and subject to penalties as prescribed herein.

ARTICLE IV. RESERVED

ARTICLE V. DUTIES AND POWERS OF THE PLANNING COMMISSION

5-1 Authority.

The duties and powers of the planning commission shall include, but are not limited to the following:

(a) Shall be the function and duty of the commission to make and adopt a master plan for the physical development of the municipality, including any areas outside of its boundaries which in the commission's judgment bear relation to the planning of such municipality.

(b) Shall be charged with the responsibility to review, apply, and monitor the enforcement of this Ordinance in accordance with the comprehensive plan or portions thereof which are adopted. It shall be part of the duties of the commission to consult with and advise public officials, agencies, public utility companies, civic, educational, professional and other organizations, and citizens with relation to the protection and implementation of the plan.

(c) Shall hear and take action on all matters which require planning commission "approval" as specified herein.

(d) Shall render decisions on uses not provided for in the Table of Permitted Uses.

(e) Shall hear and recommend to the city council on all matters of zoning, rezoning, and zoning of newly annexed properties when an R-1, Low Density Single-Family Residential, district, is determined by the planning commission not to be the proper zone, petitions for acceptance of road right-of-way, vacation of easement or vacation of right-of-way.

(f) Shall, from time to time, recommend to the appropriate public officials programs for public structures and improvements, and for the financing thereof.

(g) Shall review and approve construction of a street, park, public way, open space, public building or structure, or public utility, whether publicly or privately owned, authorized in the municipality, planned section, or district for location, character, and extent thereof.

(h) Shall hear and provide interpretations regarding the Land Use and Development Ordinance, except where such authority is specifically granted to the board of zoning adjustment herein or by the Code of Alabama; or where such authority is specifically granted to the city council by this Ordinance or by the Code of Alabama.

An application presented for review to the planning commission shall adhere to the requirements otherwise provided herein and as may be established by the commission for the lawful rendering of its duty.

In general, the planning commission shall have such powers as may be necessary to enable it to fulfill its functions, promote municipal planning, or to carry out the purposes of this chapter.

ARTICLE VI. PROCEDURES FOR THE TRANSACTION OF BUSINESS

6-1 Implementing authority.

The planning commission shall be the implementing authority for this Ordinance, except where required by law, action of the city council is necessary. Such deliberative action of the city council shall take place after due consideration of recommendations made to it by the planning commission.

6-2 Public hearings.

When the planning commission must hold a public hearing on any matter where its action is decisive, due notice shall be given as required by law. A sign shall be posted upon properties which by law require public notice. When the city council must hold a public hearing on any matter recommended by the planning commission, the planning commission may dispense with a separate hearing and submit its recommendation to

the appropriate body. The public notice of such hearing by the city council shall be published or posted by the city clerk immediately upon receipt of the recommendation from the department of community development regarding the date, time, and place of said hearing.

6-3 Rules.

"Robert's Rules of Order" shall normally govern the order of business and conduct of meetings of the planning commission or any committee of said commission.

6-4 Meetings.

The planning commission shall hold at least one (1) regular scheduled meeting per month. The date, time, and place of such meeting shall be determined by the planning commission. All meetings are governed by the Alabama Open Meetings Act 2005-40.

Special meetings of the planning commission may be called by the chairman upon giving a forty-eight-hour notice to the members.

6-5 Agenda.

An agenda shall be prepared by the planning coordinator in concert with the director of community development and the planning commission chairman for each meeting of the planning commission.

6-6 Quorum.

Unless otherwise provided by statute, a majority of the members shall constitute a quorum for the conduct of business. An affirmative vote of not less than six (6) members shall be required for approval of a comprehensive plan amendment, zoning amendment, annexation, and preliminary subdivision plat, pursuant to Code of Ala. 1975, § 11-52-10. The approval of a final subdivision plat shall require the majority vote of the quorum present and voting, pursuant to Attorney General Opinion 2000-171.

6-7 Applications.

Applications for zoning amendments, annexation, vacation of easement and/or right-of-way, subdivision plats, site plans, or recommendations with regard to the development of land shall be filed and handled in accordance with the provisions outlined herein.

6-8 Study—Additional review period.

For any matter formally presented at a regular meeting, with the exception of a subdivision plat, the planning commission may defer action until the next regular meeting thereon so additional study of the matter may be made. As required by law, the planning commission shall act to approve or disapprove a subdivision plat within thirty (30) days after its formal submission. However, with the applicant's consent to waive the thirty-day rule, the planning commission may delay action on said plat until the next regularly scheduled meeting.

6-9 Signatures.

The chairman or in the event of his/her absence, the vice-chairman or the secretary shall be the person(s) authorized to sign documents testifying to action taken by the planning commission.

6-10 Interpretations/mediations.

In accordance with Article V, Duties and Powers of the Planning Commission, subsection 5-1(h), Authority, requests for interpretation with regard to wording or intent of this Ordinance, or mediation of a dispute between an applicant and an administrator in regard to an approved site plan or subdivision plat shall be delivered to community development by the owner or authorized representative no less than sixteen (16) calendar days prior to the regularly scheduled meeting of the planning commission. The director of community development shall provide initial review of request. Upon issuance of an unfavorable recommendation in regard to the interpretation or mediation, the director of community development shall forward said dispute to the planning commission for determination. Any request for interpretation shall specify applicable Ordinance reference (article, section, subsection, etc). Planning commission vote shall be by majority of quorum present. Planning commission interpretation or mediation may be appealed to the board of zoning

adjustment in accordance with the provisions of Article XXI, Establishment of the Board of Zoning Adjustment.

6-11 Public notice signs.

This section intends to promote adequate public awareness of proposed changes to the use of real property in Daphne city limits. Pursuant to this purpose, applicants requesting site plan review, master plan review, preliminary/final, and/or preliminary subdivision plat, shall be responsible for posting a sign as provided by community development or in accordance with specifications provided thereby. Requests for plan review, master plan review, preliminary/final and/or preliminary subdivision plat shall not be placed upon the planning commission regular meeting agenda if the public notice sign is not properly sited on the property subject to such application. Signs shall be placed no later than fifteen (15) calendar days prior to planning commission review. Any application not placed on the planning commission regular meeting agenda for the above cause, shall be withheld until the next review cycle. Upon compliance with this and all other applicable requirements, the application will be placed upon the agenda. Failure to comply within forty-five (45) days of the original application submittal shall result in forfeiture of applicable application fees and rejection of the application by community development director.

The public notice sign, shall not be an advertisement sign for the proposed project, but an advertisement of the planning commission meeting dates and times in accordance with the standards established for such provided in appendix G, Supplemental Information.

No preliminary subdivision plat or preliminary/final subdivision plat application shall be considered "formally submitted" until such time that the public notice sign is properly placed and all other applicable provisions provided within the Land Use and Development Ordinance are met.

ARTICLE VII. BUILDING OFFICIAL

7-1 Authority.

The building official shall be designated by the mayor and the duties shall be as follows:

(a) Is authorized and empowered on behalf and in the name of the city council to administer and enforce the provisions of this Ordinance to include receiving applications, inspecting premises, and issuing certificates of occupancy for uses and structures which are in conformance with the provisions as outlined herein.

(b) Does not have the authority to take final action on applications, matters involving variances, or other exceptions which this Ordinance has reserved for action by the board of zoning adjustment, the planning commission and/or the city council.

(c) Shall keep records of all permits, the certificates of occupancy issued, maps, plats, and other documents with notations of all special conditions. He shall file and safely keep copies of all sketches and plans submitted. The same shall form a part of the records of his office and shall become public record.

(d) Is authorized by Ordinance 2007-29, as amended from time to time, to administer the Flood Prevention Ordinance.

7-2 Permits and certificates.

Permits and certificates shall be issued in accordance with the following provisions:

(a) *Building permits:* It shall be unlawful to commence the excavation for or the construction of any building or other structure, including accessory structures, to store building materials or erect temporary field offices, to commence the moving, alteration, or repair of any structure, including accessory structures, until the building official has issued a building permit including a statement that the plans, specifications, and intended use of such structure in all respects conform with the provision of this Ordinance. Ap-

plication for the building permit shall be made to the building official on the prescribed forms provided for that purpose.

(b) *Approval of building plans and issuance of building permits:* It shall be unlawful for the building official to approve any building plans or issue a building permit for construction until he/she has reviewed the plans in detail and found them to be in conformity with this Ordinance.

To this end, the building official shall require every application for a building permit for construction, use of land, moving, or alteration be accompanied by a plan or plat drawn to scale and showing sufficient detail to enable the building official to ascertain whether the proposed construction, use of land, moving, or alteration is in conformance with this Ordinance. Such plan or plat shall include, as a minimum the following:

(1) The actual shape, proportion, and dimension of the lot to be built upon.

(2) The shape, size, location, and intended use of all buildings or other structures to be erected, altered, moved, or existing on the lot.

(3) The existing and intended use of all such buildings or other structures.

If the proposed excavation, construction, moving, or alterations as set forth in the application are in conformity with the provisions as provided herein, the building official shall issue a building permit accordingly.

(c) *Disapproval of a building permit:* If an application for a building permit is not approved, the building official shall state in writing the cause for such disapproval. Issuance of a building permit shall in no case be construed as waiving any provision nor of any legal liability for noncompliance with the provisions of this Ordinance on the part of the building, owner, or applicant.

(d) *Certificate of occupancy:* No land, building, other structure or part thereof hereafter erected, moved or altered in its use shall be used until the building official shall have issued a certificate of occupancy stating such land, structure, or part thereof is found to be in conformity with the provisions of this Ordinance.

Within three (3) business days after the owner or his agent has notified the building official that a building, premises, or part thereof is ready for occupancy or use, it shall be the duty of the building official to make a final inspection thereof, and to issue a certificate of occupancy if the building, premises, or part thereof is found to be in conformance with the provisions of this Ordinance, or if such certificate is refused, the building official shall state the refusal in writing with the cause thereof.

7-3 Continuance of previously issued permits.

Active permits previously issued shall not be affected by the provisions of this Ordinance, except as otherwise provided herein.

7-4 Reference to technical code.

International Building Code of the City of Daphne was adopted by city ordinance number 2007-23.

ARTICLE VIII. DEFINITION OF TERMS

8-1 Usage.

a. Except as otherwise provided herein, all words shall have the customary dictionary meaning.

b. The present tense includes the future tense and the future tense includes the present tense.

c. The singular number includes the plural and the plural includes the singular.

d. The word "herein" means "in these regulations".

e. The terms "this Ordinance", "regulations", or "these regulations" mean the "Land Use and Development Ordinance of the City of Daphne, Alabama".

f. The word "person" includes an individual, as well as a firm, corporation, association, incorporated association of persons such as a club, company, organization, trust, partnership or other legal entity.

g. The word "lot" includes "plot" or "parcel".

h. The word "structure" shall include the word "building", and "building" shall include "structure"; and, the words "building" or "structure" includes any part thereof.

i. The word "shall" is always mandatory.

j. The word "may" is always discretionary.

k. The word "used", "used for", or "occupied" as applied to any land or buildings shall be construed to include the words "intended, arranged, or designed to be used, designated to be used or occupied".

l. The words "zoning map" mean the official zoning district map of the City of Daphne.

m. The terms "council", "commission", and "board" shall mean the "Daphne City Council", "City of Daphne Planning Commission", and "City of Daphne Board of Zoning Adjustment," respectively, unless otherwise indicated.

n. "The New Illustrated Book of Development Definitions" latest addition by Harvey S. Moskowitz and Carl G. Lindbloom shall be adopted as a reference and shall become a part of the Land Use and Development Ordinance as an expansion of the definition of terms not contained in this article.

8-2 Words and terms defined.

As used in this Ordinance, the following words and terms shall have the meaning defined:

Abandoned sign. A sign advertising an activity, product, or business no longer conducted or located on the premises upon which the sign is located.

Abutting/contiguous property. Any real property that is immediately adjacent to, touching, or immediately across any road, easement, or public right-of-way from the property in question.

Accessory structure. A detached subordinate structure, the use of which is customarily incidental to that of the principal structure and which is located on the same parcel or lot as the principal structure.

Accessory structure compound. A fenced, secured enclosure in which a wireless telecommunications facility and its equipment, buildings, access roads, parking area and other accessory devices/auxiliary structures are located.

Accessory use. A use of land or buildings which is normally incidental, subordinate to and related exclusively to the principal use of the premises.

Adjacent. Either abutting or on opposite sides of a thoroughfare or right-of-way that separates it from the subject property. However, properties separated by a freeway or railroad R.O.W shall not be considered "adjacent".

Advertisement. The calling of a service, product, or activity to the attention of the public, including identifying such service, product, or activity.

Agriculture. The use of land for farming, dairying, pasturage, agriculture, horticulture, floriculture, viticulture, and animal poultry husbandry and the necessary accessory uses for packing, treating, or storing the produce; provided, however, the operation of any such accessory uses shall be secondary to that of normal agricultural activities and provided further the above uses shall not include the commercial feeding of garbage or offal to swine or other animals.

Alley. A public street which affords only a secondary means of access to abutting property and not intended for general traffic circulation.

Alter, alteration, altered. These terms shall include any changes in structural parts, stairways, type of construction, kind of class of occupancy, light or ventilation, means of ingress and egress, or other changes affecting or regulated by

the building code or this Ordinance, including extension or expansion, except for minor changes or repairs not involving the aforesaid features.

Alternative support structure. Any structure other than a wireless telecommunications tower, which may include, but is not limited to, buildings, water towers, light poles, power poles, telephone poles, and other essential public utility structures.

Antenna. An electromagnetic device which conducts radio signals, through an attached cable or waveguide, to or from a radio transmitter or receiver. Typically this includes "whips," "cornucopia horns," "panels," and parabolic "dishes."

Antenna support structure. Any structure on which telecommunications antennas and cabling can be attached. Typically this includes steel towers with guy-wires (guyed towers); wooden, steel or concrete single poles (monopoles); self-supporting steel towers with three (3) or four (4) "legs" (self-supporting/lattice towers); rooftops of existing buildings or structures (such as elevated water storage tanks). (See also Tower).

Aquifer. A layer of permeable rock, sand, or gravel through which ground water flows, containing enough water to supply wells and springs.

Architect. A professional architect licensed in the State of Alabama.

Arterial street. A street designed or utilized primarily for high speed vehicular movements and heavy volumes of traffic.

Assisted living facility. A licensed facility in which room, board, meals, laundry, and assistance with personal care and other services are provided for not less than twenty-four (24) hours in any week to a minimum of two (2) ambulatory adults not related by blood or marriage to the owner and/or administrator.

Atrium. An open area within a building surrounded on all four sides by the building walls and open and unobstructed from the first floor level to the roof or sky except as otherwise provided herein.

Automobile repair. The repair, rebuilding or reconditioning of motor vehicles or parts thereof, including collision service, painting, and steam cleaning of vehicles.

Automobile wrecking. The dismantling or wrecking of used motor vehicles, mobile homes, trailers, or the storage, sale or dumping of dismantled, partially dismantled, obsolete or wrecked vehicles or their parts.

Awning. Detachable frame work covered by cloth or other light materials, supported from the walls of a building for protection from sun or weather.

Bank, stream or creek. The terrain alongside the bed of a river, creek, or stream.

Banner. Any sign of lightweight fabric or similar material that is mounted to a pole or a building at one or more edges.

Base flood. The flood having a one (1) percent chance of being equaled or exceeded in any given year.

Basement. A story all or partly underground but having at least one-half of its height below the average level of the adjoining ground.

Beach shelter. An accessory structure, temporary or permanent, consisting of one or more columns and a roof, not including walls or permanent facilities of any type. Placement of a beach shelter shall be subject to the regulations of the Coastal Area Management Program.

Bed and breakfast. The renting of rooms in a private residence for brief periods of time together with the provision of breakfast for the guests by the home owner in an establishment having one to three guest rooms which are subordinate and incidental to the main, owner occupied, single-family residential use. All service is to be provided by the home owner.

Berm. A planted or landscaped elevated ground area between two other areas, generally designed to restrict view and to deflect or absorb noise. Berms with ground cover that necessitates moving shall have a slope not greater than one (1) foot of rise per three (3) feet of run.

Best management practice (BMPs). Permanent or temporary structural practices and vegetative measures which, when properly designated, installed and maintained by property owners or contractors, provide erosion and sedimentation control for rainfall events. The result of which is to reduce non-point source inputs to receiving waters in order to achieve water quality protection goals.

Biochemical oxygen demand or BOD_5. A measure of the organic strengths of wastes in wastewater/sewage.

Bio-retention. An engineered process which manages stormwater runoff, using the chemical, biological and physical properties afforded by a natural, terrestrial-based community of plants, microbes and soil. Bio-retention provides water quantity (flood) controls and improves water quality through removal of pollutants and nutrients associated with runoff.

Billboard. An off-premises or off-site sign advertising an establishment, merchandise, product, service, or entertainment which is not sold, provided, manufactured, or furnished on the property on which said sign is located.

Block. A piece or parcel of land entirely surrounded by public highways or streets, other than alleys.

Board of zoning adjustment or board. A board appointed by the Daphne City Council as authorized by state statute to hear and decide appeals, special exceptions and variances from the terms of the Land Use and Development Ordinance. Also known as the BZA or board of adjustment.

Boarding house. A building or part thereof, other than a hotel, motel, or restaurant, where meals and/or lodging are provided for compensation, where no cooking or dining facilities are provided in individual rooms.

Boat repair. Major overhauling or repair of small craft and pleasure boats that requires open air, partially covered or enclosed dry dock facilities and such heavy equipment, yard space, and dock facilities as may be necessary.

Buffer. Land which is maintained in either a natural or landscaped state and is used to screen and/or mitigate the impacts of incompatible development on surrounding areas, properties or rights-of-way. Buffers may include berms, shrubs, trees, fences or walls, other screening devices, or a combination of such devices as required by Article XIX, Landscape and Tree Protection.

Buildable area. The portion of a lot remaining after required yards have been provided.

Buildable area, net. The total horizontal area of a parcel, in square feet, less the area of any waterway, less the area of any wetlands, less the area of any submerged lands, less any conservation easements, and less the area required for setbacks. For the purposes of computing net buildable area all waterways, wetlands, submerged lands, conservation easements and setback area square footage shall be rounded up to the next highest whole number.

Building. Any structure attached to the ground and intended for shelter, housing or enclosure for persons, animals, or chattels.

Building, accessory. A subordinate building, the use of which is incidental to that of the principal use of the main building.

Building, alterations. Any change in the supporting members of a building (such as bearing walls, beams, columns, and girders) except such change as may be required for its safety; any addition to a building; any changes in use resulting from moving a building from one location to another.

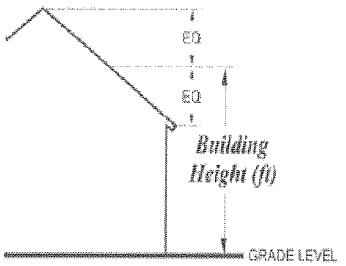
Building area. The portion of a lot or tract of land occupied by the principal building, including porches, carports, accessory buildings, and other structures.

Building code. The International Building Code published by the International Code Council, Inc., as adopted by the City of Daphne, and amended from time to time.

Building coverage. The percent of total lot area covered by buildings and structures but excluding roof overhangs, unenclosed balconies, and unenclosed walkways which do not project more than six (6) feet from the exterior walls of a building or from walls enclosing an atrium.

Building face or wall. All window and wall area of a building in one plane or elevation.

Building height. The vertical extent of a structure measured (in feet) from the average elevation of the finished grade surrounding the structure to the highest point of the structure. The highest point of the structure will vary with the type of roof as follows: The vertical distance from the finished grade of the highest roof beams on a flat or shed roof, to the deck level or a mansard roof; and the average distance between the eaves and ridge level for gable, hip and gambrel roofs.



Building Height

In a V-zone, building height will be measured from the bottom of the lowest supporting girder.

Building line. The extreme overall dimensions of a building as staked on the ground, including porches, chimneys, and similar projections at grade level, whichever is nearest to the property line. The front building line shall refer to that portion of the building nearest the front lot line.

Building official. Individual or designee thereof appointed by the City of Daphne to carry out inspections required by the building code, latest edition.

Building permit. A permit issued by the building official which allows construction, moving, alteration or repair of a building or structure including accessory structures and the placement of temporary field offices.

Building, principal. A building in which is conducted the main or principal use of the lot or parcel for which said building is situated. A principal building shall be a permanent building which has a roof supported by columns or walls which completely enclose the principal building area.

Build-to line or setback line. A line parallel to the front lot line, which establishes the maximum setback allowed within the applicable district. Example: A build-to line of twenty (20) feet requires that the front building line can be no less than twenty (20) feet from the front lot line. A corner lot shall be considered to have two such build-to-lines in applicable districts.

Bulk. Height and percentage of land coverage of a building.

Bulkhead. A structure separating land and water areas, primarily designed to resist earth pressures.

Business / commercial center. A group of two (2) or more owners, occupants or tenants with common customer and employee parking provided onsite, and/or connected together by common walls, interior aisles or malls.

Business / office park. A planned development of one (1) or more office(s) and/or business(es) in a park-like setting.

Cabana. An accessory structure usually used in connection with outdoor bathing or recreation providing enclosed space for showering or changing clothes, with recreational cooking and/or bar facilities including storage facilities, but no sleeping rooms.

Caliper. The diameter of a tree trunk measured in inches. Caliper determines the minimum size of trees planted to fulfill this Ordinance.

Camp site. A development for the accommodation of tourists or vacationers on a short-term basis, providing rental spaces for each individual trailer, camper, motor home, recreation, and service facilities for the use of the tenants.

Canopy. A detachable, roof-like cover, supported from the ground, or deck or floor of a building, and from the walls of a building, for protection from sun or weather.

Carport. An accessory structure having a roof with one or more open sides and intended for the sheltering of motor vehicles.

Cemetery. Land used or intended to be used for the burial of the human and animal dead and dedicated for cemetery purposes, including crematories, mausoleums, and mortuaries if operated in connection with and within the boundaries of such cemetery.

Central sewer system. All equipment and property involved in the operation of a sanitary sewer utility, including waste water lines and appurtenances, pumping stations, treatment works, disposal facilities, and general property necessary for the operation of such utility, which shall be fully installed, operable, and providing service in compliance with applicable Alabama laws and regulations.

Central water system. All of the equipment and property involved in the operation of a water utility, including water lines and appurtenances, pumping stations, treatment works, disposal facilities, and general property necessary for the operation of such utility, which shall be fully installed, operable, and providing service in compliance with applicable Alabama laws and regulations.

Certificate of occupancy. Official certification that a premise conforms to provisions of the zoning ordinance and building code, and may be used or occupied. Such certificate is granted for new construction or for the substantial alteration or additions to existing structures. A structure may not be occupied unless such certificate is issued by the building official.

Change of occupancy. The term "change of occupancy" shall mean a discontinuance of an existing use and the substitution therefore of a use of a different kind or class. Change of occupancy is not intended to include a change of tenants or proprietors unless accompanied by a change in the type of use.

Channel. A natural or artificial water course of perceptible extent, with bed and banks to confine and conduct continuously or periodically flowing water.

Channel letters or open letter sign. A sign consisting of a logo or symbol, individual letters or connected lettering mounted on a building in a raceway or similar mounting or on the surface of an integral architectural element, which is a part of the building. Individual letters may be illuminated. The display area of an open letter sign shall not exceed the maximum permitted area for building signs on the property.

Child development facility. Any child development program or club that promotes extended educational services that is funded partially or completely by federal, state, or local government revenue. (i.e.: Head Start Programs, Boys and Girls Clubs, etc.). The definition of "child development facility" shall also include any day care center licensed by the Alabama Department of Human Resources.

City. The City of Daphne.

City council. The chief legislative body of the City of Daphne.

City engineer. The individual or entity hired to provide engineering services for the City of Daphne.

Clearing. An activity wherein vegetative or existing hard surface cover is removed.

Clinic. A place used for the care, diagnosis and treatment of sick, ailing, infirm, injured persons, and those who are in need of medical or surgical attention, but who are not provided with board.

Club. A building or portion thereof or premises owned or operated for a social, literary, political, educational, or recreational purpose primarily for the exclusive use of members and their guests.

Club, private. Any association or organization of a fraternal or social character not operated or maintained for profit. This does not include casinos, night clubs, or other institutions operated for a profit.

Coastal area. The coastal waters, including the lands therein and thereunder, and the adjacent shore lands, including the waters therein and thereunder, strongly influenced by each and in proximity to the shorelines of Alabama and including transitional and intertidal areas, salt marshes, wetlands, and beaches within the jurisdiction of Alabama. They extend inland to a point approximately ten (10) feet above mean sea level, and shall include all lands and waters between that point and mean high tide.

Coastal bluff. A naturally formed precipitous landform located along Mobile Bay and generally has a gradient of at least two hundred (200) percent one to two (1:2) slope with a vertical elevation of at least ten (10) feet. These bluffs may be within or adjacent to the coastal area.

Coastal resources. Valuable human, natural, cultural or historical assets within the coastal area, such as water quality, air quality, wetlands and submerged grass bed, beaches and dunes, wildlife habitats, biological resources, cultural resources, public access areas, and water resources.

Co-location. The placement of more than one (1) wireless communications antenna by one (1) or more telecommunications service providers on a single existing or new antenna support structure.

Collector street. A street which carries medium volumes of traffic collected primarily from minor streets and delivered to arterial streets.

Commercial vehicle. Any vehicle designed and used for transportation of people, goods, or things, other than private passenger vehicles and trailers for private nonprofit transport of goods and boats.

Commission. The City of Daphne Planning Commission.

Common grounds. An area of development shared by all owners and managed by either the subdivider/developer or a home/property owner's association. This area may include recreation facilities, stormwater management area, buffers and other landscaped areas as designated by plat or site plan.

Common areas. Land within a development, owned by the developer or the property owners or home owner's association, that is designed and intended for the common benefit of the residents and that may include complementary drainage structures, landscaping, community signs and improvements, etc. Ownership of common areas shall be delineated in restrictive covenants and noted the record plat. The City of Daphne shall not be responsible for the maintenance of any residential common areas.

Common open space, informal. Areas designated for undisturbed natural features, including wetlands, rock outcrops, pastoral areas, floodplains, lakes, streams, rivers, and wildlife habitat; utility and conservation easements; used for passive recreation uses including walking trails, pathways, and picnic areas.

Common open space, formal. Formal open space is a generally planned and structured area that includes formally designed landscape plantings. The space is regularly maintained and may include streetscape furnishings (e.g., benches, lighting, and sculptures), recreational improvements (e.g., playground, swimming pool, tennis courts), and street improvements at the least.

Comprehensive plan. The community development plan including land use, housing, public facilities and other plan elements currently in use by the City of Daphne.

Concealed towers. Communication towers on developed property disguised to appear as either a part of the structure housing, a principal use, or an accessory structure which is normally associated with the principal use occupying the property. Concealed towers developed on unimproved property must be disguised to blend in with the existing vegetation. Ex. monopine.

Concealment techniques. Design techniques used to blend a wireless telecommunications facility, including any antennas thereon, unobtrusively into the existing surroundings so as to not have the appearance of a wireless telecommunications facility. Such structures shall be considered wireless telecommunications facilities and not spires, belfries, cupolas, or other appurtenances usually required to be placed above the roof level for purposes of applying height such as building bulk, massing, and architectural treatment of both the wireless telecommunications facility and surrounding development.

Condominium. A building, or group of buildings, in which residential dwelling units, offices or floor area that are owned individually, and the structure, common areas, and facilities are owned by all the owners on a proportional, undivided basis.

Condominium, high-rise. A condominium containing eight (8) but not exceeding sixteen (16) stories in which dwelling units, offices, or floor

area are owned individually and the structures, common area and facilities are owned by all owners or a proportional, undivided basis. Underground parking facilities are not counted in the height; however, ground level parking beneath the building shall be counted as a story.

Condominium, mid-rise. A condominium containing three (3) to seven (7) stories. Underground parking facilities are not counted in the height; however, ground level parking beneath the building shall be counted as a story.

Conservation easement. An encumbrance—sometimes including a transfer of usage rights (easement)—which creates a legally enforceable land preservation agreement between a landowner and a government agency (municipality, county, state, federal) or a qualified land protection organization (often called a "land trust"), for the purposes of conservation. It restricts real estate development, commercial and industrial uses, and certain other activities on a property to a mutually agreed upon level. The property remains the private property of the landowner.

Conservation subdivision. A subdivision of single-family detached dwellings, wherein portions of the site containing environmental features are left substantially undeveloped for preservation and/or recreation but where the developer may otherwise build the maximum number of lots permissible under the base zoning district for the entire site by clustering such dwellings on the portion(s) of the site not containing said environmental features. Refer to Article XXIX, Innovative Design Provisions.

Construction site identification sign. A temporary sign located on the site of a construction project which identifies the owners, architects, engineers, contractors, mechanics, artisans, craftsmen, financial institutions, and other individuals or firms involved with the construction, but does not include any advertisement of any product, service, or activity, except that such sign may include information regarding sale or leasing, and words announcing the name or character of the building enterprise or the purpose for which the building is intended.

Contiguous. See "abutting".

Convalescent or nursing home. A building, or portion thereof, wherein for compensation, living accommodations and care are provided for persons suffering from illness, other than mental or contagious, which is not of sufficient severity to require hospitalization, or for persons requiring further institutional care after being discharged from a hospital other than a mental hospital; including extended care facilities.

Convenience store. A retail establishment which offers the retail sales of an assortment of container food items (snacks, grocery items), refrigerated food items stored in display coolers, tobaccos, toiletries, accessory items, and other convenience items; and which may offer the sale of beer and wine, but not liquor, in unopened containers, for off-site consumption, as an accessory part of the principal establishment being retail sales of other products; and which may or may not include the sale of automotive fuels dispensed by the purchaser, but not including bays, other than drive-through car washes, for automobile service or repair.

Crown. The branches and leaves of a tree or shrub with the associated upper trunk.

Cul-de-sac. The dead-end street terminated by a vehicle turnaround area.

Cultural resources. Any district, building, site, object or other material in American history, architecture, archaeology, or culture which is of national, state, or local significance.

Curb and curb line. The inside vertical faces of a masonry curb, the center line of a valley gutter, or the edge of the pavement where no curb or gutters exist.

D.B.H. or diameter at breast height. The diameter of a tree trunk measured in inches at a height of four and one-half (4½) feet above the ground. If a tree splits into multiple trunks below four and one-half (4½) feet, then the trunk is measured at its most narrow point beneath the split.

Day care center. A facility for the day care and instruction of young or elderly persons not remaining overnight, licensed and regulated by the Alabama Department of Human Resources, receiving thirteen (13) or more children or elderly persons

for care during all or part of the day. The term does not include: programs operated as part of public or private schools; programs operated on federal governmental premises; and special activities programs such as athletics, crafts, and similar activities conducted on an organized and periodic basis by civic, charitable and governmental organizations.

Day care, home family. A child care facility, licensed and regulated by the Alabama Department of Human Resources, within a single-family dwelling, which receives on a regular basis not more than six (6) children for care during part of the day.

Day care, home group. A child care facility, licensed and regulated by the Alabama Department of Human Resources, within a single-family dwelling, which receives on a regular basis at least seven (7) but no more than twelve (12) children for care during part of the day, has at least two (2) adults present and supervising the activities.

Deciduous plants. Plants that shed their leaves during their dormant season and produce new leaves the following growing season.

Deck. A flat covered or uncovered area generally adjoining a house, building or pool, and which may be used as an outdoor sitting or recreation area.

Dedication. The deliberate assignation of land by its owner(s) for any general or public use(s), reserving to himself no other rights than such as being compatible with the full exercise and enjoyment of the public use(s) to which the property has been devoted.

Degrade. To affect the coastal area in such a manner as to produce a continuing reduction of destruction of present levels of coastal resources.

Density. The number of dwelling units per acre of land.

(a) *Gross density*—The number of dwelling units per acre of the total area of land to be developed.

(b) *Maximum density*—The density allowable in a given zoning district not otherwise limited by other applicable requirements of this Ordinance.

(c) *Net density*—The number of dwelling units per acre of land when the acreage involved includes only the land devoted to residential uses.

Detention, underground. Detention storage located in underground pipe systems or vaults designed to provide water quantity control through detention and/or extended detention of stormwater runoff.

Detention basin. An artificial flow control structure that is used to contain flood water for a limited period of time.

Development. Any manmade change to improved or unimproved real estate including but not limited to buildings or other structures, mining, dredging, filling, grading, paving, excavating, or drilling operations. Agricultural activities such as plowing or cultivating and gardening activities are not included in this definition of development.

Development permit. A permit required for any development activity in the City of Daphne that requires a building permit, and/or land disturbance permit. (See also Permit.)

Differential runoff. The difference in rate and volume of stormwater runoff from a parcel or project in its undeveloped natural condition and its developed condition.

Dirt pit. An open land area, surface mine, or excavation site used for the removal of sand, gravel, or fill dirt for sale or for use off-premises.

District. A section of the area zoned, within which the zoning regulations are uniform.

Drip line. The circumference of a tree's natural unaltered canopy extended vertically to the ground.

Driveway. A vehicular access, or curb cut, in private ownership intended for use by vehicles entering or leaving an off-street parking area.

Drive-in restaurant. A restaurant or public eating business so conducted that food, meals, or refreshments are brought to the motor vehicles for consumption by the customer or patron.

Dredging. Removal or excavation of any materials from lands underlying coastal waters.

Dry well. A cavity of sufficient size, filled to the surface with compacted rocks to allow water storage capacity.

Dwelling or dwelling unit. Any building, portion thereof, or other enclosed space or area used as or intended for use as the home of one (1) family, with separate cooking and housekeeping facilities, either permanently or temporarily, but not including units in hotels or other structures designed for transient residence.

(a) *Multiple family.* A building or structure designed, arranged or used for residential occupancy by three (3) or more families, with or without common or separate kitchen or dining facilities, including apartment houses, apartment hotels, rooming houses, boarding houses, fraternities, sororities, dormitories, row houses, town houses, and similar housing types, but not including hotels, motels, hospitals, or nursing homes.

(b) *Multiple family, garden apartments.* One (1) or more two- or three-story, multifamily structures containing eight (8) to twenty (20) dwelling units and including related off-street parking, open space and recreation facilities, and not exceeding fifty (50) feet in height. Structures shall not exceed two hundred (200) feet in length. Access may be from a common hall or individual entrance. Dwelling units may be located back to back, adjacent, and on top of one another.

(c) *Single-family.* A detached building designed for and occupied by one (1) family as a home, with cooking and housekeeping facilities.

(d) *Town house—Single-family.* A one-family dwelling with ground floor outside access, attached to three (3) or no more than five (5), one-family dwellings by common vertical fire resistant walls without openings, and not exceeding two and one-half (2½) stories or thirty-five (35) feet in height. (See also definition of building height).

(e) *Two-family, duplex.* A building designed and arranged to provide sleeping, cooking and kitchen accommodations and toilet facilities for occupancy by two (2) families living independently of each other, the structure having two (2) dwelling units. The dwellings are totally separated from each other by an unpierced wall extending from basement to roof, and does not exceed two and one-half (2½) stories or thirty-five (35) feet in height.

Earthwork. The breaking of ground, except common gardening and grounds care.

Easement. A grant by a property owner of the use of land for a specific purpose or purposes by the general public or a corporation or a certain person or persons. Such uses and reasons may include drainage, utilities, telecommunications, access, ingress or egress. Such easements may be temporary or may be attached to the property in perpetuity.

Engineer or applicant's design engineer. A professional engineer licensed in the State of Alabama.

Erect. Construct, including built, reconstruction, alteration, moved upon or any physical operations on the premises required for the building, principal structure, sign or accessory structure or use. Excavation, earthwork, fill, drainage work, utilities installations and other work as it relates to the construction or use of a building, principal structure, sign or accessory use shall be considered within the meaning of erect.

Erected. The word "erected" includes built, constructed, reconstructed, moved upon or any physical operations on the premises required for building. Excavations fill drainage, and the like shall be considered a part of erection.

Erosion control plan. Measures which prevent and/or minimize the wearing away of land, sediment or rock caused by stormwater run-off.

Essential services. Public utility facilities related to water, stormwater sewers, sanitary sew-

ers, solid waste disposal, telephone, cable television, gas and electrical collection or distribution systems serving the City of Daphne; but not including buildings housing employees, or public safety facilities such as fire and/or police stations.

Establishment A commercial, industrial, institutional, educational, office, business, or financial entity.

Exception. Relief of design standards on non-zoning requirements in the ordinance by the planning commission. Exceptions often refer to design standards such as cul-de-sac length, location and type of improvements, and landscaping requirements. They are dictated by the circumstances related to the specific application that makes the design requirement for which the exception is requested unnecessary or unreasonable. A waiver of zoning requirements usually requires a variance.

Existing facilities. Facilities which may cause or threaten to cause environmental pollution within a well field's recharge area which include, but are not limited to facilities with underground storage tanks (U.S.T) facilities with hazardous waste permits granted by ADEM.

Expansion, building or use. The addition of enclosed or unenclosed rooms or storage spaces, porches, or parking area, to an existing building or use on a parcel of land.

Extended stay hotel facility. A building or structure under a single management that provides no fewer than five (5) rental room or suite units intended primarily as short term lodging accommodations for public rental on a daily, weekly, or other short term basis for registered guests.

Family. One (1) or more persons related by blood, adoption or marriage occupying a single dwelling unit and using common cooking facilities.

Fill. All soil or other solid material added to any land surface during site development.

Fill activity. To use fill in order to provide support, establish an even grade.

Filling station. (See Service Station).

Final plat. The completed PUD or subdivision plat with appropriate official signatures in form for approval and recording in the Office of the Probate Judge of Baldwin County, Alabama.

Financial guarantee. A financial surety submitted to the City of Daphne by a property owner/developer to assure that minimum improvements will be installed.

First flush. The initial inch of surface runoff of a rainstorm.

Fixed dwelling. A dwelling unit (or structure containing several units) attached to a permanent foundation.

Flood or *flooding.* A general and temporary condition of partial or complete inundation of normally dry land areas not ordinarily covered by water from either the overflow of inland or tidal waters; or the unusual and rapid accumulation or runoff of surface waters from any source.

Flood frequency. The average frequency statistically determined, for which it is expected that a specific flood level may be equaled or exceeded.

Flood plain. Any land area susceptible to flooding. Those areas defined by the U.S. Geological Survey or the U.S. Army Corps of Engineers as subject to flooding once in one hundred (100) years, based on topography.

Floodproofing. Any combination of structural or non-structural additions, changes, or adjustments which reduces or eliminates flood damage to real estate, improved real property, water supply and sanitary sewer facilities, electrical systems, and structures and their contents.

Flood prone area. Any area subject to inundation by the regulatory flood.

Floodway. The channel of a watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface more than one (1) foot. For the purpose of these regulations, floodways shall be defined as follows:

(a) The floodways as identified or delineated in the flood insurance study for Baldwin County, Alabama.

(b) Along small streams and watercourses, all lands lying within twenty-five (25) feet of the top of the bank of the channel (measured horizontally), unless the developer demonstrates to the satisfaction of the planning commission that a lesser distance (but not less than fifteen (15) feet) is adequate based on the watershed characteristics and probable storm runoff for the base flood.

Floodway, regulatory floodway. The channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one (1) foot.

Floor area, gross. The sum of the gross enclosed horizontal area of all the floors of a building, except a basement or area under the first habitable story, measured from the exterior faces of exterior walls and/or supporting columns.

Food processing. The preparation, storage, or processing of food products on a large scale. Examples of these activities include bakeries, dairies, canneries, and other similar activities or businesses.

Frontage, building. The outside wall surface of a building or of an enclosed porch on a building that is nearest to the front lot line, or, in the case of a wall surface not parallel to the front lot lines, the average of the longest and shortest distance of the wall from the front lot line.

Garage, commercial. A building or portion thereof used for equipping, servicing, repairing, rental, selling and/or storage of self-propelled motor vehicles. Gasoline, oil, grease, batteries, tires and motor vehicle accessories may be supplied and dispensed at retail.

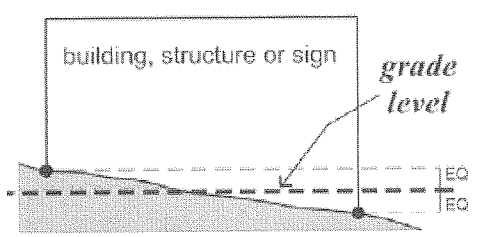
Garage, private. A building or part thereof designed and/or used for inside parking of self-propelled private passenger vehicles by the occupants of the house or other principal structure on the premises or by the occupants of or employees of a particular firm.

Garage, public. A building or part thereof designed or used for indoor or partially indoor (covered) parking of self-propelled private passenger vehicles, operated as a commercial enterprise, accessory to a commercial enterprise, or as a governmental service and providing only incidental services for such vehicles.

Gas station. Any building, structure or land at which the sale of combustible and flammable fuels is conducted. Gas stations which also have motor vehicle repair services as a component of the business shall be considered "gas/service stations".

Golf course. A tract of land for playing golf, improved with tees, greens, fairways, hazards, and which may include clubhouses and shelters. Included would be executive or par three golf courses. Specifically excluded would be independent driving ranges and any miniature golf course.

Grade level. For buildings, the average level of the finished grade at the front building line. For detached signs, the lower of (1) existing, average grade at the sign edge prior to construction or (2) the newly established average grade at the sign edge after construction, exclusive of any filling, berming, mounding, or excavating solely for the purpose of locating the sign. For trees, landscaping, and light fixtures, the level of finished grade at the base of the tree, plant, or fixture.



Grading. Excavation or fill of material, including the resulting conditions thereof.

Green space. An area of land covered in grass or other vegetation or a natural water feature. Uses in green space may include stormwater areas, wooded slopes, graded and re-vegetated slopes, required yards on both residential and non-residential lots, landscaped areas, and other land covered in vegetation.

Grinder pump. A mechanical waste management device that shreds solids and raises sewage to a higher elevation through pressure sewers and pumps it to the central sewer system.

Group development. A development comprising two or more structures built on a single lot, tract or parcel of land and designed for occupancy by separate families, firms, businesses, or other enterprises.

H2S or *hydrogen sulfide gas.* A toxic and corrosive gas with a highly offensive smell produced in wastewater and sanitary sewer collection systems.

Habitable rooms. All living spaces within a dwelling unit (house, apartment, townhouse, condominium, mobile home) arranged in such a fashion as to be commonly described as kitchen, dining room, living room, dinette, family room, den, music room, library, bedroom and/or any other partitioned area that is designed to be used, or that may be used, in the opinion of the governing body, as a room for the carrying on of general family activities.

Height of building. (See building, height).

Height of telecommunications tower. When referring to a tower or other structure, the distance measured from the ground level at the base of the tower to the highest point on the tower or structure, including if said highest point is an antenna placed on a structure or tower.

Home owner's association (or property owner's association). An incorporated, nonprofit organization operating under recorded land agreements through which, (a) each lot and/or homeowner in a planned or other described land area is automatically a member, and (b) each lot is automatically subject to a charge for a proportionate share of the expenses for the organization's activities, such as maintaining a common property, and, (c) the charge if unpaid becomes a lien against the property.

Home occupation. Any occupation for gain or support customarily conducted entirely within a dwelling and carried on solely by the inhabitant thereof, and which use is clearly incidental and secondary to the use of the dwelling for dwelling purposes, and does not change the character thereof.

Home owners association or *property owners association (HOA or POA).* A legal entity created by a real estate developer for the purpose of developing, managing and selling a development of homes. It allows the developer to exit financial and legal responsibility of the community, typically by transferring ownership of the association to the homeowners or property owners after selling off a predetermined number of lots.

Hotel. A transient commercial lodging establishment consisting of one or more buildings used for this purpose, including accessory uses such as eating and drinking facilities, recreation facilities and parking. This category includes motels and motor hotels. Lodgings may consist of sleeping rooms only or may include cooking facilities also, but are not intended for long-term occupancy.

Hotels can generally be classified as limited service or full service. Limited-service hotels provide only lodgings and do not provide any restaurant or food service, recreation facilities and the like. Full-service hotels always have restaurants and possibly a bar or lounge with entertainment, personal services, health club, and retail stores. (See also extended stay hotel facility definition).

Illicit discharges. Any discharge to the municipal separate storm sewer system that is not composed entirely of stormwater, except for discharges allowed under a NPDES permit or waters used for firefighting operations.

Improvement. Any permanent structure that becomes part of, placed upon, or is affixed to real estate.

Institution or institutional. A nonprofit organization building, or use, publicly or privately owned, for the benefit of the public (schools, churches, temples, hospitals, clubs, fire stations, police stations, sewerage lift pumps, libraries, museums, city offices, etc.).

Jurisdictional wetland. See Wetland, jurisdictional.

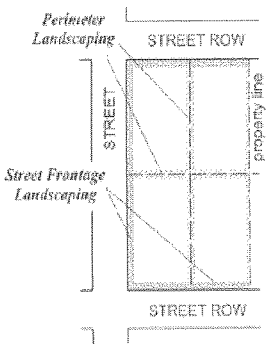
Junk yard. Place, structure or lot where junk, waste, discarded, salvaged, or similar materials

such as old metals, wood, slush, lumber, glass, paper, rags, cloth, bagging, cordage, barrels, containers, etc. are bought, sold, exchanged, baled, packed, disassembled, or handled, including auto wrecking yards, used lumber yards, house-wrecking yards, and yards or places for storage or handling of salvaged house-wrecking and structural steel materials.

This definition shall not include pawn shops and establishments for the sale, purchase, or storage of usable secondhand cars, salvaged machinery, used furniture, radios, stoves, refrigerators or similar household goods and appliances. Nor shall it apply to the processing of used, discarded, or salvaged materials as part of manufacturing operations.

Kennel. Any place or premises where four (4) or more dogs over four (4) months of age are kept.

Landscaping. Trees, shrubs, ground covers, vines, walkways, ponds, fountains, benches, sculptures, and similar materials used for creating an attractive appearance. No artificial plants, trees or like materials may be counted toward meeting the landscaping requirements of this Ordinance.



Landscaping, foundation. Those landscape areas provided against the front of the principal structure.

Landscaping, interior. Those landscape areas provided within an off-street parking area.

Landscaping, perimeter. Those landscape areas provided between an off-street parking area and adjoining properties. Perimeter landscaping shall exclude landscaping between an off-street parking area and buildings on the same legal lot.

Landscape plan. A component of a development plan on which is shown proposed landscape species, such as number, spacing, size at time of planting, and planting details; proposals for protection of existing vegetation during and after construction; proposed treatment of hard and soft surfaces; proposed decorative features; grade changes; buffers and screening devices.

LEED-certified. A rating system developed by the U.S. Green Building Council. The rating system provides guidelines and standards for environmentally sustainable construction.

Licensee. Any person licensed to operate and maintain a mobile home park under the provisions of this Ordinance.

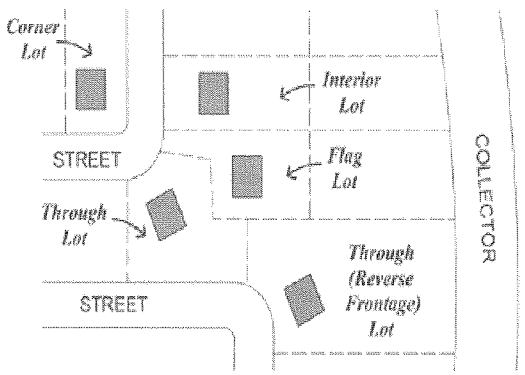
Lodging. Transient or short-term living accommodations provided by a hotel, motel, extended stay hotel facility, or bed and breakfast facility or through the short-term rental of a dwelling unit.

Logo. A recognizable and distinctive graphic design, stylized name, unique symbol, or any other device used for identifying any organization, commercial entity and/or business. A logo shall be construed as a sign and shall count towards the number of signs allowed and the maximum applicable square footage requirements. In this Ordinance, a logo does not refer to brand-identification of products or goods.

Lot. A piece, parcel, or plot of land occupied or intended to be occupied by one (1) main building, accessory buildings, uses customarily incidental to such main buildings and such open spaces as are provided in this Ordinance, or as are intended to be used with such piece, parcel, or plot of land and having its principal frontage upon an existing or proposed right-of-way conforming to the requirements of this Ordinance.

(a) *Lot, corner.* A lot abutting upon two (2) or more streets at their intersection or upon two (2) parts of a street which form an interior angle of less than one hundred thirty-five (135) degrees. The point of intersection of the street lines is the corner. On corner lots the front yard shall be considered as parallel to the street upon which the lot has its least dimension. On all corner lots the rear yard shall be at the

opposite end of the lot from the front yard. On corner lots, the side yard shall be considered as parallel to the street upon which the lot has its greatest dimension.



(b) *Lot, flag.* A flag lot is a lot with two (2) distinct parts: 1. The flag, which is the only building site; and is located behind another lot; and 2. The staff, which connects the flag to the street; provides the only street frontage for the lot; and at any point is less than the minimum lot width for the zone.

(c) *Lot, interior.* A lot other than a corner lot.

(d) *Double frontage or through lot.* A lot or plot, but not a corner lot, that abuts upon two (2) parallel streets, the two (2) frontages being noncontiguous.

Lot of record. A lot which is a part of a recorded plat or a plot described by metes and bounds, the map and/or description of which has been recorded according to Alabama law.

Lot line. The lot line which abuts a street or separates the lot from a street.

(a) *Lot line, front.* The lot line contiguous to the street right-of-way line of the principal street on which the lot abuts.

(b) *Lot line, rear.* The lot line opposite to and most distant from the front lot line.

(c) *Lot line, side.* Any lot line other than a front or rear lot line.

i. A side lot line of a corner lot separating a lot from a street is called a side street lot line.

ii. A side lot line separating a lot from another lot is called an interior lot line.

Lot depth. The mean (average) horizontal distance between the front and rear lot lines, measured at right angles to the street lines.

Lot width. The mean (average) horizontal distance between the side lot lines, measured at right angles to the lot depth, with the minimum to comply with this code to be measured at the front setback line.

Low impact development.

Maintenance and storage facilities. Land, buildings, and structures devoted primarily to the maintenance and storage of construction equipment and material.

Mall. Any concentration of two (2) or more retail stores and/or service establishments which share customer parking areas and is located within an enclosure having public walkways whereby a customer in one (1) store or establishment may walk to another store or establishment without leaving the enclosure.

Maneuvering space. The space entirely on private property required for maneuvering vehicles into and out of spaces in such a manner as to preclude the backing of any vehicle into any street right-of-way.

Manufactured home. A structure constructed in accordance with the National Manufactured Housing Construction and Safety Standards Act of 1974 as amended, U.S.C. 5401. Motor homes, house trailers, travel trailers, campers, mobile homes, mobile homes made to HUD standards and similar towed, transported, or self-propelled units are not manufactured homes.

Manufacturing, extractive. Any mining, quarrying, excavating, processing, storing, separating, cleaning, marketing or any mineral natural resource.

Manufacturing, general. Manufacturing, processing, assembling, storing, testing, and similar industrial uses which are generally major operations and extensive in character; require large sites, open storage and service areas, extensive

services and facilities, ready access to regional transportation and normally generate some nuisances such as smoke, noise, vibration, dust, glare, air pollution, and water pollution, but not beyond the zoning district boundary.

Manufacturing, light. Manufacturing or other industrial uses which are usually controlled operations; relatively clean, quiet, and free of objectionable or hazardous elements such as smoke, noise, odor, or dust; operating and storing within enclosed structures; and, generating little industrial traffic and no nuisances.

Marina. A harbor or boat basin providing moorage, docking facilities, supplies and minor services for pleasure boats.

Marina, full service. A place for docking pleasure boats or providing services to pleasure boats and the occupants thereof, including minor servicing and minor repair to boats while in the water, sale of fuel and supplies, water, electricity and sewer services, and the provision of lodging, food, beverages, and entertainment as accessory uses. Dry boat storage may also be provided, but not major boat repair. A yacht club shall be considered as a marina, but a hotel, or similar use, where docking of boats and provision of services thereto is incidental to other activities, shall not be considered a marina, nor shall boat docks accessory to a multi-family structure where no boat related services are rendered.

Marquee. Any permanent roof-like structure projecting beyond a building or extending along and projecting beyond the wall of the building, designed and constructed to provide protection from the weather.

Mini-warehouse. A building or group of buildings in a controlled access compound that contain varying sizes of individual, compartmentalized, and controlled-access stalls, cubicles and/or lockers used for storage only.

Mixed use. A zoning district which allows the combination of high density residential use with a commercial use. A mixed use building may include retail stores on the first floor and offices and/or apartments on the upper floors.

Mobile home. Any vehicle or similar portable structure having been constructed with wheels (whether or not such wheels have been removed) and capable of being towed on a public street and so constructed as to permit occupancy for dwelling or sleeping purposes.

Mobile home park. A residential development on a parcel of land in one (1) ownership providing rental spaces for two (2) or more mobile homes on a long-term basis, with recreation and service facilities for the tenants, whether or not a charge is made for such accommodation.

Mobile home space. A plot of ground within a mobile home park designed for the accommodation of one (1) mobile home or travel trailer.

Mobile home subdivision. A residential development designed for the accommodation of mobile homes on individually-owned lots or in condominium or cooperative ownership, including recreation and open space areas held in common ownership, but not including developments serving tourist or vacation-oriented travel, motor homes, campers, etc.

Monopine. A communication tower of such design and treated with architectural material so camouflaged to resemble a woody tree with a single trunk and branches on its upper part.

Motel, motor hotel. An establishment providing sleeping accommodations for transients. Traditionally, the motel (motor hotel) are one- or two-story accommodation catering to the automobile traveling public, with a majority of all rooms having direct access to the outside without the necessity of passing through the main lobby of the building. Rentals range across the entire economic spectrum, multistory structures are common and motels may offer a full range of services, including restaurants, meeting rooms, entertainment, and recreational facilities.

Multi-use building. A building containing two (2) or more distinct commercial uses.

Net buildable area (see buildable area (net)).

Net residential acreage. Land used or proposed to be used for the placement of dwelling units and their accessory uses, private open spaces, parking

areas, etc. Does not include streets or public recreation or open spaces or stormwater management facilities.

Nightclub. A restaurant, dining room, bars, or other similar establishment providing food or refreshments wherein floor shows or other forms of entertainment by persons are provided for guests.

North American Vertical Datum of 1988 or NAVD 88. The vertical control datum of orthometric height established for vertical control surveying in the United States of America based upon the General Adjustment of the North American Datum of 1988.

Nonconforming use. A use of land existing lawfully at the time of the enactment of this Ordinance, or at the time of a zoning amendment and which does not conform with the regulations of the district in which it is located.

Nuisance. Any use or result thereof which would cause noise, smoke, gas, vibration, fumes, dust or other objectionable conditions which would have a negative impact on City of Daphne.

Nursing home. A home for aged, chronically ill, or incurable persons in which three or more persons not of the immediate family are received, kept, or provided with food and shelter or care for compensation, but not including hospitals, clinics, or similar institutions devoted primarily to the diagnosis and treatment of the sick or injured.

Nursery, plant materials. Land, building, structure, or combination thereof for the storage, cultivation, transplanting of live trees, shrubs, or plants offered for wholesale or retail sale on the premises including products used for gardening or landscaping.

Nursery school. A place for the day care and instruction of children not remaining overnight; includes day care centers.

Offices. Space or rooms used for professional, administrative, clerical, and similar uses.

Open house. A house in which a selling agent is present and the house is offered for sale to the general public.

Open letter sign. A sign consisting of a logo or symbol, individual letters or connected lettering mounted on a building in a raceway or similar mounting or on the surface of an integral architectural element, which is a part of the building. Individual letters may be illuminated. The display area of an open letter sign shall not exceed the maximum permitted area for building signs on the property.

Open space. Land, not covered by parking areas, rights-of-way or buildings other than recreational structures, which is landscaped or left in a natural state as required within this Ordinance or the Subdivision Regulations and which is intended for natural or scenic preservation and/or passive recreational uses. The area may include, along with the natural environmental features, swimming pools, tennis courts or any other recreational facilities. Streets, structures for habitation, and the like shall not be included.

Open space, common. Land area within a planned development held in common ownership and maintained by a property owners or homeowners or condominium association of all of the residents for recreation, protection of natural features, amenities or buffers; is freely accessible to all residents/owners of the development; and is protected by covenant and the provisions of this Ordinance to ensure that it remains in such use(s). For the purposes of calculation, common open space shall not include surface water bodies nor land occupied by common driveways, parking areas, or rights-of-way; nor shall it include areas within lots for single-family dwellings or duplexes. Common open spaces shall be left in a natural state or landscaped, and may include recreational structures. Formal or informal open space used for active or passive recreational uses or resource protection purposes and not including the minimum lot area required for any housing type or street right-of-way.

Open space lot. A single lot or group of lots intended to contain formal or informal open space areas.

Outdoor amusement use or facility. A public, private, or semi-private property which is used

exclusively for recreational and amusement purposes, generally these activities are not enclosed within a building.

Overlay zone. A zoning district that encompasses one or more underlying zones that imposes additional requirements above that required by the underlying zone.

Parking space, off-street. For the purpose of this Ordinance, an off-street parking space shall consist of an area adequate for parking an automobile with room for opening doors on both sides, together with properly related access to a public street or alley and maneuvering room, but shall be totally outside of any street or alley right-of-way.

Permanently stabilized. The state of any disturbed area that once a practice is implemented for stabilization, it shall be resistant to erosion.

Permanent vegetation. Plant growth that is sufficient in controlling erosion and remains without essential change throughout the year.

Permit. Any written authorization by a duly appointed City of Daphne representative for an individual, firm, trust, partnership, association or corporation to undertake activities related to subdivisions, zoning, PUD's, land use, building or other actions permitted in this Ordinance or by other City of Daphne authorization.

Permit, active. A permit issued through the building department that work has commenced within one hundred and eighty (180) days of issuance and the proposed work has not been suspended for more than one hundred eighty (180) days after commencing or any permit issued by the department of community development which has not expired.

Permittee. Any individual, firm, trust, partnership, association or corporation to whom a permit is granted, including any person to whom a temporary permit is issued, such as that to maintain and operate a mobile home park under the provisions of this Ordinance.

Person. Any and all persons, including, but not limited to, any individual, partnership, association, society, joint stock company, firm, company, corporation, institution, trust, estate, other legal entity, business organization, any state or local governmental entity, and any successor of the foregoing.

Pervious paving. Materials used for surfacing parking lots and driveways such as porous concrete or modular porous paver systems that are designed to allow infiltration of stormwater and are consistent with construction best management practices. Pervious paving areas are not considered as impervious surface areas for the purpose of calculating impervious surface coverage.

Planned unit development. A tract of land under single corporation, firm, partnership, or association ownership, planned and developed as an integral unit, in a single development operation or a defined programmed series of development operations in accordance with an approved development plan.

Planning commission. The City of Daphne planning commission as authorized by state statute to be responsible for reviewing and approving site plan and subdivision applications and for making recommendations to the city council regarding annexations, zoning, vacation of easement and/or right-of-way, street acceptances and other duties as specifically provided by the state enabling act.

Plat. A map, plan, or layout of a county, city, town, section, or subdivision indicating the location and boundaries of properties. There are three (3) types of plats: preliminary, preliminary/final and final.

a. *Preliminary plat.* A tentative plan of the complete proposed subdivision submitted to the planning commission for its consideration and public hearing.

b. *Preliminary / final plat.* A subdivision with frontage to an existing publicly maintained street or common ingress/egress easement, not involving any new street, drainage or other public improvements, only the division of land into two (2) or more lots.

c. *Final plat.* A plat submitted to the planning commission for its consideration with construction as-built drawings of a com-

pleted subdivision prior to final recording in the Baldwin County Judge of Probate Office.

Porch. A roofed-over space attached to the outside of an exterior wall of a building, which has no enclosure other than the exterior walls of such building. Open mesh screening shall not be considered an enclosure.

Principal use or building. The principal purpose for which a lot, the principal building thereon, or establishment therein is designed, arranged or intended, and for which it is or may be used, occupied or maintained. The principal use of an establishment, building, or lot shall be determined, for retail and service uses, by the majority—more than fifty (50) percent—of the gross sales receipts during any ninety-day period. In other cases, the use with the greatest square footage shall be considered the principal use.

Private road. A street or road which has not been accepted and granted legal status as a city right-of-way or street in accord with Article XVII, Procedures for Subdivision Review subsection 17-4(h).

Public hearing. A hearing before the Daphne City Council, planning commission, or zoning board of adjustments held pursuant to Code of Ala. 1975, title 11, ch. 52.

Public land uses. Any land use operated by or through a unit or level of government, either through lease or ownership, such as municipal administration and operation, county buildings and activities, state highway offices and similar land uses; and federal uses such as post offices, bureau of public roads, internal revenue offices, military installations, etc.

Public nuisance. A class of common law offense in which the injury, loss or damage is suffered by the local community as a whole rather than by individual victims.

Public utility. Any person, firm, corporation, municipal department or board, duly authorized by the Alabama Public Services Commission or other governing entity with such jurisdiction, to provide electricity, gas, steam, telephone, telegraph, transportation, water or sewer service to the general public.

Public well / well field. The area described within the Well Head Protection Plan describing the potentiometric surface from which a well draws water for public usage and is owned and operated by a public or private community water utility.

Qualified credentialed professional (QCP). A certified and/or accredited individual who is employed to prepare and implement CBMP plans and to provide monitoring maintenance, continued inspection of construction sites and receiving waters, BMPs, remediation/cleanup and provide for reclamation or effective stormwater quality remediation that meet or exceed recognized technical standards and guidelines.

Recharge area. The land area which contributes water to a well by infiltration of water into the subsurface and movement with groundwater to a well. The surface land or water area through which an aquifer is replenished.

Recreational areas. Any area designed for active or passive leisure time activities, requiring equipment and taking place at prescribed sites. Passive activities involve relatively inactive or less energetic activities, such as walking, sitting, picnicking, board and table games.

Recreational vehicle. A self-propelled vehicle used for temporary housing of individuals and families during travel. This category, in this Ordinance is assumed to include also campers, camping trailers, motor homes and smaller mobile homes (up to a length of twenty-eight (28) feet exclusive of hitch) capable of being towed by a passenger motor car.

Regulatory flood. The flood which is representative of large floods known to have occurred generally in the area and reasonably characteristic of what can be expected to occur. The regulatory flood generally has a flood frequency of approximately one hundred (100) years as determined from an analysis of floods at a particular site and other sites in the same general region.

Regulatory flood protection elevation. The elevation of the regulatory flood plus one (1) foot of freeboard to provide a safety factor. See also floodway, regulatory definition.

Regulatory floodway (See floodway, regulatory).

Residential dock or pier. A dock or pier constructed adjacent to a residential lot for gratis (without charge or fee) recreational purposes and/or mooring of private boats.

Residential identification sign. A sign that identifies the name of a residential subdivision, condominium development, townhouse or apartment complex.

Responsible party. Any person, firm, corporation, utility, entity or agent thereof that engages in any site preparation and/or construction activities liable for construction activity and resultant damages caused. This term shall not be construed to include the City of Daphne.

Restrictive covenants. Private regulations recorded with the final plat, which limit or otherwise govern the use, intensity and development patterns of the land within a subdivision or parcel of land for a specified time.

Retention basin. Also known as a stormwater pond. An area used to contain stormwater and runoff from the drainage area.

Retaining wall. A wall of wood, brick, concrete or other suitable material designed to prevent erosion of soil from sharply sloping land or from around pools, decks, foundations and other similar structures.

Revetment. A facing of stone, concrete, etc., built to protect a scarp, embankment, or shore structure against erosion by wave action or current.

Right-of-way (ROW). A strip of land taken or dedicated for use as a public way. In addition to the roadway, it normally incorporates the curbs, lawn strips, sidewalks, lighting, and drainage facilities, and may include special features (required by the topography or treatment) such as grade separation, landscaped areas, viaducts, and bridges.

Roadside stand. A temporary structure designed or used for the display or sale of agricultural and related products.

Roadway. That portion of a street between the regularly established curb lines or that part of a street devoted to vehicular traffic.

Rooming / boarding house. Any building or portion thereof, other than a hotel or motel, which contains not less than three (3) or more than nine (9) guest rooms which are designed or intended to be used, let, or hired out for occupancy, more or less transiently, by individuals for compensation whether paid directly or indirectly, and without provisions for cooking by guests or meals for guests.

Satellite receiving dishes. A dish-shaped antenna designed to receive television broadcasts relayed by microwave signals from earth-orbiting communications satellites. This definition also includes satellite earth stations, or television dish antennas.

Satisfactory stand of vegetation. Temporary or permanent vegetation sufficient to cover eighty (80) percent or more of the total disturbed soil surface with no more than one (1) square foot of area void of vegetation.

Schedule of fees. The schedule of fees assessed by the City of Daphne Planning Department with regard to the administration of the Land Use and Development Ordinance as specifically enumerated in Article XXXIV, Schedule of Fees.

Screening. A method of shielding, obscuring or buffering one (1) use or building from another use or building by fencing, walls, densely planted vegetation, natural vegetation, including a transitional buffer or other means; a visual and acoustical barrier which is of such nature and density that provides year-round maximum capacity from the ground to a height as required by Article XIX, Landscape Standards and Tree Protection.

Self-storage facility, limited-access. A self-storage facility with limited access points from the exterior of the building to interior halls that provide the only access to individual storage units.

Self-storage facility, multi-access. A self-storage facility with access points from the exterior of the building(s) to individual storage units.

Seat. For purposes of determining the number of off-street parking spaces for certain uses, the number of seats is the number of seating units installed or indicated, or each twenty-four (24) linear inches of benches, pews, or space for loose chairs.

Sediment control. Measures that prevent and/or minimize eroded sediments from leaving the site.

Semi-public land uses. Philanthropic and charitable land uses including: YMCA's, YWCA's, Salvation Army, churches and church institutions, orphanages, humane societies, private welfare organizations, nonprofit lodges and fraternal orders, hospitals, Red Cross, and other general charitable institutions.

Service station, automobile. Any building or land used for retail sale and dispensing of automobile fuels or oils; may furnish supplies, equipment and minor services to private passenger vehicles incidental to sale and dispensing of automobile fuels and oils.

Setback line. A line established by the subdivision regulations and/or zoning ordinance, generally parallel with and measured from the lot line, defining the limits of a yard in which no building, other than accessory building, or structure, may be located above ground, except as may be provided in said Ordinance.

Sewers, public or community. An approved sewage disposal system which provides a collection network and disposal system and central sewage and treatment facility for a single community, development, or region.

Sewers, on-site. A septic tank or similar installation on an individual lot which utilizes an aerobic bacteriological process or equally satisfactory process for the elimination of sewage and provides for the proper and safe disposal of the effluent, subject to the approval of health and sanitation officials having jurisdiction.

Shelter, fall-out. A structure or portion of a structure intended to provide protection of human life during periods of danger from nuclear fall-out, air raids, storms, or other emergencies.

Shopping center. Two (2) or more retail stores, commercial establishments, service establishments, and/or a combination of the above. Sharing: customer parking, common walls, and/or common walkways.

Shrub. A woody plant, generally multi-stemmed, smaller than a tree; consisting of several small stems or small branches near the ground; and either deciduous or evergreen.

Sidewalk area. That portion of a street not included in the roadway, and devoted in whole or in part to pedestrian traffic.

Sign. Any words, lettering, parts of letters, figures, numerals, phrases, sentences, emblems, devices, designs, trade names or marks or combinations thereof, by which anything is made known, such as the designation of an individual, a firm, an association, a profession, a business, a commodity, or product which are visible from any public way and used as an outdoor display.

(a) *Banner.* Any sign of lightweight fabric or similar material that is mounted to a pole or a building at one (1) or more edges.

(b) *Billboard.* A sign that directs attention to a business, commodity, service, or entertainment conducted, sold, or offered at a location other than the premises on which the sign is located.

(c) *Changeable copy sign/reader board.* A sign or portion thereof with characters, letters or illustrations that can be changed or rearranged without altering the face of the surface of the sign. A sign on which the message changes more than eight (8) times per day shall be considered an animated sign and not a changeable copy sign for purposes of this Ordinance.

A sign on which the only copy that changes is an electronic or mechanical indication of time or temperature shall be consid-

ered a "time and temperature" portion of a sign and not a changeable copy sign for purposes of this Ordinance.

(d) *Construction sign.* Any sign giving the name or names of principal contractors, architects, and lending institutions responsible for construction on the premises during the time actual construction work is in progress.

(e) *Flashing, electronic and/or intermittent illuminating signs.* Signs which contain intermittent illumination and the changes occur more than twelve (12) times per hour.

(f) *Legal nonconforming sign.* (See Article XXXIII, Sign Provisions, for definition).

(g) *Marquee sign.* Any sign mounted to extend vertically below a marquee or canopy.

(h) *Nonconforming sign.* (See Article XXXIII, Sign Provisions, for definition).

(i) *Off-premises sign.* A billboard or other sign relating its subject matter or any portion thereof to premises other than the premises on which said sign is located.

(j) *On-premises sign.* A sign relating its subject matter to the premises on which said sign is located.

(k) *Permanent sign.* A sign permanently affixed to a building or the ground.

(l) *Political sign.* A sign identifying and urging voter support for or in opposition to a particular issue, political party, or candidate for public office.

(m) *Portable sign.* Any sign whether on its own trailer, wheels, or otherwise, which is designed to be transported from one place to another.

(n) *Premises.* An area of land with its appurtenances and buildings which, because of its unity of use, may be regarded as the smallest conveyable unit of real estate.

(o) *Real estate sign.* A sign which advertises the sale, rental or development of the premises upon which it is located.

(p) *Sandwich sign.* Any sign, double or single faced, which is portable and may readily be moved from place to place.

(q) *Temporary sign.* A sign or advertising display intended to be displayed for a short period of time, not to exceed thirty (30) calendar days (See temporary use).

(r) *Wall sign.* A sign attached to or erected against the wall of a building with the face parallel to the plane of the building wall.

(s) *Window sign.* Any sign placed inside or upon a window facing the outside and which is intended to be seen from the exterior.

Sign height. The vertical distance from the finished grade at the base of the supporting structure to the top of the sign, its frame, or supporting structure, whichever is higher. Such grade shall not be altered from the natural ground elevation.

Sign surface area. The surface area of a sign shall be computed for the area within the periphery of regular geometric forms, comprising all of the display area of the sign and including all the elements of the matter displayed, but not including structural elements of the sign bearing no advertising matter or other supporting structure. The surface area of a sign shall also be referred to as the "sign face."

Significant increase in trip generation. A change in the use of a property, including land, structures, or facilities, or an expansion of the size of structures or facilities, causing an increase in the trip generation of the property exceeding ten (10) percent (either peak or daily) and one hundred (100) vehicles per day more than the existing use for adjacent thoroughfares under local jurisdiction; or exceeding twenty-five (25) percent (either peak or daily) and one hundred (100) vehicles per day more than the existing use for all thoroughfares under state jurisdiction.

Single-use building or tenant. Property which is occupied by one tenant for the purpose of conducting business.

Site disturbance permit. Authorization from the director of community development or designee thereof for an individual, firm, trust, partnership, association or corporation to undertake activities related to subdivisions, zoning, PUD's, land use, building or other actions permitted in this Ordinance or by other City of Daphne authorization.

Site plan. A plan, as required by Article XV, Procedures for Site Plan Review, that provides detailed information about the layout of private land development and required public improvements prior to preparation of construction drawings for a land development that does not include subdivision of property that would otherwise be subject to a preliminary plat.

Sod. Various types of grasses planted and maintained in a lawn condition.

Special exception. A land use which may be permitted that is not similar in nature to the uses permitted in a district, but that is desired in the community and for which a suitable district is not available. Such use may be permitted in the most nearly appropriate district where a location is available, upon appeal to and approval by the board of zoning adjustment, which may set forth special conditions under which the use may be allowed.

Spot zoning. The rezoning of a lot, lots, or parcel of land, located within the limits of an existing zoning district, to benefit an owner for a use incompatible with surrounding land uses and that does not further the comprehensive zoning plan.

Stabilization. Practices implemented to prevent the erosion of exposed soils.

Staining materials. All soils and fill materials that have more than ten (10) percent by weight passing through a two hundred (200) mesh sieve.

Start of construction. The initiation of land disturbance as permitted by a site disturbance permit. Such disturbance includes land preparation, clearing, excavation, grading and/or filling.

State owned submerged lands. Those lands including but not limited to, tidal lands, sand bars, shallow banks, and lands water ward of the mean low water line beneath navigable fresh water or the mean high tide line beneath tidally-influences waters, to which the State of Alabama has acquired.

Stormwater management facility. Any combination of landscape and structural features that retain, detain or convey stormwater runoff from a specific drainage area.

Story. That portion of a building included between the surface of any floor and the surface of the next floor above it, or if there is no floor above it, then the space between such floor and the ceiling next above it.

Story, habitable. A story having its floor elevated at or above base flood elevation, as established by the City of Daphne, regardless of the intended use of the story or its floor area and complying with applicable building codes.

Stream, 303(d) listed. Alabama Department of Environmental Managements priority ranking (as amended) of stream sections that do not meet applicable state water quality standards, established pursuant to Section 303(d) of the Clean Water Act on 1972. 303(d) Listed Streams within the Daphne jurisdiction include D' Olive Creek, Joe's Branch, the Upper Tributary to D' Olive Creek, the Upper Tributary to Tiawasee Creek, and Tiawasee Creek.

Stream bank. The terrain alongside the bed of a river, creek, or stream.

Stream, impaired. Any stream or segment thereof listed by the Alabama Department of Environmental Management "as 303(d)".

Street. Any public or private way set aside for common travel more than thirty (30) feet in width if such existed at the time of enactment of this Ordinance, or such right-of-way fifty (50) feet or more in width if established thereafter.

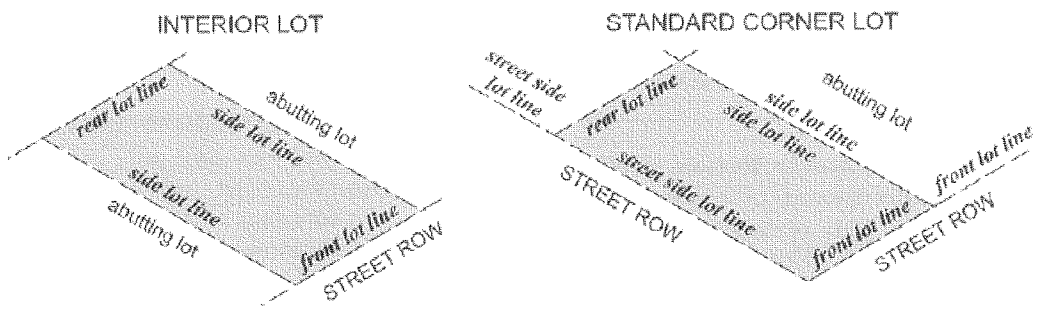
(a) *Collector street.* A street used to carry traffic from minor streets to the system of major streets.

(b) *Cul-de-sac* or *dead end street.* A street having one (1) end open to traffic and one (1) terminating in a vehicular turnaround.

(c) *Major street, arterial street* or *highway.* A street or highway or exceptional continuity designed to carry high volume traffic considerable distances.

(d) *Minor street* or *local street.* A street used primarily for access to abutting properties.

Street line. The property on the side of a street between two intersecting streets (crossing or terminating), or if the street is dead ended, then all the property abutting on one side between an intersecting street and the dead end of the street.



Lot Lines of Typical Lots

Structural alteration. Any change, except for repair or replacement, in supporting members of a building or structure, such as bearing walls, columns, beams or girders, and which complies with applicable building codes.

Structure. Anything constructed or erected, the use of which requires a location on the ground, or attached to something having a location on the ground.

Structure, existing. Any structure the construction of which was initiated and all required state, local and federal authorizations were obtained prior to the effective date of this Ordinance.

Structure, new. Any structure which is not an existing structure.

Subdivider. Any individual, firm, association, syndicate co-partnership, corporation, trust, or any other legal entity commencing proceedings to effect a subdivision of land hereunder.

Subdivision. The division of a lot, tract, or parcel of land into two (2) or more lots, plats, sites, or other division of land for the purpose, whether immediate or future, of sales or of building development. It includes re-subdivision and, when appropriate to the context, relates to the process of subdividing or to the land or territory being subdivided. It shall include all divisions of land involving the dedication of a new street or a change in existing streets. However, the following shall not be included within this definition or be subject to the requirements thereof:

(a) Property that is divided by probated family estates;

(b) The public acquisition by gift or purchase of strips or parcels of land for the widening or opening of streets or for other public uses.

Subdivision—Extraterritorial planning jurisdiction. The division of a lot, tract, or parcel of land into two (2) or more lots, plats, sites, or other division of land for the purpose, whether immediate or future, that is divided by an individual and given and/or sold to parents, spouses, sisters, brothers, children, or grandchildren, either adopted or natural, where no streets or roadway access to the lots is involved and where lots are less than the minimum lot size as herein required.

Submerged lands. Those lands situated below the mean low waterline or all of the lands covered by the mean high waterline.

Substantial improvement. Any addition, extension, enlargement, or expansion, repair, reconstruction, or improvement of any permanent structure, the cost of which equals or exceeds fifty (50) percent of the fair market value of the structure either before the repair, reconstruction, or improvement is started or if the structure has been damaged and is being restored before the damage occurred. For the purpose of this Ordinance, substantial improvement is considered to occur when the alterations of any wall, ceiling, floor or other structural part of the building commences, whether or not that alteration affects the external dimensions of the structure.

The term does not, however, include either (1) any project for improvement of a structure to comply with existing state or local health, sanitary, or safety code specifications which are solely necessary to ensure safe living conditions, or (2) any alterations or restoration of a structure listed on the National Register of Historic Places or a State Inventory of Historic Places.

Surveyor or *applicant's surveyor.* A professional surveyor licensed in the State of Alabama.

Swale. A depression in the ground which channels stormwater runoff, where the side slopes are no steeper than four (4) to one (1) run to rise.

Temporary BMPs. Temporary best management practices are designed to remain effective for a relatively short duration of time, usually until the construction site is complete and permanent BMPs have been established. Temporary BMPs are only effective if they are installed correctly and maintained. These include but are not limited to silt fences, hay bales and mulch.

Temporary use. A short period of time; not to exceed thirty (30) calendar days.

Telecommunications facility. A facility owned or operated by a public utility or a business, that transmits and/or receives electromagnetic waves, including antennas, microwave dishes, horns, and other types of equipment for the transmission or receipt of such signals, telecommunications towers, or alternative supporting structures and uses.

Telecommunications tower. Any structure that is designed and constructed primarily for the purpose of supporting one (1) or more antenna, including self-supporting lattice towers, guyed towers, or monopole towers. The term includes radio and television transmission towers, microwave towers, common carrier towers, cellular telephone towers, and the like (See also Antenna support structure).

Tourist home. A building, or part thereof, other than a motel or hotel, where sleeping accommodations are provided for transient guests, with or without meals, and which also serves as the residence of the operator.

Townhouse. An individually-owned, single-family attached dwelling unit having a separate ground floor entrance and separate private yard space, with common side walls on one (1) or both sides of the dwelling unit, and not exceeding two and one-half (2½) stories or thirty-five (35) feet in height.

Travel trailer park. A development for the accommodation of tourists or vacationers on a short-term basis, providing rental spaces for each individual trailer, camper, motor home, and recreation and service facilities for the use of the tenants, whether publicly or privately owned and whether operated for or without compensation.

Tree. A self-supporting woody plant, usually having a single woody trunk and a potential DBH of two (2) inches or more, and normally attaining a mature height of twenty-five (25) feet or more. For the purposes of this Ordinance, trees may be categorized as follows:

(a) *Overstory tree.* Trees which, at maturity, comprise the canopy of a natural forest. Generally greater than fifty (50) feet at mature height.

(b) *Public/city tree.* Any tree located on city or public property including city right-of-way.

(c) *Significant tree.* Any tree that has aged and grown to an impressive stature, for its species, to be considered an integral part of the city's natural heritage.

(d) *Understory tree.* Trees which, at maturity, comprise the sub-canopy of a natural forest. These are generally under fifty (50)

feet at a mature height. Suggested list of understory trees include: Japanese Maple, Redbud, Fringe Tree, Crape Myrtle, Oriental Magnolia, Vitex, Sweet Bay Magnolia, American Holly, Loquat, Cherry Laurel, Japanese Evergreen Oak, East Palatka Holly, or Savannah Holly.

Tree credits. An incentive to preserve existing trees whereby on-site trees may be counted toward the landscape requirements of this Ordinance. Such credits may be used to offset the number of new required trees that would otherwise have to be planted.

Trust indentures. A bond indenture that includes provisions for the appointment of trustees who may act on behalf of the bondholders.

Use. The specific purpose for which land or a building is designated, arranged, intended, or for which it is or may be occupied or maintained.

Utility, water. Any public community water supplier serving customers and owning and operating public water wells within the city limits and its planning jurisdiction.

Variance. A modification of the strict terms of the relevant regulations in a district with regard to placement of structures, developmental criteria or provision of facilities.

Examples would be:

(a) Allowing smaller yard dimensions because an existing lot of record is of substandard size.

(b) Waiving a portion of required parking and/or loading space due to some unusual circumstances.

(c) Allowing fencing and/or plant material buffering different from that required, due to some unusual circumstances. This is available only on appeal to the board of zoning adjustment.

Waiver. Permission to depart from the requirements of an ordinance with respect to the submission of required documents based upon findings and conclusions of the planning commission.

Watercourse. Any body of water, including but not limited to creeks, rivers, streams, and bays.

Waterway. A dry or wet channel that directs surface runoff to a watercourse or to the public storm drain.

Well. A hole or shaft sunk into the earth to tap an underground supply of water.

Well field. See Public well.

Well head protection area (WHPA). The surface and subsurface area surrounding a water well or well field, supplying a public water system, through which contaminants are likely to move toward and reach such water well or well field.

Wetlands. An area or areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support a prevalence of vegetation typically adapted for life in saturated soil conditions and generally include swamps, marshes, bogs and similar areas.

Wetlands, jurisdictional. A wetland area that meets the definitional requirements for wetlands to include the hydrology, hydric soil types and wetland vegetation as determined by the U.S. Army Corps of Engineers, 1987 Federal Wetland Delineation Manual.

Wholesale establishment. Business establishments that generally sell commodities in large quantities or by the place to retailers, jobbers, other wholesale establishments, or manufacturing establishments. These commodities are basically for further resale, for use in the fabrication of a product, or for use by a business service.

Yard. A space on the same lot with a main building, such space being open, unoccupied and unobstructed by buildings or structures from ground to sky, except where encroachments and accessory buildings are expressly permitted.

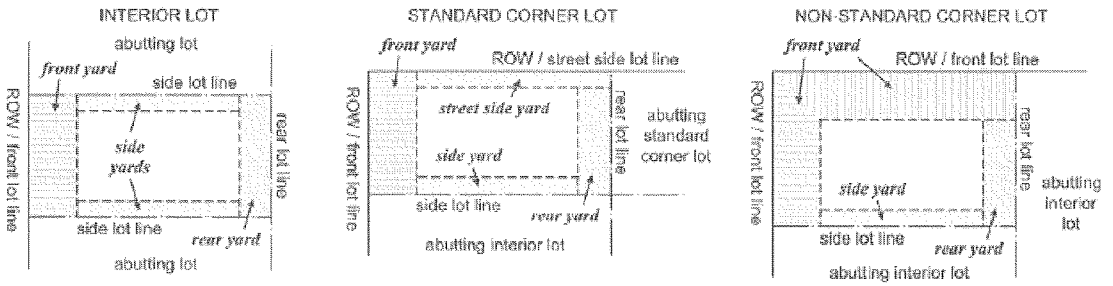
(a) *Yard, front.* An open, unoccupied space on the same lot with the main building, extending the full width of the lot and situated between the right-of-way line and the front line of the building projected to the side lines of the lot. The depth of the front yard shall be measured between the front lines of the building and the right-of-way line.

Covered porches, whether enclosed or unenclosed, shall be considered as a part of the main building and shall not project into a required front yard.

(b) *Yard, rear.* An open space on the same lot with the main building, such space being unoccupied except possibly by an accessory building and extending the full width of the lot and the rear line of the main building projected to the side lines of the lot.

(c) *Yard, side.* An open, unoccupied space on the same lot with a main building, situated between the side line of the building and the adjacent side line of the lot extending from the rear line of the front yard to the front line of the rear yard. If no front yard is required, the rear boundary of the side yard shall be the rear line of the lot.

(d) *Yard, minimum.* That yard space remaining if the property is developed to the fullest extent allowable under applicable ordinances.



Zero lot line. A developmental approach in which a dwelling unit is cited along one (1) or more lot lines.

Zoning administrator. The administrative officer designated to administer the zoning ordinance and issue land use certificates.

Zoning district. A section of the City of Daphne designated in this Ordinance text and delineated on the zoning map wherein all requirements for use of land and building and development standards must be uniform.

Zoning district map. The map or maps, which are a part of this Zoning Ordinance, and which delineate the boundaries of zoning districts.

8-3 Acronyms/abbreviations.

ac - acre(s)

ACAMP - Alabama Coastal Area Management Plan

ADCNR - Alabama Department of Conservation and Natural Resources

ADEM - Alabama Department of Environmental Management

AHC - Alabama Historical Commission

ALDOT - Alabama Department of Transportation

ANSI - American National Standards Institute

ATM - automated teller machine

BFE - base flood elevation

bldg - building

BMP - best management practices

BR - bedroom

CBMPP - construction best management practices plan

DBH - diameter at breast height

EQ - equal

FAA - Federal Aviation Administration.

FCC - Federal Communications Commission

fc - foot candle

ft - foot or feet

GFA - gross floor area

HOA - Home Owners Association

Hwy - highway

ITE - Institute of Transportation Engineers

lf - linear feet

LEED - Leadership in Energy and Environmental Design

LID - Low Impact Development

MS4 - city's municipal separate storm sewer system

max - maximum

min - minimum

mph - miles per hour

na - not applicable

NAVD 88 - North American Vertical Datum of 1988

NFA - net floor area

NPDES - National Pollutant Discharge Elimination System

NRCS - National Resources Conservation Service

POA - Property Owners Association

PUD - Planned Unit Development

ROW - right-of-way

sf - square feet

St - street

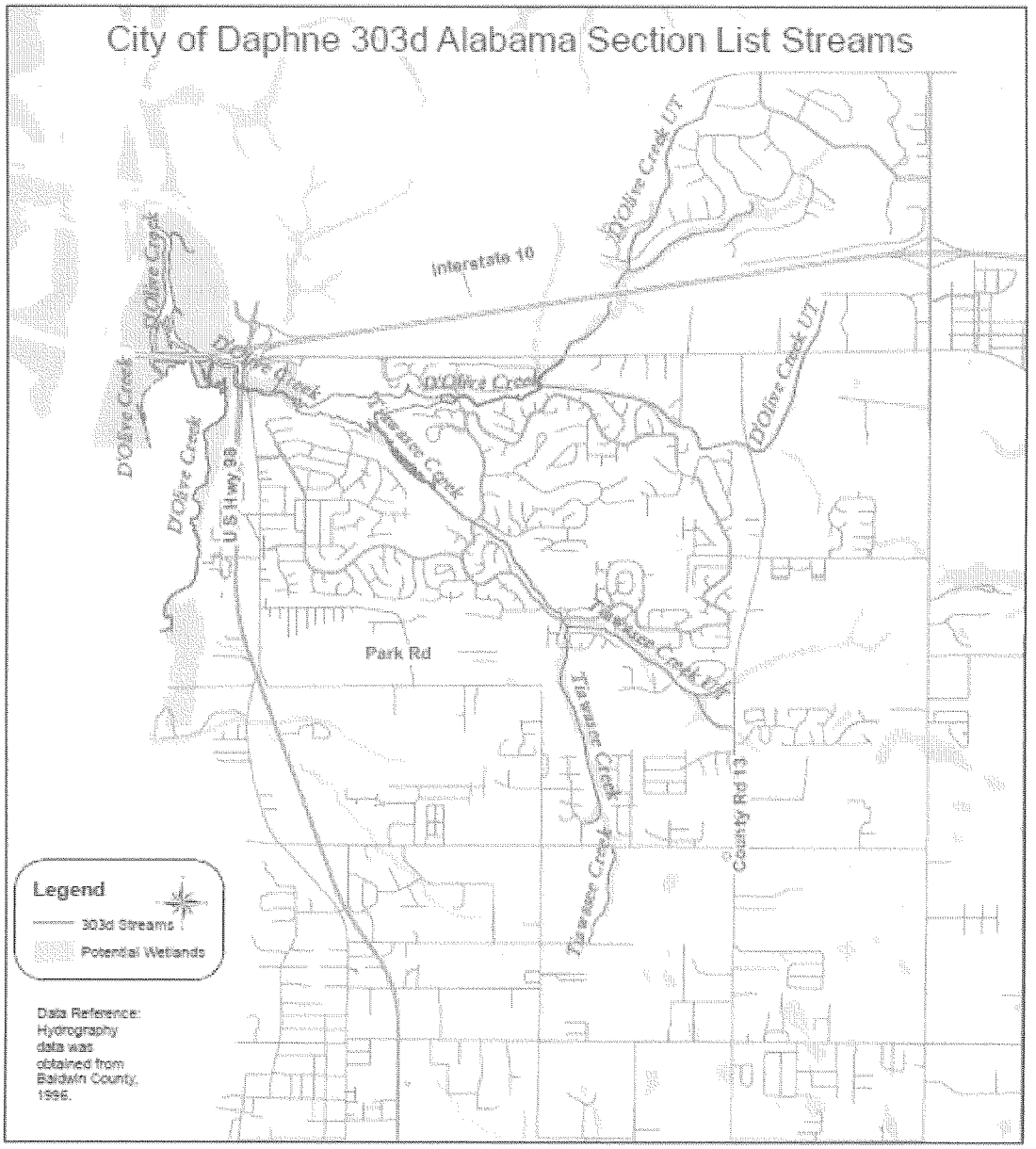
USACE United States Army Corps of Engineers.

USDA - United States Department of Agriculture

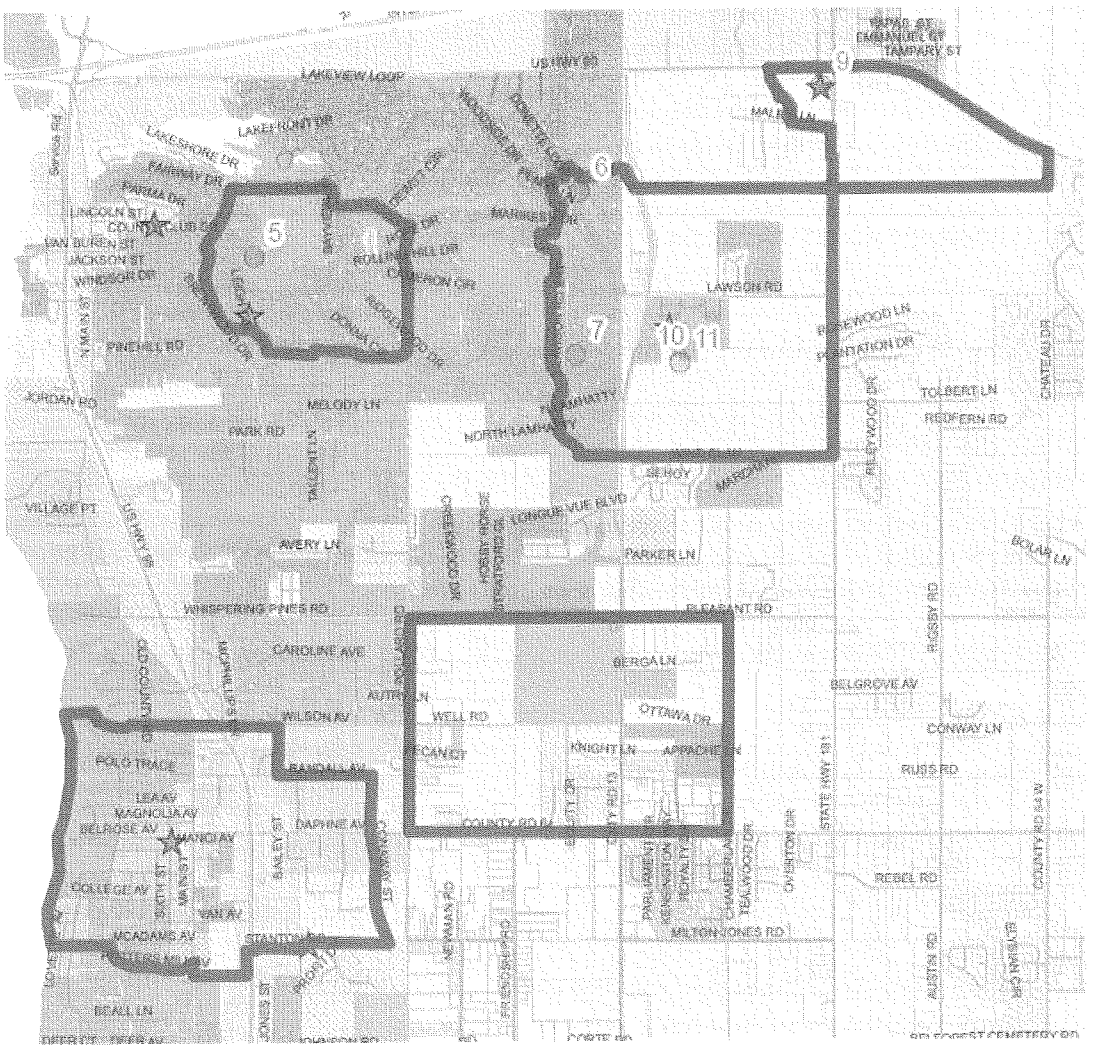
USFWS - United States Fish and Wildlife Services

% - percent

§ - section, subsection, paragraph or item within this Ordinance or other regulations, as specified


City of Daphne 303d Alabama Section List Streams
Interstate 10
D'Olive Creek UT
D'Olive Creek
Tiawasee Creek
Tiawasee Creek UT
US Hwy 98
Park Rd
County Rd 13
Legend
303d Streams
Potential Wetlands
Data Reference:
Hydrography
data was
obtained from
Baldwin County,
1996.

WELL HEAD PROTECTION AREAS



ARTICLE IX. DISTRICT PROVISIONS

Except as hereinafter provided, the following shall generally apply:

9-1 Rules for determining boundaries.

Where uncertainty exists with respect to the boundaries of any of the districts as shown on the official zoning district map, the following rules shall apply:

(a) Unless otherwise indicated, the zoning district boundary lines shall be construed to follow property lines, land lot lines, center lines of streets, highways, alleys, shorelines of streams, reservoirs, other bodies of water, or civil boundaries.

(b) Where zoning district boundaries are approximately parallel to the center lines of streets, highways, railroads, streams, reservoirs, bodies of water, or lines extended such zoning district boundaries shall be construed as being parallel thereto and at such distance therefrom as indicated on

the official zoning district map. If no distance is given, such dimensions shall be determined by the use of the scale shown on the official zoning district map.

(c) Where zoning district boundary lines appear on the official zoning district map and it divides a lot which is in single ownership at the time of this enactment of this Ordinance, the use classification of the larger(est) portion may be extended to the remainder by the planning commission without recourse to amendment procedure.

(d) Where a public road, right-of-way, street, or alley is officially vacated or abandoned, the regulations applicable to the property to which it is reverted shall apply to such vacated or abandoned public road, right-of-way, street, or alley.

(e) In case the exact location of a zoning district boundary line cannot be determined by the foregoing methods, the board of zoning adjustment shall upon application determine the location of the line.

9-2 Nonconformance.

It is the intent of this section to recognize the elimination of existing buildings and structures or uses that are not in conformance with the provisions of this Ordinance in as much as it is a subject of health, safety, and general welfare and for the prevention of the establishment of new uses which would violate said provisions. It is also the intent of this Ordinance to administer the elimination of nonconforming uses, buildings, and structures so as to avoid any unreasonable invasion of established private property rights.

Any structure or use of land existing at the time of the enactment of this Ordinance and amendments thereto and not in conformance with its use regulations and provisions may be continued subject to the following provisions:

(a) *Unsafe structures:* Any structure or portion thereof declared unsafe by any authority may be restored to a safe condition provided the restoration is in compliance with requirements of this section.

(b) *Alterations:* Any change in a nonconforming building site or yard area is subject to the following:

(1) No nonconforming building can be structurally altered, except for repairs or the installation of plumbing fixtures required by law; the changing or interior partitions; interior remodeling, cannot be substantially added to moved or extended in anyway unless the addition meets the provisions of this Ordinance.

(2) Should a nonconforming building be moved, all nonconforming yard areas shall be eliminated.

(3) A nonconforming use of land shall be restricted to the lot occupied by such use as of the effective date of this Ordinance. A nonconforming use of a building or buildings shall not be extended to include either additional buildings or land subsequent to the enactment of this Ordinance.

(4) A nonconforming building, structure, or improvement which is hereafter damaged or destroyed to an extent exceeding fifty (50) percent of the reasonable estimated replacement cost of the structure, building or improvement may not be reconstructed or restored to the same nonconforming use, except upon the approval of the board of zoning adjustment. Such damaged or destroyed structures that are no longer in use shall be removed and the site cleared at the owner's expense.

(c) *Change in use:* A nonconforming use which is changed to a conforming use shall not be permitted to revert to the original or a less restrictive use.

(d) *Discontinuance:* A nonconforming use which became such upon the adoption of this Ordinance and which has been discontinued for a continuous period of one (1) year shall not be reestablished and any future use shall be in conformity with the provisions of this Ordinance.

(e) *Adjacent land:* The presence of a nonconforming use in a zoning district shall not be legal grounds for the granting of variances for other surrounding properties by the board of zoning adjustment.

9-3 Blocks.

Blocks shall be arranged to assure maximum use of the topographic features of the land and shall not be less than four hundred (400) feet nor more than twelve hundred (1,200) feet in length, except as the planning commission considers necessary to secure efficient use of land or desired features of a street pattern. In blocks more than eight hundred (800) feet in length, the planning commission may require one (1) or more public crosswalks of not less than ten (10) feet in width to extend entirely across the block at locations deemed necessary.

Blocks shall be wide enough to allow two (2) tiers of lots of minimum depth, except where fronting on major streets, limited access highways, railroads, or where prevented by topographical conditions or size of the property, in which case the planning commission will approve a single tier of lots of minimum depth.

9-4 Lots.

The size, shape, and orientation of lots shall be such as the planning commission deems appropriate for the type of development, use contemplated, and shall be properly related to the topography of the land and character of the surrounding development. Insofar as practical, side lot lines shall be at a right angle to straight street lines or radial to curved street lines.

Residential lots served by central water and sewerage systems shall not be less than fifty (50) feet wide at the building setback line nor less than five thousand (5,000) square feet in area, provided they comply with the requirements of the zoning district in which the development is to occur.

Residential lots with central water supply, but not served by a central sewerage system shall not be less than ninety (90) feet wide at the building setback line nor less than fifteen thousand (15,000) square feet in area; provided, however, greater area may be required by the planning commission if it is indicated by data from percolation tests or determined by the Baldwin County Health Department.

Residential lots served by an individual source of water supply and an individual sewage disposal system shall be not less than one hundred (100) feet wide at the building setback line nor less than twenty thousand (20,000) square feet in area as required by the Baldwin County Health Department after investigation of soil conditions, proposed sewerage system, and depth of ground water.

9-5 Flag lots.

A flag lot is a lot with two (2) distinct parts: 1. the flag, which is the only building site; and is located behind another lot; and 2. the staff, which connects the flag to the street; provides the only street frontage for the lot; and at any point is less than the minimum lot width for the zone.

These regulations allow for the creation of flag lots in limited circumstances. The limitations are intended to minimize the negative impacts of flag lots and additional driveways on an area while allowing land to be divided when other options are not achievable.

A residential subdivision shall not consist of more than two (2) flag lots and shall comply with the following criteria:

(a) Shall have access to a public street or right-of-way by means of an ingress/egress easement thirty (30) feet in width. The staff must be part of the flag lot, connect to a street and be under the same ownership as the flag portion of the lot. Access easements to allow for use of the staff by another lot may be required. The "staff" shall be an all weather driving surface with adequate drainage and properly maintained. "All weather surface" means asphalt, concrete, gravel, or road base. Shared access for up to two (2) lots may be allowed with a recorded easement for all property owners. The staff portion of the flag lot shall not be longer than two

hundred fifty (250) feet. Any exemption to these provisions may be granted by the planning commission upon request.

(b) The minimum lot area shall be compatible with the minimum square footage as required by the zoning district in which the development is to occur. The staff shall not be a part of the required lot or parcel area and shall provide frontage on a public street or right-of-way.

(c) The setbacks shall be compatible with the minimum setback requirements of the zoning district in which the development is to occur.

(d) The front setback shall be measured from the projected lot line of the principle lot parallel to the thirty-foot ingress/egress easement.

(e) The rear and side setbacks shall be measured from the property line.

(f) Said subdivision shall include up to four (4) lots. Any further subdivision of the property shall require the thirty-foot ingress/egress easements to become a dedicated right-of-way for the purpose of the developer, subdivider, or owner to construct a street in accordance with the specifications and requirements provided herein and to provide all minimum improvements for a subdivision.

(g) Any subdivision with more than four (4) residential or commercial lots shall be subject to Article XVII, Subdivision Regulations.

(h) The record plat of any flag lot subdivision shall show that the staff, i.e., access from the dedicated public street to the property, is a dedicated ingress/egress easement; is not a city street; and will not be maintained by City of Daphne.

9-6 Lots of record.

Where the owner of a lot of record or his successor to the title thereto does not own sufficient land to enable him to conform to the dimensional requirements of this Ordinance, the following exceptions may be allowed:

(a) Where a lot, tract, or parcel of land has an area or width which does not conform to the requirements of the district in which it is located, said lot may be used for a single-family dwelling in any residential district, provided the lot to be used has a minimum area of four thousand (4,000) square feet and a minimum lot width at the building line of forty (40) feet and is connected to public sewer. In commercial/industrial districts, uses compatible with the district may be allowed by the planning commission.

(b) When two (2) or more adjoining lots with a continuous frontage are in a single ownership at the time of the application, and such lots have a frontage or lot area less than is required by the zoning district in which they are located, such lots shall be platted or reparcelled to create one (1) or more lots which conform to the minimum frontage and area requirements of the zoning district.

No lot or parcel, even though it may consist of one (1) or more adjacent lots of record, shall be reduced in size so the lot width, depth, front, side, rear yard, inner or outer courts, or lot area or other requirements of this Ordinance are not maintained. This section shall not apply when a portion of a lot is acquired for public use.

(c) Buildings or structures located on substandard lots of record may be improved only when the addition of adequate plumbing is required by the laws and ordinances of the City of Daphne.

9-7 Substandard lots of record.

Yard requirements shall be modified subject to the following conditions:

(a) On double frontage lots, the required front yard shall be provided on each public street or right-of-way.

(b) An unroofed porch shall not project into a required front yard for a distance exceeding five (5) feet.

(c) The side yard requirements for substandard lots of record may be reduced for each side yard at the rate of one (1) foot for each four (4) feet by which the lot width lacks fifty (50) feet, provided in no event shall such side yard be reduced to less than five (5) feet on each side.

(d) The setback requirements for side yards and/or front yards on corner lots or lots of record where setbacks have not been established shall not apply to any lot where the average setback on residentially developed lots located, wholly, or in part two hundred (200) feet on each side of the such lot and within the same block, zoning district, and fronting on the same streets if such lot is less than the minimum required setback. In such cases, the setback on such lot may be less than the required setback, but not less than the average of the setbacks of the existing developed lots.

9-8 Farm land.

Other provisions of this Ordinance notwithstanding, any tracts of farm land under cultivation, pasture land, or timberland presently being used for such purposes, consisting of at five (5) acres or more in size, may continue to be used for such purposes regardless of the zoning district in which it lies.

9-9 Yards.

No part of a yard or other open space required for any building for the purpose of complying with the provisions of this Ordinance shall be included as part of a yard or open space similarly required for another building. Every part of a required yard or court shall be open from its lowest point to the sky unobstructed, except for the ordinary projection of sills, cornices, buttresses, ornamental features, chimneys, flues, and eaves, provided such projections shall not extend more than two (2) feet beyond the yard area requirements.

9-10 One principal building per lot.

Every residential building, hotels, motels, condominiums, single-family and multi-family dwellings, and duplexes hereafter erected or moved shall be located on a lot and in no case shall there be more than one (1) principal residential building on a lot except as follows:

(a) In any district where multi-family structures, motels, hotels, or two (2) or more residential structures may be permitted on a lot provided no building shall be located closer to another building on the same lot than a distance equal to half the sum of the heights of both buildings.

(b) In flood hazard areas identified on the National Flood Insurance Rate Maps, the height of a building shall be measured from the floor level of the first habitable story for purposes of this section. In addition, the front or rear of any building may be no closer to the front or rear of any other building than forty (40) feet. The side of any building shall be no closer to the side, front, or rear of any other building than thirty (30) feet.

9-11 Accessory uses.

(a) *General:* Any use may be established as an accessory use to any permitted principal use in any district provided:

(1) Is customarily incidental to and is maintained and operated as a part of the principal use.

(2) Is not hazardous to and does not impair the use or enjoyment of nearby property in a greater degree than the principal use with which it is associated.

(3) Does not create levels of noise, odors, vibration and lighting, or degrees of traffic congestion, dust or pollutants, in a greater amount than customarily created by principal use.

(b) *Satellite receiving dishes:* Satellite receiving dishes are permitted accessory uses in any district, provided they comply with the setback, height, and other standards provided herein. In

any district, the dish shall be located to the rear of the front building line and must be set back ten (10) feet from any interior or rear lot line.

Special setbacks indicated herein apply on corner lots. The dish together with the principal and accessory building may not exceed the maximum lot coverage permitted in the district in which it is located. In residential districts where the antenna is detached from the main building, its maximum height may not exceed fifteen (15) feet. When roof mounted, it must conform to the zoning district's height requirements and its installation must be checked for safety by the building official. Installation and construction must also comply with the building code. No form of advertising or identification is allowed on the dish or framework other than manufacturers' small identification plates.

(c) *Radio and TV antennas:* Private radio and TV antennas for individual homes or for amateur uses are permitted as accessory structures in any district and may be placed on roofs or in rear or side yards so they do not occupy more than fifty (50) percent of said yard, nor come closer than five (5) feet to any right-of-way or property line. Antennas in excess of the normal height limitations for the zoning district in which they are located are subject to approval and permitting by the building official.

Said permit shall include a clause which shall indemnify, hold harmless, and protect the City of Daphne against any and all liabilities which may result from the erection and use of such radio and TV antennas.

Antennas must be properly constructed in compliance with the requirements of the Federal Communications Commission (FCC), the American Radio Relay League, Inc. (ARRL), or equivalent standards and good engineering practices as determined by the building official.

(c) *Fall-out shelters:* Fall-out shelters are permissible as principal or accessory structures in any zoning district, subject to the following conditions:

(1) If any portion of the structure extends above the ground, the portion above the ground must comply with the yard and lot coverage requirements of the zoning district in which it is located. The plot plan for such shelter shall be approved by the building official.

(2) If the structure is completely underground, it need not comply with yard requirements or percentage of lot coverage requirements.

(3) A fall-out shelter, underground or above ground, shall be confined to a side or rear yard and shall not be located in the front yard between the main building and the street on which it fronts.

(4) Fall-out shelters may contain or be contained in other structures or may be constructed separately.

9-12 Accessory structure.

Where an accessory structure is attached to the main building, a substantial part of one (1) wall of the accessory structure shall be an integral part of the main building or such accessory structure shall be attached to the main building in a substantial manner by a roof, and therefore, such requirements applicable to the main building shall apply. The lot shall be large enough to accommodate the principal building and the accessory building or building(s) and meet the yard and other district requirements as otherwise provided herein. The principal building and accessory structure must comply with the requirements applicable to the maximum building coverage specified in this Ordinance.

In residential districts, a detached accessory structure shall conform to the following requirements:

(a) Shall not be located on a lot by itself, nor be located or extend into the front yard.

(b) Shall not be constructed to exceed more than one (1) story or fifteen (15) feet mean roof height unless such building sits within the primary residence building setback lines, and shall not exceed more than thirty (30) percent of the rear yard.

(c) Shall not be closer than five (5) feet to the main building.

(d) Shall maintain a side yard setback of not less than five (5) feet.

(e) Shall maintain a rear yard setback of not less than five (5) feet.

(f) There shall be one (1) power meter to service both the primary residence and the accessory structure. A second power meter may be allowed with the approval of the building official in conditions of extreme hardship due to distance or access. The decision of the building official may be appealed to the board of zoning adjustment in accordance with provisions established herein.

9-13 Access to public streets.

Access to public streets shall be maintained in accordance with the following requirements:

(a) Each principal use shall be placed on a lot or parcel which provides frontage on a public street having a right-of-way of not less than fifty (50) feet, except where existing public right-of-way is less than fifty (50) feet.

9-14 Single-family dwelling.

Single-family—A detached building designed for and occupied by one (1) family as a home, with cooking and housekeeping facilities which meets or exceeds the following standards:

(a) The home has a length not to exceed four (4) times its width, with the length measured along the longest axis and the width measured at the narrowest part of the other axis with the minimum width of not less than twenty (20) feet.

(b) The roof shall have a minimum 3:12 (three to twelve) roof pitch and shall have a surface of wood shakes, asphalt composition, wood shingles, concrete, fiberglass or metal tiles, slate, or built up gravel materials. All roof structures shall provide an eave projection of not less than six (6) inches.

(c) The exterior siding materials shall consist of wood, masonry, concrete, stucco, masonite, metal, brick, or vinyl lap or other materials of like appearance.

(d) The electric meter must be attached to the structure.

(e) Taxed as real property.

ARTICLE X. GENERAL PROVISIONS

Except as hereinafter provided the following shall generally apply:

10-1 Screening, lighting, and space.

(a) *Protection buffer:* In any business or commercial/industrial district, an operation not conducted within a building such as drive-in business, outdoor recreation, outdoor storage of materials, and outdoor servicing activities occurs shall be enclosed by a wall or fence as a protection buffer or adequate screening. In any district where reference is made requiring a protection buffer for a specified operation, said screening shall be a wall or fence of a solid appearance, shall be at least six (6) feet in height, and of a construction and design approved by the planning commission and/or a staggered double row of Evergreen plantings at least ten (10) feet in width which shall grow to at least ten (10) feet in height and spaced in a manner which after three (3) years will provide an impervious visual barrier. Said protection buffer shall be maintained by the owner of the property in order to conceal such areas or facilities from a residential district adjoining, facing, across a street, in the rear, or on the side of the principal building or use. See also "Dumpsters, Trash Refuse and Recycling Containers," herein.

Every use in any district shall be conducted entirely within a completely enclosed structure, unless expressly exempted from the enclosure requirements of this Ordinance.

(b) *Lighting:* Outdoor lighting, of all types, shall be directed as to reflect away from all residential dwellings and public rights-of-way.

(c) *Administration and enforcement:* The code enforcement officer may cause the removal, replacement, repair, and/or correction at the owner's expense, any screening, lighting, and space improperly maintained.

10-2 Use.

No building or land shall hereafter be used or occupied, no building or a part thereof be erected, constructed, moved, or altered, except in conformity with the regulations for the zoning district in which the development is to occur, except as otherwise provided herein.

It shall be the responsibility of the owner/developer to show proof of compliance with the requirements of this Ordinance.

10-3 Building height.

No building shall hereafter be erected, constructed, or altered so as to exceed the height requirement specified in the regulations for the zoning district in which the development is to occur, except as otherwise provided herein.

10-4 Height exceptions.

The height requirement for the various districts shall not apply to church spires, belfries, cupolas, penthouses, or domes not used for human habitation, to chimneys, ventilators, skylights, water tanks, parapet walls, cornices, radio and television antennas, or necessary mechanical appurtenances usually carried above the level thereof, provided such features are limited to the height necessary for their proper functioning.

Mechanical equipment, chimneys, air conditioners, elevator penthouses, church spires and steeples, water towers, parapet walls and similar appurtenances are excluded from height restrictions. However, the exclusions apply only to those elements that are appurtenant to the structure. The excluded element shall not exceed the maximum height by more than fifteen (15) feet.

10-5 Fire hazards.

Outside above ground tanks for the storage of gasoline, liquefied petroleum gas, oil, flammable liquids, or gases shall be restricted to the requirements set forth in this Ordinance and state regulations.

The storage, utilization, manufacture of solid materials, or products ranging from incombustible to moderate burning is permitted. The storage, utilization or manufacture of solid materials of products ranging from free or active burning to intense burning is permitted, provided the following condition is met:

(a) Said materials or products shall be stored, utilized, or manufactured within completely enclosed buildings having incombustible exterior walls and protected throughout by an automatic fire extinguishing system. The storage, utilization, or manufacture of flammable liquids or gases which produce flammable or explosive vapors shall be permitted in accordance with the following table for the exclusive of storage of finished products in original sealed containers.

10-6 Total capacity of flammable materials permitted gallons.*

Industries Engaged in Storage and Distribution of Such Materials	*Above Ground*	*Below Ground*
(a) Materials having a flash point above 190 degrees Fahrenheit (87.7878 Centigrade)	Prohibited	100,000
(b) Materials having a flash point from and including 105 degrees Fahrenheit (40.5556 Centigrade) to and including 190 degrees Fahrenheit (87.7878 Centigrade)	Prohibited	40,000

Industries Engaged in Storage and Distribution of Such Materials	*Above Ground*	*Below Ground*
(c) Materials having a flash point below 105 degrees Fahrenheit (40.5556 Centigrade)	Prohibited	20,000
Industries Engaged in Utilization and Manufacture of Such Materials		
(d) Materials having a flash point above 190 degrees Fahrenheit (87.7878 Centigrade)	10,000	50,000
(e) Materials having a flash point from and including 105 degrees Fahrenheit (40.5556 Centigrade) to and including 190 degrees Fahrenheit (87.7878 Centigrade)	1,000	20,000
(f) Materials having a flash point below 105 degrees Fahrenheit (40.5556 Centigrade)	500	10,000

* When flammable gases are stored, utilized or manufactured and measured in cubic feet, the quantity in cubic feet, at S.T.P., permitted shall not exceed three hundred (300) times the quantities listed above.

10-7 Water pollution.

The following shall apply:

(a) No development or operation shall discharge, cause to be discharged, liquid or solid waste into public waters unless it is in conformance with the provisions of the Municipal Separate Storm Sewer System (MS4) permit of the City of Daphne, the Alabama Department of Environmental Management, the Alabama State Board of Health Statutes and any regulations promulgated there under.

(b) The developer or operator shall be responsible for meeting established standards and upon request shall supply the city, county, state, federal, and/or other permitting authority with the information necessary to determine compliance with these standards within ten (10) business days.

(c) Plans and specifications for proposed sewerage, industrial waste treatment, and disposal facilities shall be submitted to and approval obtained from the Baldwin County Health Department, Daphne Utilities or the appropriate permitting agency.

(d) The City of Daphne's National Pollutant Discharge Elimination System (NPDES) permit-Number AL 00000002, and the MS4 Municipal Separate Storm Sewer System permit shall be adopted as a reference to address stormwater discharge within the city limits.

(1) Discharge into the Daphne MS4 (Municipal Separate Storm Sewer System) shall be in compliance with authorized discharges of the National Pollutant Discharge Elimination System (NPDES) permit as provided in part I, Authorized Discharges.

(2) All state NPDES permitted discharges shall be required to connect to the sanitary sewer for additional treatment to minimize the potential for pollutants entering the City of Daphne's MS4.

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

(4) The connection, use, maintenance or continued existence of illicit connections to the storm drain system is prohibited. This prohibition expressly includes, without limitation, illicit connections made in the past, regardless of whether the connection was permissible under law or practices applicable or prevailing at the time of connection. A person, firm, corporation, entity or agent is considered to be in violation of the MS4 Ordinance if the person, firm, corporation, entity or agent connects a line conveying sewage or sewerage to the MS4, or allows such a connection to continue.

(5) The commencement, conduct or continuance of any illegal discharge to the storm drain system is prohibited except as prescribed as follows:

(a) Water line flushing or other potable water sources, landscape irrigation or lawn watering, diverted stream flows, rising ground water, ground water infiltration to storm drains, uncontaminated pumped ground water, foundation or footing drains (not including active groundwater dewatering systems), crawl space pumps, air conditioning condensation, springs, non-commercial washing of vehicles, natural riparian habitat or wetland flows, swimming pools (if dechlorinated-typically less than one (1) PPM chlorine), fire fighting activities, and any other water source not containing pollutants.

(b) Discharges specified in writing by the authorized enforcement agency as being necessary to protect public health and safety.

(c) Dye testing is an allowable discharge, but requires a verbal notification to the authorized enforcement agency prior to the time of testing.

10-8 Compliance.

The review of oil and gas exploration and production activities under the requirements of this Ordinance shall not duplicate the regulatory activities of the Alabama Department of Environmental Management, the U.S. Army Corps of Engineers, Alabama Department of Conservation and Natural Resources, State Lands Division or the Alabama State Oil and Gas Board.

The planning commission shall permit oil or gas exploration and production in any zoning district following administrative review and assurance that all required federal and state permits have been obtained and that adequate environmental safeguards and guarantees required under the permits have been addressed.

10-9 Traffic impact anaylsis.

A traffic impact analysis shall be required for proposed high density and high intensity developments. Said analysis shall be performed by a credentialed professional licensed to perform such service. The results and any corrective measures necessary shall be included as part of, and in addition to, the requirements for preliminary subdivision plat and/or site plan review and approval.

10-10 Well head protection area (WHPA).

The water supply protection district or the well head protection area (WHPA) district is created for the purpose of promoting the public health, safety, and welfare through the protection of public water supplies from the danger of water pollution and contamination in compliance with the Safe Drinking Water Act of 1974. Regulations within these areas are established to prevent water quality degradation due to pollutant loadings within aquifer recharge areas and within the watersheds of surface public water supplies.

(a) *Boundaries:* The well head protection area (WHPA) is hereby established. The boundaries shall be amended in the same manner as any other zoning district permitted

by the Land Use and Development Ordinance, and may be amended in accordance with the provisions of Article III, Amendments to the Zoning District Map.

The boundaries of the WHPA are determined by the individual public utilities owning and operating public water wells and are based on their individual source water assessment plans and well head protection plans. The public water utilities include Daphne Utilities, Park City Water Authority, and Belforest Water Authority.

This district shall be in addition to and shall overlay all other zoning districts where it is applied, so that any parcel of land lying in such an overlay district shall lie in one (1) or more other zoning districts provided for by the Land Use and Development Ordinance. The effect is to create a new district that has the characteristics and limitations of the underlying district, together with the characteristics and limitations of the overlying district.

(b) *Prohibitions:* No use shall be hereafter established except in conformity with these regulations, except as otherwise provided herein. It is the responsibility of the developer/owner to show proof of compliance with the requirements.

The following uses are prohibited: manure spreading, animal processing facilities, junk yards, auto salvage yards, graveyards, cemeteries, wood preserving facilities, fertilizer and/or pesticide storage and/or production; any establishment for warehousing, production, processing, assembly, manufacture, preparation, compounding, cleaning, servicing, testing, or repair of materials, goods or products which generates, stores, treats, utilizes and/or disposes of a hazardous or toxic material or waste, as set forth in Title 40, Code of Federal Regulations, Parts 116.4 and 261.30 et seq., shall submit the following information with any application for a proposed development or use.

(c) *Exceptions:*

(1) Written requests for uses not herein defined or not listed as either a permitted use or a prohibited use may be submitted to the planning commission. The planning commission shall review said request as per Article XV, Site Plan Review.

(2) All requests shall be accompanied by an environmental assessment report that is prepared by a licensed, qualified engineer. Said report shall be forwarded to the applicable water utility for recommendation. Such recommendations shall be considered in the final decision of the planning commission.

(3) Any exceptions granted shall be conditional and may include a requirement for environmental and safety monitoring consistent with local, state and federal requirements.

(d) *Permitted uses:* The following are considered permitted uses within the WHPA. Uses not listed below may or may not be permissible, depending upon the determination of planning commission as provided in section 10-10(b), Well Head Protection Area, Prohibitions. Uses listed as prohibited, shall not be permitted.

(1) Parks, provided there is a no on-site waste disposal or fuel storage tank facilities associated therewith;

(2) Wildlife areas;

(3) Non-motorized trails, such as biking, nature and fitness walks;

(4) Municipally-sewered residential developments, free of flammable and combustible liquid underground storage tanks;

(5) Agricultural uses in accordance with the Baldwin County Soil Conservation Department's Best Management Practices Guidelines;

(6) Municipally-sewered business developments, except the following. The following uses may be considered by

the planning commission through the exception process as outlined in exceptions provided above.

(a) Above-ground storage tanks;

(b) Asphalt products manufacturing;

(c) Automotive service and repair garages, body shops and painting;

(d) Chemical storage, sale, processing and manufacturing plants;

(e) Dry cleaning establishments;

(f) Electronic circuit assembly plants;

(g) Electroplating plants;

(h) Exterminating shops;

(i) Foundries and forge plants;

(j) Industrial liquid waste storage areas;

(k) Infiltration ponds;

(l) Metal reduction and refinement plants;

(m) Motor and machinery service and assembly shops;

(n) Paint products manufacturing;

(o) Petroleum products manufacturing;

(p) Photographic studies including the development of film and pictures;

(q) Plastics manufacturing;

(r) Pulp and paper manufacturing;

(s) Storage, manufacture, or disposal of toxic or hazardous materials;

(t) Underground petroleum, products storage tanks for industrial, commercial, residential or other uses;

(u) Woodworking and wood products manufacturing.

(e) *Regulations applying to WHPA:* In addition to the regulations applicable to the underlying zoning district or districts, the following regulations shall apply to all parcels located within the WHPA and shall be provided to supplement each applicable site development application. Such information shall be referred to the community development staff and the appropriate community water utility staff for review in accordance with the provisions of applicable laws and ordinances. When deemed appropriate, environmental programs manager or the appropriate community water utility staff may furnish a copy of the application and supporting information to the Directors of the Alabama Department of Environmental Management, the Alabama State Department of Health, and other appropriate agencies for further review.

(1) A listing of all toxic and hazardous materials and wastes that will be generated, utilized, stored, treated, and/or disposed on site;

(2) A soils report describing the nature and characteristics of the soils covering the site;

(3) A description of surface and groundwater characteristics of the site and the surrounding area within three hundred (300) feet of site boundaries;

(4) A description of all spill prevention, containment, and leakage control measures proposed by the applicant, for all toxic and hazardous materials and wastes generated, utilized, stored, treated, and/or disposed of on the site, including an emergency spill response plan;

(5) A letter from the environmental programs manager of the City of Daphne, concurred with by the applicable water utility authority, that the proposed use complies with all applicable adopted laws, ordinance and regulations;

(6) An inventory of all existing and proposed wells, septic tanks, injection wells, and similar facilities on the site, whether in use or not;

(7) Any other proposed or existing activities on the site that might impact groundwater quality;

(8) A copy of any applicable permits under the National Pollutant Discharge Elimination System, Federal Wetlands regulations, or other provision of the Clean Water Act, or pursuant to the Endangered Species Act, National Environmental Policy Act, or similar legislation intended to address water pollution.

(f) *Separation distances:* The following setbacks shall be maintained and shall not be modified except by the board of zoning adjustment.

MINIMUM SEPARATION FROM A PUBLIC WELL

Proposed Structure		*Setback from Public Well*
•	Storm sewer drain	50'
•	Sanitary sewer manhole, main, and/ connection	100'
•	Sanitary sewer lift station or related equipment for transport and disposal of sanitary sewage	200'
•	Septic system, tank or drain field receiving less than 8,000 gallons per day	500'
•	Cemetery or stormwater drainage pond	500'
•	Land application of municipal, commercial, or industrial waste; industrial, commercial, or municipal wastewater, lagoons or storage structures; manure stacks or storage structures; and septic tanks or soil absorption units receiving 8,000 gallons or more per day	1,000'
•	Any solid waste storage, transportation, transfer, incineration, processing, one-time disposal, or small demolition facility; gasoline or fuel oil storage tanks; bulk fuel storage facilities and pesticide or fertilizer handling and storage facilities	1,200'
•	Private Well	See "h" below

In the event that stormwater runoff is directed toward, or may enter, an opening in the ground that provides access to the groundwater table (e.g., well, sinkhole, etc.), the developer shall present a mitigation plan to ensure that no pollutants enter the groundwater table during construction. Additionally, the developer shall, in concert with the applicable community water utility and the environmental programs manager, take steps to ensure that any such openings are protected from any future surface water infiltration. This may be accomplished by permanently closing such openings, or by taking other steps acceptable to the planning commission.

(g) *Requirements for existing facilities:* Existing facilities are defined as those which may cause or threaten to cause environmental pollution within a well field's recharge area which include, but are not limited to facilities with underground storage tanks (U.S.T) facilities with hazardous waste permits granted by ADEM.

Existing facilities shall provide the following:

(1) Copies of all federal, state and local facility operation approvals or certificates and ongoing environmental monitoring results to the department of community development, environmental programs manager and the public community water utility.

(2) Additional environmental or safety structures/monitoring as deemed nec-

essary by the environmental programs manager, department of community development, and the public community water utility which may include but is not limited to stormwater management and monitoring.

(3) Replace equipment or expand in a manner that improves the existing environmental and safety technologies already in existence.

(4) Shall have the responsibility of devising and filing with the department of community development and the public community water utility a contingency plan satisfactory to the environmental programs manager and utility for the immediate notification of City of Daphne and utility personnel in the event of an emergency or possible groundwater contamination.

(h) *Private wells:*

(1) It is the intent of this Ordinance to eliminate by attrition all private water wells located within the WHPA of the city and where a public community water system is available.

(2) No private water well may be created for human consumption if a public community water system is available and has the capacity to serve the development.

(3) No new private water wells for human consumption may be constructed within the WHPA. Private water wells for any purpose other than human consumption, including irrigation wells, must apply for a private well construction permit.

(4) Any individual or entity proposing to construct a private water well outside of the WHPA but within the planning jurisdiction of the city, must apply for and obtain a private well construction permit from the building official. The community water utility will review the application and make a determination of the health or contamination hazard posed to the public water supply by the private water well and will provide written recommendation for approval or disapproval to the building official.

(5) Determination of health or contamination hazards by utility may be based on, but not limited to:

(a) Depth and size of proposed private well;

(b) Water production design of proposed private well;

(c) Proximity to public water well;

(d) Quality of existing water supplies;

(i) *Enforcement:*

(1) In the event that an individual and/or facility causes the release of any contaminants which endanger the WHPA, the individual and/or entity responsible shall immediately stop the release and clean up the release to the satisfaction of the city, utilities, state and federal regulatory agencies.

(2) The individual/facility responsible for the contamination shall be responsible for all cleanup, and may include all of the following:

(a) City and/or utility consultant fees for the oversight, review and documentation.

(b) The cost of city or utility equipment employed.

(3) Following such release or discharge, the city may require additional testing, monitoring and/or bonds/securities.

10-11 Dumpsters, trash refuse and recycling containers.

For any commercial, institutional, industrial or multi-family development there shall be provided and maintained properly enclosed trash/garbage

disposal and recycle containers. All nonresidential uses utilizing city garbage containers shall enclose all refuse collection and storage areas in accordance with this subsection.

(a) Such containers shall be located behind the front building line; and other such considerations shall be given to a location where the containers can be adequately screened from public view.

(b) Trash/garbage disposal shall be set on concrete pads sized as recommended by the disposal company and screened on three (3) sides to fully screen all refuse containers from public view.

(c) Walls shall be constructed of masonry materials that match the main colors and materials of the associated building they serve. Opaque gates, designed to complement the screen, shall be installed for access.

(d) Any enclosure intended for screening dumpsters, refuse areas, or recycling containers that contains a compaction unit shall include a floor drain within the containment pad that is tied directly to the sanitary sewer system in accordance with the standard specifications for sanitary sewers.

(e) Any enclosures provided for restaurants or other eating establishments shall be sized to accommodate the storage of grease barrels in addition to dumpsters and recycling containers.

(f) To allow for dumpster gates to remain closed as often as possible, either a pedestrian door or a wall offset for pedestrian access shall be provided.

(g) Screening shall not compromise safety by obstructing any required clear sight triangle, by blocking access to any aboveground, pad-mounted transformer (minimum clear distance required by the utility company shall be provided), nor by impeding or diverting the flow of water in any drainage way.

(h) The minimum height for screening shall be that which is sufficient to visually separate the uses and shall also meet the following standards:

(1) Fences used to screen dumpsters shall be at least two (2) feet higher than the container.

(2) Berms used for required screening shall be a minimum height of four (4) feet with a maximum slope of three to one (3:1). Berms in excess of four (4) feet shall have a maximum slope of four to one (4:1) measured from the lot line. Berms shall be landscaped and stabilized to prevent erosion.

(3) Shrubs used for required screening shall be evergreen; at least thirty (30) inches high when installed; spaced closely together so as to create a hedge, but not farther than five (5) feet on center; and be shrub species that shall attain an average normal growth height of five (5) feet to six (6) feet within four (4) years.

(4) Trees used for required screening shall be evergreen and at least six (6) feet in height at installation.

ARTICLE XI. MINIMUM STANDARDS AND REQUIRED IMPROVEMENTS FOR SUBDIVISIONS AND COMMERCIAL SITE DEVELOPMENTS

11-1 Suitability of land.

The planning commission shall not approve the subdivision of land or site development plans if, from adequate investigations conducted by all public agencies concerned, it has been determined that it is not in the best interest of the public or the proposed development is not suitable for platting or subdividing purposes. The design and improvements of all subdivisions and developments shall meet all State and Baldwin County Health Department requirements and proof thereof shall be submitted. All improvements shall be designed and sealed by a licensed professional

engineer. The engineer shall carry errors and omissions insurance at a minimum coverage of at least one million dollars ($1,000,000).

11-2 Land subject to flooding.

Land subject to flooding or inadequately served by drainage facilities shall not be acceptable for subdivision unless the subdivider agrees to make such improvements as will render the land fit for occupancy in conformity with the National Flood Insurance Program. Fill may not be used to raise land in areas subject to flood and/or excessive erosion, unless the fill proposed does not restrict the natural flow of water, advance erosion, and unduly increase flood heights. The use of staining materials shall be prohibited in fill activity within coastal bluff areas or flood zones.

To ensure proper development in flood prone areas, the planning commission shall require the subdivider to provide elevation and flood profiles sufficient to demonstrate the sites will be free from the danger of flooding.

If a stream flows through or adjacent to the proposed subdivision, the plat shall provide for an easement or right-of-way along the stream for a floodway. For the smaller streams, the plat shall also provide for channel improvement to enable them to carry all reasonable floods within banks. The floor elevations of houses shall be high enough to be above the regulatory flood. The flood way easement shall be wide enough to provide for future enlargement of the stream channel as adjacent areas become more highly developed and runoff rates are increased.

Approval will not be given for streets within a subdivision which would be subject to excessive inundation or flooding.

11-3 Conformance with existing plans.

Proposed improvements in all subdivision developments within the extraterritorial planning jurisdiction shall be in conformance with existing approved plans, maps, ordinances, and design standards of the City of Daphne or Baldwin County, whichever is more restrictive.

Any subdivision recorded prior to the enactment of this Ordinance shall remain a legal subdivision unless a re-plat of said subdivision is submitted and approved.

11-4 Penalties.

The developer, owner, or agent of the owner of any land to be subdivided in the corporate limits or extraterritorial planning jurisdiction who transfers, sells, agrees to sell, or negotiates to sell such land by reference to an exhibition of, or by other use of a plat to subdivide such land before such plat has been approved by the planning commission and recorded in the Office of the Probate Judge of Baldwin County shall forfeit and pay a penalty of one hundred dollars ($100.00) for each lot or parcel so transferred or sold, and the description by metes and bounds in the instrument of transfer, or other document used in the process of selling or transfer shall not exempt the transaction from such penalties.

The City of Daphne, through its attorney or other designated representative, may enjoin such transfer, sale, or agreement by appropriate action.

No plat of a subdivision in the corporate limits or its extraterritorial planning jurisdiction shall be filed by a subdivider in the office of the probate judge until it shall have been submitted to and approved by the planning commission and such approval entered in writing on the plat by the chairman, vice-chairman, or secretary of the commission. The probate judge shall not file or record a plat of a subdivision which does not have the approval of the planning commission.

Any building or structure erected or to be erected in violation of subdivision regulations shall be deemed an unlawful building or structure, and the building official may bring action to enjoin such erection or cause it to be vacated or removed.

11-5 Subdivision exceptions and exemptions.

Whenever the strict compliance with these regulations would result in an extraordinary hardship or injustice to the subdivider because of topography, unusual size or shape of the property,

or unusual conditions in surrounding property of development, the planning commission may modify or waive such regulations so the subdivider may subdivide his property in a reasonable manner provided that such modification or waiver shall not nullify the intent or purpose of the subdivision regulations, the public welfare, and interest of the City of Daphne shall be protected. Any such modification together with reasons therefore shall be so noted in the minutes of the planning commission.

(a) *Modifications / waivers:* In granting modifications or waivers, the planning commission may impose such other reasonable conditions as will, in its judgment, justify such modification or waiver and still substantially maintain the objectives of these regulations. Each modification or waiver of the regulations sought by a subdivider shall be applied for and acted upon individually by the planning commission.

(b) *Subdivision exemptions:* The sale or exchange of lots or parcels of land or the relocation of an interior lot line between adjoining property owners may be exempt from these regulations by the planning commission, provided no additional lots are created, none of the lots affected by the sale, exchange or relocation of interior lines are reduced below the minimum size requirements of the zoning district in which the division is to occur. No existing easement shall be vacated or moved without the recommendation of the planning commission and the acceptance by resolution of the city council as outlined in the applicable sections of this Ordinance.

11-6 Minimum street requirements.

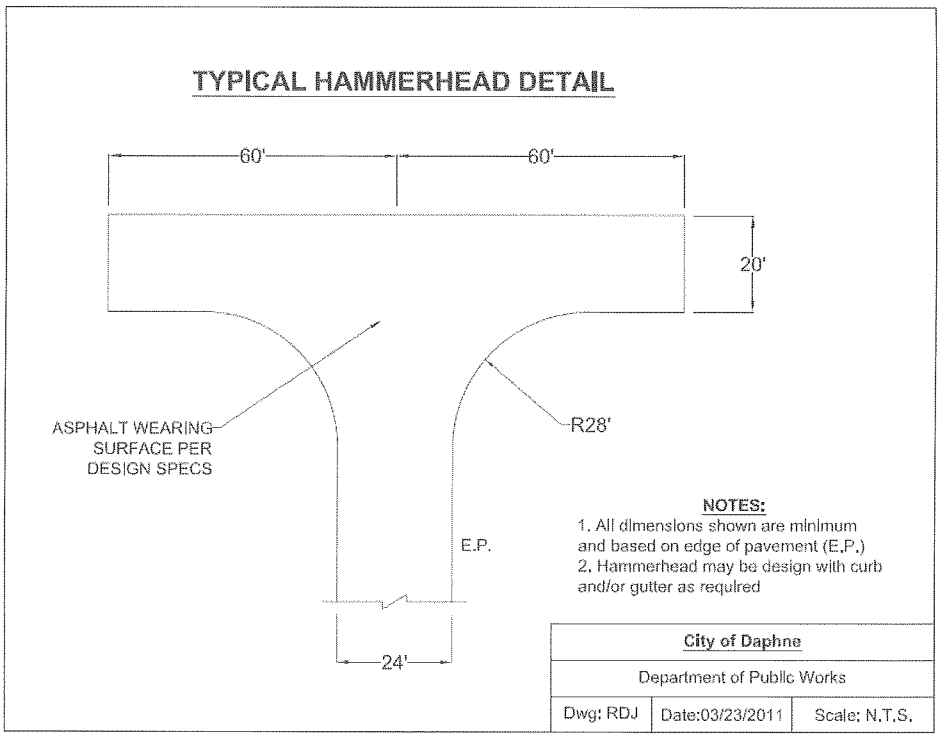
	Major Street	*Collector Street*	*Local Street*	*Cul-de-Sac[1] (Turn around)*	*Cul-de-Sac[1] (Turn around w/ 20-ft island)*	*Hammer Head Turnaround*	*Alley*
Minimum Right-of-Way:	100'	60'	50'	60' (120' diam.)	70' (140' diam.)	120'	30'
Minimum Asphalt Width (ft)[2]:	12' per lane	12' per lane	22'	48' (93' diam.)	56.5' (113' diam.)	20'	20'
Maximum Grade[3]:	5%	10%	15%	3%	3%	3%	10%
Minimum Angle of Intersection:	80°	60°	60°	60°	60°	90°	60°
Minimum Intersection Offset	150'	150'	150'	150'	150	n/a	150'
Minimum Curb Radius at Intersection:	40'	30'	25'	25'	25'	28'	20'
Minimum Horizontal Curve Radius:	300'	250'	100'	100'	120'	0'	100'
Minimum Reverse Curve Tangent:	100'	100'	100'	120'	120'	0'	100'

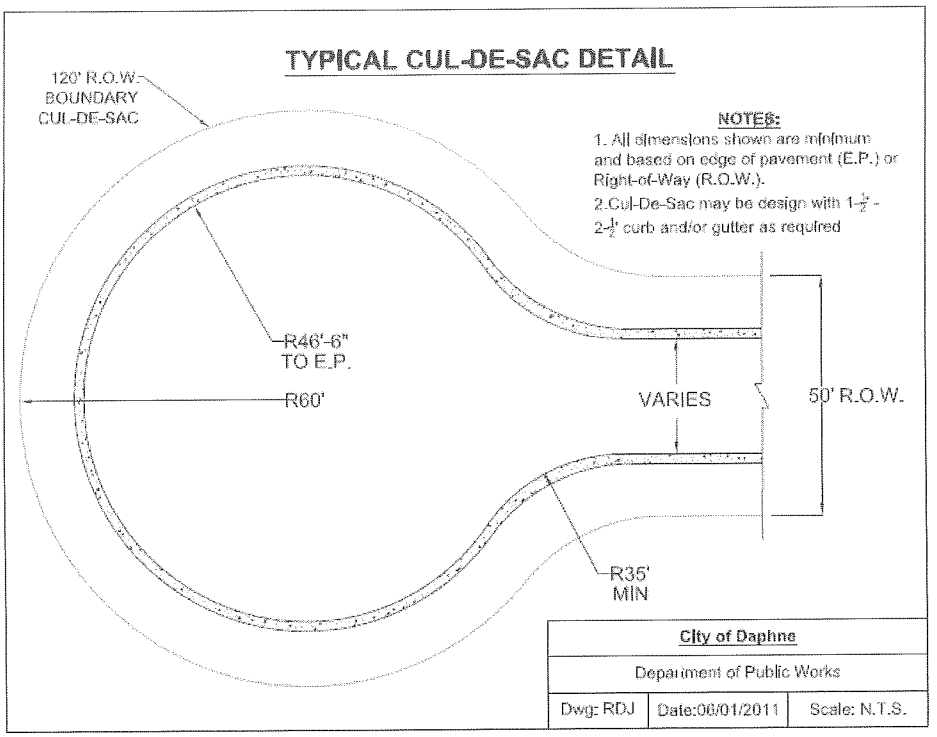
[1] Cul-de-sacs shall not be longer than one thousand three hundred twenty (1,320) feet measured from the intersecting street to the center of the turnaround.

[2] Measured from toe of curbing. Minimum twenty-four (24) feet combination curb and gutter or twenty-four (24) feet valley gutter. Other curb types must be submitted to public works director for approval.

[3] May vary with topography subject to planning commission approval based on recommendation of public works director and director of community development.

11-7 Typical illustrations.





11-8 Improvement standards for streets.

Any proposed streets in a subdivision, planned unit development, mobile home park, apartments, townhouses, condominiums, patio homes, business, commercial, or industrial developments whether such streets are to be private or dedicated for public use shall be paved and adequately drained.

This requirement is not subject to modification by the planning commission. The developer/owner shall construct such streets in accordance with good engineering practices and the standards prescribed herein in these regulations, as required by the director of community development or her/his duly authorized representative, state, county highway department, and the department of the respective utility.

The full width of the right-of-way shall be graded including the subgrade of the areas to be paved. This requirement may be modified for the purpose of preserving the natural beauty of the area. The minimum roadway build-up is as follows based on roadway classification:

(a) *Major and collector street:*[1, 2]

(1) 429-A Improved Bituminous concrete wearing surface layer, one-half-inch maximum aggregate size mix, ESAL Range B, one-hundred and ten (110) pounds per square yard.

(2) 405-A Tack coat, spread rate of 0.10 gal/sy.

(3) 429-B Improved bituminous concrete binder layer, three-quarter-inch maximum aggregate size mix, ESAL, Range B two hundred twenty (220) pounds per square yard.

(4) 401-A Bituminous Treatment type "A" (0.25 gal/sy).

(5) 301-A Compacted Granular Soil Base Course (sand/clay) type "A" minimum of two (2) to four (4) feet lifts of compacted thickness; or,

(6) 301-B Crushed aggregate base course (limestone) type "B" minimum six-inch compacted thickness (if using this method, delete 401-A treatment.

(b) *Local street and hammerhead turnaround:*[1, 2]

(1) 429-A Improved Bituminous concrete wearing surface layer, one-half-inch maximum aggregate size mix, ESAL Range B, one-hundred and ten (110) pounds per square yard.

(2) 405-A Tack coat, spread rate of 0.10 gal/sy.

(3) 429-B Improved bituminous concrete binder layer, three-quarter-inch maximum aggregate size mix, ESAL, Range B one hundred sixty-five (165) pounds per square yard.

(4) 401-A Bituminous Treatment type "A" (0.25 gal/sy).

(5) 301-A Compacted Granular Soil Base Course (sand/clay) type "A" minimum of two (2) to four (4) feet lifts of compacted thickness; or,

(6) 301-B Crushed aggregate base course (limestone) type "B" minimum six-inch compacted thickness (if using this method, delete 401-A treatment.

(c) *Alley:*[1, 2]

(1) 429-A Improved Bituminous concrete wearing surface layer, three-quarter-inch maximum aggregate size mix, ESAL Range B, one hundred sixty-five (165) pounds per square yard.

(2) 401-A Bituminous Treatment type "A" (0.25 gal/sy).

(3) 301-A Compacted Granular Soil Base Course (sand/clay) type "A" minimum of two (2) to four (4) feet lifts of compacted thickness; or,

(4) 301-B Crushed aggregate base course (limestone) type "B" minimum six-inch compacted thickness (if using this method, delete 401-A treatment.

Notes

[1] Base design shall be based upon the in-situ soil conditions.

[2] Other pavement designs may be submitted for planning commission approval. Such options shall be contingent upon the director of the department of community development and the director of public works.

If curbs and gutters are required, they must be in conformance with approved city, state, and county highway department standards.

All grading in the subdivision shall be related to the topography and environmental features of the surrounding area. Unpaved areas within a dedicated street right-of-way shall be graded with a minimum of two (2) inches of top soil and permanently stabilized with ground cover in a manner that will enhance the appearance of the environment. The shoulder at the edge of pavement or at back of curbing shall be stabilized with a minimum of two (2) courses or sod for the entire length of the roadway.

All water mains, sanitary sewers and laterals, and storm sewers shall be installed as necessary to prevent the future cutting of the pavement of any street, sidewalk, or other required pavement.

In order for the City of Daphne to provide regular maintenance of street lighting, said lighting shall be purchased through and installed by Riviera Utilities. Regular maintenance does not include replacement of lamps, luminaries or standards which are damaged or destroyed due to vandalism or any other cause beyond the utility's control. Such facilities damaged or destroyed under such circumstances shall be replaced by the utility company at the property owner's expense.

11-9 Issuance of site disturbance permit.

Each person, firm, corporation, utility, entity, or agent thereof engaged in any site preparation and/or construction activities shall acquire a site disturbance permit from the community development department prior to commencement of such activities as established pursuant to the provi-

sions of this article and no such activity shall commence prior to the approval of a preliminary plat or site plan by the planning commission.

Where applicable, any and all state and/or federal permits for construction related activities shall be obtained and submitted to the city prior to issuance of the site disturbance permit. The owner or developer shall provide to the department of community development, the appropriate signed application form, a certified cost estimate for site work, the fee for a site disturbance permit as enumerated in Article XXXIV, Schedule of Fees, and proof of the contractor's Daphne business license.

Whenever a major development, one which is five (5) acres or more, or any project deemed appropriate by the director of community development, is proposed within the corporate limits, the developer or his/her authorized engineer should contact the planning coordinator to arrange a pre-construction conference. Said meeting shall occur after site plan approval and prior to the issuance of a site disturbance permit. Participants shall include the developer, his engineer and his contractors, the representatives from the departments of community development, public works, building inspections; Riviera Utilities, Daphne Utilities, any other applicable public or private utility company, local, state, and/or federal agency. At the pre-construction conference, participants will discuss details related to permitting, construction safety, general expectations during construction, final inspection protocol, etc.

11-10 Construction, testing and inspection of streets.

An independent testing laboratory shall conduct all the necessary tests to determine if the streets are installed to minimum design standards. Results shall be furnished to the department of community development prior to final subdivision plat approval. These tests shall be conducted at the expense of the developer/owner.

(a) *Testing:* All testing shall be conducted by an independent testing laboratory approved in writing by the public works director or his/her designee. The testing laboratory shall have the proper equipment and personnel necessary to perform said testing of required improvements and shall be certified by the Alabama Department of Transportation. Proof of certification must be submitted to the public works director or his/her designee, prior to said approval.

The public works director shall determine which tests shall be scheduled and performed. A schedule of proposed testing must be submitted to the public works director or his/her designee for approval at the time of the pre-construction conference. The tests normally consist of, but are not limited to:

(1) Soil gradation;

(2) Optimum moisture content tests on embankment, subgrade and base material;

(3) Soil compaction test on subgrade and base material;

(4) In-place asphalt density analysis of road building materials;

(5) Twenty-eight-day compressive strength of concrete;

(6) Hydro-static test of water and pressurized sewer system as required by utility provider;

(7) Air test of gravity sewer line as required by utility provider.

The developer shall notify the public works director, or his/her designee, twenty-four (24) hours prior to any required tests. Copies of all test reports are to be provided to the public works director before additional construction occurs. In the event problems exist that require remedial actions or design, the developer shall be required to submit revised engineering plans to the public works director before construction will be allowed to proceed.

(b) *Clearing and grubbing:* All rights-of-way shall be cleared of all vegetation, trees, stumps, rocks and other objectionable or unsuitable material prior to grading or

filling unless otherwise approved, in writing, by the public works director or his/her designee.

(c) *Embankment sections:* The public works director will have the right to approve all borrow sources; however, this does not relieve the developer from full responsibility for the quality of material used. Roadway fill or embankment of earth material shall be placed in uniform layers, full width, and not exceeding six-inch thickness (loose measurement). Each layer shall be compacted so that a uniform specified density is obtained. Compaction tests shall be run at the frequency and location as directed by the public works director or his/her designee. Additional layers of fill shall not be added until directed by the public works director. For all density requirements refer to the current Alabama Department of Transportation "Standard Specifications for Highway Construction".

(d) *Subgrade:* The subgrade shall be compacted and properly shaped prior to the placing of base materials. The top six (6) inches of the roadbed shall be modified, with the work being performed under Section 230 Roadbed Processing, of the current Alabama Department of Transportation "Standard Specifications for Highway Construction". It shall be full width of regular section and extend eighteen (18) inches outside of curb sections of thirty (30) inches from the edge of asphalt, whichever is greater. The embankment or subgrade shall be inspected by proof rolling, under the supervision of the public works director or his/her designee, with a fully loaded (minimum twenty (20) CY) tandem axle dump truck to check for soft or yielding areas. Any unstable materials shall be removed and replaced with a suitable material compacted to a density as required.

(e) *Base:* Base course shall meet the requirements according to the current Alabama Department of Transportation "Standard Specifications for Highway Construction". Base course shall have a minimum thickness as required by section 11-8, Improvement Standards for Streets, of these regulations and shall extend twelve (12) inches outside of curb sections or twenty-four (24) inches from the edge of asphalt, whichever is greater. The density requirements for compaction shall be in accordance with the current Alabama Department of Transportation "Standard Specifications for Highway Construction". Developer/engineer may submit an alternate base design method for approval by the public works director or his/her designee. Design shall be based on a proven and accepted engineering test or method for the site conditions that exist.

(f) *Roadway pavement:* All roads and/or streets shall be paved and comply with the following:

(1) All roads shall be improved according to the standards outlined in section 11-8, Improvement standards for streets, of these regulations;

(2) Prior to the placement of pavement, a bituminous treatment A (prime) shall be placed and inspected by the public works director or his/her designee;

(3) The finished wearing surface shall be uniform and free of defects. The public works director or his/her designee may require additional density tests in areas that appear questionable.

When all required improvements are installed, the developer/owner shall call for a final inspection. The public works director or his/her duly authorized representative shall inspect the site to determine if the required improvements are satisfactorily installed according to the plans and specifications.

11-11 Sidewalks.

(a) It is the intent of this section to require the installation of concrete or asphalt sidewalks on both sides of the street in residential and commer-

cial subdivisions in order to encourage vehicular and pedestrian connectivity within the City of Daphne. It is also the intent of this section to require the installation of sidewalks in commercial and or industrial site developments. Sidewalks are counted toward the improvement standards of all streets and shall be installed prior to the issuance of a certificate of occupancy unless an agreement for future installation has been presented by the developer. In no case shall the City Daphne be responsible for the installation of sidewalks within any subdivision development.

(b) Construction of sidewalks, shall comply with the following standards:

Type of Subdivision	*Sidewalk Width*
Low Density Residential	4 feet
High Density Residential	5 feet
Commercial or Industrial	6 feet

(c) Sidewalks shall provide pedestrian traffic and design shall encourage safe means of access eliminating conflicts between vehicular and pedestrians. Innovative design measures which would encourage the use of pervious material may be considered by the planning commission in lieu of typical sidewalk installation. Due consideration shall be given to the feasibility of sidewalk installation depending upon the proposed development. Except where exempted or modified by the planning commission, sidewalks shall be installed as follows:

(1) Along the perimeter of all developments where adjacent to city right-of-way.

(2) Along the right-of-way where adjacent to the perimeter of any common area within the development; except where walking trails/paths are incorporated into the design for formal/recreational open space as provided in section 11-14, Special provisions herein. Final plat shall not be approved until this provision is satisfied.

(3) Along the right-of-way within each residential subdivision development.

(4) Sidewalks shall be constructed with reinforced concrete that has a minimum twenty-eight-day compressive strength of three thousand (3,000) pounds per square inch, and shall be in accordance with city specifications and these regulations, unless otherwise approved by the planning commission.

(5) New sidewalks shall connect to any adjacent sidewalks and/or bike paths and shall be interconnected within said development to allow for sufficient pedestrian access.

(6) All sidewalks shall be in accordance with current ADA (Americans with Disabilities Act) requirements.

(d) Restrictive covenants, as required in Article 17, Subdivision Review, shall provide for the installation sidewalks by individual home owners or the developer:

The planning commission may, at its discretion, approve a final plat prior to the installation of sidewalks upon receipt of an agreement to install sidewalks, a cost estimate for sidewalk installation and a surety in the amount of two hundred (200) percent of the estimated cost and shall not expire within a twenty-four-month period.

(e) *Additional provisions:*

(1) Subdividers may also be required to provide access through greenways and common areas.

(2) Trail design shall be reviewed and approved by the planning commission. Trail width shall be at least ten (10) feet.

(3) Walkways, with the exception of dedicated trail, shall be maintained by the adjacent property owners.

(4) Pedestrian crosswalks, not less than ten (10) feet wide, shall be required where deemed necessary to provide circulation or access to schools, playgrounds, shopping centers, bus stops, and other community facilities.

11-12 Water connections.

(a) *Connection to public or private water system:* Developments, individual lots, or parcels shall be properly connected to a public or private

community water system where such system borders the development, lot line, or is available and the appropriate utility has the capacity to provide service. The lines for both domestic use and fire protection shall be approved by a public or private community water supply and constructed in such a manner as to adequately serve all of the lots located within the subdivision. Water wells for purposes other than human consumption may continue to be used. If a well is required for each lot, the location, construction, and use of such well shall also meet the Baldwin County Health Department requirements. If a well is to serve more than one lot, a public community water system acceptable by and properly permitted by ADEM shall be required.

It is the intent of this Ordinance to eliminate by attrition, all existing private wells, in areas where public or private community water systems are available. Therefore, at such time as any private well fails to function properly, the owner must connect to the public or private community water system where such systems borders any development, lot line, or are available and the appropriate utility has the capacity to provide the service.

All developments shall have adequate potable water and adequate water for fire protection. In all cases, the developer, property owner, or agent shall submit written documentation verifying that the public or private water provider is willing and able to provide service to the development. Said documentation shall be on the utility company's letter head addressed to the department of community development.

When all water lines and connections are installed, the developer/owner shall call for final inspection prior to final plat approval or prior to the issuance of the certificate of occupancy. The appropriate utility provider representative shall inspect the site to determine if the required improvements are satisfactorily installed according to the plans and specifications presented to the planning commission.

11-13 Sewer connections.

(a) *Connection to sanitary sewer system requirements.*

(1) A centrally connected sanitary system shall be constructed and installed and connected to a public sanitary sewer system where such system is reasonably available. A public sanitary sewer system is considered to be reasonably available if the system is located within an easement or right-of-way adjacent to or within five hundred (500) feet of the development or where such sanitary sewer system borders the development, individual lots, or parcels and the appropriate entity has the capacity to provide the service.

(2) Sanitary sewer collection systems for multiple customers shall be gravity systems. Low pressure systems, i.e., multiple grinder pumps, shall not be acceptable within the City of Daphne or its planning jurisdiction except with the approval of the planning commission. Consideration will be given to areas where access for proper maintenance to sewer mains is impractical and cost prohibitive as determined by the City or Daphne Utilities. The project design engineer shall provide written certification to justify the need for a multi-customer low pressure system. When approved as an acceptable system in lieu of a gravity system, low pressure systems shall be constructed to provide flow conditions that will minimize the development of corrosive and odor conditions from H2S and to prevent the development of sewage BOD_5 (biochemical oxygen demand) concentrations greater than three hundred fifty (350) mg/l.

(b) *Regulation of septic tanks:* The Board of Health of Baldwin County or its duly authorized representatives being specifically empowered and directed by state law, are hereby empowered and directed by the city to making such inspections and investigations of and to take such legal steps as may be necessary to regulate and control the type, construction, reconstruction, location, use and maintenance of all septic tanks and all appurtenances thereto or used in connection therewith in the city.

(c) *Inspection of septic tanks:* All septic tanks within the city shall be subject to inspection or investigation by the board of health or its duly authorized representative(s) at all reasonable times

and the board of health or its representative(s) shall have the right to enter upon or into all property, premises or building for such purposes.

(d) *Permit for construction and maintenance of septic tank:* It shall be unlawful and an offense against the city for any person to construct a septic tank on any property within the city without first having obtained a permit from their county board of health or its duly authorized representative.

(e) *Low pressure systems also known as grinder pumps:*

(1) Except as noted above, low pressure systems may only be installed with the approval of the planning commission. Construction of low pressure sanitary sewer systems, selection and installation of individual grinder pumps shall conform to the utilities board of the City of Daphne's Standard Constructed Specifications, latest edition, which is hereby adopted by reference.

(2) The building official or designee thereof or city engineer shall have the authority to determine if selection and installation of grinder pumps meets the minimum requirements of these specifications.

11-14 Special provisions.

(a) *Utility placement:* All water, sewer, gas, electric power, telephone, cable TV, and other utility lines shall be installed underground by the developer and/or owner in all new residential, commercial, or industrial developments, expansions and/or renovations of existing uses; said developments shall be connected to a central distribution system, unless for good reasons other than cost, the planning commission approves a modification or waiver of this requirement in part or in whole, or if a special condition requires otherwise.

(b) *Drainage and utility easements:* Easements having a minimum width of ten (10) feet and located along the side or rear lot lines shall be provided as is necessary to utility lines, underground mains, and cables. Where a subdivision is traversed by a water course, drainage way, channel or stream, there shall be provided a stormwater or drainage right-of-way of adequate width, no less than five (5) feet to accommodate normal runoff. Said right-of-way shall be at a location one (1) foot above established high water or flood elevation.

(c) *Location of fire hydrants:* Roadway fire hydrants shall be installed along each street at the center of each block and at one (1) corner of each roadway intersection, provided, however, that in no event shall fire hydrants be spaced so that any fire hydrant is located more than five hundred (500) feet from another fire hydrant. The water supply and pressure shall be sufficient to provide adequate fire protection and the future needs of the intended land use. Additional fire hydrant placement may be required on the interior of developed lots pursuant to local ordinance and fire regulations as adopted by the City of Daphne.

(d) *Location of street lighting:* Lighting shall be installed at all intersections, curves, and cul-de-sacs. If additional lighting is consistent with safety and other community needs are deemed necessary, the director of community development shall require the subdivider to present a street lighting plan developed in conjunction with the appropriate utility company having jurisdiction within the area.

If the City of Daphne is to provide regular maintenance of street lighting, said lighting shall be purchased through and installed by Riviera Utilities. Regular maintenance does not include replacement of lamps, luminaries or standards which are damaged or destroyed due to vandalism or any other cause beyond the utility's control. Such facilities damaged or destroyed under such circumstances shall be replaced by the utility company at the property owner's expense.

(e) *Placement of street signage for subdivisions and developments:* Proper signage in accordance with the latest edition of the "Manual of Uniform Traffic Control Devices" (MUTCD) as adopted by Alabama Department of Transportation (ALDOT) shall be installed prior to receiving final plat approval and maintained in all subdivisions until such time as roads are dedicated and accepted for maintenance by the city council resolution. All

proposed signage shall be shown and detailed on the construction plans. The following minimum standards shall be adhered to:

(1) *R1-1 stop sign:* High intensity prismatic-minimum 0.080 inch thick, thirty (30) inches for all internal street intersections; thirty-six (36) inches for all intersections with existing city, county, state and federal roads.

(2) *Street name sign:* Nine-inch aluminum extruded blade, high intensity prismatic, six-inch tall all-capital lettering on green background for streets proposed to be public; six-inch tall white all-capital lettering on blue background for streets proposed to remain private. Brackets: Vulcan type VS-8 vandal proof or an approved equivalent.

(3) *All other signs, engineering grade or better:* Minimum 0.080 inch thick.

(4) *Post for street signs:* Minimum ten-foot long, two and three-eighth-inch galvanized round post. Street signs must be mounted on separate post from the stop sign, unless approved by public works director. If street signs and stop signs are approved to share the same post, in no case shall the street sign be attached directly to the stop sign. Stop signs shall be attached using a flanged bracket such as Vulcan Part #222491-501 or equivalent.

(5) *Post for all other signs:* #3 Galvanized U-channel of appropriate height embedded not less than three (3) feet below the finished grade elevation.

(f) *Location of concrete monuments and pins:* Right-of-way and property line monuments shall be placed in each subdivision. Concrete monuments three-and-one-half (3½) inches square and two (2) feet long shall be driven flush with the grade at the intersection of all street rights-of-way and radius points.

Iron pins one-half-inch in diameter and two (2) feet long shall be driven flush with the grade at each lot corner and at each point where the property line changes direction.

(g) *Annexation provision for extraterritorial planning jurisdiction subdivisions:* Proposed residential and/or commercial subdivisions located in the extraterritorial planning jurisdiction which are contiguous to the corporate limits and are served by a public community water and sanitary sewer system of the utilities board of the City of Daphne, shall be required to annex into the City of Daphne prior to approval of said subdivision, if it is deemed by the planning commission to be in the best interest of the city.

(h) *Common open space provisions:*

(1) Common open space set asides shall include formal open space or informal open space to be used for active or passive recreational uses or for resource protection purposes.

(2) Each area shall be appropriately designated on the subdivision plat and assigned a lot number.

(3) Notes shall be placed on the plat indicating ownership of common open space areas and shall reference subdivision restrictive covenants by instrument number as recorded in the Baldwin County Probate Records.

(4) A note shall be provided on the plat indicating that the City of Daphne shall not maintain any common open space areas.

(5) Where relevant and appropriate, open space areas shall be located so as to be readily accessible and useable by residents of the development.

(6) To the maximum extent practical, a portion of the open space should provide focal points for the development.

(7) Open space set-aside areas shall have at least one (1) direct access to a public right-of-way.

(8) The lands shall be compact and contiguous unless the land is used as a continuation of or link to an existing or planned adjacent open space resource or where specific natural or topographic features require a different configuration.

(9) In all developments, due regard shall be shown for all natural features such as large trees, water courses, historical spots, and similar community assets which, if preserved, will add attractiveness and value to the property.

(10) In a residential subdivision or residential development of more than five (5) acres in size, the subdivider shall provide suitable recreation land of at least fifteen (15) percent of the total area of land to be subdivided.

(11) In subdivisions five (5) acres in size or less, the subdivider shall provide suitable recreation land of at least ten (10) percent of the total area of land to be subdivided.

(12) A residential subdivision which is to be developed in phases or units shall at the time of the submittal of the preliminary plat make an appropriate agreement with the planning commission to assure that the dedication of the required land is to be provided. Said agreement shall be based upon the planning commission's approval of a master plan for the overall site.

(i) *Informal open space.* Informal open space shall be areas designated on the subdivision plat for undisturbed natural features including: tree groves, wetlands, rock outcrops, pastoral areas, floodplains, lakes, streams, rivers, and wildlife habitat; utility and conservation easements; and for passive recreation uses including walking trails, pathways, and picnic areas. Detention ponds and related stormwater facilities may be included in areas designated as informal open space.

(j) *Formal open space / recreational provisions.* Landscaped formal open space/recreation areas, comprising not less than ten (10) percent of all common area required by this article, may include the following: pedestrian access walkways, children play areas, general landscaped areas, flower gardens, and areas for passive recreation, swimming pools, including accompanying accessory structures, and areas for organized sports, any other areas suitable for the common area enjoyment of the residents.

(1) Due consideration shall be given to the allocation of areas centrally located and of adequate size for a playground or park for local or neighborhood use, and other public service areas including but not limited to pools, ball fields, playgrounds, tennis courts, jogging trails, and clubhouses used primarily for recreation purposes. Additionally, open areas that include arranged plantings, gardens, gazebos or similar structures, fountains, sculptures, and other forms of public art may be credited toward this provision.

(2) Where such features provide a clear community benefit, the planning commission may credit towards the minimum recreation provision any plazas and sidewalk areas exceeding the minimum sidewalk width requirements that contain at least four of the following features towards formal open space area requirements: seating elements; specialized or decorative paving features; pedestrian lighting beyond that required to illuminate public rights-of-way; canopies, awnings, or overhangs to shield pedestrians; street furnishings, including but not limited to planters, waste receptacles, bicycle racks, drinking fountains, or shelters for persons utilizing public transit; or informational kiosks.

(3) Detention ponds shall not be counted towards formal open space/recreational area provisions; however, retention ponds centrally located and accessible to the residents may be counted towards these recreation provisions. One-half (1/2) of the land area occupied by retention ponds and other bio-retention devices shall be counted toward these provisions.

(4) All formal open space/recreational areas shall be suitably developed for neighborhood use prior to final approval of the subdivision except where an agreement has been established for implementation in several phases.

ARTICLE XII. ESTABLISHMENT OF DISTRICTS

12-1 General provisions.

The City of Daphne is hereby divided into zoning districts as described below and as shown on the official zoning district map, for the purpose of:

(a) Providing a residential environment free of incompatible uses and safe from natural and manmade hazards.

(b) Promoting, where possible, planned residential, commercial, and industrial areas in appropriate locations with appropriate standards and minimum service cost to local government.

(c) Providing a compact convenient urban pattern for urban areas.

(d) Providing a level of flexibility of control sufficient to promote innovation and creativity in community development and to encourage maximum living comfort and convenience at the lowest cost.

(e) Promoting the comprehensive plan for the City of Daphne.

12-2 List of zoning districts.

Residential Zoning Districts

R-1, Low Density Single-Family Residential District

R-2, Medium Density Single-Family Residential District

R-3, High Density Single-Family Residential District

R-4, High Density Single and High Density Multi-Family Residential District

R-5, Mobile Home District

R-6(D), Duplex—Two-Family District

R-6(G), Garden or Patio Home District

R-7(A), Apartment District

R-7(M), Mid-Rise Condominium District

R-7(T), Townhouse District

Business Districts

B-1, Local Business District

B-2, General Business District

B-3, Professional Business District

MU, Mixed Use District

Industrial Districts

C/I, Commercial Industrial District

Outdoor Amusement District

C-2, Outdoor Amusement District

Golf Course District

GC, Golf Course District

12-3 Residential districts.

(a) *R-1, Low Density Single-Family Residential District:* This district is provided to afford the opportunity for a low density, suburban residential environment consisting of single-family residences on large parcels of land.

(b) *R-2, Medium Density Single-Family Residential District:* This district is provided to afford the opportunity for a medium density single-family, urban residential environment consisting of single-family residences on lots of a moderate size.

(c) *R-3, High Density Single-Family Residential District:* This district is provided to afford the opportunity for moderately higher density of single-family residences on smaller lots than those allowed in the R-l, low density single-family residential, and R-2, medium density family residential, districts.

(d) *R-4, High Density Single and Multi-Family Residential District:* The intent of this district is to provide opportunity for high density residential development in specified areas. Within this district it is also considered suitable to include other uses of a type deemed to be compatible with a good, high density living environment by providing for needed community services.

All land heretofore delineated as an R-4 district prior to the enactment of this Ordinance shall remain in R-4 status. However, all existing R-4, High Density Single and Multi-Family Resi-

dential Districts shall be developed in accordance with the standards provided within this Ordinance wherein R-6(D), R-6(G), R-7(A), R-7(M), R-7(T) shall be respectively considered for all proposed duplexes, garden/patio homes, apartments, mid-rise condominiums, and townhouses zoning requests.

(e) *R-5, Mobile Home Residential District:* The intent of this district is to provide space at appropriate locations consistent with community objectives for the establishment of mobile home parks and subdivisions which provide for the establishment of permanent mobile homes and for the amenities conducive to an adequate living environment. Public or private community water and sewer facilities are required except where lots are equal to Baldwin County Health Department requirements for private wells and individual septic systems.

(f) *R-6(D), Duplex—Two-Family District:* This district is provided to afford the opportunity for medium density two-family uses in an urban residential environment consisting of duplex residences on lots of a moderate size. R-6(D) shall replace the R-4 Two-Family designation.

(g) *R-6(G), Garden or Patio Homes District:* This district is provided to afford the opportunity for a considerably higher density of single-family residences on smaller lots than those allowed in the R-l, R-2, or R-3, districts and for their amenities. R-6(G) shall replace the R-4 Garden Home/ Patio Home designation.

(h) *R-7(A), Apartment District:* The intent of this district is to provide an opportunity for high density multi-family residential development in specified areas and for their amenities. R-7(A) shall replace the R-4 apartments and townhouses designation.

(i) *R-7(M), Mid-Rise Condominium District:* The intent of this district is to provide an opportunity for high density condominium development in specified areas and for their amenities. All high-rise condominiums shall be approved by the planning commission and the city council in accordance with Article XXXVIII, High-Rise Condominiums. R-7(M) shall replace the R-4 apartments and townhouses designation.

(j) *R-7(T), Townhouse District:* The intent of this district is to provide an opportunity for high density residential development in specified areas and for their amenities. R-7(T) shall replace the R-4 apartments and townhouses designation.

12-4 Business districts.

(a) *B-1, Local Business District:* This district is intended to provide for limited retail, convenience goods and personal service establishments in residential neighborhoods and to encourage the concentration of these uses in one location for each residential neighborhood rather than in scattered sites occupied by individual shops throughout a neighborhood.

(b) *B-2, General Business District:*This district is intended to provide opportunity for activities causing noise and heavy traffic, not considered compatible in the more restrictive business district. These uses also serve as a regional, as well as, a local market and require location in proximity to major transportation routes.

(c) *B-3, Professional Business District:* This district is established to provide an opportunity for business establishments of a professional nature and is restricted to offices and businesses which provide specific corporate functions or professional services to the general public, but not the sale of goods or services at retail or wholesale.

(d) *MU, Mixed Use District:* A mixed use district is allowed only within a designated overlay district. A mixed use district shall be limited to a combination of either B-1, Local Business, B-2, General Business, B-3, Professional Business, and either R-7(A) Apartments, R-7(M) Mid-Rise Condominiums, or R-7(T) Townhouses.

This district is established to provide an opportunity to encourage the concentration of limited retail convenience goods and personal service establishments, business establishments of a professional nature, and high density residential development compatible with a good, high density living environment.

12-5 Commercial/industrial district.

(a) *C/I, Commercial/Industrial District:* This district is intended to provide locations for heavy commercial and light industrial activities which

will not detract from the general character of the community because of hazardous operations, unsightly appearance of buildings and surroundings, objectionable emissions, or other factors that may be detrimental to the community environment.

12-6 Outdoor amusement district.

(a) *C-2, Outdoor Amusement District:* This district is intended to provide locations for outdoor amusement and recreational activities which serve the needs of the community.

12-7 Golf course district.

(a) *GC, Golf Course District:* This district is intended to provide locations for golf courses and related activities which may serve the recreational needs of the community.

ARTICLE XIII. DISTRICT REQUIREMENTS

The following limitations and requirements are hereby placed on uses in each district. Such limitations established by this article are in accordance with the stated purpose and intent of this Ordinance.

13-1 General.

(a) *Permitted uses:* The following are permitted uses in all residential districts, unless otherwise provided herein: customary accessory structures, satellite receiving dishes, gardens, playgrounds, parks, public buildings including schools and libraries, agriculture or farming including horticulture, plant nurseries, market gardening, field crops, orchards and home occupations meeting all requirement as prescribed in Article XXXI, Home Occupations, Automobile Service Stations, Cemeteries, Bed and Breakfast Establishments, Extended Stay Hotel Facilities.

(b) *Uses permitted by special exception:* Certain public and semi-public uses are essential and desirable for the general convenience and welfare but may not fit compatibly within residential neighborhoods. When it is established by the board of zoning adjustment through site plan review that the location, design, and proposed activities will not adversely affect the public health, safety, morals, and general welfare of the surrounding neighborhood, the following public and semi-public uses may be permitted within a residential district by special exception. Such uses shall thereafter be submitted to the planning commission for site plan review and approval:

(1) Public elementary, intermediate, and high schools, church schools, private or parochial elementary or high schools having a curriculum approximately the same as ordinarily given in public elementary and high schools and meeting all standards of the State Board of Education for instruction and site size.

(2) Churches, synagogues, and other places of worship including parish houses, rectories, and other facilities normally incidental to places of worship but excluding funeral homes.

(3) Cultural activities not carried on as a gainful business, including art galleries, non-public libraries, and museums.

(4) Convalescent and nursing homes for the aged.

(5) Recreation facilities, country clubs, community centers, and clubs which would draw a substantial number of users from the immediate neighborhood in which they are located, excluding residential accommodations and any activity carried on as a gainful business other than incidental concessions.

(6) Day care centers, whether public or private, kindergartens, or play schools, upon approval of the state and the department of human resources.

(c) *Prohibited uses:* Any use not permitted or permitted by special exception, except as otherwise determined under section 13-3, Compliance with district requirements. Commercial and Industrial uses such as garages, repair, storage yards, warehouses, buildings used as correctional institutions, and industrial type operations of any kind.

(d) *Unlisted uses:* In any case where a requested use is not specifically referred to in the Table of Permitted Uses, its status shall be determined by the planning commission by reference to the most clearly analogous use or uses that are specifically referred to in the Table of Permitted Uses.

When the status of a use has been so determined by the planning commission, such determination shall thereafter have general application to all uses of the same type and shall be added to the Table of Permitted Uses.

13-2 Table of permitted uses-Defined.

The uses permitted in each of the zoning districts are listed in the Table of Permitted Uses, Article XXXV, in three (3) categories, as follows:

(a) *Uses by right:* Uses in the Table identified by as "by right", are subject to the conditions specified in the table or otherwise provided herein.

(b) *Uses requiring planning commission approval:* Uses in the table identified as "planning commission approval" are permitted upon approval by the planning commission of the location and the site plan appropriate with regard to transportation, access, water supply, waste disposal, fire, police protection, and other public facilities; as not causing undue traffic congestion or creating a traffic hazard; and in harmony with the orderly and appropriate development of the district in which the development is to occur.

(c) *Special exceptions by the board of zoning adjustment:* Uses in the table identified by "special exceptions by the board of zoning adjustment" are subject to the same approval of location and site plan as uses requiring planning approval. These uses are subject to approval of the board of zoning adjustment in accordance with the provisions provided in Article XIII, Uses Permitted by Special Exception, and are subject to site plan review by the planning commission.

13-3 Compliance with district requirements.

Any use permitted in any district whether by right, planning approval, administrative approval, or as a special exception, must comply with the requirements of the district in which it is located, unless a variance from such requirement is specifically requested and granted by the board of zoning adjustment; unless approved as a planned unit development with modifications as required by the planning commission provisions of section 11-5, Subdivision exceptions and exemptions.

(a) *Planning approval:* Any use requiring planning approval is subject to review and approval of the planning commission. Each application to the planning commission for approval must be accompanied by a site plan prepared by the applicant or his/her authorized agent. The planning commission shall review the application at its next meeting and take into consideration all existing regulations and ordinances of the City of Daphne, as well as, recommendations from the zoning administrator, director of community development, the director of public works, the building official or his/her designee, the code enforcement officer, the Baldwin County Health Department, public and/or private utility entities and any other such local official. The planning commission may either approve the use request as is, approve the request with conditions, or deny the request.

(b) *Special exception:* Any use permitted by special exception is subject to review and approval of the board of zoning adjustment. Each application shall be accompanied by a site plan. The board of zoning adjustment shall consider the recommendations of the zoning administrator, director of community development, the director of public works and the building official or his/her designee, and make such recommendations a part of the record of any public hearing held on an application for a special exception, prior to making a decision on the application. If the decision of the board of zoning adjustment is not consistent with such recommendations,

the minutes of the meeting at which such decision is made shall set forth the particular reasons for deviating from such recommendations.

If the special exception is approved, the site plan shall then be submitted to the planning commission for review and consideration.

13-4 Requirements for lot area, width, coverage, density, height and other factors.

The following shall apply in districts as outlined, except planned unit developments or innovative design for single-family, and as provided below:

MINIMUM LOT REQUIREMENTS

	Minimum Lot Area Square feet (sq. ft.)	*Minimum Lot Width at Setback Line (ft.)*	*Maximum Lot Coverage Percent (%)*[a]	*Maximum Density*[b] *(units/acre)*	*Maximum Height*[e] *(stories) (ft.)*
R-l, Low Density Single-Family	20,000	100	25	2.0	2.5 stories 35 ft.
R-2, Medium Density Residential	15,000	90	25	2.5	2.5 stories 35 ft.
R-3, High Density Single-Family	12,000	80	30	3.5	2.5 stories 35 ft.
R-4, High Density Single-Family— Multi-Family—	5,000 7,500[c]	50 85	38 35	8.0 14.0	3 stories 50 ft.
R-5, Mobile Homes	See Articles XXV and XXVI for Details				
R-6(G) Garden/Patio Homes	5,000	50	38	8	2.5 stories 35 ft.
R-6(D), Duplex, R-7(A), R-7(M), R-7(T) respectively: Apartments, Mid-Rise Condominium, Townhouses	See Section 13-9 for Details				
B-1, B-2, B-3 Business Districts and Mixed Use Districts	N/A	N/A	N/A	N/A	4 stories 50 ft.
Extra-territorial Planning Jurisdiction	12,000[d]	80	30	3.5	2.5 stories 35 ft.

a. Maximum lot coverage percentages do not apply to lots of record smaller than required in the district in which they are located.

b. Maximum density = total number of dwelling units per gross acre to be developed.

c. Minimum lot area determined by adding seven thousand five hundred (7,500) square feet for one (1) unit plus two thousand five hundred (2,500) square feet for each additional unit.

d. Applies to unzoned lots contained within any subdivision located in the extraterritorial planning jurisdiction where the size of the development exceeds ten (10) acres.

e. Maximum height does not apply to overlay districts (see specific applicable overlay districts. Structures up to seventy-five (75) feet may be permitted on sites zoned B-2 or R-7 upon approval by the planning commission. In no case shall such building exceed seventy-five (75) feet in height.

13-5 Requirements for lot area, width, coverage and other factors for public and semi-public buildings.

(a) *Definition:* A public building is one which is used exclusively for public purposes by any department or branch of government. A semi-public building is one of an institutional nature and serving a public need, such as a house of worship; hospital; school; library; museum; post office; police, rescue and fire stations; and public utilities and services.

(b) *Minimum lot area and lot width:* None specified; however, the lot shall be large enough to provide the minimum yards as specified herein.

(c) *Yard regulations:*

(1) *Front yard:* Each lot shall provide a front yard with a minimum depth of forty (40) feet.

(2) *Side yard:* Each lot shall have a side yard of a minimum of thirty-five (35) feet on each side.

(3) *Rear yard:* Each lot shall have a rear yard with a minimum depth of thirty-five (35) feet.

(d) *Maximum building height:* No structure shall exceed a height of thirty-five (35) feet, except a church may have a maximum height of fifty (50) feet, provided one (1) foot shall be added to all minimum yard requirements for each additional foot of height in excess of thirty-five (35) feet (does not apply to a church sanctuary).

(e) *Maximum building coverage:* The maximum land covered by a building shall be no more than fifty (50) percent of the total lot area.

(f) *Minimum landscaping:* A minimum of twenty (20) percent of the lot area shall be maintained as a landscaped common area designed in accordance with the provisions of Article XIV, Landscape Standards and Tree Protection.

13-6 Minimum zoning district setback requirements.

The following setback requirements shall apply in districts as outlined below, except in a Planned Unit Development, the Olde Towne Daphne District, the Village Overlay District, the Eastern Shore Park Overlay District, or the Jubilee Retail Overlay District.

SETBACKS

Zoning District	*Front Yard*				*Rear Yard*	*Side Yard*	*Corner Lot Side Yard*	
	Arterial & Collector Streets	*Local Streets & Service Roads*	*U.S. Highway 98*	*U.S., State or County Roads*			*Arterial & Collector Streets*	*Local Streets & Service Roads*
R-1	40	40	50	e	40	15	40	25
R-2	35	35	50	e	35	10	35	20
R-3	30	30	50	e	30	10	30	20
R-4SF & R6(G)	25	25	50	e	25	6	30	20
R-4 TF	30	30	50	e	30	a	30	20
R-4 MF	30	30	50	e	30	a	30	20
R-5	See Article XXV			e				
New MF Districts	See Section 13-9, Minimum Requirements for Fixed Dwellings			e				
Innovative Design SF	25	25	50	e	25	6	30	20
ET SF*	30	30	50	e	30	10	30	20
B-1	30	20	50	e	20	b, d	30	25
B-2	30	20	50	e	b, d	b, d	30	25
B-3	30	20	50	e	b, d	b, d	30	25
C/I	50	30	50	e	c, d	c, d	30	20
MU	30	30	n/a	n/a	30	a	30	25

NOTES FOR PREVIOUS TABLE:

(a) Side yards shall be ten (10) feet plus two (2) additional feet for each floor above two (2) stories, but not exceeding twenty (20) feet; when the dwelling unit faces the side yard, the dwelling unit shall be at least twenty-five (25) feet from the side lot line.

(b) None, except it will be five (5) feet where abutting an alley, or where abutting a residential district it shall be at least thirty (30) feet.

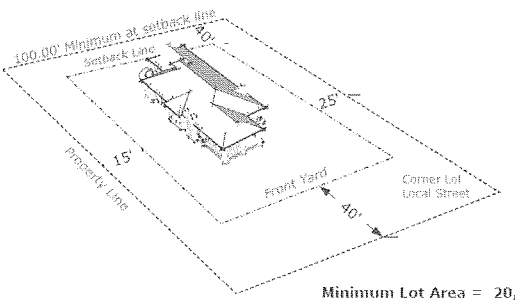
(c) Yard shall be twenty (20) feet, except when abutting any part of a residential or business district, a setback at least forty (40) feet is required.

(d) Where a public or semi-public use, multi-family residential, or mixed use district abuts any part of a single-family residential district, a buffer zone ten (10) feet wide shall be required. Where a B-2 district abuts any part of a single-family residential district, a buffer zone fifteen (15) feet wide shall be required. Where an industrial district abuts any part of a business or mixed use district, a buffer zone of twenty (20) feet shall be required. Where an industrial district abuts any part of a residential, a buffer zone of thirty (30) feet shall be required. Each buffer zone shall be designed in compliance with the provisions established in Article XIV, Landscape Standards and Tree Protection.

(e) Per Act No. 94-572 of the Legislature of Alabama enacted April 21, 1994, as amended, the following setbacks shall apply for any state or county road or highway and measured from the centerline of the R.O.W: principal arterials—Interstate 10 and U.S. Highway 98—require a one-hundred-twenty-five-foot setback; minor arterials—U.S. Highway 90, State Highway 181 and U.S. 31 require a one-hundred-foot setback; major collectors—County Road 64 requires a seventy-five-foot setback.

Lot orientation: On corner lots the front yard shall be considered as parallel to the street upon which the lot has its least dimension. ET-SF*: Applies to unzoned lots contained within any subdivision located in the extraterritorial planning jurisdiction where the size of the development exceeds ten (10) acres. Side yards on buildings between fifty (50) feet and one hundred twenty-five (125) feet in height: all yard setbacks shall be at least fifty (50) feet on each side of building. Additional provisions are outlined in the Article XXXVIII, Residential High-Rise Condominium Development District.

R-1 Low Density Residential

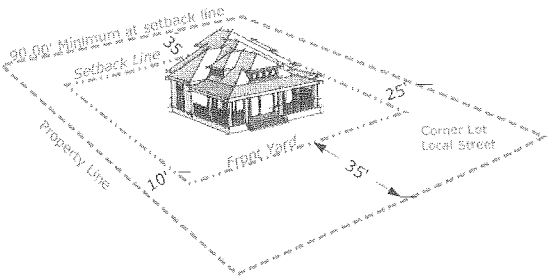


Setback Requirements:

Front Yard -
40' Arterial or collector streets
40' Local Streets & service rds
50' U.S. Highway
Rear Yard - 40'
Side Yard - 15'
Side Yard/Corner Lot-
40' Arterial or collector streets
25' Local streets or service rds

Minimum Lot Area = 20,000 sq. ft.
Minimum Width at Setback Line = 100 ft.

R-2 Medium Density Residential

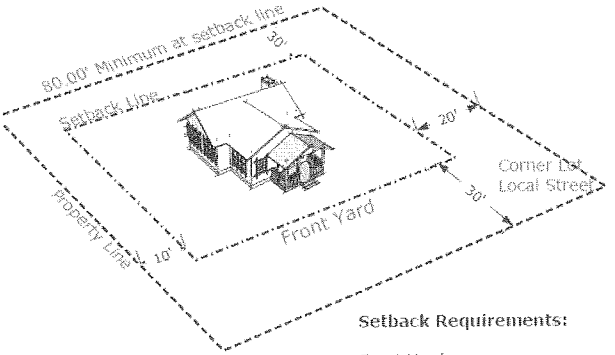


Setback Requirements:

Front Yard -
35' Arterial or collector streets
35' Local Streets & service rds
50' U.S. Highway
Rear Yard - 35'
Side Yard - 10'
Side Yard/Corner Lot-
35' Arterial or collector streets
20' Local streets or service rds

Minimum Lot Area = 15,000 sq. ft.
Minimum Width at Setback Line = 90 ft.

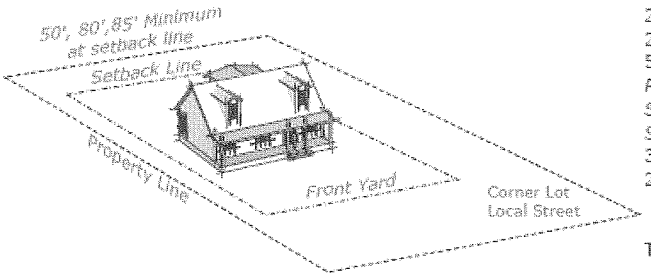
R-3 High Density Single Family Residential



Setback Requirements:

Front Yard -
30' Arterial or collector streets
30' Local Streets & service rds
50' U.S. Highway
Rear Yard - 30'
Side Yard - 10'
Side Yard/Corner Lot-
30' Arterial or collector streets
20' Local streets or service rds

R-4 High Density Single & Multi-Family Residential



Minimum Lot Area:
Single family 5,000 sq. ft.
Two family 10,00 sq. ft.
Multiple family 7,500 sq. ft.

R 4 Setback Requirements:

Single Family

Front Yard -
25' Arterial or collector streets
25' Local Streets & service rds
50' U.S. Highway
Rear Yard - 25'
Side Yard - 6'
Side Yard/Corner Lot-
30' Arterial or collector streets
20' Local streets or service rds

Two-Family

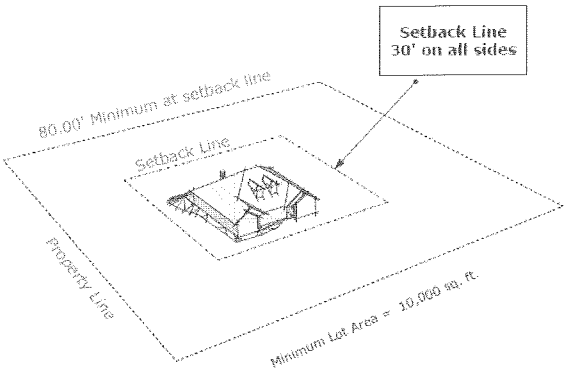
Front Yard -
30' Arterial or collector streets
30' Local Streets & service rds
50' U.S. Highway
Rear Yard - 25'
Side Yard - *
Side Yard/Corner Lot-
30' Arterial or collector streets
20' Local streets or service rds

Multi-Family

Front Yard -
30' Arterial or collector streets
30' Local Streets & service rds
50' U.S. Highway
Rear Yard - 30'
Side Yard - *
Side Yard/Corner Lot-
30' Arterial or collector streets
20' Local streets or service rds

*10 feet plus 2 additional feet for each floor above 2 stories, not exceeding 20 feet; when dwelling unit faces the side yard, the dwelling unit shall not be less than 25 feet from side lot line.

R-6 Duplex Two Family District



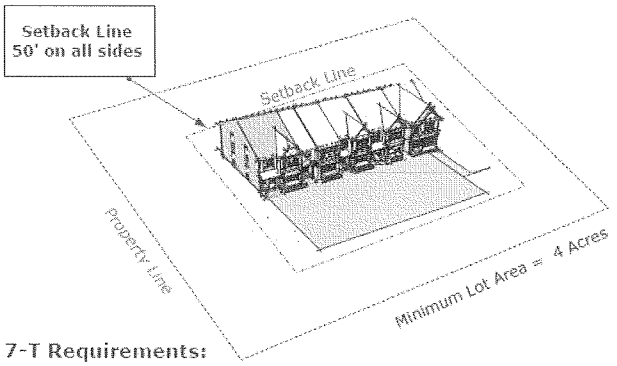
R 6 Requirements:

Minimum Setback Lines - *front/rear/side/corner* - 30'

Maximum Height - 35 feet
Maximum Stories - 2 stories

Minimum Distance Between Bldgs:
facing front-to-back - 100' (25' minimum from back of curb)
facing back-to-back - 100'
side-to-side -1/2 sum of height of both bldgs

R-7 Townhouse District



R 7-T Requirements:

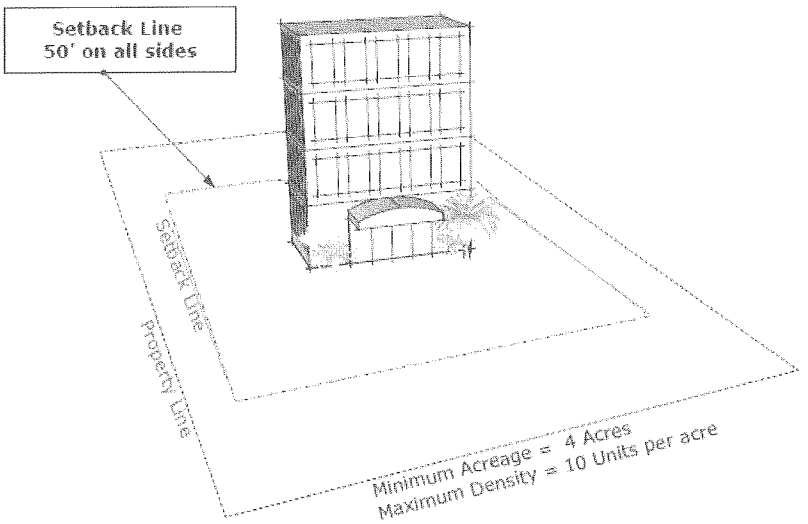
Minimum Setback Lines - *front/rear/side/corner* 50'

Maximum Height - 35 feet
Maximum Stories - 2 stories

Minimum Distance Between Bldgs:
facing front-to-back - 100' (25' minimum from back of curb)
facing back-to-back - 100'
side-to-side -1/2 sum of height of both bldgs

Greenbelt Area:
Along Perimeter Roadway - 25' in addition to minimum setback.
Rermaining Project Boundary - 25' located within setbacks.

R-7 Mid-Rise Condominium District



R-7 M District Requirements

Minimum Building Setback Lines:
front/rear/side/corner - 50'

Maximum Height: 50 feet
Maximum Stories: 3 stories

Minimum Distance Between Bldgs:
facing front-to-back 100' (25' minimum from back of curb
facing back-to-back 100'
side-to-side 1/2 the sum of height of both bldgs.

Greenbelt Area:
Along Perimeter Roadway: 25' in addition to minimum setback
Remaining Project Boundary: 25' (may be located within setbacks)

13-7 Performance standards for nonresidential districts.

In all nonresidential districts (with commercial, institutional and/or industrial uses) where facilities are permitted lots shall comply with the following minimum standards:

(a) Lots shall be of sufficient size to be used for the purpose intended, provide adequate parking and loading facilities in addition to space required for conduct of other operation of the business, and otherwise comply with the provisions provided herein.

(b) The minimum lot size for marinas shall be one (1) acre and shall be constructed above mean sea level.

(c) No entrances or exits shall direct traffic into adjacent residential districts.

(d) Noise, air pollutants including dust emissions, and surface runoff shall not exceed background levels by more than ten (10) percent.

(e) Uses in all business districts must comply with all applicable health and safety standards, including sanitary facilities; paved and landscaped parking areas, and all other requirements of this Ordinance, as well as pertinent state and federal regulations.

(f) Nonpermanent structures such as trailers, sheds, and other such buildings used for business purposes may be permitted

in business districts on a temporary basis pending construction of a permanent building. Such structures may be permitted by the building official for a three-month period, renewable upon written request from the business owner, up to a maximum of one (1) year. Said nonpermanent structure shall be removed immediately upon completion of construction. Delayed removal of the nonpermanent structure may be allowed for no more than thirty (30) calendar days upon review and approval of the building official.

(g) All non-residential structures shall be so designed as to present an aesthetically pleasing appearance that is generally compatible with existing buildings in the district, except those less desirable in appearance that have been grandfathered under this Ordinance.

(h) Every effort to make structures aesthetically pleasing shall be made by the developer. Depending upon the location of the proposed facility, as a means to ensure compatibility with existing development or to encourage a higher standard along major corridors, subsequent improvements and changes to building architecture may be required by the planning commission.

(i) In all non-residential zoning districts the following are preferred building materials for any wall area facing a public street: brick, textured concrete block, wood, metal veneers, stucco or exterior insulation and finish systems (E.I.F.S), concrete, steel, vinyl or stone panels provided they contain some architectural relief and exhibit structural strength.

(j) Metal buildings may be permitted in a C/I zone district only, except where located along County Road 13, Highway 98, Highway 90, Highway 181, Olde Towne Daphne, the Village Overlay District, Eastern Shore Overlay District and Jubilee Retail Overlay District.

13-8 Fixed dwellings.

(a) *R-6(D), Duplex—Two-family district provisions:*

(1) *Duplex—Two-family definition:* A building containing two (2) single-family dwelling units totally separated from each other by an unpierced wall extending from basement to roof, and not exceeding two and one-half (2½) stories or thirty-five (35) feet in height. (See also definition of building height).

(2) *Regulation for buildings and yards:* The following list provides the minimum yard setbacks, minimum lot requirements, and maximum allowable building height for R-6(D), Duplex districts.

R-6(D) DUPLEX—TWO-FAMILY MINIMUM REQUIREMENTS

Minimum Acreage	0.5 acre
Minimum Lot Width	80 feet
Maximum Density	8 dwelling units/acre or 4 duplexes/acre
Maximum Lot Coverage	
Impervious surfaces	
Buildings/structure	30%
Maximum Height	35 feet
Stories	2 stories
Minimum Building Setback Lines	
Front	30 feet
Rear	30 feet
Side	15 feet
Interior corner	15 feet
Street side corner	30 feet
Minimum Parking	2 spaces per dwelling unit
Greenbelt Area for Subdivision Development:	
Along Perimeter Roadway	30 feet wide in addition to minimum building setback.
Remaining Project Boundary	25 feet wide, maybe within minimum building setbacks.

(b) *R-7(A), Apartment District:*

(1) *Multiple family garden apartments definition:* One (1) or more two- or three-story, multi-family structures containing eight (8) to twenty (20) dwelling units and including related off-street parking, open space and recreation facilities, and not exceeding fifty (50) feet in height. Structures shall not exceed two hundred (200) feet in length. Access may be from a

common hall or individual entrance. Dwelling units may be located back to back, adjacent, and on top of one another.

(2) *Regulation for buildings and yards:* See Article XIII, Minimum Requirements for Fixed Dwellings, for the minimum yard setbacks, minimum lot requirements, and maximum allowable building height for R-7(A), Apartment Districts.

(c) *R-7(T), Townhouse District:*

(1) *Town house—Single-family definition:* A one-family dwelling with ground floor outside access, attached to three (3) or no more than five (5), one-family dwellings by common vertical fire resistant walls without openings, and not exceeding two and one-half (2½) stories or thirty-five (35) feet in height. (See also definition of building height).

(2) *Regulation for buildings and yards:* See Article XIII, Minimum Requirements for Fixed Dwellings, for the minimum yard setbacks, minimum lot requirements, and maximum allowable building height for R-7(T), Townhouse District.

(d) *R-7(M), Mid-Rise Condominium District:*

(1) *Condominium, mid-rise definition:* A building, if containing three (3) to seven (7) stories in which dwelling units, offices, or floor area owned by all owners or a proportional, undivided basis. Underground parking facilities are not counted in the height; however, ground level parking beneath the building shall be counted as a story. Structures of more than fifty (50) feet in height may be permitted subject to the approval of the city council with the planning commission's recommendation; however, in no event shall a mid-rise condominium be approved for a height greater than seventy-five (75) feet. See Article XXXVIII for high-rise condominium requirements.

(2) *Regulation for buildings and yards:* See Article XIII, Minimum Requirements for Fixed Dwellings, for the minimum yard setbacks, minimum lot requirements, and maximum allowable building height for R-7(M), Mid-Rise Condominium District.

13-9 Minimum requirements for fixed dwellings.

The following fixed dwelling minimum requirements shall apply in districts as outlined below, except in overlay districts.

Fixed Dwelling Minimum Requirements	*R-7(A) Apartments*	*R-7 (T) Townhouse*	*R-7 (M) Mid-Rise Condo*
Minimum Acreage	4 ac	4 ac	4 ac
Minimum Lot Width	None	None	None
Maximum Density	10 units/acre	10 units/acre	10 units/acre
Maximum Height	50 feet or 3 stories	35 feet or 2½ stories	50 feet or 4 stories
Minimum Building Setback Lines Front/rear/side/corner	50 feet	50 feet	50 feet
Minimum Distance between Buildings -facing front to back	100 feet (25 feet minimum from back of curb)	100 feet (25 feet minimum from back of curb)	100 feet (25 feet minimum from back of curb)
-facing back to back	100 feet	100 feet	100 feet
-side to side	½ the sum of the height of both building	½ the sum of the height of both building	½ the sum of the height of both building

Fixed Dwelling Minimum Requirements	*R-7(A) Apartments*	*R-7 (T) Townhouse*	*R-7 (M) Mid-Rise Condo*
Maximum Lot Coverage Impervious surfaces Buildings/structures	30%	30%	30%
Greenbelt Area Width Along Perimeter Roadway In addition to minimum setback	25 feet	25 feet	25 feet
Width on Remaining Project Boundary(s) Greenbelt may be located within setbacks	25 feet	25 feet	25 feet
Minimum Landscaping See Article XIX			
Minimum Parking Spaces per dwelling unit	2	2	2
Additional Provisions See Article XXVIII			

13-10 Requirements for lot area, width, coverage and other factors for outdoor amusement uses.

(a) *Definition:* Public, private, or semi-private property which is used exclusively for recreational and amusement purposes, generally these activities are not enclosed within a building.

(b) *Permitted uses:* Outdoor amusement facilities permitted in the City of Daphne are listed in Article XXXV, Table of Permitted Uses.

(c) *Minimum lot area and lot width:* None specified, however, the lot shall be large enough to provide the minimum yards as specified herein.

(d) *Setback regulations:*

(1) *Front:* Each lot shall provide a front yard with a minimum depth of forty (40) feet.

(2) *Side:* Each lot shall have a side yard of a minimum of forty (40) feet on each side.

(3) *Interior side exception:* The interior side setback may be reduced to fifteen (15) feet where abutting property zoned B-1, Local Business, B-2, General Business, C/I, Commercial/Industrial, or where abutting a public or semi-public use.

(4) *Rear:* Each lot shall have a rear yard with a minimum depth of thirty-five (35) feet.

(5) *Rear yard exception:* The rear setback may be reduced to ten (10) feet where abutting property zoned B-1, Local Business, B-2, General Business, or C/I, Commercial/Industrial, or where abutting a public or semi-public use.

(e) *Maximum building height:* Fifty (50) feet.

(f) *Maximum building coverage:* The maximum land covered by a building shall be no more than twenty-five (25) percent of the total lot area.

(g) *Minimum landscaping:* A minimum of twenty (20) percent of the lot area shall be maintained as a landscaped common area designed in accordance with the provisions of Article XIX, Landscape Standards and Tree Provisions.

(h) *Performance standards:*

(1) Amusement and recreation services must be so arranged that noise, vibration, lights, and all other possible disturbing aspects are enclosed, screened or otherwise controlled so that operation of the establish-

ment will not unduly interfere with the use and enjoyment of properties in the surrounding area.

(2) Unless otherwise noted herein, any permanent or temporary building or structure shall be one hundred (100) feet from any property line.

(i) *Parking requirements:* All parking requirements shall be based upon the most current industry standard for each particular outdoor amusement use, modifications to said parking standard may be considered as deemed appropriate by the planning commission.

13-11 Requirements for lot area, width, coverage and other factors for golf course uses.

(a) *Definitions:*

Golf course: A tract of land for playing golf, improved with tees, greens, fairways, hazards, and which may include clubhouses, shelters, putting greens, and or driving ranges. Included would be executive or par three golf courses. Specifically excluded would be independent driving ranges and any miniature golf course.

Green space: An area of land covered in grass or other vegetation or a natural water feature. Uses in green space may include stormwater areas, wooded slopes, graded and re-vegetated slopes, required yards on both residential and nonresidential lots, landscaped areas, and other land covered in vegetation.

(b) *Permitted uses:* Any green space and/or golf course as defined above shall be permitted in the GC zone. Additional information on permitted uses is listed in Article XXXV, Table of Permitted Uses.

(c) *Minimum lot area and lot width:* None specified, however, the lot shall be large enough to provide the minimum yards as specified herein.

(d) *Building setback regulations:*

(1) *Front:* Each lot shall provide a front yard with a minimum depth of forty (40) feet.

(2) *Side:* Each lot shall have a side yard of a minimum of forty (40) feet on each side.

(3) *Interior side exception:* The interior side setback may be reduced to fifteen (15) feet where abutting property zoned B-1, Local Business, B-2, General Business, C/I Commercial/Industrial, or where abutting a public or semi-public use.

(4) *Rear:* Each lot shall have a rear yard with a minimum depth of thirty-five (35) feet.

(5) *Rear yard exception:* The rear setback may be reduced to ten (10) feet where abutting property zoned B-1, Local Business, B-2, General Business, or C/I Commercial/Industrial, or where abutting a public or semi-public use.

(e) *Maximum building height:* Fifty (50) feet.

(f) *Maximum building coverage:* The maximum land covered by a building shall be no more than twenty-five (25) percent of the total lot area.

(g) *Minimum landscaping:* A minimum of twenty (20) percent of the lot area shall be maintained as a landscaped common area designed in accordance with the provisions of Article XIX, Landscape Standards and Tree Protection.

(h) *Performance standards:*

(1) Golf courses must be so arranged that noise, vibration, lights, and all other possible disturbing aspects are enclosed, screened or otherwise controlled so that operation of the establishment will not unduly interfere with the use and enjoyment of properties in the surrounding area.

(2) Unless otherwise noted herein, any permanent or temporary building or structure shall be one hundred (100) feet from any property line.

(i) *Parking requirements:* All parking requirements shall be based upon the most current industry standard for golf courses, modifications to said parking standard may be considered as deemed appropriate by the planning commission.

ARTICLE XIV. THE OLDE TOWNE DAPHNE DISTRICT

14-1 Purpose.

The intent of this article is to provide for the creation of the district in order to establish min-

imum standards and provisions for residential, business, or commercial development in the areas outlined the map provided herein and to achieve a healthy, beautiful, and safe community by the following means:

- Aesthetics: Improve the appearance of all areas through the incorporation of innovative landscaping and open space into development in ways that harmonize and enhance the natural beauty of the environment.
- Land values: Maintain and increase the value of land by incorporating innovative designs and criteria into development, thus becoming itself a valuable capital asset.
- Human values: Provide direct and important physical and psychological benefits to human beings through the use of landscaping and tree preservation as a buffer zone between residential and business development to reduce noise and glare, and to break up the monotony and soften the harsher aspects of urban development.
- Improved design: Promote innovative and cost conscious approach to the design and construction of the district.
- Improved administration and enforcement: Establish procedures and standards for the administration and enforcement of this article.

14-2 Uses permitted.

The following zoning districts provided herein established and most specifically defined in Article XII, Establishment of Districts: B-1, Local Business, B-2, General Business, B-3, Professional Business, R-4, Single-Family and Multi-Family Residential, and MU, Mixed Use. Article XXXV, the Table of Permitted Uses and Conditions, outlines the restrictions for each district. (See also Article XII, Establishment of Districts). The planning commission shall no longer consider zoning or rezoning amendments for B-2, General Business or R-4 zoning districts. All existing B-2, General Business and R-4, High Density Single and Multi-Family Residential Districts shall be developed in accordance with the standards provided herein. For any new request, the following districts shall be considered in lieu of R-4: R-6(G) for all garden/patio homes developments; and, R-6(D) for duplexes.

14-3 Special provisions.

The following shall apply:

(a) The provisions of this article shall be required for all residential projects involving the construction of two (2) or more dwelling units including apartments, town homes, condominiums, planned unit developments, subdivisions, business, commercial, industrial, and/or institutional structures; all existing structures which increase the gross floor area by thirty (30) percent or more, except a single-family residence; construction of a park, public way, open space, public building or structure; construction of a public utility whether publicly or privately owned; and other uses as required by the planning commission.

(b) A site plan review for minor expansions of commercial or institutional uses, renovations or changes in use shall be subject to administrative review and approval by the director of community development to determine compliance with the provisions of this Ordinance.

(c) Whenever a major development is proposed the developer should informally consult with the department of community development prior to site plan application to ensure compliance with the required regulations. No fee shall be charged for the review and no formal application shall be required.

(d) Any development which is to be constructed in phases or units shall require a master plan of the site which shall be submitted to the planning commission for approval prior to submitting a site plan application. The subdivider shall submit to the department of community development, a written request for review and approval by the planning commission and a copy of said master plan. The master plan shall be of sufficient detail to show

the proposed street and lot layout, drainage, utilities, detention, common, recreational, landscaped areas and maximum density (gross and net).

(e) Size of properties reserved or laid out for business, or commercial purposes shall be adequate to provide for the off-street service and parking facilities required by the type of use and development contemplated.

(f) A site plan review shall be accomplished by the recommendation of the director of community development and approval of the planning commission to assure compliance with the provisions of the Land Use and Development Ordinance in conformity with its purpose as stated in Article I, Purpose, Repeals, Enactment and Short Title, as well as, applicable building and fire codes, latest edition.

(1) Site plan approval shall become void one (1) year from the date of planning commission approval if no site disturbance permit has been acquired for the project. The site disturbance permit and site plan shall both become void one (1) year from the issuance of the site disturbance permit if no substantial building or construction activity has occurred.

(2) Prior to expiration, a one-year extension of time may be granted for the approved site plan and the site disturbance permit by the director of community development, upon written request of the applicant stating good reason.

(3) If no construction activity has occurred after the expiration of the extended time, an additional one-year extension of time may be considered by the planning commission. At no time shall any site plan and related site disturbance permit be granted an extension beyond this time. The site plan and site disturbance permit shall automatically be deemed null and void.

(g) After site plan approval and before the issuance of a site disturbance permit, a pre-construction conference shall be held between the developer, contractors, the departments of community development, public works, building inspections; Riviera Utilities, Daphne Utilities; any other applicable public or private utility company, local, state, and/or federal agency. At the pre-construction conference, involved parties will discuss issues related to permitting, construction safety, general expectations during construction, final inspection protocol, etc.

(h) When all required improvements are installed in accordance with the site plans and specifications approved by the planning commission, the developer or owner shall request a final inspection by the design engineer and the registered landscape architect. Both shall forward compliance letters to the director of community development. Upon receipt thereof the director or his/her duly authorized representative shall inspect the site to determine if the required improvements are satisfactorily installed prior to signing the certificate of occupancy or final plat.

14-4 Site plan application.

Prior to making any improvements, the developer/owner shall submit to the planning commission a site plan of the project for review in accordance with the following procedure. These items shall be received in the department of community development not less than thirty (30) days prior to a regularly scheduled meeting of the planning commission at which meeting the site plan is to be formally submitted for review.

(a) *Developer's responsibility*—The developer shall submit to the department of community development:

(1) Completed application on prescribed forms signed by the property owner or authorized agent; an agent authorization letter-if applicable; a copy of the recorded warranty deed of the

subject property (as proof of ownership); the Owner's Indemnification and Maintenance Agreement Form for Commercial Developments; drainage calculations; Certification of Engineering Design form; applicable state and/or federal permit applications; in accordance with specifications provided in the Site Plan Supplemental Documentation List in the Appendix; the site plan; documentation of all applicable utility companies' service availability and willingness to provide services; the filing fee as specifically enumerated in Article XXXIV, Schedule of Fees.

(2) The developer shall submit a site plan and utility sheets to each utility company for review. Paper and electronic copies shall be provided to the department of public works, bureau of fire prevention, Riviera Utilities, Daphne Utilities and the building department. The subdivider shall submit a site plan and applicable documents as may be necessary to any and all applicable utility companies, local, state and/or federal agencies for review. Sign details shall be submitted to the code enforcement officer for review.

(a) *Site plan content:* The site plan shall contain all information as reflected on the current site plan supplemental documentation list and the site plan review checklist as provided in the appendix. Either may be modified at the discretion of the director of community development when applicable. However, any modifications to either the checklist or supplemental list shall be requested of the applicant and approved by the director of community development during or as a result of a pre-application conference. Incomplete submissions shall not be accepted by the department of community development.

Site plans shall be designed and certified by a professional design engineer. Landscape plans shall be designed and certified by a registered landscape architect. Site plans shall include the following sheets: boundary survey, existing conditions, tree survey, site plan, geometric plan, utility plan, water and sewer plan, grading and drainage plan, construction best management practices plan, applicable construction details and notes as may be applicable, an overall master plan, if applicable, landscape plan and irrigation plan, building elevations, floor plans, and sign details. Site plans shall be designed to meet all applicable provisions of this Ordinance.

(b) *Posting notice of site plan review:* Applicant shall be responsible for posting a sign providing public notice of site plan review. Failure to post said sign fifteen (15) days prior to planning commission review, shall cause the application to be withdrawn from the meeting agenda. Said sign shall not be an advertisement sign for the proposed project, but an advertisement of the planning commission meeting dates and times in accordance with the standards established for such provided in the supplemental information.

14-5 Waiver.

The director of community development may waive certain requirements contained in this article if, in his/her opinion, the requirements are not essential to a proper decision on the project;

or, he/she may supplement the list with other requirements deemed necessary to clarify the nature of the proposed development.

14-6 Bond requirement for off-site impacts.

(a) Whenever a person, firm, corporation, developer or other entity proposes to develop a commercial, public, semi-public or multi-family, or mixed use project that, in the opinion of the director of community development constitutes a land disturbing activity which may pose a risk of drainage and/or siltation damage outside the boundaries of the project, such person, firm, corporation, developer or other entity conducting the land disturbing activity shall be required to submit a non-cancelable performance bond in the name of the permittee, a letter of credit or cashier's check, to the city prior to the issuance of a site disturbance permit.

(b) At the time of the site plan approval, the bond shall become effective and shall extend for a period of at least two (2) years following the issuance of the certificate of occupancy by the city. The bond shall be in the amount of twenty (20) percent of the total cost for the performance of all site work. Said bond shall cover drainage, erosion and siltation damage, if any.

(c) The director of community development or other administrative official as designated by the city council shall determine the prescribed bond, as well as, the adequacy and the security thereon.

14-7 Fees and application withdrawal procedures.

An application for site plan review, site disturbance permit and extension requests shall be accompanied by the appropriate fee as specifically enumerated in Article XXXIV, the Schedule of Fees. If, for any reason, an item scheduled for initial presentation before the planning commission is requested to be tabled or withdrawn within seven (7) calendar days of submission to the department of community development, then the application fee and notification fee will be credited toward re-submittal of the application; however, beyond the seven-calendar-day period, fees shall not be refunded nor credited toward subsequent submittals. The request to withdraw or table the item shall be submitted in writing to the department of community development prior to the scheduled hearing date.

14-8 Issuance of site disturbance permit.

Each person, firm, corporation, utility, entity or agent thereof preparing to engage in any site preparation and/or construction activities shall acquire a site disturbance permit from the department of community development prior to commencement of such activities as established pursuant to the provisions of this article and no such activity shall commence prior to the approval of a site plan by the planning commission if required by section 14-3(a) or administrative review by the director of community development if required by section 14-3(b). Fees for said permit and permit extension requests are enumerated in Article XXXIV, Schedule of Fees.

14-9 Issuance of building permit.

Upon approval of the site plan either as submitted or with changes and/or special conditions required by the planning commission, the building official may issue a building permit for a portion or all of the proposed development provided that the application is in compliance with all applicable city, county, state and federal requirements.

14-10 Parking requirements.

Any business use located within the Olde Towne Daphne District with a lot frontage of fifty (50) feet shall require a minimum of four (4) parking spaces, with a lot frontage of twenty-five (25) feet shall require a minimum of two (2) parking spaces, and shall also comply with the minimum design and improvements standards as otherwise outlined in this Ordinance and ADA requirements.

Off-street parking for multi-use buildings or mixed use developments shall be located in the rear of the building(s) adjacent to the street.

For any use for which the above referenced parking requirement cannot be met due to the unique conditions of a particular parcel of property as documented on the site plan, off-street parking spaces of the public type may be consid-

ered toward the requirements necessary to comply with the article upon determination of the director of community development and approval of the planning commission.

14-11 Signage.

The maximum allowable square footage established in each zoning designation and/or overlay district shall apply as provided in each district. Said allowable area shall not be exceeded. In the event that channel letters, as defined in Article VIII, Definitions, are proposed, then the maximum allowable square footage shall be calculated at a rate of eighty (80) percent in lieu of the standard rate of one hundred (100) percent.

(a) *Nonconformance:* Any sign in existence on the date of the adoption of this Ordinance that is not in conformance shall be considered a nonconforming sign and shall be permitted to continue to exist, subject to the conditions and prohibitions set forth in the provisions of Article XXXIII, Sign Provisions.

(b) *Single-use building* (A commercial building with one (1) commercial tenant): Signs indicating the name of a business or retail use permitted in this district with a single-use building shall have one (1) sign not to exceed fifteen (15) square feet in area per face, five (5) feet in height, of the ground sign or pylon type, and have two (2) faces.

Each establishment of a business or retail use permitted in this district with a single-use building may acquire an additional permit for a wall-mounted sign of a size not to exceed ten (10) percent of the surface frontal area of its building or portion of the building. Signs mounted on mansards, marquees, windows, and awnings are deemed to be wall signs.

(c) *Multi-use building* (A commercial building which houses more than one commercial tenant: Signs indicating the name of a business or retail use permitted in this district with a multi-use building shall have one (1) sign not to exceed thirty-two (32) square feet in area per face, ten (10) feet in height, of the ground sign or pylon type, and have two (2) faces.

Each establishment of a business or retail use permitted in this district within a multi-use building may acquire an additional permit for a wall-mounted sign of a size not to exceed ten (10) percent of the surface frontal area of its building or portion of building. Signs mounted on mansards, marquees, windows, and awnings are deemed to be wall signs.

(d) *Fees:* Signs permitted under this article shall require a permit as more specifically enumerated in Article XXXIII, Sign Provisions. Fees for each permitted sign are specifically enumerated in Article XXXIV, Schedule of Fees.

14-12 Sidewalks.

A sidewalk of a minimum six (6) feet in width shall be required to be located adjacent to the front property line and in the interior of multi-use developments.

14-13 Landscape standards.

(a) *General requirements:* The developer of any use in this district shall suitably landscape at least five (5) percent of the subject property and also comply with the requirements of Article XIX, Landscape and Tree Protection.

If the landscape design is determined to be compatible with the character of the district, an innovative landscape design, to include planters and/or hanging plants, as well as, a "natural cluster of trees" may be approved if recommended by the director of community development and given approval by the planning commission.

More stringent design and landscape standards may be required if it is determined that the design would be more compatible with the development and more beneficial to the aesthetics of the Olde Towne Daphne district.

(b) *Off-street parking landscape requirements:* The design and appearance of parking areas are intended to be compatible with the character of

the community. Toward this objective, the following landscaping standards shall be observed in the construction of off-street parking areas:

(1) Landscaped areas and perimeter areas shall be so graded as to receive a reasonable portion of the rainfall from the surrounding pavement. Protective curbing around landscaped areas will leave openings for the flow of water onto unpaved areas.

(2) Landscaped areas shall be protected from vehicular encroachment by the use of curbing or wheel stops.

(3) The owner, tenant, occupant and/or agent, if any, shall be jointly and severally responsible for watering and maintaining all landscaping in a healthy, neat and orderly condition, replacing it when necessary, and keeping it free of refuse and debris.

(4) Adjacent residential property owners may jointly agree on the establishment of a common landscaped or fenced area between their properties which meets the requirements of this article.

(c) *Buffer zone requirements:* Where a business district abuts any part of a residential district, a buffer zone ten (10) feet in width shall be required. The buffer shall run the entire length of the abutting lot line(s). Under no circumstances shall this buffer impair vehicular flow and shall be part of the yard requirements. Said protection buffer shall be maintained in such a manner to accomplish its purpose continuously.

This district shall comply with the following minimum standards and said buffer zone shall be constructed of at least one (1) of the following three (3) designs or a combination thereof as determined by the director of community development and approved by the planning commission:

(1) *Wall or fence.* If a wall or fence of solid appearance is provided as a protection buffer, it shall be at least six (6) feet in height and of a construction and a design approved by the planning commission.

(2) *Screen planting strip.* A staggered double row of Evergreen plantings at least ten (10) feet in width which will grow to at least ten (10) feet in height and spaced in a manner in which after three (3) years it will provide an impervious visual barrier.

(3) *Natural forest.* A natural, undisturbed forest which provides a nearly impervious visual barrier due to the dense nature of the plants and/or trees. If this option is chosen, the width of the buffer zone shall be ten (10) feet in width and shall be included on the landscape plan.

The director of community development shall determine whether the barrier is satisfactory via site inspection prior to approval.

14-14 Supervision.

The landscape architect shall be responsible for the supervision of all plantings. After completion, the landscape architect shall certify in writing to the City of Daphne that the submitted, approved landscape plan has been implemented and complies with the requirements of this article.

14-15 Certificate of occupancy.

A certificate of occupancy shall not be issued until the submitted, approved landscape plan has been implemented or cash or cashier's check has been submitted in an amount equal to one hundred and fifty (150) percent of the actual landscape cost which shall be certified by a professional landscape architect with a signed/sealed cost estimate for incomplete work.

14-16 Penalties.

The Code Enforcement Officer of the City of Daphne shall serve the owner of said property, each person, firm or corporation engaged in the activities regulated hereunder in which the activities are being conducted in violation of any provision of this article with a summons and complaint citation.

The person(s) shall be fined upon conviction, not less than twenty-five dollars ($25.00) nor more than five hundred dollars ($500.00) and costs of the court for each offense.

14-17 Setbacks.

MINIMUM DISTRICT REQUIREMENTS[d]				
Zoning Districts	*Front Yard*	*Rear Yard*	*Side Yard*	*Corner Lot Side Yard*
R-4[c] Single-family R-6(D or G) Duplex or Garden or Patio Home	15	20	6	25
R-4[c] Multi-Family	15	20	a	25
B-1 Local Business	10	b	b	25
B-2 General Business	10	b	b	25
B-3 Professional Business	10	b	b	25
MU Mixed Use	15	e	b	25

(a) When dwelling unit faces side yard, the dwelling unit shall not be less than twenty-five (25) feet from the side lot line.

(b) None. If there is a rear alley, the setback shall be twenty-five (25) feet. When abutting a residential district it shall be not less than ten (10) feet. (See Buffer requirements, section 14-13, Landscape Standards).

(c) The planning commission shall no longer consider zoning or rezoning amendments to an R-4 zoning district. All existing R-4, High Density Single- and Multi-Family Residential Districts shall be developed in accordance with the standards provided herein. For all new requests, the following districts shall be considered in lieu of R-4: R-6(G) for all garden/patio homes developments; R-6(D) for duplexes; R-7(A) for apartments; and R-7(T) for townhouses and R-7(M) for mid-rise condominiums.

(d) Minimum district requirements for any zoning district not specifically listed in this table shall meet the minimum standards as established in requirement for lot area, width and setbacks in section 13-4, Requirements for lot area, width, coverage, density, height and other factors and section 13-6, Minimum zoning district setback requirements, herein.

(e) None. If there is an alley, the setback shall be twenty-five (25) feet. When abutting a residential district it shall be not less than fifteen (15) feet. (See Buffer requirements, section 14-13, Landscape standards).

14-18 Maximum building height.

Except as otherwise provided herein, no structure shall exceed thirty-five (35) feet in height in any R-4, Single-Family and Multi-Family Residential District or more than fifty (50) feet in height in any business or mixed use district. Structures of more than fifty (50) feet shall not be permitted. (See definition of building height in Article VIII, Definition of Terms).

14-19 Drainage.

Any use in this district shall comply with Article XVIII, Drainage and Stormwater Management Facilities and Erosion/Sediment Control.

14-20 District map.

The Olde Towne District Map, Exhibit B, is hereby adopted and as a part of this Ordinance. (See Appendix I, Table of Contents).

ARTICLE XV. PROCEDURES FOR SITE PLAN REVIEW

15-1 Use and applicability.

(a) The provisions of this article shall be required for all residential developments involving the construction of two (2) or more dwelling units including apartments, town homes, condominiums, business, commercial, industrial, and/or institutional structures; all existing structures which increase the gross floor area by thirty (30) percent or more, except a single-family residence; construction of a park, public way, open space, public building or structure; construction of a public utility whether publicly or privately owned; and other uses as required by the planning commission.

(b) A site plan review for minor expansions of commercial or institutional uses, renovations or changes in use shall be subject to administrative review and approval by the director of community development to determine compliance with the provisions of this Ordinance.

15-2 Pre-application and pre-construction conferences.

(a) *Pre-application conference:* Whenever a major development, one which is five (5) acres or more or as deemed appropriate by the director of community development, is proposed within the corporate limits, the developer should informally consult with the department of community development prior to site plan application to ensure compliance with the required regulations. No fee shall be charged for the review and no formal application shall be required.

(b) *Pre-construction conference:* After site plan approval and before the issuance of a site disturbance permit, a pre-construction conference shall be held between the developer, contractors, the representatives from the departments of community development, public works, building inspections; Riviera Utilities, Daphne Utilities, any other applicable public or private utility company, local, state, and/or federal agency. At the pre-construction conference, participants will discuss issues related to permitting, construction safety, general expectations during construction, final inspection protocol, etc.

15-3 Master plan submittal.

Any development which is to be constructed in phases or units shall require a master plan of the site which shall be submitted to the planning commission for approval prior to submitting a site plan application. The subdivider shall submit to the department of community development, a written request for review and approval by the planning commission and a copy of said master plan. The master plan shall be of sufficient detail to show the proposed street and lot layout, drainage, utilities, detention, common, recreational, landscaped areas and maximum density (gross and net).

15-4 Special provisions.

The following shall apply:

(a) Water, sewer, gas, electric power, telephone, cable television, and other utility lines shall be installed underground by the developer and/or owner in all new residential, commercial, and industrial developments, expansions, and/or renovations of existing said developments shall be connected to a central distribution system, unless for good reasons other than cost, the planning commission approves a modification or waiver of this requirement in part or in whole, or if a special condition requires otherwise.

(b) Size of properties reserved or laid out for business, commercial, or industrial purposes shall be adequate to provide for the off-street service and parking facilities required by the type of use and development contemplated.

(c) A site plan review shall be accomplished by the recommendation of the director of community development and approval of the planning commission to assure com-

pliance with the provisions of the Land Use and Development Ordinance in conformity with its purpose as stated in Article I, Purpose, Repeals, Enactment and Short Title, as well as, applicable building and fire codes, latest edition.

(d) Planning commission approval shall be the first step in the construction permitting process. After approval, the owner or developer shall provide to the department of community development, the appropriate signed application form, a cost estimate for site work certified by the design engineer, the fee for a site disturbance permit as enumerated in Article XXXIV, Schedule of Fees, applicable state and/or federal permits, sand proof of the contractor's Daphne Business license.

(1) Site plan approval shall become void one (1) year from the date of planning commission approval if no site disturbance permit has been acquired for the project. The site disturbance permit and site plan shall both become void one (1) year from the issuance of the site disturbance permit if no substantial building or construction activity has occurred.

(2) Prior to expiration, a one-year extension of time may be granted for the approved site plan and the site disturbance permit by the director of community development, upon written request of the applicant stating good reason.

(3) If no construction activity has occurred after the expiration of the extended time, an additional one-year extension of time may be considered by the planning commission. At no time shall any site plan and related site disturbance permit be granted an extension beyond this time. The site plan and site disturbance permit shall automatically be deemed null and void.

(e) When all required improvements are installed in accordance with the site plans and specifications approved by the planning commission, the developer or owner shall request a final inspection by the design engineer and the registered landscape architect. Both shall forward compliance letters to the director of community development. Upon receipt thereof the director or his/her duly authorized representative shall inspect the site to determine if the required improvements are satisfactorily installed prior to signing the certificate of occupancy or final plat.

15-5 Site plan application.

Prior to making any improvements, the developer/owner shall submit to the planning commission a site plan of the project for review in accordance with the following procedure. These items shall be received in the department of community development not less than thirty (30) calendar days prior to a regularly scheduled meeting of the planning commission at which meeting the site plan is to be formally submitted for review.

(a) *Developer's responsibility*—The developer shall submit to the department of community development:

(1) Completed application on prescribed forms signed by the property owner or authorized agent; an agent authorization letter—if applicable; a copy of the recorded warranty deed of the subject property (as proof of ownership); the Owner's Indemnification and Maintenance Agreement Form for Commercial Developments; drainage calculations; Certification of Engineering Design form; applicable state and/or federal permit applications; in accordance with specifications provided in the Site Plan Supplemental Documentation List in the appendix; the site plan; documentation of all applicable utility companies' service availability and willingness to provide services; the filing fee as specifically enumerated in Article XXXIV, Schedule of Fees.

(2) The developer shall submit a site plan and utility sheets to each utility company for review. Paper and electronic copies shall be provided to the department of public works, bureau of fire prevention, Riviera Utilities, Daphne Utilities and the building department. The subdivider shall submit a site plan and applicable documents as may be necessary to any and all applicable utility companies, local, state and/or federal agencies for review. Sign details shall be submitted to the code enforcement officer for review.

(a) *Site plan content.* The site plan shall contain all information as reflected on the current Site Plan Supplemental Documentation List and the Site Plan Review checklist as provided in the appendix. Either may be modified at the discretion of the director of community development when applicable. However, any modifications to either the checklist or supplemental list shall be requested of the applicant and approved by the director of community development during or as a result of a pre-application conference. Incomplete submissions shall not be accepted by the department of community development.

Site plans shall be designed and certified by a professional design engineer. Landscape plans shall be designed and certified by a registered landscape architect. Site plans shall include the following sheets: boundary survey, existing conditions, tree survey, site plan, geometric plan, utility plan, water and sewer plan, grading and drainage plan, sedimentation and erosion control plan, best management practices plan, applicable construction details and notes as may be applicable, an overall master plan, if applicable, landscape plan and irrigation plan, building elevations, floor plans, and sign details. Site plans shall be designed to meet all applicable provisions of this Ordinance.

(b) *Posting notice of site plan review.* Applicant shall be responsible for posting a sign providing public notice of site plan review. Failure to post said sign fifteen (15) calendar days prior to planning commission review, shall cause the application to be withdrawn from the meeting agenda. Said sign shall not be an advertisement sign for the proposed project, but an advertisement of the planning commission meeting dates and times in accordance with the standards established for such provided in the supplemental information.

15-6 Waiver.

The director of community development may waive certain requirements contained in this article if, in his/her opinion, the requirements are not essential to a proper decision on the project; or, he/she may supplement the list with other requirements deemed necessary to clarify the nature of the proposed development.

15-7 Issuance of site disturbance permit.

Each person, firm, corporation, utility, entity or agent thereof preparing to engage in any site preparation and/or construction activities shall acquire a site disturbance permit from the department of community development prior to commencement of such activities as established pursuant to the provisions of this article and no such activity shall commence prior to the approval of a site plan by the planning commission or administrative review by the director of community development as required in Article XV, Site Plan

Review, section 15-1. Fees for said permit and permit extension requests are enumerated in Article XXXIV, Schedule of Fees.

15-8 Bond requirement for off-site impacts.

(a) Whenever a person, firm, corporation, developer or other entity proposes to develop a commercial, public, semi-public or multi-family, or mixed use project that, in the opinion of the director of community development constitutes a land disturbing activity which may pose a risk of drainage and/or siltation damage outside the boundaries of the project, such person, firm, corporation, developer or other entity conducting the land disturbing activity shall be required to submit a non-cancelable performance bond in the name of the permittee, a letter of credit or cashier's check, to the city prior to the issuance of a site disturbance permit.

(b) At the time of the site plan approval, the bond shall become effective and shall extend for a period of at least two (2) years following the issuance of the certificate of occupancy by the city. The bond shall be in the amount of twenty (20) percent of the total cost for the performance of all site work. Said bond shall cover drainage, erosion and siltation damage, if any.

(c) The director of community development or other administrative official as designated by the city council shall determine the prescribed bond, as well as, the adequacy and the security thereon.

15-9 Release of bond.

(1) At the expiration of two (2) years from the issuance of the certificate of occupancy, the director of community development and the site containment officer or designee of the building official shall determine if the drainage design implementation of the project has:

(a) Been performed in accordance and continues to functions within the parameters of the design standards as set forth by the project engineer;

(b) Had any impact on any streams, waterways, or third parties that have been minimized through mitigation efforts;

(c) Received from the project engineer a certificate of performance which states the drainage facilities have been constructed in accordance with the plans, specifications, and engineering guidelines.

(2) The city may release the developer and/or the bond holder from further obligations under said bond based upon the evaluation and recommendation of the director of community development, director of public works and/or the site containment officer, or designee of the building official, city engineer and the planning commission.

(3) If it is determined that the requirements of this section have not been met, then the bond may be extended for one (1) six-month interval to allow the developer and/or bond holder additional time to correct the deficiencies which prohibit the release of bond. If the site contractor is unable and/or unwilling to satisfy the deficiencies as enumerated by the director of community development, director of public works and/or the site containment officer, or designee of the building official or city engineer, the entire bond shall be forfeited with the bond being payable to the City of Daphne for the direction of such work and/or activities necessary for the completion of the improvements. The developer and/or bond holder of the property thereof shall be liable for any additional cost incurred.

15-10 Issuance of building permit.

Upon approval of the site plan, either as submitted or with changes and/or special conditions required by the planning commission, the building official may issue a building permit for a portion or all of the proposed development provided the application is in compliance with all applicable city, county, as well as, state and federal requirements.

15-11 Fees and application withdrawal procedures.

An application for site plan review, site disturbance permit and extension requests shall be accompanied by the appropriate fee as specifically enumerated in Article XXXIV, the Schedule of Fees. If, for any reason, an item scheduled for

initial presentation before the planning commission is requested to be tabled or withdrawn within seven (7) calendar days of submission to the department of community development, then the application fee will be credited toward resubmittal of the application; however, beyond the seven (7) calendar day period, fees shall not be refunded nor credited toward subsequent submittals. The request to withdraw or table the item shall be submitted in writing to the department of community development prior to the scheduled hearing date.

ARTICLE XVI. PARKING REQUIREMENTS FOR ALL DISTRICTS

16-1 General.

Off-street automobile storage or parking space shall be provided with vehicular access to a street or alley and shall be equal to the minimum requirements for the specific land use set forth as otherwise provided herein.

The required number of parking spaces for any number of separate uses may be combined in one lot, but the required space assigned to one use may not be assigned to another use at the same time, except that portion of the parking space required for an existing church whose peak attendance will be at night or on Sunday, may be assigned to a use which will be closed at night or on Sunday.

Areas reserved for off-street parking in accordance with the requirements of this Ordinance shall not be reduced in area or changed to any other use unless the permitted use which it serves is discontinued or modified, except where equivalent parking space is provided to the satisfaction of the planning commission.

Off-street parking in existence prior to the enactment of this Ordinance in connection with the operation of an existing building or use shall not be reduced to an amount less than hereinafter required for a similar new building or use.

For existing commercial uses in any business district and other similar areas desiring to expand, but unable for good and sufficient reason to provide parking at the standard required in the following schedule, the board of zoning adjustment may grant relaxation of the strict application of these requirements on appeal, subject to the regulations governing appeals and variances.

Where business and multi-family unit developments require large numbers of parking spaces, such spaces may be accommodated in parking decks provided that no such parking deck shall exceed three (3) levels above ground or twenty-five (25) percent of the height of the principal structure, whichever is greater.

A parking deck design shall be compatible with the design of the principal structure and shall be submitted as a part of the overall site plan. The parking deck shall comply with the minimum requirements of this Ordinance.

16-2 Parking schedule.

LAND USE		*PARKING REQUIREMENTS*
(a)	*Dwellings*	
	(1) One and two families:	Two (2) spaces for each dwelling unit.
	(2) Multiple families:	Two (2) spaces for each unit.
	(3) Hotels without restaurants, lounges, or banquet facilities:	One (1) space for each bedroom.
	(4) Hotels with in-house restaurants, banquet facilities, or convention/meeting capabilities:	One and one-half (1.5) spaces for each bedroom.
	(5) Motels, Tourist Courts, and Tourist Homes:	One and one-half (1.5) spaces for each guest bedroom.
	(6) Mobile Home Courts and Parks:	Two (2) spaces per unit.
	(7) Boarding, Rooming Houses and Dormitories:	One (1) space for each guest bedroom.

LAND USE		*PARKING REQUIREMENTS*
(b)	*Public Assembly*	
	(1) Churches or Other Places of Worship:	One (1) space for each four (4) seats in the main auditorium or sanctuary.
	(2) Private Clubs, Lodges and Fraternal Buildings, (not providing overnight accommodations):	One (1) space for each hundred (100) square feet of building under roof.
	(3) Theaters, Auditoriums, Coliseums, Stadiums, and Similar Places of Assembly:	One (1) space for each four (4) seats.
	(4) Libraries, Museums:	One (1) space for each five hundred (500) square feet of gross floor area.
	(5) Schools, including Kindergartens, Playschools, and Day Care Centers:	One (1) space for each four (4) seats in assembly hall, or one (1) space for each employee, including teachers and administrators, whichever is greater, plus five (5) spaces per classroom for high school and colleges.
	(6) Skating Rinks, Dance Halls, Pool Rooms and Other Places of Amusement or Assembly without Fixed Seating Arrangements:	One (1) space for each two hundred (200) square feet of floor area.
	(7) Bowling Alleys:	Four (4) spaces for each alley/lane.
(c)	*Health Facilities*	
	Hospitals, Sanitariums, Nursing Homes for the Aged and Similar Institutional Uses:	One (1) space for each four (4) beds, plus one (1) space for each employee on the maximum shift.
	(1) Kennels and Animal Hospitals:	A parking area equal to thirty percent (30%) of the total enclosed or covered area.
	(2) Medical, Dental and Health Offices and Clinics:	One (1) space for each two hundred square feet (200 sq. ft.) of floor area used for offices and similar purposes.
	(3) Mortuaries and Funeral Parlors:	Ten (10) spaces per parlor chapel unit, or one (1) space per two (2) seats, whichever is greater.
(d)	*Business*	
	(1) Commercial Establishments and Office (including but not limited to the following):	
	Food Stores, Furniture Stores, General Business, (commercial or personal service establishments catering to the retail trade, but excluding food stores); and/or,	Four (4) parking spaces for up to four hundred square feet (400 sq. ft.) limited to the square feet of gross floor area, plus one (1) parking space for each additional four hundred square feet (400 sq. ft.) of gross floor area, up to five thousand square feet (5,000 sq. ft.), plus one (1) parking space for each additional two hundred square foot (200 sq. ft.) of gross floor area over five thousand square foot (5,000 sq. ft).
	Governmental Offices, Office Buildings, (including banks, businesses, commercial and professional offices and buildings but excluding medical, dental and health offices and clinics); and/or,	
	Public Utilities, (such as telephone exchanges and substations, radio and TV stations).	

LAND USE		*PARKING REQUIREMENTS*
	Restaurants, (including bars, bars grills, diners, cafes, taverns, night-clubs, lunch counters, and all similar dining and/or drinking establishments).	One and one-fourth (1.25) spaces for each four (4) seats.
(e)	*Shopping Centers*	One (1) space per each two hundred square feet (200 sq. ft.) of gross floor area.
(f)	*Marinas*	Two (2) spaces per berth (also applies to dry storage).
(g)	*Industries*	
	(1) Commercial, Manufacturing and Industrial establishments (not catering to the maximum retail trade):	One (1) space for each employee on the working shift, plus one (1) space for each vehicle operating from the premises.
	(2) Wholesale establishments:	One (1) space for every fifty square feet (50 sq. ft.) of customer service area, plus two (2) spaces for each three (3) employees on the maximum working shift, plus one (1) space for each company vehicle operating from the premises.
	(3) Electric Power and Gas Substation:	Twenty-five percent (25%) of the parcel on which located or four (4) spaces, whichever is smaller.
(h)	*Any use not specified by these regulations:*	One (1) parking space for each three hundred square feet (300 sq. ft.) of gross floor area in the building. Where the use is mixed, total requirements for off-street parking shall be the sum of the requirements for the various uses computed separately.

16-3 Design standards.

(a) *Definition:* An off-street parking space is an all-weather surfaced area not in a street or alley and having an area of not less than one hundred seventy-one (171) square feet and minimum dimensions of nine (9) feet by nineteen (19) feet, exclusive of driveways, permanently reserved for the temporary storage of one (1) automobile and connected with a street or alley by an all-weather surfaced driveway which afford unobstructed ingress and egress to each space.

(b) *Permit:* A site disturbance permit shall be required for any parking area with a design capacity for six (6) or more vehicles. Each person, firm, corporation, utility, entity or agent thereof engaged in any site preparation and/or construction activities shall acquire a site disturbance permit from the department of community development prior to commencement of such activities as established pursuant to the provisions of this article. Fees for said permit shall be as enumerated in Article XXXIV, Schedule of Fees.

(c) *Parking area dimensions:* The design and dimensions of the parking area shall be in accordance with the following Dimension Table and provide for handicapped parking spaces and sidewalk accessibility in accordance with the Americans with Disabilities Act.

PARKING DIMENSION TABLE

Curb Angle of Parking	Length Per Car	Stall Depth	Access Driveway Width
0°	23'0"	9'0"	12'0"
20°	20'4"	15'0"	11'0"
30°	18'0"	17'4"	11'0"
40°	14'0"	19'2"	12'0"
45°	12'9"	19'10"	13'0"
50°	11'9"	20'5"	14'0"
55°	11'1"	20'3"	15'6"

PARKING DIMENSION TABLE

60°	10'5"	21'0"	18'0"
70°	9'8"	21'0"	19'0"
80°	9'8"	20'4"	24'0"
90°	9'0"	19'0"	24'0"

(d) *Width of two-way access driveways:* The minimum width of two-way access driveways within parking areas shall be twenty-four (24) feet.

(e) *Paving standards:* Parking spaces and driveways shall be paved to the standards established by the City of Daphne.

(f) *Drainage:* Off-street parking facilities shall be drained to prevent damage to abutting property and streets to prevent pollutants from draining onto the adjacent lots. Landscaped and perimeter areas shall be so graded as to receive a reasonable portion of the rainfall from the surrounding pavement. Protective curbing placed around landscaped areas shall leave openings for water to flow onto unpaved areas.

(g) *Off-street loading and unloading space:* Off-street loading/unloading spaces shall be provided as hereinafter required by this Ordinance.

(1) *Size of spaces:* Each off-street loading/unloading space shall have minimum dimensions of fourteen (14) feet in height, twelve (12) feet in width, and fifty-five (55) feet in length.

However, upon sufficient demonstration that a particular loading space will be used exclusively by shorter trucks, the planning commission may reduce the minimum length accordingly to as much as thirty-five (35) feet.

(2) *Connection to street or alley:* Each required off-street loading and unloading space shall have direct access to a street or alley or have a driveway which offers satisfactory ingress and egress for trucks.

(3) *Floor area more than ten thousand square (10,000) feet:* There shall be provided for each hospital, institution, hotel, commercial or industrial building, or similar use requiring the receipt or distribution of materials or merchandise and having a floor area of more than ten thousand (10,000) square feet, at least one (1) off-street loading and unloading space for each ten thousand (10,000) square feet of floor space or fraction thereof.

Such space shall be so located as not to hinder the free movement of pedestrians and vehicles over a sidewalk, street, or alley.

(4) *Floor area less than ten thousand (10,000) square feet:* There shall be provided for each commercial or industrial building requiring the receipt or distribution of materials or merchandise and having a floor area of less than ten thousand (10,000) square feet, sufficient off-street loading and unloading space, not necessarily a full space if shared by an adjacent establishment, so located as not to hinder the free movement of pedestrians and vehicles over a sidewalk, street, or alley.

(5) *Location:* All required off-street loading and unloading spaces shall be located on the same lot as the building which they are intended to serve or on an adjacent lot when shared with the use occupying said adjacent lot.

(6) *Permanent reservation:* Areas reserved for off-street loading and unloading in accordance with the requirements of this Ordinance shall not be reduced in area or changed to any other use unless the permitted use which is served is discontinued or modified, except where equivalent loading and unloading space is provided and approved by the planning commission.

(h) *Off-street parking, loading / unloading spaces for mini-warehouses:*

(1) All one-way driveways shall provide for one (1) ten-foot travel lane. Traffic direction and parking shall be designated by signing or painting.

(2) All two-way driveways shall provide for one (1) ten-foot parking lane and two (2) twelve-foot travel lanes.

(3) Whenever applicable, two (2) parking spaces shall be provided for the manager's

quarters plus one (1) additional space for every twenty-five (25) storage cubicles to be located at the project office for use of clients.

(i) *Storage and parking of trailers and vehicles:*

(1) No more than one commercial vehicle per dwelling shall be permitted. In no case shall a commercial vehicle be used for hauling explosives, gasoline, or liquefied petroleum products.

(2) Travel trailers or motor homes, hauling trailers or boat trailers shall be permitted if parked or stored behind the front building setback line.

(3) A travel trailer shall not be occupied either temporarily or permanently while it is parked or stored in any area, except in a recreational vehicle park as authorized in Article XXVII, Recreational Vehicle Park Provisions.

(4) A wrecked or disabled vehicle which cannot be moved under its own power shall not be permitted on or near lots with dwelling units. The vehicles shall be classified as junked vehicles and shall be removed to a junk yard at the owner's expense.

ARTICLE XVII. PROCEDURES FOR SUBDIVISION REVIEW

17-1 Pre-application and pre-construction conferences.

(a) *Pre-application conference:* Whenever the subdivision of a tract of land within the extraterritorial planning jurisdiction of the planning commission is proposed, the subdivider should consult informally with the planning staff of the City of Daphne and Baldwin County, prior to submittal with the planning commission(s) to ensure compliance with the required regulations. No fee shall be charged for the review and no formal application shall be required.

(b) *Pre-construction conference:* After preliminary plan approval and before the issuance of a site disturbance permit, a pre-construction conference shall be held between the developer, contractors, the representatives from the departments of community development, public works, building inspections; Riviera Utilities, Daphne Utilities, any other applicable public or private utility company, local, state, and/or federal agency. At the pre-construction conference, participants will discuss issues related to permitting, construction safety, general expectations during construction, final inspection protocol, etc.

17-2 Master plan submittal.

Any subdivision or development which is to be developed in phases or units shall require a master plan of the proposed subdivision or development which shall be submitted to the planning commission for approval prior to submitting a preliminary plat application.

The subdivider shall submit to the department of community development, a written request for review and approval by the planning commission and a copy of said master plan. The master plan shall be of sufficient detail to show the proposed street and lot layout, drainage, utilities, detention, common, recreational, and landscaped areas.

17-3 Preliminary plat application.

Prior to making any improvements, the subdivider shall submit to the planning commission a preliminary plat of the proposed subdivision for review in accordance with the following procedure. These items shall be received in the department of community development not less than thirty (30) calendar days prior to a regularly scheduled meeting of the planning commission at which meeting the subdivision plat is to be formally submitted for review.

(a) *Subdivider's responsibility:* The subdivider shall submit to the department of community development the following:

(1) Completed application on prescribed forms; a copy of a recorded warranty deed of the subject property (as proof of ownership); the preliminary plat

and subdivision construction plans in accordance with section 17-3, Plat content; Owner's Indemnification and Maintenance Agreement Form for Detention Facilities and Common Areas; a list of adjacent property owners and a Certification of Property Owners Notification Form in accordance with specifications provided in the Preliminary Plat Supplemental Documentation List in the appendix; documentation of all applicable utility companies' service availability and willingness to provide services; and the, the filing fee as specifically enumerated in Article XXXIV, Schedule of Fees.

(2) The subdivider shall submit a preliminary plat and utility sheets to each utility company for review. Electronic copies shall be provided to the department of public works, bureau of fire prevention, Riviera Utilities, Daphne Utilities and the building department. The subdivider shall submit a plat and applicable documents as may be necessary to any and all applicable utility companies, local, state and/or federal agency for review. Sign details shall be submitted to the code enforcement officer for review.

(b) *Plat content:* The preliminary plat shall contain all information as reflected on the current Preliminary Plat Supplemental Documentation List as provided in the appendix. The checklist may be modified at the discretion of the director of community development when applicable.

(c) *Fees and application withdrawal procedures:* An application for plat review shall be accompanied by the appropriate fee as enumerated in Article XXXIV, the Schedule of Fees.

(1) *Withdrawal of application by the applicant:* If, for any reason, an item scheduled for initial presentation before the planning commission is withdrawn without having been presented, then the applicant shall refile a new application and applicable fees. The written request to withdraw shall be signed by the applicant and authorized agent and shall be submitted to the department of community development prior to the scheduled hearing date.

If the project is withdrawn within seven (7) calendar days of submission, then the application fee shall be credited toward re-submittal of the application; however, beyond the seven-calendar-day period, fees shall not be refunded nor credited toward subsequent submittals. The application fees shall be required for any future application. The request to withdraw or table the item shall be submitted in writing to the department of community development prior to the scheduled hearing date.

(2) *Request by the applicant to table final plat prior to hearing date.* If, for any reason, an item scheduled for initial presentation before the planning commission is requested to be tabled without having been presented, then the applicant shall incur the costs required to re-notify adjacent property owners of the future meeting or hearing at which time the item will be considered in accordance with this subsection. If the project is withdrawn within seven (7) calendar days of submission, then the application fee and notification fee will be credited toward re-submittal of the application; however, beyond the seven-calendar-day period, fees shall not be refunded nor credited toward subsequent submittals. The written request to table the item and reschedule said meeting shall be accompanied by additional mailing labels, certified property owner's list and certification form and the appropriate fee as enumerated in Article XXXIV, Schedule of Fees.

(d) *Department of community development review:* The department of community development shall proceed with the preliminary plat review as follows:

(1) *Plat study:* During the thirty (30) calendar days prior to the next regularly scheduled meeting, the department of public works, bureau of fire prevention, Riviera Utilities, Daphne Utilities, building inspections department and any applicable utility company, local, state, and/or federal agency shall review plans and submit recommendations to the director of community development prior to the initial hearing on the preliminary plat.

(a) Whenever a person, firm, corporation, developer or other entity proposes to develop a commercial, public, semi-public or multi-family, or mixed use project that, in the opinion of the director of community development constitutes a land disturbing activity which may pose a risk of drainage and/or siltation damage outside the boundaries of the project, such person, firm, corporation, developer or other entity conducting the land disturbing activity shall be required to submit a non-cancelable performance bond in the name of the permittee, a letter of credit or cashier's check, to the city prior to the issuance of a site disturbance permit.

(b) At the time of the preliminary plat approval, the bond shall become effective and shall extend for a period of at least two (2) years following final plat approval by the city. The bond shall be in the amount of twenty (20) percent of the total cost for the performance of all site work. Said bond shall cover drainage, erosion and siltation damage, if any.

(c) The director of community development or other administrative official as designated by the city council shall determine the prescribed bond, as well as, the adequacy and the security thereon.

(2) *Notice of public hearing:* The planning coordinator or designee of the director of community development shall distribute public notice of the time and place of the hearing and shall send notice of public hearing on said preliminary plat by certified mail to the owner of record, the subdivider, and the owners of record of abutting land at least five (5) calendar days prior to the hearing.

(3) *Commission action:* The preliminary plat is considered to be formally and officially submitted at the regularly scheduled meeting of the planning commission. Per section 6-6, "An affirmative vote of not less than six (6) members shall be required for approval of subdivisions, pursuant to Code of Ala. 1975, § 11-52-10."

At this meeting, the commission may either:

(a) Approve the preliminary plat.

(b) Conditionally approve the preliminary plat: In this case, the conditions shall be stated in the hearing and presented to the subdivider in writing. If necessary, the commission may require the subdivider to submit a revised preliminary plat prior to acquiring a site disturbance permit.

(c) Disapprove the preliminary plat: If disapproved, the reasons for such action shall be stated in the public hearing and presented to the subdivider in writing, and if possible, recommendations made as to the basis on which the plat will be approved.

The subdivider may resubmit the plat with due consideration to the recommendations stated by the planning commission at any subsequent regularly scheduled meeting of the commission in accordance with these regulations.

(d) Delay action on the preliminary plat: The commission shall act to approve or disapprove a subdivision plat within thirty (30) calendar days after its formal submission at a regularly scheduled planning commission meeting. If the applicant waives this requirement and consents to an extension, then the commission may delay action on the plat up to thirty (30) additional calendar days.

If no action is taken within the initial thirty-day period, or if no action is taken upon the thirty-calendar-day extension, said plat shall be deemed to have been approved and correspondence to that effect shall be issued by the commission on request.

In any case, the commission shall notify the subdivider either verbally or in writing of the action taken at the hearing. If any of the requirements of these regulations are modified or waived, they shall be specified and the reasons therefore given.

(e) *Effect of preliminary plat approval:*

(1) Approval shall be authorization for the subdivider to acquire a site disturbance permit as prescribed herein from the department of community development. The owner or developer shall provide to the department of community development, the appropriate signed application form, any applicable state/federal permits, a cost estimate for site work, the fee for a site disturbance permit as enumerated in Article XXXIV, Schedule of Fees, and proof of the contractor's Daphne business license.

(a) Preliminary plat approval shall become void one (1) year from the date of planning commission approval if no site disturbance permit has been acquired for the project. The site disturbance permit and preliminary plat shall both become void one (1) year from the issuance of the site disturbance permit if no substantial building or construction activity has occurred.

(b) Prior to expiration of the initial site plan and/or site disturbance permit, a one-year extension of time may be granted for the approved preliminary plat and the site disturbance permit by the director of community development, upon written request of the applicant, stating good reason.

(c) If no construction activity has occurred after the expiration of the extended time, an additional one-year extension of time may be considered by the planning commission. At no time shall any preliminary plat and related site disturbance permit be granted an extension beyond this time. The plat and site disturbance permit shall automatically be deemed null and void. The subdivider shall be required to resubmit the preliminary plat application and follow procedures as outlined in section 17-3(a), Subdivider's Responsibility.

(2) Said approval shall be authorization to begin work, to proceed with the construction of all minimum improvements as enumerated in Article XI,

Minimum Standards and Required Improvements, including the grading of streets, and staking of lots, etc.

(3) Preliminary plat approval does not constitute final plat approval nor does it authorize official recording of the plat nor does it constitute or effect an acceptance by the City of Daphne of any street or other open space shown on the preliminary plat.

(4) When all required improvements are installed the developer or owner shall in accordance with Article XI, Minimum Standards and Required Improvements, request a final inspection by the design engineer, the registered landscape architect, all applicable city departments, public and/or private utility companies, and when applicable, Baldwin County officials. Said inspections shall be conducted prior to submitting an application for final plat approval. Final inspection reports shall be provided with the application for final plat approval.

17-4 Final plat application.

(a) *Financial guarantee of performance in lieu of full installation of minimum improvements:* The subdivider shall be responsible for the full installation of all required minimum improvements in the proposed subdivision prior to the submission of a final plat application to the planning commission or after no less than ninety (90) percent of the minimum improvements have been installed, the subdivider may issue a financial guarantee with surety to the City of Daphne that the remaining minimum improvements shall be completed.

As such, one (1) or more of the following may be accepted as financial guarantee with surety payable to the City of Daphne: a letter of credit or certified check from an Alabama lending institution in an amount not to exceed one hundred and fifty (150) percent of the cost of the required improvements remaining.

A cost estimate for any remaining civil improvements shall be certified and submitted by the design engineer with the application for final plat approval; a cost estimate of any remaining landscaping improvements must be certified and submitted by the professional landscape architect with the application for final plat approval and the financial guarantee.

(b) *Street maintenance bond:* The developer/owner shall submit to the department of community development a maintenance bond payable to the City of Daphne which shall be valid for a period of two (2) years. The bond shall be in an amount equal to twenty (20) percent of the total street, utility, and drainage improvements in the subdivision. Said bond shall be required as a condition to dedication and acceptance of any new streets within the corporate limits. The director of community development or director of public works other administrative official as designated by the city council shall determine the adequacy of said bond and security thereon.

The maintenance bond period shall begin upon the acceptance of the street and drainage improvements by resolution of the city council. No less than thirty (30) calendar days prior to the expiration of said maintenance bond, an inspection shall be conducted by the department of public works and the environmental programs manager or site containment officer to ensure that the improvements are in satisfactory condition prior to acceptance.

The city council, upon the recommendation of the department of public works and the environmental programs manager or site containment officer, may release or extend a maintenance obligation. An extension of the maintenance bond shall be for a period no greater than one (1) additional year.

(c) *Subdivider's responsibility:* Within one (1) year of the date of preliminary plat approval or prior to the expiration of an extension granted by the director of community development or the planning commission as prescribed in section 17-3, Effect of preliminary plat approval, the subdivider shall submit the following to the department of community development:

(1) File the required application on the prescribed forms;

(2) Submit a copy of the final plat and as-built drawings of the site in accordance with section 17-3, Plat content;

(3) Submit a petition for street acceptance on prescribed forms accompanied by a street maintenance bond in an amount equal to twenty (20) percent of the total street, utility, and drainage improvements in the subdivision; certification of improvements form signed and sealed by the design engineer and a street test report from an independent testing laboratory noting satisfactory condition of the street;

(4) Submit filing fee as enumerated in Article XXXIV, the Schedule of Fees;

(5) If applicable, submit a financial guarantee of performance of the remaining ten (10) percent of the minimum improvements and a certified cost estimate of any/all remaining work to be completed;

(6) Private restrictive covenants and deed restrictions;

(7) All inspection reports and permits; and,

(8) Applicable test reports.

These items shall be received in the department of community development not less than thirty (30) calendar days prior to a regularly scheduled meeting of the planning commission at which meeting the subdivision plat is to be formally submitted for review.

(d) *Final plat content:* The final plat shall conform to the conditions of the approved preliminary plat. It shall show sufficient detailed data to readily determine and to accurately reproduce on the ground the location, bearing and length of every street line, lot line, boundary line, block line, and building line.

The plat shall be clearly drawn on a twenty-four (24) by thirty-six (36) inches sheet, at a scale of not less than one hundred (100) feet to the inch, and shall contain all information shown on the current departmental check list for a final plat (see appendix), which may be modified at the discretion of the director of community development when applicable.

(e) *Fees and application withdrawal procedures:* Said fees and procedures are as prescribed in section 17-3, Fees and application withdrawal procedures, herein.

(f) *Department of community development review:* The department of community development shall proceed with the final plat review as follows:

(1) *Plat study:* During the thirty (30) calendar days prior to the next regularly scheduled meeting, the department of community development shall review the final plat for compliance with the subdivision regulations and submit any recommendations to the planning commission at its meeting.

(2) *Commission action:* The final plat is considered to be formally and officially submitted at the regularly scheduled meeting of the planning commission. At this meeting, the commission may either:

(a) Approve the final plat.

(b) Disapprove the final plat: Such action may result if the final plat is found to be in conflict with the approved preliminary plat or with the subdivision regulations.

A statement of the reasons for disapproval shall be forwarded by letter to the subdivider and one (1) copy being filed in the records of the department of community development. No certificate of approval shall be given. The subdivider may resubmit the final plat application for another hearing after the corrections as noted by the planning commission have been made to the plat.

(c) *Delay action on the final plat:* The commission shall act to approve or disapprove a subdivision plat within thirty (30) calendar days after its formal submission at a regularly scheduled planning commission meeting. If the applicant waives this requirement and consents to an exten-

sion, then the commission may delay action on the plat up to thirty (30) additional calendar days.

If no action is taken within the initial thirty-calendar-day period, or if no action is taken upon the thirty-calendar-day extension, said plat shall be deemed to have been approved and correspondence to that effect shall be issued by the commission on request.

(3) *Records:* In any case, the planning commission shall retain one (1) copy of the final plat as presented to the planning commission in its files with indication in writing of the action taken at the hearing.

If any of the requirements of these regulations are modified or waived, they shall be specified and the reasons therefore given.

(g) *Effect of final plat approval:* Approval of the final plat by the planning commission shall authorize the owner, subdivider, or his agent, to have said plat recorded in the Office of the Judge of Probate of Baldwin County.

The plat shall be filed prior to the sale of any lot in the subdivision. Copies of all private covenants, deed restrictions, and certifications shall be filed with the final plat. Once approval has been given and endorsed in writing on the plat by the planning commission and/or the director of community development, no changes, erasures, modifications or revisions shall be made on said plat.

In the event that any subdivision plat, when recorded, contains changes which have not approved by the planning commission, said plat shall be considered null and void, and the planning commission shall then file the corrected plat as approved, noting the reason for such filing. Any erasures made on a plat prior to its signing shall be initialed and dated by the planning commission chairman or other authorized agent and/or the director of community development, at the time of the signing.

The approval of the final plat shall be recorded within a period of one (1) year following the date of such approval. Upon recording, the owner or developer shall furnish to the department of community development a copy of the recorded plat and recorded restrictive covenants. Additionally, the articles of incorporation for the establishment of a property owner's association shall be furnished to community development upon recording.

Approval and recordation of the final plat does not result in the acceptance of any street or other public space shown on the plat. Council resolution accepting dedication of streets is required as noted in section 17-4, Streets, herein.

(h) *Streets—Legal status:* The City of Daphne shall not accept, open, improve, maintain, grade or light any street right(s)-of-way and/or drainage and utility easement; authorize water mains, sanitary sewer, or connections to be made to any street, unless:

1. The street right(s)-of-way is a part of a subdivision plat approved by the planning commission; and,
2. Such street has been accepted or otherwise granted the legal status of a public street; and,
3. The right(s)-of-way corresponds with a street shown on the comprehensive plan; and,
4. Petition for acceptance and dedication of the street right(s)-of-way and drainage and utility easement(s) has been accepted and adopted by city council resolution.

ARTICLE XVIII. DRAINAGE, STORMWATER MANAGEMENT FACILITIES AND EROSION/SEDIMENT CONTROL

18-1 General.

A. *Purpose:* The purpose of this section is to provide a guide for development wherein the ecological impacts to the environment are minimized through appropriate design, landscaping, erosion control, stormwater management, and proper planning. The intent of the City of Daphne is to protect valuable natural resources, the nat-

ural environment and the quality of life for all its citizens. In order to preserve the integrity, stability and the value of land, the city encourages the use of innovative, LEED-certified (Leadership in Energy and Environmental Design) and/or other "green" practices in development design. Where such methods/practices are proposed for a development said practices shall be designed and certified by a credentialed professional in his/her design field.

B. *Applicability and use:* The following requirements shall apply to uses and developments in each overlay district and zoning district within the Daphne corporate limits, except where noted herein. As a general policy the objective of each drainage system design shall be the safety and protection of the traveling public, the environment, the City of Daphne and private property.

C. *Jurisdiction:* All projects which fall under the inspection, permitting, or extraterritorial planning jurisdiction of the city, on items related to stormwater management and site development within the corporate limits of the city.

D. *Permitting:* No land disturbing activity shall take place on any site prior to the issuance of a site disturbance permit in accordance with Article XV, Procedures for Site Plan Review in section 15-4(d), Special provisions and Article XVII, Procedures for Subdivision Review, section 17-3(e), Preliminary plat application, of this Ordinance. All permitted sites within the city limits shall post a waterproof site disturbance permit identification sign on site during construction. This sign shall identify the permit number, permit holder, contractor and contact phone number. Any and all state/federal permits for such activities shall be obtained and submitted to the city prior to issuance of the site disturbance permit.

E. *Technical reference:* The current version of the Alabama Handbook for Erosion Control, Sediment Control and Stormwater Management on Construction Sites and Urban Areas is hereby adopted as a reference and shall be considered a part of the Land Use and Development Ordinance as an expansion of erosion control provisions not listed. Herein, the book shall be referred to as the "Alabama Handbook for Erosion Control".

F. *Professional civil engineer:* All engineering plans and specifications submitted for review and/or approval shall be prepared by and under the direct supervision of a registered professional civil engineer, licensed in the State of Alabama. Said professional engineer shall carry errors and omissions insurance at a minimum coverage of one million dollars ($1,000,000). All plans and specifications shall meet the minimum standards and requirements of the city and other applicable local, state or federal authorities.

(1) Plan, profile and special drawing sheets for a project submitted for review shall bear a legible stamp and signature of the professional design engineer in charge. If the name or license number is not clear, the signature and number shall be added.

(2) The professional design engineer shall be qualified in the area of drainage as per the State of Alabama engineering registration laws.

(3) Upon completion of the project, an inspection of the site and drainage facilities shall be conducted by the design engineer. Correspondence in the form of a letter along with a set of as-built final plan sheets and an electronic version in a format deemed acceptable by the city shall thereafter be submitted to the department of community development from the design engineer certifying that all drainage and related facilities have been installed in accordance with approved plans and specifications.

G. *Liability:* Use of the information contained herein for placement of any structure or use of land, shall not constitute a representation, guarantee, or warranty of any kind by the city, its offices or employees, of the practicability, adequacy or safety and shall not create liability upon or cause action against any such public body, office, or employee for any damage that may result pursuant thereto.

(1) Any liability associated with the design, performance and operation of the drainage, stormwater management or erosion

and sediment control facilities remains with the developer/owner and the project design engineer.

(2) Stormwater management facilities shall be designed in accordance with good engineering practice. The design criteria establish minimum elements of design which must be implemented with good engineering and good workmanship.

H. *Pre-design conference:* The developer and the design engineer are encouraged to contact the city for a pre-design conference at the conceptual stage of the project. Such conference would be mutually beneficial to outline the complexity and scope of design, applicability of criteria and elimination of possible items of conflict during the review process. Subsequent conferences, during the preparation of plans may be arranged by the design engineer or the developer to obtain preliminary, informal decisions on items in need of clarification.

I. *Letter of transmittal:* In order to facilitate review of plans, all projects shall be submitted with a letter of transmittal which shall include the name of the project, name and address of the owner and/or developer, telephone number of the engineer, and clarification as to the purpose of submittal.

18-2 Drainage and stormwater management engineering plan contents.

A. *General requirements:* For all developments affecting city rights-of-way and for all proposed subdivisions and site development plans, the developer or the professional design engineer shall submit signed and sealed detailed drainage plans and drainage computations to the city for review and approval. Said drainage plans shall contain a map, narrative and supplemental items as follows:

(1) *Map information:*

i. Existing and proposed contours in one (1) foot increments (topography shall be based upon the NAVD 88 datum;

ii. Location of existing improvements including roads, parking areas and building footprints along with their proposed finished floor elevations;

iii. Existing drainage system, including but not limited to, pipes, culverts, inlets, ditches, and ponds with data providing invert elevations, slopes, permanent water elevation and other related dimensional data;

iv. Flood zone designation and certification;

v. Elevation of the regulatory lowest floor level, including basement, of all proposed structures;

vi. Elevation to which any non residential structures will be floodproofed;

vii. Drainage basin boundaries, showing direction of flow, including total tributary drainage areas entering the improved area, taking into account any off-site runoff being routed through or around the project in its undeveloped condition;

viii. Size, location, slopes, inverts, types and general configuration of all primary drainage facilities required to route, collect, treat and dispose of stormwater runoff, generated by or passing through the development;

ix. Location of on-site water bodies, ephemeral streams and/or wetlands with details of size and vegetative cover to include normal water elevation, side slopes, and depths of water bodies and for wetlands, the general surface elevation and the wet season water elevation;

x. CBMPP (Construction Best Management Practices Plan) in accordance with the Erosion Control provisions stated in section 18-6 below;

xi. Reference the one-hundred-year flood elevation if applicable;

xii. All final plats shall have a section that details that the city reserves the right to require the owners of all

drainage facilities to perform needed maintenance to prevent potential flooding hazards.

(2) *Narrative:*

i. Proposed project including its size, percent pervious versus impervious land usage, total wetlands within site boundaries, and a breakdown of wetland acreage preserved, by type, and acreage removed, by type.

ii. All acres solely for water management purposes shall be noted and the legal method to ensure areas remain devoted.

iii. Times of concentration, intensity, runoff coefficients used for determining runoff for all tributary areas and areas within the development at pre- and post-construction rates.

iv. Discharge rate in cubic feet second (cfs), discharge velocity in feet per second (fps), and any other additional hydraulic data needed to establish that the drainage system will safely convey the flow to an adequate outlet without eroding any property or the channel of flow. Armoring of the receiving channel shall be required where velocities exceed the scour velocity for the given soil conditions. Discharge and runoff coefficients should be based on full or ultimate build out of the parcel and contributing watershed.

v. Proposed start and completion date for the project.

vi. Description of the extent to which any watercourse will be altered or relocated as a result of the proposed development, if applicable.

(3) *Supplemental information:*

i. Design storms used including depth, duration, and distribution;

ii. Staged storage calculations for the project and stage discharge computations for the outfall structure(s);

iii. Differential runoff evaluation consists of determination of rates of runoff before and after development, determination of required volume of retention/detention and verification of adequacy of discharge and control structures.

iv. Runoff routing calculations showing discharges, elevations and volumes retained/detained during applicable storm events;

v. Draw down calculations for detention;

vi. Base flood elevation data for all proposed developments greater than fifty (50) lots or five (5) acres, whichever is less; if not established refer to the Flood Damage Prevention Ordinance No. 2009-01;

vii. Calculations required for determination of minimum building floor and road elevations;

viii. Calculations for flood plain encroachment, if applicable;

ix. Copies of all federal and state permit applications for the activity.

(4) *Acreage in a tabular format:*

Sample Table

	Existing		*Proposed*	
	Acres	*%*	*Acres*	*%*
Total Area				
Building				
Pavement				
Impervious total				
Pervious total				
Wetlands				
Common area				
Recreation area				

B. *Provision for additional engineer's review:* The intent of this provision is to protect and improve water quality and stream conditions within the City of Daphne, particularly those on the ADEM 303(d) List of Impaired Streams. The purpose of this provision is to mitigate the impact

of potential or future development in support of the Daphne MS4 permit program and to uphold the provisions of this article.

Where deemed appropriate by the planning commission, any drainage and stormwater management plan submitted for review by the planning commission that could impact a stream listed on the ADEM 303(d) Impaired Streams list, may be subject to an additional review by a qualified professional civil engineer with experience in stormwater management (consultant engineer). The applicant/developer/owner may be required to modify stormwater and drainage plans to accommodate the recommendations of the consultant engineer. All costs incurred for this additional engineer's review shall be paid by the developer/owner/ applicant.

18-3 Drainage and stormwater management.

A. *General requirements:*

(1) Each subdivision plat and site plan submitted for review shall make adequate provisions for stormwater or flood water runoff channels or basins. Storm drains and drainage structures shall be designed and installed as required herein and in accordance with current good engineering practices and standards. The responsible professional design engineer shall submit signed and sealed design computations with said plans.

(2) The professional engineer shall make certain that any spring or surface water that may either exist prior to or as a result of the proposed subdivision or site development design shall be carried away by vegetative swale, pipe, open concrete paved ditch, or any alternate drainage facility certified by the design engineer and subsequently approved by the planning commission. Drainage conveyance structures may be located in the road right-of-way where feasible, or in perpetual unobstructed easements of appropriate width. Said drainage conveyance structures shall be constructed in accordance with the Alabama Department of Transportation (ALDOT) Standard Specifications.

(3) Where a public storm drainage system is accessible, the professional engineer shall design stormwater drainage facilities to connect thereto. Storm drainage provisions for each development shall be subject to the specifications and calculations submitted by the design engineer. If no outlets are within a reasonable distance then adequate provisions shall be made for the disposal of stormwater.

(4) Where a public storm drainage system is not accessible, the subdivider shall install all drainage structures necessary to convey the water to a location acceptable to the city and obtain all required easements thereto.

(5) If, in a phased development, a connection to a public storm drainage system will be provided in a future phase of construction then a phasing plan for the project, a master storm drainage plan for the overall development and a bond in the amount of one hundred fifty (150) percent of the cost of installing the appropriate facilities as enumerated in Article XVII, Procedures for Subdivision Review, section 17-4(a), Final plat application, shall be submitted upon application for final plat approval. Said master drainage plan shall show the arrangements anticipated for future stormwater disposal.

(6) No development shall be approved unless adequate drainage is provided to the natural drainage watercourse or an existing drainage facility.

i. For all developments, upstream drainage areas shall be accommodated and considered in designing drainage facilities. A culvert, pipe, or other drainage facility, shall in any case, be of sufficient size to accommodate potential stormwater runoff from its upstream drainage area, whether inside or outside the subdivision or development site boundary. The design engineer shall determine the necessary size of the facility based

on drainage calculations and provisions of the construction standards and specifications.

ii. For all developments, downstream drainage areas shall be considered in designing drainage facilities. The design engineer shall review the effect of each development on existing downstream drainage facilities outside the area of the development. These drainage studies, together with such other studies as shall be appropriate, may serve as a guide to needed improvements and shall be incorporated into the drainage report to be submitted with the development application.

iii. Stormwater drainage facility design shall note the calculation of a runoff coefficient by measuring the total area of each sub-drainage basin within the project and the areas of each land use which will occur in each basin after construction is complete. These areas shall include off-site drainage onto the site as well as the development area. These calculations should also consider future development or build-out on the upstream contributing area based on current land use or zoning.

(7) Where it is anticipated that additional runoff incidental to the development will overload an existing downstream drainage facility, approval of the development may be: denied, delayed, or withheld until provisions have been made to prevent and/or remedy such occurrence by the developer/owner submitting of an off-site impact bond, as provided in Article XV, Procedures for Site Plan Review, and Article XVII, Procedures for Subdivision Review, prior to preliminary plat or site plan approval.

(8) The City of Daphne reserves the rights to enforce all federal and state water quality regulation, as amended

(9) In a site plan review, the planning commission may require additional water quality enhancement through the use of stormwater treatment measures such may include, but shall not be limited to oil/gas/grease separators.

B. *Flood prevention:*

(1) All proposed developments shall provide adequate storm drainage facilities.

(2) All proposed developments shall meet standards established in the Flood Prevention Ordinance 2009-01, as amended.

(3) Any areas subject to periodic flooding or flooding caused by poor drainage facilities will not be accepted unless the developer or subdivider makes necessary provisions to eliminate such flooding in conformity with the National Flood Insurance Program.

(4) The floor elevations of houses or buildings shall be high enough to be above the regulatory flood.

(5) The floodway easement shall be wide enough to provide for future enlargement of the stream channel as adjacent areas become more highly developed and runoff rates are increased.

(6) Fill may not be used to raise land in areas subject to flood and/or excessive erosion unless permitted by the flood plain manager in accordance with the Flood Prevention Ordinance and provisions provided herein.

(7) If fill is permitted to raise land in areas subject to flood and/or in areas of excessive erosion, said fill shall be subject to the following requirements:

i. Fill shall not restrict the natural flow of water,

ii. Fill shall not advance erosion,

iii. Fill shall not unduly increase flood heights,

iv. Fill shall not be comprised of staining materials, e.g., red clay.

C. *Easements:* Easements shall meet all specifications provided herein and shall be labeled on the record plat and/or site development plan.

(1) Where topography or other conditions are such as to make impractical the inclusion of drainage conveyance structures/facilities within road rights-of-way, perpetual unobstructed easements for such drainage conveyance structure/facilities shall be, a minimum of twenty (20) feet in width and located across said property, outside the road lines and with satisfactory access to the road. Drainage easements shall be carried from the road to the natural watercourse or to other drainage facilities.

(2) Where a subdivision or development of land is traversed by a watercourse, drainage way, channel, or stream, there shall be provided a stormwater easement or drainage right-of-way conforming substantially to the lines of such water course, and of such width and construction or both as shall be adequate.

(3) The subdivider shall dedicate by easement land in its natural state on both sides of any existing stream, of an adequate width and to a distance that is adequate to discharge flood waters without cumulatively increasing the water surface elevation more than one (1) foot. Per section 18-3(d), Streams and wetland buffers, the easement shall be at least fifty (50) feet wide.

(4) Low-lying lands along watercourses subject to flooding or overflowing during storm periods, whether or not included in areas for dedication shall be preserved and retained in their natural state as drainage ways, except where improvements are warranted and deemed necessary by the design engineer and subsequently approved by the planning commission. Said low-lying areas shall be appropriately delineated on the record plat.

D. *Stream and wetland buffers zones:*

(1) For any flowing or ephermal water body, a fifty-foot-wide vegetated non-disturbed buffer zone shall be provided on both sides of the stream from the bank. These buffer zones shall be shown on the plat, field verified by the design engineer, flagged prior to project implementation and protected by appropriate measures during all construction phases.

(2) For any delineated wetland area, a thirty-foot-wide vegetated non-disturbed buffer zone of shall be provided around the wetlands. These buffers shall be shown on the plat/site plan, field verified by the design engineer, flagged prior to project implementation and protected during all construction phases.

(3) When wetlands border, abut, and/or adjoin a stream, the undisturbed buffer zone must extend a minimum of fifty (50) feet from each stream bank and a minimum of thirty (30) feet from the delineated wetland boundary. The wetland buffer is not applicable where the U.S. Army Corps of Engineers has permitted wetland fill for a linear transportation crossing or utility crossing. However, the wetland and/or stream buffer requirements are still applicable to areas adjacent to the permitted activity.

(4) Modifications to the stream or wetland buffers shall be approved by the planning commission on a case by case basis. If a modification is requested, the design engineer shall demonstrate through safety or design specifications the need for the modification.

(5) Existing subdivisions platted, prior to the acceptance of this Ordinance, are grandfathered from the buffer requirements.

(6) Individual property owners within existing subdivisions shall be responsible for compliance with U.S. Army Corp of Engineers 404 Wetland Regulations. At any time during or prior to site disturbance, if it is determined by the City of Daphne or a consultant thereto that the parcel potentially has wetlands, the city shall require a wetland delineation of the parcel.

E. *Operations in lakes or natural watercourses:* Land-disturbing activity in connection with construction, in, on, over, under a lake, or natural watercourse shall be planned and conducted in such a manner as to minimize the extent and duration of disturbance of the stream channel. Any and all state and federal permits for such activities shall be obtained and submitted to the city prior to issuance of the site disturbance permit.

F. *Permanent downstream protection of stream banks and channels:* Provision shall be made for the permanent protection of off-site stream banks and channels from the erosive effects of increased velocity and volume of stormwater runoff resulting from certain land-disturbing activities.

G. *Phasing and platting:* The effective acreage for a project is not limited to a fractional part of the total concept, rather if a project is developed in phases of small plats, the total acreage of the conceptual project shall be considered. Phasing is required on all site disturbance areas of seventeen and one-half (17.5) acres, i.e., seven hundred fifty thousand (750,000) square feet or more. The size of each phase will be limited to seventeen and one-half (17.5) acres or as deemed appropriate by the planning commission. The planning commission may allow exceptions to the phasing requirement on a case by case basis. In such case, the design engineer shall provide enhanced construction best management practices to ensure maximum mitigation to prevent off-site and water quality impacts.

H. *Borrow and waste areas:*

(1) When the person conducting the land-disturbing activity is also the person conducting borrow or waste disposal activities, areas from which borrow is obtained shall be considered as part of the land-disturbing activity where the borrow material is being used or from which the waste material originated.

(2) When the person conducting the land-disturbing activity is not the person obtaining borrow and/or disposing waste, these areas shall be considered a separate land-disturbing activity.

I. *Access and haul roads:* Temporary access and haul roads, other than public roads, constructed or used in connection with any land-disturbing activity shall be considered a part of such activity.

18-4 Stormwater management facility design.

A. *Conveyance systems:*

(1) *Culverts:*

i. Culverts under arterial roadways shall accommodate a minimum fifty-year, twenty-four-hour storm frequency design storm unless conditions dictate that one-hundred-year frequency design storm must be accommodated. Design storm criteria will be used by the design engineer based on the site specific conditions that warrant life and property protection.

ii. All culverts within city road rights-of-way must be approved by the City of Daphne and shall conform to Alabama Department of Transportation (ALDOT) standards.

iii. All culverts within state road rights-of-way must be approved and permitted by the ALDOT. In conjunction with the required subdivision or site plan application material, the developer/engineer shall submit a conceptual approval letter from ALDOT to the department of community development for planning commission review. A copy of the official ALDOT permit must be submitted to the city prior to final inspection or issuance of the certificate of occupancy.

iv. Concrete box culverts shall be designed and constructed according to the latest edition of the Standards and Specifications for Road and Bridge construction, ALDOT.

v. Culvert head walls shall be required on pipe culverts and shall be reinforced concrete.

vi. Special types of head walls may be required by the city when deemed necessary for erosion control.

vii. Riprap may be required at the upstream and downstream end of culverts and shall be placed at these locations based on the velocities at that location.

viii. All roadway cross drain pipes shall be made of reinforced concrete and shall have a minimum diameter of eighteen (18) inches or greater.

ix. Any pipe proposed within a city right-of-way or drainage easement shall be made of reinforced concrete. If other piping is installed therein, said road right-of-way or drainage easement dedication shall not be favorably recommended by the planning commission and may not be accepted by the city council except where deemed appropriate by the department of public works director.

(2) *Bridges:* Bridges shall accommodate a minimum one-hundred-year, twenty-four-hour frequency design storms. Design storm criteria will be used by the design engineer based on the site specific conditions that warrant life and property protection. All bridges shall be designed and constructed according to the latest edition of the Standards and Specifications for Road and Bridge construction, ALDOT.

(3) *Open channels and ditches:*

i. Storm drain pipes, open channels, open ditches or swales may be implemented when properly engineered based on site conditions. Open channels and ditches shall be designed to safely accommodate traffic and to prevent hazardous erosion.

ii. The maximum side slope shall be 3:1 (three to one) ratio for all open channels and ditches, unless approved by the planning commission upon recommendation of the director of public works. Drainage calculations shall show the volume and velocity for each separate ditch section. Adequate ditch lining shall be determined based on the ditch calculations. Where two (2) open channels converge, some form of energy dissipation, such as riprap, shall be provided.

iii. Where a driveway or ingress/egress easement must cross an existing or proposed ditch, the design engineer shall note upon the plat, the required culvert size(s) necessary to accommodate said crossing(s).

iv. Headwalls and end-walls shall be installed on street culverts.

v. Within any public right-of-way, flared headwalls or slope paved headwalls with a 4:1 (four to one) slope or flatter shall be used.

vi. The recommended maximum flow velocities shall be in accordance with the ranges recommended in the latest edition of the ALDOT Hydraulics Manual.

vii. All open channels and ditches shall be permanently vegetated upon final inspection. Neither seed, mulch, nor a combination thereof will be accepted as vegetation or as a substitute for permanent vegetation. Where sod is used on slopes or around corners, it shall be pinned as specified in the Alabama Handbook for Erosion Control.

(4) *Street and inlets:*

i. Inlets shall be provided so that surface water is not carried across any intersection, or carried for a distance of more than five hundred (500) feet in the gutter. When calculations indicate curb capacities are exceeded at a point, catch basins shall be used to intercept flow at that point. The minimum pipe diameter of each storm drain shall be eighteen (18) inches. The stormwater drainage system shall be separate and independent of

any sanitary sewer system. In no case shall stormwater empty into the sanitary sewer system.

ii. Profile grades and typical roadway sections shall be submitted with all construction drawings.

(5) *Clean out access:* Clean out accesses shall be provided at least every three hundred (300) feet for continuous pipes of twenty-four (24) inches in diameter or less and at least every four hundred (400) feet for larger continuous pipes if required. Clean out accesses shall be provided at each angle point and at each change in grade.

B. *Stormwater drainage detention / retention facilities:*

(1) *General requirements:*

i. Developments which produce an increase in the amount of stormwater runoff shall be required to construct stormwater detention/retention ponds or other approved types of detention devices.

ii. The developer/engineer shall submit, detailed engineering plans to the city including historical runoff, developed runoff, detention/retention pond details, method of discharge, and other information as required for review.

iii. Stormwater detention/retention facilities shall meet all specifications provided herein and shall be labeled as a lot on the record plat and/or site development plan as common area.

(2) *Minimum requirements for stormwater management detention / retention facilities:*

i. Differential runoff is the difference in rate and volume of stormwater runoff from a parcel or project in its undeveloped natural condition and its developed condition. Post-development release rates shall not exceed pre-development rates. Where practical, the differential runoff should be less.

ii. Detention basins shall detain the first flush from a storm event and release the subsequent runoff water at a pre-development rate for sites twenty (20) acres or less based on the rational method or modified rational method. For sites larger than twenty (20) acres, the pre- and post-calculations shall be based on the Natural Resource Conservation Service (NRCS) Curve Number Method or other accepted engineering methodology. There should also be adequate sizing of the detention basin to store an accumulation of one-half-inch sediment during construction of the infrastructure. The first flush volume for any stormwater detention structure must be contained and then slowly released over a minimum time period of twenty-four (24) hours and maximum time period of seventy-two (72) hours.

iii. The purpose of installing detention structures is to slow or attenuate the peak flows downstream by controlling the release rate. The post-development peak outflow rate shall be limited to the pre-development peak outflow rate as the basis of detention design.

iv. All stormwater detention structures must attenuate the post-development peak flow rates from the two-year, five-year, ten-year, twenty-five-year, fifty-year and one-hundred-year, twenty-four-hour design storms to release a graduated discharge at or below predevelopment peak flow rates.

v. The following conditions and limitations should be observed in location, selection and use of the method of detention:

a. Detention facilities shall be located within the parcel limits of the project under consideration.

b. No detention or ponding shall be located within public road rights-of-way.

c. Location of detention facilities immediately upstream or downstream of the project may be considered by special request if proper documentation is submitted with reference to practicality, feasibility and proof of ownership or right-of-use of the area proposed.

vi. During construction of a residence, allowances for silting under denuded soil conditions for a period not less than one (1) year is recommended.

vii. All permitted site development projects shall incorporate stormwater detention and first flush treatment as part of the design. Stormwater detention is not required in the following two (2) situations:

a. The project discharges stormwater runoff directly into a tidally influenced water body. This does not include discharges of stormwater runoff that flows through a public drainage system or across a downstream property boundary prior to entering the tidal water body.

b. Where stormwater detention for a project site is either unwarranted or impractical, the design engineer shall submit complete hydrologic and hydraulic computations to support this conclusion. This conclusion must be affirmed by the department of community development. Typically this might occur in the very lowest downstream reaches of a major watershed, if it can be proved that un-detained stormwater should be discharged quickly to avoid peak discharge timing for the entire watershed. The hydrologic analysis should include more than one representative downstream location for comparing hydrographs.

c. Even if stormwater detention is waived by the planning commission for the above two (2) situations, the site development must still provide first flush treatment, oil/gas/grease separation, and/or any other filtration system deemed appropriate in order to protect water quality.

viii. All detention basin slopes shall be permanently stabilized with a perennial vegetative cover prior to final inspection. Seed and mulch will not be accepted.

ix. Detention facilities are to be built prior to storm drainage installation and prior to any building or roadway construction and/or grading. Since these facilities are intended to control increased runoff, they must be fully operational prior to any clearing of the vegetation.

x. In accordance with Article XI, Minimum Standard and Required Improvements, section 11-14(h), Special provisions, dry detention facilities shall be located on common grounds within the development; however, detention facilities shall not be considered to be a part of the informal open space area, unless otherwise approved by the planning commission. Wet detention/retention facilities also known as lakes may be considered as part of the formal open space/recreational areas.

xi. Projects developed under these procedures shall establish, in the recorded plat, maintenance and access easements for the detention facilities and include provisions for maintenance in the restrictive covenants or trust indentures.

xii. The hydraulic elevations of the drainage system shall not adversely affect adjoining properties.

xiii. All common ground areas, including but not limited to stormwater facilities, recreational spaces and open spaces must be permanently stabilized upon final inspection. Seed and mulch will not be accepted at final inspection.

xiv. Wetland areas shall not be used for the purpose of stormwater detention.

(3) *Dry detention basins:*

i. Dry detention basins provide limited pollutant removal benefits and are not intended for water quality treatment. Detention-only facilities must be used in conjunction with other structural controls that provide stormwater treatment.

ii. Seventy-five (75) acres is the maximum contributing drainage area to be served by a single dry detention basin. Routing calculations must be used to demonstrate that the storage volume is adequate.

iii. Vegetated embankments shall be no more than twenty (20) feet in height and shall have a maximum side slope of a three to one (3:1) ratio. Riprap protected embankments shall have a maximum slope of a two to one (2:1) ratio. Geotechnical slope stability analysis is required for embankments greater than ten (10) feet in height. The detention basin shall be setback such that the outfall is at least twenty-five (25) feet from the property line.

iv. Areas above the normal high water elevations of the detention facility should be sloped toward the basin to allow drainage and to prevent standing water.

v. Inflow channels shall be stabilized with flared riprap aprons, or the equivalent thereof. A sediment forebay sized to 0.1 (one-tenth) inches per impervious acre of contributing drainage shall be provided for dry detention basins that are part of the treatment process.

vi. The outlet structure shall be sized based on hydrologic routing calculations and may consist of a weir, orifice, outlet pipe, combination outlet, or other acceptable control structure which would achieve the required graduated discharge.

vii. Riprap, plunge pools or pads, or other energy dissipaters must be placed at the end of the outlet to prevent scouring and erosion.

viii. An emergency spillway shall be included in the stormwater pond design to safely pass the extreme flood flow. The spillway must prevent pond water levels from overtopping the embankment and causing structural damage. A minimum of one (1) foot of freeboard must be provided, measured from the top of the water surface elevation for the extreme flood, to the lowest point of the dam embankment not counting the emergency spillway. Special consideration for smaller basins may be considered as long as the design engineer can show that the practice is warranted.

(4) *Stormwater ponds:*

i. Stormwater ponds also known as wet ponds, retention ponds, and or permanent lakes are constructed stormwater retention basins that have a permanent pool of water throughout the year. Runoff from each rain event shall be detained and treated in the pool through gravitational settling and biological uptake until it is displaced by runoff from the next storm. The permanent pool must protect deposited sediments from re-suspension. Above the

permanent pool level, additional temporary storage shall be provided for runoff quantity control. The upper stages of a stormwater pond shall be designed to provide extended detention of the two-year, twenty-four-hour storm event for downstream channel protection, as well as normal detention of larger storm events.

ii. Channel protection may be achieved by releasing the two-year, twenty-four-hour storm runoff volume over twenty-four (24) hours. A stormwater pond shall provide the required storage above the permanent pool and meet the specified graduated allowable release. Where required, stormwater ponds shall also be used to provide detention to control the one-hundred-year storm event. Where this is not required, said pond structure shall be designed to safely pass extreme storm flows.

iii. Minimum setback requirements for stormwater pond facilities:

a. Twenty-five (25) feet from property line to outward toe of berm;

b. One hundred (100) feet from private wells;

c. Fifty (50) feet from a septic system tank/leach field;

d. Five hundred (500) feet from public well.

iv. The stormwater pond shall consist of a permanent pool of water, the overlying zone in which runoff control volumes are stored, and a shallow littoral zone along the edge of the permanent pool that acts as a biological filter. All stormwater pond designs shall include a sediment forebay at the inflow to the basin to allow heavier sediments to drop out of suspension before the runoff enters the permanent pool. Additional pond design features include an emergency spillway, maintenance access, safety bench, pond buffer and appropriate native landscaping.

v. Proper geometric design shall be implemented to prevent hydraulic short-circuiting. The minimum length-to-width ratio for the permanent pool shape is one and one-half to one (1.5:1), and should ideally be greater than three to one (3:1) to avoid short-circuiting. In addition ponds should be wedge-shaped when possible so that flow enters the pond and gradually spreads out, improving the sedimentation process.

vi. To avoid stratification and anoxic conditions, the maximum depth of the permanent pool shall generally not exceed eight (8) feet. Minimum depth for the pond bottom shall be three (3) feet.

vii. Side slopes to the pond shall not exceed three to one (3:1) without the use of safety precautions. Side slopes to the pond shall not exceed three to one (3:1) if mowing is anticipated. Said should terminate on a safety bench. The safety bench requirement may be waived if slopes are four to one ratio (4:1) or gentler.

viii. The perimeter of all deep pool areas should be surrounded by two benches: safety and aquatic. For larger ponds, the safety bench shall extend approximately fifteen (15) feet outward from the normal water edge to the toe of the pond side slope. The maximum slope of the safety bench should be sixteen to one (16:1) or six (6) percent. An aquatic bench should extend inward from the normal pool edge, fifteen (15) feet on average, and should have a maximum depth of eighteen (18) inches below the normal pool water surface elevation.

ix. The sediment forebay should consist of a separate cell, formed by an acceptable barrier. The forebay must

be sized to contain 0.1 (one-tenth) inches per impervious acre of contributing drainage. A fixed vertical sediment depth marker shall be installed in the forebay to measure sediment deposition over time. The bottom of the forebay may be hardened to make sediment removal easier. Inflow channels are to be stabilized with flared riprap aprons, or the equivalent. Exit velocities from the forebay must be non-erosive.

x. Flow control from a stormwater pond is typically accomplished with the use of a concrete or corrugated metal riser and barrel. The riser should be located within the maintenance easement for access, safety and aesthetics. Higher flows should pass through openings or slots protected by trash racks further up on the riser. After entering the riser, flow is conveyed through the barrel and discharged downstream. Anti-seep collars should be installed on the outlet barrel to reduce the potential for pipe failure.

xi. Riprap, plunge pools or pads, or other energy dissipaters must be placed at the end of the outlet to prevent scouring and erosion. If pond daylights to a channel with dry weather flow, care should be taken to minimize tree clearing along the downstream channel, and to re-establish a forested riparian zone in the shortest possible distance.

xii. An emergency spillway shall be included in the stormwater pond design to safely pass the extreme flood flow. The spillway must prevent pond water levels from overtopping the embankment and causing structural damage. A minimum of one (1) foot of freeboard must be provided, measured from the top of the water surface elevation for the extreme flood, to the lowest point of the dam embankment not counting the emergency spillway. Special consideration for smaller basins may be considered as long as the design engineer can show that the practice is warranted.

xiii. A maintenance right-of-way or easement must be provided to a pond from a public or private road. Maintenance access should be at least fifteen (15) feet wide, having a maximum slope of no more than fifteen (15) percent and be appropriately stabilized to withstand maintenance equipment and vehicles. The maintenance access must extend to the forebay, safety bench, riser, and outlet and, to the extent feasible, be designed to allow vehicles to turn around.

xiv. The principal spillway opening should not permit access by small children, and end walls above pipe outfalls greater than forty-eight (48) inches in diameter should be fenced to prevent access. Warning signs should be posted near the pond to prohibit swimming and fishing in the facility.

(5) *Other methods of stormwater drainage detention / retention:*

i. Other methods of detention such as seepage pits, French drains, etc., may be considered. If these methods are proposed, proper documentation of soils data, percolation, geological features, shall be provided for review and consideration.

ii. The use of underground detention shall consist of the following elements designed in accordance with acceptable engineering practices:

a. An outlet structure with emergency release provisions;

b. An emergency spillway;

c. Maintenance access;

d. Maintenance schedule; and

e. Sediment trap on inflow structure.

iii. *Parking lot detention:*

a. Detention within parking lots is only permitted within overflow parking areas the maximum depth of said detention shall be eight (8) inches. In no case should the maximum limits extent of ponding be designed closer than twenty (20) feet from a building unless water proof of the building and pedestrian accessibility is properly documented on plans.

b. The minimum freeboard from the maximum ponding elevation to the lowest sill elevation shall be one (1) foot.

(6) *Stormwater management detention / retention control structures:*

i. Detention facilities shall be provided with obvious and effective control structures. Plan view and sections of the structure with adequate detail shall be included in plans.

ii. Sizing the low-flow pipe shall be by inlet control or hydraulic gradient requirements.

iii. Low-flow pipes shall not be smaller than eight (8) inches in diameter to minimize maintenance and operating problems, except in parking lot and roof retention where minimum size of opening shall be designed specifically for each condition.

iv. The overflow opening or spillway shall be designed to accept the total peak runoff of the improved tributary area.

v. Proper engineering judgment shall be exercised in analysis of secondary routing of discharge of greater intensity than the basic design storm in order to avoid economic losses or damage downstream.

(7) *Stormwater management detention / retention discharge systems:*

i. Sizing of the system located below the control structure shall be based upon the total improved peak runoff tributary to the structure with no allowance for detention.

ii. When existing downstream pipe sizing, outside the developers control jurisdiction, is inadequate, an evaluation for under sizing of pipes may be undertaken by the city upon receipt of written request from the engineer specifying the run or runs desired to be undersized.

iii. Requests for under sizing shall be accompanied by plans and profiles of the entire undersized system downstream if less than five hundred (500) feet in length or a minimum of five hundred (500) feet.

iv. When hydraulic gradients of the proposed undersize system affect the performance or capacity of structures maintained by the city, no under-sizing will be allowed.

18-5 Verification of adequate design, easements and maintenance.

A. *Verification of adequacy:* Analysis of all elements of design shall be performed by the registered professional design engineer. The following outline is provided to ascertain that critical elements of design are in workable compliance with the aims of design:

(1) Volume of retention for the total project;

(2) Tributary (Q) peak runoff to basin;

(3) Balanced maximum outflow rate from the low-flow structure;

(4) Ratios of inflow to outflow;

(5) Sizing of the overflow facilities;

(6) Permeability rates, and geotechnical data where applicable;

(7) Stability of dikes;

(8) Safety features; and

(9) Maintenance features.

For projects up to two hundred (200) acres, routing calculations for all ponds shall be submit-

ted in legible tabulated form with documented verification of adequacy according to scope and complexity of design. Proof of adequacy of volume of retention and sizing computations for low-flow structures shall also be submitted and certified by the design engineer. Features of stability and safety may also need to be documented if the scope of the project requires special attention in this area of design.

B. *Stormwater management detention/retention easements:* Two (2) types of easements shall be provided in plans for stormwater detention/retention facilities.

(1) *Maintenance easement:*

i. All stormwater management facility reservoirs, with the exception of parking lot and roof detention, shall be enclosed by a maintenance easement. The limits of the said easement shall extend ten (10) feet beyond the top elevation of the reservoir.

ii. When a stormwater management facility is adjacent to a public right-of-way, the limits of the easement shall extend twenty-five (25) feet beyond the elevation of the reservoir on the public right-of-way side.

(2) *Drainage easement:* A minimum fifteen (15) feet wide drainage easement shall be provided within the reservoir area connecting the tributary pipes and the discharge system along the best possible routing of a piping system for possible future elimination of managed stormwater.

C. *Maintenance of stormwater detention/retention facilities and liability:*

(1) All final plats shall have a section that details that the city reserves the right to require the owners of all drainage facilities to perform needed maintenance to prevent potential flooding hazards.

(2) Operation and maintenance of any existing and future stormwater management facility (detention or retention basin) is the responsibility of the property owner(s).

(3) Any liability associated with the design, performance and operation of the facility remains with the owner and the project design engineer. The project design engineer shall be responsible for disclosing information regarding and instructing the owner of required operation and maintenance of the facility(s). Prior to final plat approval by the planning commission, a completed Stormwater Management Indemnification Form (Appendix) shall be submitted to the city. Said agreement shall require among other things that the landowner, its successors, and, or assigns or any property owner who discharges to or benefits from the maintenance or improvements to the real property shall, annually, inspect the stormwater facility and submit said inspection report to the environmental programs manager or designee of the building official. The landowner, its successors and/or assigns of any property owner within the subdivision who discharges to or benefits from the maintenance or improvement to the real property shall have a qualified credential professional (QCP) inspect the facility at least once every three (3) years. Upon completion of the inspection the QCP shall submit to the City of Daphne in report form a copy of said inspection detailing but not limited to the following items: facility as-built engineered floor elevation, existing floor elevation, sedimentation, vegetative cover, debris, fencing (if required), outlet structure and inlets. The facility shall be subject to at least an annual inspection by the city to ensure that it functions in accordance with its original design criteria and to follow up on submitted inspection and/or respond to citizen complaints. Entry to the stormwater management facility shall be granted by the owner, developer or property owners association.

(4) Any defects discovered by the city during the annual inspection process shall be furnished to the owner of the stormwater management facility in writing by the city. The notice shall be in the form of

certified mail-return receipt required, through the United States Postal Service. The owner shall have fifteen (15) business days from the date of mailing of said notice by the city to submit a written plan detailing the actions that will be instituted to correct noted defects and thirty (30) business days thereafter to implement a corrective plan. If said repairs involve engineered practices, then the plan shall be signed by an engineer licensed in the State [of] Alabama. Also, if the repair plan results in land disturbance greater than one thousand (1,000) square feet, a City of Daphne Land Disturbance Permit (Ordinance # 2008-54) shall be required. The city may, at its discretion, allow the owner additional time as deemed appropriate for the corrective work to be performed. Failure by the owner to perform the corrective action may result in enforcement by the city which may include, but not be limited to, the issuance of a municipal offense citation and or the declaration of the facility as a public nuisance.

D. *Abatement of detention / retention facility public nuisance:* It shall be unlawful for any person to maintain a public or private nuisance upon any public or private property.

(1) *Resolution of abatement:* Whenever any such public nuisance occurs, the city council may, by resolution, declare the same to be a public nuisance and order its abatement. The resolution shall refer to the street by the name under which it is commonly known, describe the property upon which, or in front of which, the public nuisance exists, by giving a legal description thereof and no other description of the property shall be required. Any number of streets, sidewalks or parcels of property may be included in one and the same resolution.

(2) *Notice of declaration:*

i. After the passage of the resolution, notice of a public hearing on the matter shall be given by certified mail, return receipt requested, mailed a minimum of thirty (30) days prior to the date of the public hearing and shall inform the owner of the time, date and place of the public hearing and reason therefore. The notice shall be mailed to the owner of the property as it appears of record in the Baldwin County Revenue Commissioner's office.

ii. Notice shall also be given by publication in a local newspaper of general circulation once a week for two (2) consecutive weeks. The first notice shall be published at least fourteen (14) days prior to the date of the scheduled public hearing.

iii. In addition thereto, signs shall be conspicuously posted at sixty-foot intervals along the frontage of the property. The caption of the signs shall not be less than one (1) inch in height and shall be in substantially the same form as expressed in the public notice.

iv. The notice shall be posted at least seven (7) days prior to the time of the hearing of the city council.

(3) *Hearing on nuisance declaration:* If objections are filed with the city clerk's office prior to the time stated in the notice, the city clerk's office shall hear and consider all evidence, objections and protests regarding the proposed compliance issues. The council may continue the assessment hearing from time to time, as needed. Upon the conclusion of an assessment hearing, the council, by resolution, shall decide whether a public nuisance exists and, if so, shall order it to be removed or abated with respect to any property or part thereof described. The city council, by passage of the resolution, shall be deemed to have acquired jurisdiction to proceed and either to perform or have performed the work of removal or abatement with respect to such property or part thereof. The decision of the governing body on the matter shall be deemed final and conclusive.

(4) *Order for abatement:*

i. After the council passes the resolution finding the conditions of the property to be a public nuisance and ordering its abatement, all employees and duly authorized agents of the city are hereby expressly authorized to enter upon private property for that purpose.

ii. The city may, at its option, engage and authorize city employees and/or private contractors, companies, enterprises or individuals to abate and remove the nuisance. The council, by resolution, shall designate the city employees and/or private contractors, companies, enterprises or individuals who may perform the work.

iii. Any property owner shall have the right to abate any public nuisance at his own expense, providing the same is done prior to the time city employees or agents commence work.

(5) *Liability insurance:* Private contractors engaged by the city in accordance with this article shall be required to provide proof of liability insurance in the amounts routinely required by the city for similar projects and will accept responsibility for any damages to subject lots and surrounding areas which may occur during the cutting/cleaning of subject property. The insurance policy shall contain an endorsement that the same shall not be canceled without giving to the city ten (10) days' written notice.

(6) *Billing and collection:*

i. The city shall keep an account of the cost of abating each nuisance in front of or on each separate lot or parcel of land where work is completed by it or its employees, or by a duly authorized private contractor, company, enterprise or individual, and shall render a written itemized report to the city council showing the cost of removing a particular public nuisance; provided that before the report is submitted to the governing body, a copy of the same shall be posted for at least five (5) days prior thereto on or near the chamber door of the city council, together with a notice of the time when the report shall be submitted to the city council for confirmation.

ii. Prior to the time fixed for the city council to receive and consider the report, the administrative appeal process of filing, hearing and ruling upon complaints and objections shall have been completed. Contested assessments shall be appealed to the city council, at the property owner's request upon filing a timely notice with the city clerk at least seven (7) days prior to the time fixed by the city council to receive and consider the report.

iii. The cost of abating such nuisance in front of or upon the various parcels of land mentioned in the report shall constitute a special assessment and as thus made and confirmed shall constitute a lien on the property for the total amount of such assessment along with any administrative costs, respectively. After confirmation of the report, the city shall attempt to collect the lien. If this attempt by the city proves futile, a copy of the lien confirmation report will be turned over to the Baldwin County Revenue Commissioner who, under the "optional method of taxation," is charged with the collection of the city's municipal taxes pursuant to Code of Ala. 1975, §§ 11-51-40 through 11-51-74. It shall be the duty of the Baldwin County Revenue Commissioner to add the amount of the respective lien to the next regular bill for taxes levied against the respective lots and parcels of land, and thereafter the amounts shall be collected at the same time and in the same manner as ordinary municipal

ad valorem taxes are collected and shall be subject to the same penalties and the same procedure under foreclosure and sale in case of delinquency pursuant to Code of Ala. 1975, §§ 11-51-40 through 11-51-74.

18-6 Erosion and sediment control.

A. *Purpose:* During the construction process, soil is most vulnerable to erosion by wind and water. Eroded soil endangers water resources by reducing water quality and causing the siltation of aquatic habitat for fish and other desirable species. Eroded soil also necessitates repair of sewers and ditches, and the dredging of watercourses. In addition, clearing and grading during construction causes the loss of native vegetation necessary for terrestrial and aquatic habitat, and to provide a healthy living environment for the citizens of Daphne.

B. *General requirements:*

(1) Construction best management practices plan (CBMPP) shall be designed by a qualified credentialed professional (QCP as defined in Article VII, Definition of Terms) such as a professional engineer.

CBMPP map shall include the following:

i. Identify topography, natural features such as watercourses, waterways, and wetlands and proposed construction areas.

ii. Identify critical areas which are subject to severe erosion and off-site areas which are especially vulnerable to damage from erosion and/or sedimentation. Critical areas shall be identified and shall receive special attention and protection. Critical areas include but are not limited to cut and fill slopes, streams and wetlands.

iii. Erosion and sediment controls used throughout all phases of construction and details of permanent stabilization methods to be used at completion.

iv. Provisions for maintenance of erosion and sediment controls and periodic inspections for effectiveness of controls.

C. *Submittal, review and approval procedures:*

(1) CBMPP shall be submitted with application material required for planning commission review.

(2) No land disturbance shall take place prior to review and approval of the project CBMPP.

D. *Modifications to the CBMP plan:*

(1) Major modification, such as relocation of detention facility, to the CBMPP shall be submitted to the department of community development and shall be processed and approved, or disapproved, by the environmental programs manager or designee of the building official and the director of community development or his/her designee. Where deemed necessary by the director of community development, approval for such modification may be required upon planning commission review.

(2) Minor modifications, such as the addition of additional silt fence, to the CBMPP may be addressed on site as needed to ensure compliance with the provisions outlined.

E. *Design requirements:* Erosion control practices, and sediment control practices, shall meet the design criteria set forth in the most recent version of the Alabama Handbook for Erosion and Sediment Control and shall be adequate to prevent transportation of sediment from the site to the satisfaction of the environmental programs manager or designee of the building official.

(1) *Clearing and grading:*

i. Clearing and grading of natural resources, such as wetlands, waterways, and watercourses, shall not be permitted, except where in compliance with all other sections of this Land Use and Development Ordi-

nance and as permitted by the United States Army Corps of Engineers, if applicable.

ii. Clearing techniques that retain natural vegetation and natural drainage patterns are strongly encouraged.

iii. Phasing shall be required in accordance with provisions provided in Article XVIII, Drainage and Stormwater Management Facilities and Erosion/Sediment Control, section 18-3(g), Phasing and platting, on all sites seventeen and one-half (17.5) acres or greater, with the size of each phase to be no more that seventeen and one-half (17.5) acres.

iv. Clearing, except as necessary to establish sediment basin and other sediment control devices, shall not begin until all sediment control devices have been installed.

v. Cut and fill slopes shall be no greater than three to one (3:1), except as approved by the City of Daphne to meet other community or environmental objectives.

F. *Erosion control:*

(1) Soils must be stabilized within thirteen (13) days of clearing or inactivity in construction.

(2) If vegetative erosion control methods, such as seeding, have not become established within four (4) weeks, the City of Daphne may require that the site be reseeded, or that a non-vegetative option be employed.

(3) On steep slopes or in drainage ways, special techniques that meet design criteria outlined in the Alabama Handbook shall be used to ensure stabilization.

(4) Soil stockpiles are consider part of the site disturbance and therefore must be temporarily stabilized within thirteen (13) days of clearing or inactivity in construction.

(5) Techniques shall be employed to prevent the blowing of dust or sediment from the site onto adjacent properties.

(6) Appropriate techniques shall be employed to divert upland runoff past disturbed slopes.

G. *Sediment controls:*

(1) Sediment controls shall be provided in the form of sediment basins or sediment traps and perimeter controls.

(2) Where possible, sediment basins shall be designed in a manner that allows adaptation to provide long term stormwater management. Permanent stormwater controls can be retrofitted to serve as sediment controls during construction.

(3) Adjacent properties shall be protected by the use of a vegetated buffer strip, in combination with perimeter controls.

H. *Waterways and watercourses:*

(1) When a watercourse must be crossed regularly during construction, a temporary stream crossing shall be provided, and an approval obtained from the United States Army Corps of Engineers. The letter of permission or the permit from the USCOE must be submitted to the city prior to issuance of the site disturbance permit.

(2) When in-channel work is conducted, the channel shall be stabilized after work is completed.

(3) All on-site stormwater conveyance channels shall be designed according to the criteria outlined in the Alabama Handbook.

(4) Outlets of all pipes and paved channels shall have adequate stabilization to prevent erosion. Riprap may be required for stabilization if vegetative measures prove to be ineffective at controlling erosion in waterways or watercourses.

I. *Construction site access:*

(1) A stabilized construction access shall be required in order to ensure sediment is not tracked on to public streets.

(2) If sediment tracking occurs on public streets and/or right-of-ways, the contractor will be required to remove accumulated sediments from streets and ditches.

J. *ADEM "303(d)" Listed Streams:* Any site which discharges directly or indirectly to an ADEM 303(d) Listed Stream segment shall submit an enhanced CBMPP to minimize to the maximum extent practical the release of the listed pollutant to the stream. The enhanced CBMPP shall include enhanced BMPs and other measures which may include but not be limited to a water sampling component of the sites discharge for the 303d listed pollutant.

K. *Other provisions related to construction and/or site disturbance:*

(1) *Burning:* No open burning associated with property clearing is allowed during the months of May through October per state regulations. During certain permissible months, open burning is not allowed unless a smoke curtain or incinerator is used and permitted per the current City of Daphne Fire Code.

(2) *Spill prevention control counter-measures plan requirement:* Sites that store onsite fuel, chemicals or other pollutants shall prepare implement and maintain a spill prevention, control and countermeasures plan (SPCCP), as a separate document or as a component of the erosion and sediment control plan (CBMPP) for the site.

(3) *Washout areas:* A concrete washout area shall be designated on all sites during installation of drainage structures and in the residential construction phase.

(4) *BMPs:* The placement of BMPs in/on city right-of-way is prohibited unless express written permission is granted by the director of public works or his/her designee.

(5) *Construction cebris:* CBMPP shall include measures to address construction debris during all phases of construction at the site.

(6) *Sanitary waste:* CBMPP shall include measures to address public health and safety in regards to restroom usage during all phases of construction.

L. *Site inspections:* The owner or contractor shall make daily inspections of all control measures throughout the construction process to ensure the overall effectiveness of the CBMPP; however any permitted site shall be subject to at least the following inspections by the site containment officer and/or environmental programs manager:

(1) Immediately after erosion and sediment controls are in place and prior to commencement of site clearing and grading;

(2) After installation of stormwater detention/retention management facilities;

(3) After clearing and grading has been completed;

(4) After remaining drainage has been installed;

(5) After streets and curb and gutter have been completed; and/or,

(6) Before construction completion.

M. *Enforcement of erosion and sediment control provisions:*

(1) The building inspections department and/or public works department (where applicable) shall serve as a line of communication between the permit holder and the city in regard to permit compliance.

(2) The City of Daphne may issue a stop work order and/or suspend or revoke the site disturbance permit where the site containment officer or designee of the building official or the director of public works or his/her designee has found the following:

i. Violation(s) of the terms of the permit or site development which may adversely affect the health, welfare, or safety of persons residing or working in the neighborhood.

ii. Site development that is detrimental to the public welfare or injurious to property or improvements in the neighborhood.

(3) *Compliance with erosion control / sedimentation requirements:*

i. If compliance cannot be achieved through the normal inspection process, the city may issue a notice of violation.

(4) *Notice of violation:*

i. *General:* Whenever the development is determined to be in non-compliance, the owner shall be notified of the violations and/or deficiencies. Upon notification, the owner shall have forty-eight (48) hours to bring the site into compliance. The city may, at its discretion, allow the owner additional time as deemed appropriate for the corrective work to be performed. If the site fails to come into compliance, the owner may be found in violation of the Ordinance and guilty of a misdemeanor. Any person who violates this Ordinance shall, upon conviction thereof, be fined not more than five hundred dollars ($500.00), and in addition shall pay all costs and expenses involved in the case. Each day during which any violation of any of the provisions of this Ordinance is committed, continued, or permitted shall constitute a separate offense. Nothing herein contained shall prevent the City of Daphne from taking such other lawful actions as are necessary to prevent or remedy any violation.

ii. *Sediment impact violations:* Whenever the City of Daphne determines that significant sedimentation is occurring as a result of a land disturbing activity, despite application and maintenance of protective practices, the person conducting the land disturbing activity or the person responsible for maintenance will be required to take additional protective action. Furthermore, if it is determined that sedimentation has occurred off site onto right-of-way, instream, or into stormwater drainage systems, the sediments shall be removed. The owner, builder, or engineer shall be notified by a certified notice of violation.

iii. The notice of violation shall detail the non-compliance and shall give the violator fourteen (14) days to submit a restoration plan to the environmental programs manager (EPM). This plan shall include measures to mitigate any offsite sediment and measure including but not limited to stabilization measure for the impacted area. Upon receipt and review of the restoration plan, the environmental programs manager at his or her discretion shall require the plan to be submitted to the planning commission, United States Corps of Engineers, and/or the Alabama Department of Environmental Management for further review and approval. Upon approval of the plan by the city and other regulatory agencies the violator shall have thirty (30) days to implement and complete the plan. Upon completion of the plan, the environmental programs manager or his/or her designee shall perform a follow-up inspection. If the site is compliant, then the violation shall be resolved.

iv. *Intentional circumvention of the drainage, stormwater management facilities and erosion / sediment control provisions:* When an owner, builder or design engineer is found to have intentionally circumvented any provision of Article XVIII, the following steps shall be taken:

a. The owner, builder, or engineer shall be notified of such by a certified notice of violation.

b. The notice of violation shall detail the non-compliance and shall give the violator fourteen (14) days to submit a corrective action plan to the director of community development for review of the applicable city inspector/complainant.

c. Upon receipt and review of the corrective action plan, director of community development at his/her discretion may require the plan to be submitted to the planning commission for further review and approval.

d. Upon approval of the plan the violator will have thirty (30) days to implement and complete the plan.

e. If the completion of the plan requires more than thirty (30) days, the owner, builder, or engineer may formally request by letter a thirty-day extension from the director of community development. Once the corrective action is complete, the director of community development designee shall inspect the site for compliance with Article XVIII, Drainage, Stormwater Management Facilities and Erosion/Sediment Control provisions.

f. If the site is compliant then the violation will be resolved. [However, if the violation is not resolved during the allotted time the owner, builder, or engineer will be notified by a second (2nd) certified notice of violation stating that the planning commission shall consider making a recommendation to city council that said violator's city business license be revoked for a one-year period the owner.]

18-7 Completion of construction activities, final inspection and/or certificate of occupancy requests.

A. All open channels and ditches shall be permanently vegetated with perennial vegetation upon final inspection. Seed and mulch shall not be accepted. If sod is used on slopes, corners will need to be pinned per the Alabama Handbook.

B. Common areas, such as detention basins shall be permanently stabilized upon final inspection with perennial vegetation. Seed and mulch shall not be accepted.

C. All construction waste and debris, silt fences, hay bales, inlet protection, and other temporary BMPs shall be removed prior to final inspection.

D. All final inspection submissions shall include the following:

(1) Signed set of as-built engineered drawings and an electronic version of the drawings compatible with Arc Info 9.3: Projected Coordinate System:

NAD_1983_State Plane_Alabama_West_FIPS_0102_Feet.

(2) Letter of acceptance from the city site containment inspector and/or environmental programs manager, director of public works, fire marshal, Daphne utilities, all applicable public utility providers, and applicable state/federal agency.

(3) Letter of completion from the project engineer.

(4) Letter of completion from the project landscape architect.

(5) Copy of all recorded drainage or right of entry easements.

(6) Maintenance bonds for streets and drainage, and any other applicable bonds.

ARTICLE XIX. LANDSCAPE STANDARDS AND TREE PROTECTION

19-1 Purpose.

The intent of this article is to establish minimum standards for the provision, installation, and maintenance of landscape plantings and tree

preservation in order to achieve a healthy, beautiful, and safe community by the following means:

- *Aesthetics:* Improve the appearance of all areas through the incorporation of open space into development in ways that harmonize, enhance, and build the natural environment.
- *Environmental quality:* Improve environmental quality by recognizing the numerous beneficial effects of landscaping and tree preservation upon the environment.
- *Land values:* Maintain and increase the value of land by requiring landscaping and tree preservation to be incorporated into development thus becoming itself a valuable capital asset.
- *Human values:* Provide direct and important physical and psychological benefits to human being through the use of landscaping and tree preservation to reduce noise and glare, to break up the monotony, and soften the harsher aspects of urban development.
- *Preservation of vegetation:* Preserve existing natural vegetation and the incorporation of native plants, plant communities and ecosystems into landscape design, where possible.
- *Improved design:* Promote innovative and cost conscious approaches to the design, installation, and maintenance of landscaping, encouraging existing tree preservation, and water and energy conservation.
- *Bio-retention:* Innovative landscape design techniques may be considered which encourage the use of bio-retention methods, mechanisms and facilities.
- *Improved administration and enforcement:* Establish procedures and standards for the administration and enforcement of this article.

19-2 Applicability and use.

(a) *Applicability:* The provisions of this article shall be required for all residential projects involving the construction of two (2) or more dwelling units including apartments, town homes, condominiums, planned unit developments, subdivisions, business, commercial, industrial, and/or institutional structures; all existing structures which increase the gross floor area by thirty (30) percent or more, except a single-family residence; construction of a park, public way, open space, public building or structure; construction of a public utility whether publicly or privately owned; and other uses as required by the planning commission.

A golf course which was in existence prior to the enactment of this Ordinance is hereby exempt from the provisions of this article.

(b) *Change in use or ownership provision:* The provisions of this article shall apply to any project which requires site plan review for minor expansions of commercial or institutional uses, renovations or changes in use that is subject to administrative review and approval by the director of community development. Where a change in: (a) use of property, (b) occupancy, or (c) ownership—regardless of name change to any business, commercial, industrial or institutional development, it shall be the responsibility of the owner to comply with the provisions of this article and Article XVI, Parking Provisions, within ninety (90) days from the date in which the change occurred.

19-3 Landscape standards.

(a) *Site plan review:* A site plan shall not be approved by the planning commission without an acceptable landscape and irrigation plan.

(b) *Subdivision review:*

i. A subdivision shall not be approved by the planning commission without an acceptable landscape and irrigation plan.

ii. All subdivisions shall require a landscape plan for the common areas of the subdivision: the entrance, detention pond, retention pond, recreational areas and other areas which are deemed appropriate by the planning commission.

iii. A tree survey shall not be required for a subdivision over fifty (50) acres; however,

a developer/owner shall comply with the protection of significant trees as otherwise provided herein.

(c) *Revisions to landscape plan:* If proposed construction shall cause changes in the landscape and/or irrigation plan, a revised plan shall be submitted by the project's landscape architect to the department of community development for re-evaluation prior to the installation of plantings. In no case shall the plans be altered unless approved by the landscape architect who originally certified the plans and the director of community development prior to the installation of plantings. Failure to install landscaping in accordance with the landscape plan approved by the planning commission or the City of Daphne shall be subject to a penalty of five hundred dollars ($500.00). Said penalty shall be paid to the City of Daphne prior to the issuance of a certificate of occupancy or final plat approval.

(d) *Issuance of site disturbance permit:* A landscape and irrigation plan shall be submitted with the recommendation of the director of community development and approved by the planning commission prior to the issuance of a site disturbance permit as provided in Article XV, Procedures for Site Plan Review and Article XVII, Procedures for Subdivision Review.

(e) *Compliance with landscape provisions:* All subject properties, including those owned by the City of Daphne shall comply with the provisions of this article, except those provided herein.

(f) *Certification and plan requirements:* Landscape and irrigation plans shall be drawn and stamped by a licensed landscape architect registered in the State of Alabama. All landscape and irrigation plans shall be reviewed and signed by the owner/developer prior to submission to the department of community development. The landscape plan shall be of professional quality and include at least the following:

i. Date, scale, north arrow, title, and names and contact information for property owner(s), developer, and the landscape architect.

ii. Location of existing boundary line dimensions of the building site, existing water sources, significant drainage features, existing and proposed streets or alleys, existing or proposed utility easements on or adjacent to the building site including overhead power lines, rights-of-way, minimum setbacks, locations of proposed parking spaces, and location of existing and/or proposed sidewalks or pedestrian paths.

iii. The location(s) and dimension(s) of the proposed landscaped areas within the parking area(s) and within greenbelt areas including a description of new trees and plant materials to be placed within landscaped area(s). Both common and botanical names shall be included.

iv. An indication using written or graphic information of plans to protect from damage during construction any existing trees and other vegetation which are proposed to be retained.

v. An indication using written or graphic information of measures to protect tree roots by controlling erosion or sediment loss during construction.

At a minimum, all trees to remain on site and to be credited toward meeting the minimum landscaping requirements shall be protected before and during construction by a six-foot chain link fence with a two-inch top rail. Said protection fence shall extend to the ground and shall extend ten (10) feet beyond the drip line of the tree so as to encompass the circumference of the tree canopy.

vi. The proposed irrigation plan shall provide one hundred (100) percent coverage of the landscaped areas. Said plan shall show the location of the source of water, controller, lateral lines, heads, the location and size of sleeves, and the location and routing of the mainline. All items shall be identified and labeled on the

plan. When applicable and practical, drip irrigation system shall be installed.

vii. Location and species of buffer zone vegetation.

viii. A tree survey shall be performed by a credentialed professional certified to perform such service. Said tree survey shall show all trees with an eight-inch or greater caliper. This information shall be plotted on a twenty-four- by thirty-six-inch drawing at the same scale as the landscape and civil engineer plans. The drawing is to be used to determine which trees will be retained and/or removed.

ix. The landscape plan shall clearly show what existing trees, shrubbery, and other vegetation will be retained, as well as, what trees, shrubbery, and other vegetation shall be added to complete the final landscaping of the property.

x. Plans shall provide the locations, species, and diameter at breast height (D.B.H.) of existing significant trees indicating those to be retained and those to be removed along with written justification for the removal of any significant trees.

xi. Calculation of the trees to be protected and the quantity of credits to be applied to the landscape requirements shall be provided as well as calculations for the protected trees to be removed.

19-4 Protection of significant trees.

(a) Except where permitted by the planning commission through either the site plan or subdivision review process, significant trees as defined herein are hereby protected under this article and cannot be cut or intentionally harmed without the express written permission of the designee of the director of public works.

(b) An overstory tree species, except a live oak, is considered protected as a significant heritage tree if it has a twelve-inch or greater caliper. Likewise, an understory tree species is considered protected if it has an eight-inch or greater caliper.

(c) Live Oak trees:

i. Any live oak tree ten (10) inches or greater shall be classified as a significant heritage tree and shall be protected. A live oak ten (10) inches or greater in caliper located within the building foot print of a proposed building shall be replaced by other live oaks at least three (3) inches in caliper.

ii. Complete removal of all heritage trees on site shall not be permitted unless approved by the planning commission. If approved, developer shall plant replacement trees as noted in section 19-7, Planting requirements.

iii. Once new heritage trees are established and accounted in a landscape plan approved by the planning commission, said trees shall be preserved in perpetuity.

(d) Other trees of significance include Cabbage Palms (Sabal palmettos) and Windmill Palms (Trachycarpus fortunei).

(e) The following trees shall not be considered significant trees: Chinese Tallow tree/Popcorn tree (Sapium sebiferum), Water Oak (Quercus nigra), or Ornamental Laurel (Prunus spp.).

19-5 Tree protection zone.

All lands within one hundred (100) feet of the right-of-way of the four-lane U.S. Highway 98, fifty (50) feet of the right-of-way of Main Street, North Main Street, U.S. Highway 90, and all other (nonresidential) city streets including Pollard Road, Whispering Pines Road and County Road 64 are hereby declared to be tree protection zones.

No tree within these zones shall be removed except as provided above in section 19-4(a) nor without first presenting justification based on the criteria noted in section 19-6(b) below and written

approval from the designee of the director of public works or upon planning commission approval, as applicable.

19-6 Permitting procedures.

(a) *Tree removal—No permit required:* Tree removal shall be at the property owner's expense except for the following: (1) trees in the city right-of-way or on city-owned property which are diseased, injured, in danger of falling close to existing structures, creates an unsafe visual clearance, or conflicts with sight distance, the removal of which shall be funded by the city; or (2) trees beneath utility lines which threaten to damage utility lines, of which the removal is the responsibility of the utility company. Said tree removal shall not require permitting.

(b) *Tree removal permit—Sites not subject to planning commission approval:* Any person wishing to remove or relocate a significant tree as defined herein or a tree located within the tree protection zone, shall submit a written application on the prescribed documents to the designee of the director of public works accompanied by a site plan. The following criteria must be established in order for the permit to be issued:

i. The tree shall be located in an area where a structure or improvement is to be placed in accordance with the proposed plan.

ii. The tree shall be diseased, injured, in danger of falling too close to an existing or proposed structure, interferes with existing utility service, creates an unsafe visual clearance, or conflicts with sight distance or with other ordinances, articles, or regulations.

iii. The tree shall be prior to or after construction in violation of federal, state, local laws, or regulations including but not limited to laws and regulations pertaining to government programs for the financing of the construction.

iv. No understory trees greater than eight (8) inches in diameter or greater caliper or an overstory with a twelve-inch or greater caliper shall be removed unless it can be shown that the tree is a safety hazard to pedestrians, property or vehicular traffic, is diseased or weakened by age, storm, fire or other injury, or it is absolutely necessary to construct the proposed improvements without incurring significant additional construction costs, or it is necessary for the installation of solar energy equipment.

v. A permit may be denied if the tree is considered to have aged or grown to an impressive stature for its species or it is considered an integral part of the natural heritage the designee of the director of public works determines there is a reasonable alternative other than the removal of the tree.

vi. The property owner shall agree to plant two (2) replacement trees for each significant tree proposed to be removed. The replacement trees shall be shade or flowering trees and shall be at least two and one half (2½) inches or greater in caliper and ten (10) feet in height at planting.

19-7 Planting requirements.

(a) Trees planted in accordance with this article shall meet the following criteria:

i. A minimum of four (4) different species shall be planted on each site. Two (2) species shall be overstory (large) trees and two (2) species shall be understory (medium) trees in order to promote species richness.

ii. Large (overstory) trees shall have at least three (3) inches or greater in caliper and ten (10) feet in height at planting.

iii. Medium (understory) trees shall have at least three (3) inches in caliper and eight (8) feet in height at planting.

iv. Multi-stemmed understory trees shall be a minimum of ten (10) feet in height and must have at least three (3) stems; each with a minimum caliper of three-fourths-inch.

v. Shrubs shall be a minimum of three (3) gallons at planting. Shrubs pruned into tree form variations shall not be credited

toward tree planting requirements. These include, but are not limited to the following: Ligustrum, Indian Hawthorn, Tree Yaupon and Camellia.

vi. Ground cover planting shall be established with pots sized four (4) inches or greater.

vii. All newly planted trees shall be located in a twelve-foot by six-foot area at least seventy-two (72) square feet.

viii. On-site relocated trees may be credited toward these requirements.

ix. Grass shall be composed of solid sod. Seed and mulch shall not be accepted at final inspection.

x. It is recommended that trees be obtained from a licensed source.

xi. Cabbage Palms (Sabal palmettos) and Windmill Palms (Trachycarpus fortunei) shall be planted in triangular clusters of three (3) palms and must be no further than six (6) feet apart from each other. Each palm shall be a minimum of five (5) feet clear trunk (CT) in overall height to be credited.

(b) *Tree replacement provisions:* The developer shall plant two (2) replacement trees for each significant tree proposed to be removed, except the Live Oak. The replacement trees shall be shade or flowering trees and shall be at least two and one-half (2½) inches or greater in caliper and ten (10) feet in height at planting. The quantity of Live Oak trees to be replanted after removal shall be calculated by adding the calipers of all live oaks proposed for removal divided by six (6) (measured in inches).

(c) *Credits and calculation procedures for existing significant protected trees:* All plans submitted to the planning commission shall have an accurate tree survey denoting each tree above eight (8) inches in caliper, its location, elevation and both proper scientific and common name. The landscape plan shall show the placement and species of the number of required new replacement trees. Calculations of trees to be protected and the quantity of credits to be applied shall be provided along with the calculations of trees to be removed and justification of proposed removal.

i. *Measurements:*

1) Trees which are from one (1) inch to four and one-half (4.5) inches in caliper shall be measured six (6) inches above the root zone at the base of the tree.

2) Trees which are over four and one-half (4.5) inches up to eight (8) inches in caliper shall be measured one (1) foot above the root zone.

3) Trees which are greater than eight (8) inches in caliper shall be measured four (4) feet above the root zone.

4) All calculations shall be rounded up for a final count.

ii. *Tree credits:*

1) Tree credits may only account for preserved trees which can be integrated into the design and calculations for the overall landscape plan.

2) All credited trees shall be at least eight (8) inches in caliper measured as provided above.

3) Tree credits shall not apply to trees for frontage areas or parking and impervious materials. These tree credits shall only be applied to those trees which are required for the perimeter tree requirements.

4) One (1) tree credit may be applied for every six (6) inches in total caliper of trees. The credit shall be calculated as follows: sum of calipers of preserved trees divided by six (6) (measured in inches).

5) Existing trees located within a greenbelt area may be credited at a rate of one (1) to one (1).

6) In addition to the required tree planting requirements, all trees ten (10)

inches in caliper or greater shall be protected if not located within the footprint of the building.

7) If a tree ten (10) inches or larger is not protected and is either removed or damaged during construction, then two (2) additional trees will be required to be planted for every six (6) inches in caliper of the trees to be removed. Said ten-inch caliper tree shall be measured four (4) feet above the root zone at the base of the tree. Calculation: Total tree calipers of trees to be removed divided by six (6) (measured in inches).

8) Cabbage Palms (Sabal palmettos) and Windmill Palms (Trachycarpus fortunei) shall be credited as three (3) palms equal to one (1) three-inch caliper heritage tree if planted in clusters of three (3) as provided above in subsection (a).

19-8 Greenbelt zones.

The term greenbelt zones and greenbelt areas shall be interchangeable within this Ordinance. A greenbelt zone shall be designated on each site to create a natural buffer along the perimeter of proposed development sites. Greenbelt areas shall be landscaped with trees, shrubs, ground cover and grass. Greenbelts may only account for twenty (20) percent of the required landscaping. Sidewalk and/or pedestrian walkway requirements as provided in Article XI, Minimum Standards and Required Improvements, shall be considered in the greenbelt design.

(a) Frontage area requirements (front property line or area fronting along roadway) shall apply except where otherwise provided herein.

i. An overstory tree shall be planted for every thirty (30) feet of frontage area. All frontage area trees shall be planted thirty (30) feet from the front property setback and fifty (50) percent of these trees shall be planted ten (10) feet from the front setback.

ii. The first twelve (12) feet of frontage area shall be protected to create a buffer from the road right-of-way.

iii. There shall be a minimum of one (1) three-gallon shrub for every five (5) feet of frontage area. The plantings shall be planted within the first twelve (12) feet of the frontage area in the greenbelt.

(b) Perimeter area requirements (side and rear property lines) shall apply except where provided herein.

i. Either overstory or understory trees shall be planted for every fifty (50) feet of the perimeter property lines. Perimeter areas are side and rear property line landscape setbacks.

ii. Side and rear property lines shall have a six-foot greenbelt.

(c) *U.S. Highway 98 and County Road 13:* All developments along U.S. Highway 98 and County Road 13 shall maintain a minimum of twelve (12) feet of the required fifty-foot setback as a landscaped greenbelt along the entire front width of the property, except where curb cuts provide ingress and egress.

If any of the fifty-foot front setback is used for parking, said greenbelt shall be in addition to the landscape requirements for parking areas as more specifically defined in Off-street parking facilities, section 19-10 of this article. Said greenbelt shall be planted with trees, shrubs, grass, or other ground cover so as to create an attractive appearance representative of the developer's approved landscape plan.

The trees shall be shade or flowering trees and shall be at least three (3) inches or greater in caliper and ten (10) feet in height at planting. There shall be a minimum of one (1) tree planted for every twenty-five (25) feet or fraction thereof of lot frontage, fifty (50) percent of which shall be shade trees having a maximum crown of seventy (70) feet, except under or

within forty (40) feet of an overhead power line. (See Definitions, Article VIII, Understory tree).

(d) *U.S. Highway 90 and Alabama State Road 181:* All developments along U.S. Highway 90 and Alabama State Road 181 (south of the intersection of Highway 90 and State Road 181) shall maintain a minimum of twenty (20) feet of the required fifty-foot setback as a landscaped greenbelt along the entire front width of the property, except where curb cuts provide ingress and egress.

If any of the fifty-foot front setback is used for parking, said greenbelt shall be in addition to the landscape requirements for parking areas as more specifically defined in Special designs, section 19-11 of this article. Said greenbelt shall be planted with trees, shrubs, grass, or other ground cover so as to create an attractive appearance representative of the developer's approved landscape plan.

The trees shall be shade or flowering trees and shall be at least three (3) inches or greater in caliper and ten (10) feet in height at planting. There shall be a minimum of one (1) tree planted for every twenty-five (25) feet or fraction thereof of lot frontage, fifty (50) percent of which shall be shade trees having a maximum crown of seventy (70) feet, except under or within forty (40) feet of an overhead power line. (See Definitions, Article VIII, Understory tree).

(e) *Multi-family developments:* Multi-family developments require greenbelts along all perimeter roadways and all project boundaries. The greenbelt shall not be included as part of the minimum yard requirements. It shall be thirty (30) feet wide along all perimeter roads, and shall be twenty-five (25) feet wide along all remaining project boundaries. The greenbelt shall run the entire length of the project boundaries.

The trees shall be shade or flowering trees and shall be at least three (3) inches or greater in caliper and ten (10) feet in height at planting. There shall be a minimum of one (1) tree planted for every twenty-five (25) feet or fraction thereof of lot frontage, fifty (50) percent of which shall be shade trees having a maximum crown of seventy (70) feet, except under or within forty (40) feet of an overhead power line. (See Definitions, section 8-2, Understory tree).

19-9 Buffer zone requirements.

(a) *General:*

i. Where a business district abuts any part of an existing multi-family residential land use, no buffer shall be required unless deemed appropriate by the planning commission.

ii. Any decorative fence design constructed in lieu of a planted buffer must be reviewed and approved by the planning commission.

iii. Where a C/I, Commercial/Industrial district abuts any part of a residential district, a natural undisturbed buffer thirty (30) feet in width and an eight-foot-high privacy fence shall be required, or a planted buffer thirty (30) feet in width and an eight-foot-high privacy fence shall be required.

iv. Where an industrial district abuts any part of a business district, a planted buffer of twenty (20) feet shall be required. A six-foot-high decorative fence may be constructed in lieu of the planted buffer.

v. Where a business district, B-1, Local Business or B-3, Professional Office, abuts any part of a residential district, a ten-foot-wide buffer zone shall be required.

vi. Where a B-2, General Business district abuts any part of a residential district, a natural undisturbed buffer fifteen (15) feet in width and an eight-foot-high privacy fence shall be required, or a planted buffer fifteen (15) feet in width and an eight-foot-high privacy fence shall be required.

vii. Where any non-residential land use (see Special Exceptions in the Table of Permitted Use) is subject to either site plan approval by the planning commission, administrative review, or approval of a special exception by the board of zoning adjustment in a residential zone district abutting any part of a residential district, a ten-foot-wide buffer zone shall be required.

viii. Where any institutional use, multi-family use, multi-use district, or innovative design subdivision abuts any part of a single-family zone, the planted buffer zone shall run the entire length of the abutting lot line(s).

(b) *Options:* Under no circumstances shall this buffer impair vehicular flow. It shall be part of the yard requirements except where a greenbelt is required. Said protection buffer shall be maintained in such a manner to accomplish its purpose continuously. Zoning districts shall comply with the following minimum standards and said buffer zone shall be constructed of at least (1) one of the following two (2) designs or a combination thereof as recommended by the director of community development and approved by the planning commission during site plan review and/or subdivision plat review process.

i. *Wall or fence options:*

1) In a residential subdivision or planned unit development: All fences or walls shall be a maximum of six (6) feet in height; shall be located at least six (6) feet from the property line; and shall have a six-foot greenbelt area on both sides of the fence. Shrubs shall be planted every five (5) linear feet of the fencing. Plantings shall be installed in clusters and groupings with trees to soften fence exposure.

2) In a commercial development, multi-family apartment and condominium project: All fencing and/or walls located along the primary frontage area providing ingress and/or egress shall not exceed thirty-six (36) inches in height and shall be located no closer than six (6) feet from the front property line. All fences or walls along other road frontages shall have a maximum height of six (6) feet. Said fence shall be six feet from the property line and shall have a landscaped greenbelt six (6) feet in width on both sides of the fence. Shrubs shall be planted every five (5) linear feet of the fencing. Plantings shall be installed in clusters and groupings with trees to soften fence exposure.

All fences or walls along side and rear property lines shall be a maximum of six (6) feet in height and may be located on the property line. Said fence or wall shall have a six-foot-wide landscaped greenbelt located on the interior side of the fence.

3) For retail car lot: All fences or walls along the primary frontage area shall be a maximum of four (4) feet in height and shall be located at least six (6) feet from the property line. Shrubs shall be planted every five (5) linear feet of the fencing. Plantings shall be installed in clusters and groupings with trees to soften fence exposure.

All fences or walls along side and rear property lines shall be a maximum of six (6) feet in height and may be located on the property line. Said fence or wall shall have a six-foot-wide landscaped greenbelt located on the interior side of the fence.

ii. *Natural forest:* A natural, undisturbed forest which provides a nearly impervious visual barrier due to the dense nature of the plants and/or trees. If this option is chosen, the width of the buffer zone shall be fifty (50) feet and shall be shown on the landscape plan. The director of community development shall determine whether the barrier is satisfactory via site inspection prior to approval.

19-10 Off-street parking facilities.

The design and appearance of parking areas are intended to be compatible with the character of the community. Toward this objective, the following landscaping standards shall be observed in the construction of off-street parking areas which accommodate six (6) or more parking spaces:

(a) One (1) tree shall be planted for every two thousand (2,000) square feet of impervious area including parking areas and building areas for all development with the exception of a retail car lot. For a retail car lot development, one (1) tree shall be planted for every seventy-five hundred (7,500) square feet of impervious surface area.

(b) At least fifteen (15) percent of the total interior area intended for off-street parking shall be suitably landscaped.

(c) Interior portions of the parking area at intervals of twelve (12) parking spaces shall be broken by provision of landscaped islands. Such landscape islands shall include the placement of shade or flowering trees at least three (3) inches or greater in caliper and ten (10) feet in height at planting.

(d) Each separate landscaped area must be a minimum of ninety (90) square feet if it is to be counted toward the minimum landscaped area requirements.

(e) Landscaped areas shall be protected from vehicular encroachment by the use of curbing or wheel stops.

(f) The owner, tenant and/or agent, if any, shall be jointly and severally responsible for watering and maintaining all landscaping in a healthy, neat and orderly condition, replacing it when necessary, and keeping it free of refuse and debris.

(g) A minimum of six (6) feet side and rear landscaping may be required in the landscape plan depending on the topography and arrangement of parking facilities.

Such areas shall be planted with a combination of trees, shrubs, and grass or other ground cover adequate to break the expanse of contiguous parking areas and to present an attractive appearance as determined by the director of community development.

(h) Adjacent property owners may jointly agree on the establishment of a common landscaped area between their properties that meets the requirements of this article and shall be a minimum of ten (10) feet in width; provided that such agreement and the planting and maintenance of the common area shall be binding upon both parties, his/her successors in interest, heirs, and assigns. A signed agreement shall be provided upon submittal of the project review application.

(i) Innovative landscape designs using "natural cluster of trees" rather than the required one (1) tree at intervals of twelve (12) parking spaces may be approved by the planning commission if it is determined by the landscape architect that the design is compatible with the character of the community, the intent of this article and is shown not to be a safety hazard.

(j) Landscaped areas and perimeter areas shall be so graded as to receive a reasonable portion of the rainfall from the surrounding pavement. Protective curbing around landscaped areas will leave openings for the flow of water onto unpaved areas.

(k) No shrub plantings shall be planted closer than four (4) feet from the back of any parking area or curbing. No trees shall be planted closer than three (3) feet from a parking area, back of curb, sidewalk, wall, fence, building or any other hardscape surface.

19-11 Special designs.

More stringent design and landscape standards may be required by the planning commission in any district if it is determined the design would be more compatible with the development and more beneficial to the aesthetics of the city.

19-12 Retention or detention ponds in common areas.

(a) *Detention ponds—General:* Vegetation shall be planted around the circumference of detention areas.

(b) *Subdivisions and planned unit developments:* Retention areas shall have embankments planted with a combination of grass (sod) and shrub plantings. Additional requirements for trees may be required as deemed appropriate by the planning commission. There shall be a minimum of one shrub for every five (5) feet of circumference around retention or detention areas.

19-13 Supervision.

The landscape architect shall be responsible for the supervision of all plantings. Upon completion, the landscape architect shall certify in writing to the director of community development that the submitted, approved landscape plan has been implemented and is in compliance with the provisions of this article.

19-14 Certificate of occupancy.

A certificate of occupancy shall not be issued until the submitted, approved landscape plan has been fully implemented or a financial guarantee for the implementation of the landscape plan is submitted. Said guarantee shall be in an amount equal to one hundred and fifty (150) percent of the total remaining installation cost. Said cost shall be certified by the landscape architect responsible for the design. In no case shall a certificate of occupancy be approved without the written approval of the design landscape architect.

19-15 Maintenance.

Maintenance of new plantings, fencing and/or natural areas is the responsibility of the developer and/or property owner(s). Any vegetation or trees planted or retained to fulfill the requirements of this article that becomes damaged or diseased must be replaced by the property owner by the beginning of the optimum planting season of the following year and approved by a professional landscape architect. The landscape architect or the property owner must notify the designee of the director of public works in writing when the replacement tree(s) and vegetation has been planted.

19-16 Penalties.

The Code Enforcement Officer of the City of Daphne shall serve the owner of said property, each person, firm or corporation engaged in the activities regulated hereunder in which the activities are being conducted in violation of any provision of this article. The person(s) shall be fined upon conviction, not less than twenty-five dollars ($25.00) nor more than five hundred dollars ($500.00) and costs of the court for each offense.

ARTICLE XX. COASTAL PROTECTION

20-1 Purpose.

The intent of this article is to simplify the permitting process in the coastal area and promote the protection and enhancement of coastal area resources by adopting provisions which are consistent with or exceed the provisions of the Alabama Coastal Area Management Program.

20-2 Statutory authority.

The legislature of the State of Alabama enacted Title 9, Chapter 7, Sections 10 through 22 of the Code of Alabama, entitled "Preservation, Development, etc. of Coastal Areas," for the protection of those resources and for the enhancement of economic development activities. Title 9, Chapter 7, Section 20 stipulates no agency can issue a permit for any activity in the coastal area that the Alabama Department of Environmental Management finds to be inconsistent with the coastal area management program established by the Alabama Department of Economic and Community Affairs Office of State Planning and Federal Programs. This section further stipulates the intent of this article is to avoid duplication whenever possible as to the managing activities within the coastal area and yet to assure compliance with the management program. Now therefore, the City of Daphne, Alabama, as a means of minimizing duplication of permitting activities

within the jurisdiction of Daphne, Alabama, does ordain the provisions below as granted under its authority.

20-3 Finding of fact.

There is a direct and/or indirect relationship between the protection of coastal area resources, the protection and enhancement of lives and property, the economic stability, and the enhancement activity within the jurisdiction of Daphne, Alabama.

As written, the Alabama Coastal Area Management Program contains specific provisions wherein the City of Daphne can be delegated permitting authority under the Alabama Coastal Area Management Program as a means of minimizing duplication of permitting efforts within the coastal area.

20-4 Objectives.

The objectives of this Ordinance are as follows:

(a) To protect humans, wildlife, and natural resources.

(b) To minimize erosion and siltation.

(c) To assist in the implementation of the Alabama Coastal Area Management Program.

20-5 Usage.

Unless specifically defined below, words or phrases used in this shall be interpreted so as to give them the meaning described in the Alabama Coastal Area Management Program as approved on September 28, 1979, and amendments thereto, or otherwise have the meanings in common usage and to give the most reasonable application.

20-6 Words and terms defined.

(a) *Coastal area:* The coastal waters, including the lands therein and thereunder, and the adjacent shore lands, including the waters therein and thereunder, strongly influenced by each and in proximity to the shorelines of Alabama and including transitional and intertidal areas, salt marshes, wetlands, and beaches within the jurisdiction of Alabama. They extend inland to a point approximately ten (10) feet above mean sea level, and shall include all lands and waters between that point and mean high tide.

(b) *Coastal resources:* Valuable human, natural, cultural or historical assets within the coastal area, such as water quality, air quality, wetlands and submerged grass bed, beaches and dunes, wildlife habitats, biological resources, cultural resources, public access areas, and water resources.

(c) *Cultural resources:* Any district, building, site, object or other material in American history, architecture, archaeology, or culture which is of national, state, or local significance.

(d) *Degrade:* To affect the coastal area in such a manner as to produce a continuing reduction of destruction of present levels of coastal resources.

(e) *Dredging:* Removal or excavation of any materials from lands underlying coastal waters.

(f) *Person:* Any and all persons, natural or artificial, including, but not limited to, any individual, partnership, association, society, joint stock company, firm, company, corporation, institution, trust, estate, other legal entity, business organization, any state or local governmental entity, and any successor of the foregoing.

(g) *Substantial improvement:*

(1) Any addition to any structure.

(2) Any extension, enlargement, or expansion of any structure.

(3) Any repair, reconstruction, or improvement of a structure, the cost of which equals or exceeds fifty (50) percent of the fair market value of the structure either:

(a) Before the repair, reconstruction, or improvement is started or,

(b) If the structure has been damaged and is being restored before the damage occurred.

(h) *Steep slope:* A steep slope is any area of land along a coastal bluff and coastal ravine where the slope exceeds thirty (30) percent.

20-7 Lands covered.

This shall apply to all coastal areas in the jurisdiction of Daphne, Alabama.

20-8 Basis for establishing the coastal area.

The coastal area shall be those areas within Daphne, Alabama, which lies below an elevation of ten (10) feet above mean sea level, as is defined herein and in the Alabama Coastal Area Management Program.

20-9 Permit required.

A development permit shall be required in conformance with the provisions of this Ordinance.

20-10 Compliance.

No development, activity, or land shall hereafter be initiated, located, extended, converted, or structurally altered without full compliance with the terms of this Ordinance and other applicable regulations.

20-11 Abrogation and greater restrictions.

This Ordinance is not intended to repeal, abrogate, or impair any existing easements, covenants, or deed restrictions. However, where this Ordinance and another conflict or overlap, whichever imposes the more stringent restrictions shall prevail.

20-12 Interpretation.

In the interpretation and application of this all provisions shall be:

(a) Considered as minimum requirements.

(b) Deemed to neither limit nor repeal any other powers granted under state statutes.

20-13 Warning and disclaimer of liability.

The degree of resource protection and enhancement required by this Ordinance is considered reasonable for regulatory purposes and is based on the requirements of the Alabama Coastal Area Management Program.

20-14 Monitoring and enforcement.

Activities permitted under this shall be monitored by the environmental programs manager for compliance with the terms and conditions of the permit issued.

In the event the environmental programs manager or code enforcement officer discovers a violation of this, the environmental programs manager and building official may pursue several remedies to the violation.

These are as follows:

(a) Inform the user of the violation and pursue means for correcting the violation.

(b) Issue a cease and desist order if the activity is causing degradation to the coastal area.

(c) Revoke the permit if the activity cannot be brought into compliance with the conditions of the article.

(d) Pursue judicial remedies and/or levy fines in accordance with the police powers of the city.

(e) Other means as are deemed necessary to prevent further violations of the ordinance.

20-15 Administration.

The environmental programs manager is hereby appointed to administer and implement the provisions of this Ordinance and is given the following duties and responsibilities:

(a) Monitor all coastal activities.

(b) Review applications and building permits for activities in the coastal area in accordance with the provisions of this [article/Ordinance].

(c) Notify the Alabama Historical Commission of archaeological and historical finds.

(d) Where necessary, coordinate with the Alabama Department of Environmental Management and/or other governmental agencies on developments in the coastal area.

(e) Advise the permittee of other state and/or federal permits that may be required.

(f) Maintain a record of permit and monitoring activities.

(g) Issue a public notice of an impending permit, solicit public comments, make the permit application, and related records available to the public for inspection upon request, with the exception of any proprietary information.

20-16 Permit procedures.

Application for a development or activity permit shall be made to the building inspections department and shall at a minimum include an erosion control plan consisting of a statement or statements delineating the measures that will be taken to prevent and/or retard erosion from the development or activity site.

20-17 Variance.

Any aggrieved person may pursue an appeal in accordance with the variance provisions contained in the Flood Damage and Prevention Ordinance.

20-18 Specific provisions.

In all areas of the coast the following provisions are required:

(a) *Erosion control plan:* Any person proposing to conduct a development activity in the coastal area shall submit an erosion control plan to the building inspections department as part of his application for a permit for approval.

(b) *Shoreline erosion mitigation:*

(1) Any use intended to mitigate a shoreline erosion problem in the coastal area shall use nonstructural erosion control methods to the maximum extent practicable, including but not limited to preservation and restoration of dunes, beaches, wetlands, submersed grass beds, shoreline restoration, and nourishment.

(2) The emplacement of groins, jetties and breakwaters as erosion control devices shall be permissible only when no other technically feasible alternative means of control is available and the structure will have to be approved and permitted by the state and federal agencies.

The U.S. Department of Army, Corps of Engineers and the Alabama Department of Environmental Management regulate activities in waters of the United States within the political boundaries of the State of Alabama. Joint application and notification, as required by federal and state regulations, shall be submitted to the U.S. Army Corps of Engineers, Mobile District.

Furthermore, the State of Alabama Department of Conservation and Natural Resources State Lands Division regulates the placement and configuration of piers and other improvements on state submerged lands. Notice of intent to impact state owned submerged lands, as required by State Lands Division Regulation 03-SL-01, Rule 220-4-09, shall be submitted to the Alabama Department of Conservation and Natural Resources State Lands Division, Submerged Lands.

A copy of each applicable permit will be required to be submitted to the city prior to installation of the structure.

(3) Protection of cultural resources.

(4) All development in the coastal area shall, to the maximum extent practicable, avoid adversely affecting historic, cultural, or archaeological resources.

(5) Any person shall notify the environmental programs manager of any historical, cultural, or archaeological resources discovered in the course of conducting a permitted use in the coastal area.

(6) Coastal permitting may be a prerequisite for site plan and/or subdivision plat approval. recommendation

of the environmental programs manager shall be considered by the planning commission in making its final decision on all developments in the coastal protection area prior to approval.

(c) *Protection of wildlife and wildlife habitats:* To the maximum extent practicable, all uses within the coastal area shall be undertaken in such a way as to preserve and protect existing wildlife and wildlife habitats. In particular, endangered species and their habitats, as designated by appropriate federal and state agencies, shall be protected to the maximum extent practicable.

(d) *Coastal bluffs and coastal ravines slope protection:* New subdivisions and commercial sites shall provide forty-foot setback for all steep slopes located within the boundary of the coastal bluffs and coastal ravines. This setback is provided in recognition of the potentially negative impacts of construction in steep slope areas in the form of erosion, siltation, excessive removal of vegetation and soil, flooding, soil slippage, water runoff and destruction of unique land forms. It is further the purpose of this setback requirement to encourage good land use planning and design, maximize optimal use of the natural terrain and maintain ridgelines. Effective and reasonable application of this regulation will protect the health, safety and welfare of the citizens of the City of Daphne, as well as limit the adverse impact on adjoining, downstream properties and Mobile Bay.

ARTICLE XXI. THE BOARD OF ZONING ADJUSTMENT

21-1 Authority.

The board of zoning adjustment is hereby established and the following rules are set forth to govern its operation:

(a) *Membership:* The board shall consist of five (5) members appointed by the city council for overlapping terms of three (3) years.

(b) *Initial appointment:* The initial appointment shall be as follows: two (2) members for one (1) year; two (2) members for two (2) years; and, one (1) member for three (3) years.

(c) *Vacancies:* Any vacancy in the membership shall be filled for the unexpired term in the same manner as the initial appointment. Members shall be removed for cause by the city council upon written charges and after public hearing thereon.

(d) *Public offices held:* No members shall hold any other public office or position; with the exception that one (1) of the board members may also be a member of the planning commission.

(e) *Rules of procedure:* The board shall observe the following procedures:

(1) Shall adopt rules in accordance with the provisions of this Ordinance for the conduct of its affairs.

(2) Shall elect one of its members, other than a member of the planning commission, as chairman, who shall serve for one (1) year or until he/she is re-elected or his/her successor is elected. Said board will appoint a recording secretary.

(3) Said meetings of said board shall be held at the call of the chairman and at such other times as said board may determine.

The chairman, or in his/her absence, the acting chairman, may administer oaths and compel the attendance of witnesses by subpoena.

(4) All meetings shall be open to the public and are governed by the Alabama Open Meetings Act 2005-40, as amended.

(5) Said board shall keep minutes of its proceedings, show the vote of each member upon questions, if absent or failing to vote, indicating such fact, and shall keep records of its examinations and other official actions, all

of which shall be immediately filed in the office of the city clerk and shall become public record.

(f) *Duties and powers:* The board shall have the following duties and powers:

(1) *Administrative appeal:* To hear and decide appeals where it is alleged there is error in any order, requirement, decision, or determination made by the director of community development, zoning enforcement officer, code enforcement officer or other administrative official, involved in the enforcement of this Ordinance.

(2) *Special exceptions:* To hear and decide special exceptions to the terms upon which said board is required to pass under this Ordinance.

(3) *Variances:* To authorize upon appeal in specific cases such variance from the terms of this Ordinance as will not be contrary to the public interest where, owing to special conditions, a literal enforcement of the provisions of this Ordinance will, in an individual case, result in unnecessary hardship, so that the spirit of this Ordinance shall be observed, public safety and welfare secured, and substantial justice served. Such variance may be granted in such individual case of unnecessary hardship upon a finding by the board that:

(a) There are extraordinary and exceptional conditions pertaining to the particular piece of property in question because of its size, shape, or topography.

(b) The application of this Ordinance to this particular piece of property would create an unnecessary hardship.

(c) Such conditions are peculiar to the particular piece of property involved.

(d) Relief, if granted, would not cause substantial detriment to the public good or impair the purpose and intent of this Ordinance; provided, however, that no variance may be granted for a use of land or building or structure that is prohibited by this Ordinance.

(e) Variance examples would be as follows: Allowing smaller yard dimensions because an existing lot of record is of substandard size; waiving a portion of required parking and/or loading space due to some unusual circumstances; or, allowing fencing and/or plant material buffering different from that required, due to some unusual circumstances. This is available only on appeal to the board of zoning adjustment.

(g) *Use variance not permitted:* The board shall not be authorized to approve a use not permitted in a zoning district for which the provision is not otherwise provided herein.

21-2 Procedure.

Persons requesting a hearing before the board of zoning adjustment for an administrative review, special exception, or a variance shall observe the following procedures:

(a) An application on the prescribed form shall be filed with the department of community development by said owner of the subject property by the first day of the month for presentation at the next regular meeting, held on the first Thursday of the subsequent month. The application shall include all the specified pertinent data including an explanation of the grounds on which the appeal is being made.

(b) An application shall be accompanied by all supplemental materials listed in the applicable application packet found in Appendix G.

(c) The board shall hear the appeal within thirty (30) calendar days after its receipt.

Public notice of the hearing shall be published in full for one (1) insertion and an additional insertion of a synopsis of the proposed hearing request one (1) week after the first insertion in a newspaper of general circulation published in the municipality, the first insertion shall be at least fifteen (15) calendar days prior to the said public hearing; or, if no newspaper is published in the municipality, then said notice shall be posted in four (4) conspicuous places within the municipality at least fifteen (15) calendar days prior to the said public hearing. Due notice shall be given to the parties in interest of the date, time, and place of said hearing. A sign shall be posted upon properties which by law require public notice.

(d) The board shall render a decision on any appeal or other matters before it within forty-five (45) calendar days from the date of the public hearing.

(e) An appeal stays all legal proceedings in furtherance of the action appealed from, unless the director of community development certifies to the board after the notice of appeal shall have been filed with him/her, by reason of facts stated in the certificate a stay would, in his/her opinion, cause an imminent peril to life and property. In such case, proceedings shall not be stayed otherwise than by a restraining order which may be granted by the said board or a court of record on application, on notice to the official from whom the appeal is taken and on due cause shown.

(f) In exercising the powers granted the board of zoning adjustment in the administrative appeal procedures outline above, said board may, in conformity with the provisions of this Ordinance, reverse or affirm, wholly or in part, or may modify the order, requirements, decisions, or determination of the director of community development, zoning enforcement officer, code enforcement officer or other administrative official, involved in the enforcement of this Ordinance.

21-3 Limitation, withdrawal, citizen appeals.

(a) A property owner, or his/her appointed agent, shall not initiate action for a hearing before the board relating to the same parcel of land more often than once every twelve (12) months on the same variance request.

(b) Any petition for a hearing before the board may be withdrawn prior to action thereon by the board at the discretion of the person initiating such a request upon written notice to the recording secretary of the board.

(c) Any person or persons severally or jointly aggrieved by any decision of the board may make, within fifteen (15) calendar days thereafter, appeal to the circuit court or the like jurisdiction, by filing with such board a written notice of appeal specifying the judgment or decision from which appeal is taken.

21-4 Fees.

An appeal to the board of zoning adjustment for administrative review, special exception, variance, in addition, the actual costs for legal advertisements of the request and notifications to parties in interest shall be accompanied by the appropriate fee as more specifically enumerated in Article XXXIV, Schedule of Fees.

Fees paid for appeals to the board of zoning adjustment in accordance with section 21-1, subsection (f)(1), Administrative review, after the board has acted on an appeal may be returned to the appellant by resolution of the city council, if the board has ruled in favor of the appellant, and it is deemed appropriate to do so.

ARTICLE XXII. ZONING AMENDMENT

22-1 Procedure.

The city council may, from time to time, after examination, review and public hearing thereon, amend, supplement or change the regulations and zoning districts herein or subsequently established, proposals for zoning amendments, whether initiated by the city council, the planning commis-

sion, or any person, firm, or a corporation, shall be treated in accordance with the following procedure:

(a) An application on the prescribed form shall be submitted in writing to the department of community development thirty (30) calendar days prior to the regularly scheduled meeting and must be accompanied by a complete site plan of the proposed use, an adjacent property owners list, warranty deed (proof of ownership), legal description of subject property, current survey, and a map of the subject property. Such site plan shall include the existing land use and zoning of the adjacent and surrounding properties.

(b) The application shall be reviewed by the planning commission at its next regular meeting and said commission shall have thirty (30) calendar days from said regular meeting within which to submit a recommendation to the city council. If the commission fails to submit a recommendation to the city council within the thirty-day period, it shall be deemed to have approved the proposed amendment.

(c) Before the enactment of any amendment to this Ordinance, a public hearing thereon shall be held by the city council with proper notice as required by law.

(d) Said notice shall be published in full for one (1) insertion and an additional insertion of a synopsis of the proposed amendment one (1) week after the first insertion in a newspaper of general circulation published in the municipality, both insertions shall be at least fifteen (15) calendar days prior to the said public hearing; or, if no newspaper is published in the municipality, then said notice shall be posted in four (4) conspicuous places within the municipality at least fifteen (15) calendar days prior to the said public hearing. Due notice shall also be given to the parties in interest of the date, time and place of said hearing.

(e) Said public hearing shall be held at the earliest possible time to consider the proposed zoning amendment, and the city council shall take action on said proposed zoning amendment within forty-five (45) calendar days from the date of the public hearing, except in the case where the action of the city council is not in accordance with the planning commission's certified recommendation.

(f) In such case, the city council shall not make any change or departure from the text or maps, as recommended and certified by the planning commission, unless such change or departure is first resubmitted to the commission for an additional review and further recommendation. The planning commission shall have thirty (30) calendar days to resubmit its recommendation to the city council.

(g) Any petition for zoning amendment may be withdrawn prior to action thereon by the planning commission or city council at the discretion of the owner, authorized representative, firm, or corporation initiating such a request upon written notice to the department of community development or the city clerk, whichever is applicable.

(h) A property owner, or his authorized representative, shall not initiate action for the same zoning designation affecting the same parcel of land more often than once every twelve (12) months from the date of the action taken by the city council. The initiation date shall be at such time consideration is given by the planning commission.

22-2 Reversionary clause.

(a) *General:*

(1) Any parcel or parcels of land zoned or rezoned under the amendment authority of this Ordinance shall revert back to the prior zoning classification after the prescribed time period provided in subsection

(b), Time limits, from the date of city council approval if one of the following has not occurred on site:

a. Installation of water mains and connections as shown on approved subdivision or site development plans approved by the planning commission; or

b. Installation of sanitary sewers and laterals as shown on approved subdivision or site development plans approved by the planning commission; or

c. Installation of storm sewers, drainage facilities, and drainage structures as shown on approved subdivision or site development plans approved by the planning commission.

(2) If the development is to be constructed in stages, one (1) of the above-listed installations shall occur in the first phase of development to preclude reversion of the entire property to the previous zoning classification.

(3) The planning commission, upon recommendation of the director of community development, shall recommend to the city council the reversion period as prescribed below.

(b) *Time limits:* Any recommendation other than as provided below shall be accompanied by a justification thereof. The justification shall be clearly stated in the public hearing and shall be made part of the motion to approve the property's zoning.

	TIME LIMITS	
ZONING DISTRICT	2 years	3 years
Single-family residential districts	Up to five (5) acres	Over five (5) acres
Multi-family residential-apartment, town house or condominium	Up to one hundred fifty (150) units	Over one hundred fifty-one (151) units
B-1, B-2, B-3, MU or C/I district	Up to three (3) acres	Over three (3) acres

(c) *Administration:*

(1) *Inspection:* The director of community development shall inspect the site to determine whether development has occurred sixty (60) calendar days prior to the reversion of any property. The department of community development shall notify the property owner as listed in the Baldwin County Tax record (if different from original owner) of an upcoming public hearing regarding reversion of the zoning. Notice shall be provided via certified mail.

(2) *Fees:*

Extension of reversionary period	$500.00
Advertisement fee	$25.00
Notice to the Public	The greater of $5.75 per letter or United States Postal Cost for Certified Mail

(3) *Enforcement and records:* The department of community development shall maintain files and records to monitor reversion periods.

(4) *Penalty:* Failure to request an extension of the reversion period shall result in the re-establishment of the previous zoning of the property.

(5) *Zoning map disclaimer:* All rezoning or zoning amendment approved after the date of this Ordinance shall be subject to a reversionary period. Please contact the department of community development to verify zoning.

(6) *For city council ordinance:* A note shall be added to all zoning ordinances:

"This zoning classification is subject to a (fill in the blank) year reversionary clause. (Fill in the blank) years from the date this Ordinance is enacted, if the site development has not started for the purpose listed herein, the zoning shall be null and void and the property shall revert to the prior zoning district. Refer to Section 22-2, Reversionary Clause, of the Land Use and Development Ordinance."

(7) *Repeal of ordinance by which zoning was established:* Upon expiration of the reversionary period and upon recommendation of the director of community development, the planning commission shall forward a recommendation to city council to repeal the applicable ordinance by which said rezoning was established and to revert said property back to its original zoning classification. Zoning shall remain in place until such time as city council repeals applicable ordinance. Established procedures for public notice and public hearing for zoning and rezoning shall apply as established in Article XXII, section 22-1, entitled Procedures, subsections (c), (d), and (e) provided herein.

22-3 Fees.

An application to the planning commission for rezoning shall be accompanied by the appropriate fee as more specifically enumerated in Article XXXIV, Schedule of Fees.

ARTICLE XXIII. ANNEXATION

23-1 Procedure.

The city council may, from time to time, after examination, review and public hearing thereon, amend, supplement or change the regulations and zoning districts herein or subsequently established, proposals for annexation, whether initiated by the city council, the planning commission, or any person, firm, or a corporation, shall be treated in accordance with the following procedure:

(a) An application on the prescribed form shall be submitted in writing to the department of community development thirty (30) calendar days prior to the regularly scheduled meeting of the planning commission and must be accompanied by a warranty deed (proof of ownership), legal description of subject property, current survey, and a map of the subject property.

(b) The application shall be reviewed by the planning commission at its next regular meeting and said commission shall have thirty (30) calendar days from said regular meeting within which to submit a recommendation to the city council. If the commission fails to submit a recommendation to the city council within the thirty-calendar-day period, it shall be deemed to have approved the proposed amendment.

(c) Before enacting any amendment to this Ordinance, a public hearing thereon shall be held by the city council with proper notice as required by law.

(d) Said notice shall be published in full for one (1) insertion and an additional insertion of a synopsis of the proposed amendment one (1) week after the first insertion in a newspaper of general circulation published in the municipality, both insertions shall be at least fifteen (15) calendar days prior to the said public hearing; or, if no newspaper is published in the municipality, then said notice shall be posted in four (4) conspicuous places within the municipality at least fifteen (15) calendar days prior to the said public hearing. Due notice shall also be given to the parties in interest of the date, time, and place of said hearing.

(e) Said public hearing shall be held at the earliest possible time to consider the proposed annexation, and the council shall take action on said proposed annexation within forty-five (45) calendar days from the date of the public hearing except in the case where the tentative action is not in accordance with the planning commission's certified recommendation.

(f) In such case, the council shall not make any change in or departure from the text or maps, as recommended and certified by the planning commission, unless such change or departure can be first resubmitted to the commission for an additional review and recommendation. The commission shall have thirty (30) calendar days to resubmit its recommendation.

(g) Any petition for annexation may be withdrawn prior to action thereon by the plan-

ning commission or city council at the discretion of the owner, authorized representative, firm, or corporation initiating such a request upon written notice to the department of community development or the city clerk's office, whichever is applicable.

23-2 Procedure for zoning newly annexed land.

Any land annexed to the City of Daphne hereafter shall be classified as an R-1, Low Density Single-Family Residential District unless otherwise recommended by the planning commission through the zoning amendment procedure provide in section 22-1, Zoning amendment procedures. In such case, city council may consider, after due process of publication and hearing as required by law, specific applications to zone newly annexed land into one or more existing or proposed new zoning classifications recommended by the planning commission. Multiple zoning requests for a single parcel shall be subject to the Article XVII, Subdivision Regulations and/or the Article XXX, Planned Unit Development regulations as applicable.

23-3 Fees.

An application to the planning commission for annexation shall be accompanied by the appropriate fee as more specifically enumerated in Article XXXIV, Schedule of Fees.

ARTICLE XXIV. VACATION OF EASEMENT AND/OR RIGHT-OF-WAY

24-1 Procedure.

The city council may, from time to time, after examination and review thereon, amend, supplement, or change the subdivision requirements in regard to easements and right-of-ways provided herein or subsequently established, whether initiated by the planning commission, or any person, firm, or a corporation shall be treated in accordance with the following procedure:

(a) An application on the prescribed form shall be submitted in writing to the department of community development thirty (30) days prior to the regularly scheduled meeting of the planning commission and must be accompanied by an adjacent property owners list, warranty deed (proof of ownership), legal description of subject property, current survey, and a map of the subject property.

(b) The application shall be reviewed by the planning commission at its next regular meeting.

(c) Said commission before enacting any amendment to this Ordinance, a public hearing thereon shall be held by the planning commission with proper notice as required by law. Due notice shall also be given to the parties in interest of the date, time, and place of said hearing.

Said notice of a vacation of easement or right-of-way shall be published in full for one (1) insertion in a newspaper of general circulation published in the municipality prior to the said public hearing by the city council.

(d) Said easement or right-of-way shall be vacated and/or relocated upon the recommendation of the planning commission and the acceptance by resolution of the city council.

(e) Any petition for vacation of easement and/or right-of-way may be withdrawn prior to action thereon by the planning commission or city council at the discretion of the owner, authorized representative, firm, or corporation initiating such a request upon written notice to the planning coordinator in the department of community development or city clerk in the city clerk's Office, whichever is applicable.

24-2 Fees.

An application to the planning commission for vacation of easement and/or right-of-way shall be accompanied by the appropriate fee as more specifically enumerated in Article XXXIV, Schedule of Fees.

ARTICLE XXV. MOBILE HOME PARK PROVISIONS

25-1 General.

(a) *Location:* Mobile homes shall not be permitted in any district except an R-5, Mobile Home Residential, district as specified hereafter, and the city council shall not spot zone individual lots in a zoning district for mobile home use. No extension, expansion, or replacement of an existing mobile home (trailer) park shall be approved, unless it is to be located in an R-5, Mobile Home Residential District.

(b) *Buffer requirement:* Mobile homes not meeting HUD standards (U.S.C. 5401) shall not be installed, erected, or permitted. Where any boundary of a park directly abuts property which is improved with a permanent residential building or unimproved property which may under existing laws and regulations are used for permanent residential construction, a wall or fence of solid appearance shall be six (6) feet in height and of a construction and design approved by the planning commission shall be provided along such boundary.

(c) *Sale of lots:* Any subdivision designed for the sale of lots on which homes are to be placed shall conform to all of the requirements set forth in this Article XVII, Subdivision Review, regardless of whether the homes to be placed on the lots for sale are to be permanent type structures or mobile homes. If it is located in the corporate limits, the land use shall be restricted to those uses permitted in the zoning district in which the proposed subdivision is to occur.

(d) *Compliance:* Mobile home parks (trailer parks) designed for rent or lease of spaces within the park for accommodation of individual mobile homes shall conform to the regulations of the Baldwin County Health Department, provided that a copy of the plan for a proposed trailer park, extension, or revised plan of an existing trailer park shall also be submitted to the planning commission for approval.

25-2 Application.

(a) An application submitted to the planning commission for the use of land as a mobile home subdivision shall be accompanied by a development plan showing compliance with the requirements of this article prior to construction.

25-3 Plan.

The following information shall be filed with the department of community development:

(a) The initial application shall be in writing, signed by the applicant, and shall include the following:

(1) Location and legal description of area, indicating uses of surrounding areas.

(2) Detailed map of area showing dimensions, contours at two-foot intervals, and area drainage.

(3) Plans and arrangements of access streets and connection with traffic artery, lot layout, recreation areas and facilitates, buffer zone, and proposed green belt planting as screening.

(4) Plans for the proposed sewage, drainage, street paving and such other information as may be otherwise required by the planning commission.

(5) Plans and specifications of all buildings, improvements, and facilities to be constructed within the mobile home subdivision.

(6) Three (3) copies of the application and all accompanying plans and the requirements of Article XV, Site Plan Review.

25-4 Minimum requirements.

(a) The park shall be located on a well-drained site with a minimum of two (2) acres in size which is properly graded to ensure rapid drainage free from stagnant pools of water.

(b) Each park shall provide mobile home spaces and each such space shall be clearly defined or delineated. Each space shall have an area of not less than four thousand (4,000) square feet and a width of not less than fifty (50) feet.

(c) Mobile home parks which, at the time of the adoption of this Ordinance, existed lawfully with mobile home spaces that do not comply with any of the foregoing minimum area and width or

minimum average width requirements, may continue to operate and shall be excused from such compliance.

(d) Maximum density: Ten (10) spaces per residential acre, exclusive of street walks and open space, one (1) per lot or space.

(e) All mobile home spaces shall abut upon a driveway of not less than twenty-four (24) feet in width which shall have unobstructed access to a public street, alley, or highway.

(f) Walkways not less than two (2) feet wide shall be provided from the mobile home spaces to the service buildings.

(g) Each mobile home space shall be provided with two (2) off-street parking spaces.

(h) All driveways and walkways within the park shall be hard-surfaced and lighted at night with electric lamps of not less than two hundred fifty (250) watts each, spaced at intervals of not more than one hundred (100) feet.

(i) An electrical outlet supplying at least 100-115/220-250 volts, one hundred (100) amperes shall be provided for each mobile home space.

(j) An adequate supply of pure water for drinking and domestic purposes shall be supplied by pipes to all buildings and mobile home spaces within the park to meet the requirements of the park. Each mobile home space shall be provided with a cold water tap at least four (4) inches above the ground.

(k) Each mobile home space shall be provided with a sewer line at least four (4) inches in diameter which shall be connected to receive the waste from the shower, bathtub, flush toilet, lavatory, and home harbored in such space and having any or all of such facilities. The sewer line in each space shall be connected to discharge the waste into a public sewer system in compliance with any applicable ordinance or into a private sanitary sewer system or individual septic system of such construction and in such a manner as shall comply with the Baldwin County Health Department requirements and present no health hazard.

(l) Garbage cans with tight-fitting covers shall be provided in quantities adequate to permit disposal of all garbage and rubbish, shall be located no further than three hundred (300) feet from any mobile home space, and kept in a sanitary condition at all times. Garbage and rubbish shall be collected and disposed of as frequently as may be necessary to ensure that the cans shall not overflow. The area used to accommodate garbage receptacles shall be properly screened by providing a wall or a fence of solid appearance shall be at least six (6) feet in height and of a construction and design approved by the planning commission.

(m) Every park shall be equipped at all times with fire extinguishing equipment in good working order of such type, size, and number and so located within the park as to satisfy applicable reasonable regulations of the fire department. No open fires shall be permitted at any place which may endanger life or property. No fires shall be left unattended at any time.

(n) A six-inch water line with a fire plug shall be provided for each thirty (30) mobile homes (e.g., 31 requires two (2) fire hydrants).

(o) No owner or person in charge of any dog, cat, or other pet animal shall permit it to run at large or commit any nuisance within the limits of any mobile home park and shall comply with other applicable local ordinances regarding animals and pets.

(p) It shall be unlawful for any persons including, but without limitation, owners of mobile home parks and owners and/or such occupants of mobile homes within such park to place, maintain, or occupy any mobile home unless such mobile home is equipped with tie-downs and anchors meeting or exceeding standards of the building code. Owners of mobile home parks shall notify the building official of the placement of any mobile home on his property or the existence of any mobile home in his park which by visual inspection appears not to comply with the tie-down and anchor requirements of the building code. Such notification shall be written, shall contain a statement of the nature of the possible violation, the location of the mobile home, name, and the address of the mobile home owner. It shall

be the responsibility of the owner of the mobile home park to give written notice to the owners of all mobile homes within such park of the requirements of this section. In addition to such written notice, the owner of such park shall maintain in a clearly visible location at the entrance to the park, a sign advising all occupants of the park of the requirements of this article.

(q) Not less than ten (10) percent of the total area of any mobile home park shall be devoted to common recreational areas and facilities, such as playgrounds and swimming pools. Ways for pedestrians and cyclists shall be away from streets, and play areas for small children or other recreational areas in block interiors.

These areas shall not include streets or parking areas, shall be closed to automotive traffic except for maintenance and service vehicles and shall be improved and maintained for the uses intended.

(r) The licensee or permittee, a duly authorized attendant, or caretaker shall be in charge at all times to keep the mobile home park, facilities, and equipment in a clean, orderly and sanitary condition. The attendant or caretaker shall be accountable, with the licensee or permittee, for the violation of any provision of this Ordinance to which the licensee or permittee is subject.

25-5 Minimum lot and structure requirements.

The following shall apply:

(a) No lot shall have less frontage on its access street than required for a driveway allowing maneuverability of the home onto the lot. All corners of each lot shall be marked with iron pipe or other permanent type marker.

(b) Mobile homes shall be located on lots with a minimum setback from an access street of twenty-five (25) feet and ten (10) feet from any other lot line, provided no mobile home shall be closer than twenty (20) feet to another mobile home.

(c) Each mobile home space shall be improved with one patio of concrete or other suitable impervious material having a minimum area of one hundred fifty (150) square feet, and one (1) gravel or concrete pad of size equal to or greater than the dimensions of the trailer located on the pad, but in no case less than ten (10) feet by forty (40) feet.

(d) Permanent structures located within any mobile home lot shall be used for storage purposes only, and shall have a maximum area of eighty (80) square feet and shall be located not less than twenty (20) feet from any mobile home, nor closer to any lot lines than provided in the residential district in which it is located.

(e) No permanent additions of any kind shall be built onto, or become a part of any mobile home provided however, that this provision shall not be construed to prohibit the addition to the mobile home of a patio cover or carport cover if the same is not permanently attached to the ground. Such patio or carport covers shall be similar in appearance and design to the mobile home, nor shall this provision be construed to prohibit tie-downs which are required.

25-6 License.

It shall be unlawful for any person to maintain or operate a mobile home park within the corporate limits of the city in any district other than an R-5, Mobile Home Residential, district if the home park was in existence prior to the enactment of this Ordinance the maintenance and/or operation may continue.

25-7 Application for license.

Application for initial mobile home park license shall be filed with the City of Daphne. The application shall be in writing, signed by the applicant and shall include the following:

(a) The name and address of the applicant.

(b) The location and legal description of the mobile home park.

(c) A complete site plan of the mobile home park showing conformity with the requirements of Article XV, Site Plan Review.

(d) Plans and specifications of all buildings, improvements and facilities constructed or to be constructed within the mobile home park.

(e) Such further information as may be required by the planning commission to enable it to determine if the proposed park will comply with legal requirements. Three (3) copies of the application and all accompanying plans and specifications shall be filed with the department of community development.

(f) Upon application in writing by a licensee for renewal of a license and upon payment of the annual license fee, the City of Daphne shall issue a certificate renewing such license for another year provided the park is still in compliance with the requirements provided herein.

(g) Upon application in writing for transfer of a license and payment of the transfer fee, the city shall issue a transfer if the transferee will sign a document indicating that he/she will comply with all the requirements of this Ordinance and other applicable local, state, and federal laws.

25-8 Posting of license and temporary permit.

The license or temporary permit shall be conspicuously posted in the office of or on the premises of the mobile home park at all times.

25-9 Revocation of license.

The City of Daphne may revoke any license to maintain and operate when the licensee has been found guilty by a court of competent jurisdiction of violating any provision of this Ordinance. After the correction of such conditions and the payment of the penalties imposed by law and assurance given to the city council that such condition will not be repeated, then they may issue a new license.

25-10 Fees.

The annual license or transfer of license fee for each mobile home park shall be as enumerated in Article XXXIV, Schedule of Fees.

ARTICLE XXVI. MANUFACTURED HOMES PROVISIONS

26-1 General.

Manufactured homes not meeting HUD standards (U.S.C. 5401) and not having the HUD Stamp Certification permanently attached shall not be installed, erected, or permitted. A manufactured home which otherwise qualifies as a single-family dwelling unit under Article VIII, Definition of Terms, hereof, shall be allowed to be placed or erected in certain residential zones upon compliance with the following requirements:

(a) A manufactured home may be located within any residential zone other than R-1, Low Density Single-Family Residential, and R-2, Medium Density Single-Family Residential districts.

(b) A manufactured home shall not be placed within a planned unit development unless placement of manufactured homes within the planned unit development is expressly provided in the planning unit development documents.

(c) The manufactured home shall be reviewed, approved, or disapproved by the planning commission as to the compatibility with standards set forth in this article.

26-2 License.

Contractors doing any and all work required in the siting of a manufactured home shall be licensed by the state prior to receiving a license from the City of Daphne as is the same for erecting other types of structures, prior to the issuance of a building permit and a subsequent certificate of occupancy as defined in Article VII, section 7-2, entitled the Permits and certificates.

26-3 Compliance.

(a) Manufactured homes shall be installed according to the standards established either by the Alabama Manufactured Housing Commission Statutory Law, Title 24, Housing Code of Alabama as amended from time to time, the Building Code,

and the National Manufacturing Housing Construction and Safety Standards Act of 1974 as amended, U.S.C. 5401.

(b) It is intended that manufactured homes be designed and erected to be similar in appearance to permanent houses—not mobile units—generally with pitched roofs, eaves overhanging six (6) inches or more, and typical to an on-site conventionally built single-family permanent dwelling as built in accordance with the Standard Housing Code.

Manufactured homes shall be erected on permanent foundations meeting HUD standards (U.S.C. 5401) or Building Code standards and conforming to Title 24, Housing Code of Alabama, Chapter 535-X-13, as amended, and are deemed to be real property and taxed as such.

(c) Manufactured homes placed in residential zoning districts shall meet the minimum compatibility standards set forth in this article, are subject to the requirements of the zoning district in which it is placed, except as otherwise provided herein.

26-4 Compatibility.

(a) Placement of a manufactured home may be permitted after it has been reviewed and determined that the manufactured home is compatible with the general appearance of homes in the surrounding area if recommended by the director of community development and approved by the planning commission. Manufactured homes shall be compatible to site-built and other homes in the immediate general areas within the same zoning or residential district and/or area. Approval shall be granted upon finding that the manufactured home is substantially similar in size, siding material, roof material, foundation enclosure, and general aesthetic appearance to existing or proposed development in the same zoning district or residential area.

26-5 Minimum requirements.

The following shall apply:

(a) *Minimum width:* The general shape, width, and appearance of the manufactured home shall conform to housing in adjacent or nearby locations to ensure compatibility of site-built houses and manufactured housing.

(b) *Roof pitch, overhang, and materials:* The general shape, appearance, and roofing material of the manufactured home shall be compatible with the exterior appearance of the housing in adjacent or nearby locations.

(c) *Exterior finish:* Any material may be used for exterior finish that is generally used in areas near the location where the manufactured home is to be sited.

(d) *Site orientation:* Manufactured homes shall be placed on the lot in such a manner as to be compatible with and reasonably similar in orientation to the other structures in the area.

(e) *Garages, carports, etc:* Garages and/or carports, landings, stairs, porches, entrance platforms, ramps, or other means of entrance for manufactured homes shall be compatible with the manufactured home and site-built garages and/or carports of site-built houses in adjacent or nearby locations and constructed in accordance with the building code at the time the manufactured home is sited.

(f) *Towing devices:* All towing devices, including but not limited to wheels, axles, hitches and transportation lights must be removed.

(g) *Foundation enclosure:* The manufactured home's foundation forms an enclosure under exterior walls, unpierced except for ventilation and access, and conforms to Title 24, Housing Code of Alabama, Chapter 535-X-13, as amended from time to time. The type of material and method used for underpinning shall be consistent with that for site-built houses in adjacent or nearby locations.

ARTICLE XXVII. RECREATIONAL VEHICLE PARK PROVISIONS

27-1 General.

The following regulations apply to all developments provided for the accommodation of transient recreational vehicles including travel trailers, campers, small mobile homes used for vacation purposes, motor homes, and similar transient residential vehicles.

Recreation vehicle parks are uses permitted in R-5, Mobile Home Residential, and B-2, General Business, districts subject to the approval of the planning commission and compliance with the requirements of the following provisions.

27-2 Minimum requirements.

The following shall apply:

(a) No recreational vehicle park shall be located without direct access to a city, county, state, or federal highway with a minimum width of not less than fifty (50) feet and shall not direct traffic into adjacent residential districts.

(b) The minimum lot area per park shall be two (2) acres.

(c) Use of spaces in recreation vehicles parks shall be limited to travel trailers, mobile homes, motor homes, and campers.

(d) Users of the spaces shall meet all other applicable laws. Spaces shall be rented by the day or week only and an account of such space shall remain in the same trailer park for a period of not less than ninety (90) days.

(e) Management headquarters, recreational facilities, toilets, showers, laundry facilities and other uses and structures customarily incidental to operation of a recreational vehicle park are permitted as accessory uses in any district which recreation vehicle parks are allowed provided:

(1) Such establishments and the parking area primarily related to their operations shall not occupy more than ten (10) percent of the park area.

(2) Such establishments shall be restricted in their use to occupants of the park.

(3) Such establishments shall present no visible evidence of their commercial character which would attract customers other than occupants of the park.

(4) No space shall be so located that any part intended for occupancy for sleeping purposes shall be within thirty (30) feet of the right-of-way line of any major, collector or minor street.

(5) Recreational vehicle parks designed for temporary use by mobile homes for recreational or other purposes shall conform to applicable Baldwin County Health Department regulations, provided that the plan for a proposed camp site, extension, or re-plan of an existing camp site shall be submitted to the planning commission for approval prior to construction.

ARTICLE XXVIII. FIXED DWELLING PROVISIONS

28-1 Minimum provisions.

Duplexes, apartments, townhouses, and mid-rise condominiums are subject to the approval of the planning commission and compliance with the following provisions:

(a) There shall be no more than eight (8) continuous dwelling units built in a row with the same front line.

(b) The end of the building in any grouping shall conform to the side yard requirements of the district.

(c) No more than thirty (30) percent of the lot area shall be occupied by buildings.

(d) Insofar as practicable, off-street parking facilities shall be located under habitable floors of the buildings or grouped in bays either adjacent to streets or in the interior of blocks. No off-street parking shall be more than one hundred (100) feet by the most direct pedestrian route from a door of the dwelling unit it intends to serve.

(e) All complexes shall be required to connect to a public or private water and sanitary sewer system operating under the conditions of an NPDES (National Pollutant

Discharge Elimination System) permit from ADEM. No other means of waste disposal shall be permitted.

(f) All other requirements within the district in which the apartments, townhouses, or condominiums are located shall prevail.

(g) The total area which may be covered by buildings shall be compatible with the total area requirements of the zoning district in which the development is to occur.

(h) The maximum height of buildings shall be compatible with the maximum building height requirements of the zoning district for which the development is to occur.

(i) Greenbelt areas and landscaping shall be designed in accordance with Article XIX, Landscaping and Tree Protection provisions except where provided herein.

(j) See Article XIII, District Provisions, section 13-8, Fixed Dwellings, for additional requirements.

ARTICLE XXIX. INNOVATIVE DESIGN PROVISIONS

29-1 General.

The intent of this article is to provide for single-family detached residential developments of an innovative or unconventional design for which the planning commission may modify the subdivision regulations, subject to the following restrictions:

(a) *Zoning:* The following requirements are not subject to modification by the planning commission:

(1) An innovative or unconventional design subdivision shall be allowed only in an R-4, High Density Single and Multi-Family District or R-6(G) Garden or Patio Home District as outlined in Article XXXV, Table of Permitted Uses and Conditions.

(2) The development shall be designed with a wall or fence of a solid appearance at least six (6) feet in height and of a construction and design approved by the planning commission shall be provided along such boundary to protect the integrity of the subdivision and of the zoning district in which the development is to occur. Said wall or fence shall conform to applicable provisions as prescribed in Article XIX, Landscaping and Tree Protection.

(b) *Size of tract:* The tract of land to be used for the innovative or unconventional subdivision shall be of sufficient size to accommodate the proposed uses and buildings in a homogenous and harmonious entity. However, it may not exceed a size greater than ten (10) acres, unless the development of the larger tract of land is approved by the planning commission.

(c) *Density:* Maximum density shall be five (5) dwelling units per gross acre to be developed. No modification shall be allowed to reduce the aggregate net area of the lots in the subdivision to less than the minimum area required by the zoning district in which the development is to occur, however, a reasonable proportion of the required gross area may be combined with other portions to provide common open area. Such common open space means recreational area for collective use and enjoyment of the residents or occupants of the subdivision or the general public. Common open space shall not include streets, whether public or private, drainage ways, parking, and service areas.

(d) *Interior streets and sidewalks:* All facilities within an innovative subdivision which are intended for the movement, storage, parking, loading and unloading of vehicles, or pedestrian traffic shall be provided with a permanent surface and of a construction approved by the planning commission.

(e) *Procedure:* An application for review and approval of an innovative or unconventional design subdivision shall also be subject to the procedures as set forth in Article XVII, Subdivision Review.

ARTICLE XXX. PLANNED UNIT DEVELOPMENT PROVISIONS

30-1 General.

(a) *Intent:* The intent of this article is to provide an opportunity for the best use of land, protection of valuable natural features in the community, provision of larger areas of recreational open space, more economical public services, and to encourage the unified development of tracts of land by permitting within the confines of an overall density limitation, much more creative, and flexible concepts in planning.

(b) *Definition:* A planned unit development is as follows:

Is land under single ownership or unified control, planned and developed as a whole in a single development operation or approved programmed series of development operations, and which generally includes clustered buildings, common open spaces, and a mix of building types and land uses.

Includes principal and accessory uses and structures substantially related to the character of the development itself and the surrounding area of which it is a part.

Is developed according to comprehensive and detailed plans which include not only streets, utilities, lots, or building sites and the like, but also site plans, floor plans, and elevations for all buildings as intended to be located, constructed, used, and related to each other, and detailed plans for other uses and improvements, facilities, and services as will be common use by some or all of the occupants of the planned unit developments, but will not be provided, operated, or maintained at public expense.

30-2 Types of developments.

(a) *Fixed dwelling planned unit developments:* A group of two (2) or more fixed dwelling structures, together with other permitted uses, on a parcel of property of adequate size that is suitable for the intended use and in single ownership, with not less than sixty (60) feet of frontage on a public street which frontage shall serve as the principal means of access to the property.

(b) *Ownership:* A person, partnership or corporation, a property owners' association, legally bound to one another, to carry out the provisions of this article for the development and operation of a planned unit development, likewise legally bound to execute the agreements as provided hereinafter.

The property owners' association of a condominium project, established under the provisions of Alabama law which has the power to execute the agreements as provided for hereinafter.

30-3 General regulations.

The following regulations shall apply to all planned unit developments and require that such developments:

(a) Shall be in conformity with the comprehensive plan or portion thereof as it may apply.

(b) Shall be consistent in all respects with the purposes and intent of this Ordinance.

(c) Shall advance the general welfare of the city and immediate vicinity.

(d) Shall provide, through desirable arrangement and design, benefits which justify the deviations from development standards which would otherwise apply.

(e) Shall also be reviewed and approved according to the criteria as set forth in Article XVII, Subdivision Review, if it is determined that the development is a subdivision according to the laws of Alabama.

30-4 Development regulations.

The following development regulations shall apply to all planned unit developments:

(a) Provisions of residential districts as applicable shall generally be adhered to in all planned unit developments.

(b) All land proposed in the project for residential use, including outdoor use, off-

street parking, interior drives, and other circulation ways may be counted in complying with the density requirements.

(c) For any single-family, two-family dwelling, any dwelling unit in a townhouse, or condominium building there shall be a private common area. Such common area shall include the space occupied by such dwelling or dwelling unit, with adjoining common area assigned exclusively to such dwelling unit of not less than six hundred (600) square feet in addition to private parking area.

(d) Open space, permanent usable, in planned unit development.

Definitions:

• Privately owned and occupied area of a separate lot, outside of any buildings on the lot.

• Privately occupied open space assigned to an individual dwelling unit in a project and not occupied by the dwelling.

• Public open space. Any spaces not occupied by buildings or privately owned lots or privately occupied space. This public open space may consist of access driveways, off-street parking spaces, pedestrian walkways, play areas, landscaped areas and any other areas suitable for the common enjoyment of the residents of the project.

(e) All common areas not assigned to private occupancy as set forth above shall be assigned to the common use of all residents of the development, with such use assured in perpetuity as provided for above. Assignment and development of such common area shall be as follows:

(1) Access driveways.

(2) Landscaped areas, comprising not less than ten (10) percent of all common area required by this article, may include the following:

(a) Pedestrian access walkways.

(b) Children play areas.

(c) General landscaped areas, flower gardens, and areas for passive recreation.

(d) Swimming pools, including accompanying accessory structures, and areas for organized sports.

(e) Any other areas suitable for the common area enjoyment of the residents.

(f) Every residential structure in a development shall be within two hundred (200) feet of a hard-surfaced access drive no less than twenty (20) feet wide or a parking lot connected with such a drive. In addition, every dwelling or ground floor dwelling unit shall be directly accessible to service and emergency vehicles.

(g) Private streets on common easements may be used to provide vehicular access to not more than thirty (30) dwelling units on any one such drive. In all other respects, the system of vehicular circulation for a development shall be provided by dedicated streets complying in all respects with the standards of the subdivision regulations; the easement therefore may be counted as a part of the net area in complying with density limits, but may not be counted as a part of required landscape or recreation area.

(h) Private streets shall be constructed in accordance with the subdivision regulations. No part of the streets may be used for the parking of vehicles.

(i) Off-street parking spaces for dwelling units may be provided in group garages or parking lots within one hundred fifty (150) feet of the dwelling units

to be served. Curb indented parking bays or courts may be permitted within the easement or street right-of-way, but not within the required street or sidewalk. Such parking shall be landscaped and shall be permitted only along easements or streets internal to the project and not along a street or major thoroughfare serving other uses. Such off-street parking spaces may be counted as part of the net area in calculating density, but shall not be counted as part of the required recreation area.

30-5 Uses permitted.

(a) *Principal uses:*

(1) Dwelling units of a permanent nature, for ownership or rental, including non-transient mobile homes.

(2) Public parks and specialized recreation centers.

(b) *Accessory uses:*

(1) Home occupations. (See Home Occupation, as defined in Article XXXI).

(2) Facilities for use of residents of the development:

(a) Recreation, children's nursery, kindergarten, laundry or similar services, any similar facility.

(b) Off-street parking lots or garages.

(c) Stores of the "local family shopping" or "convenience" nature provided for the use, primarily, of the residents, in any development comprising three hundred (300) or more dwelling units, with such commercial facilities subject to requirements in the B-1, Local Business, district. Maximum area devoted to such commercial uses shall be one (1) acre or five (5) percent of total acreage in the project, whichever is greater.

30-6 Other requirements.

(a) *Location requirements:* Each planned unit development shall comply with the following:

(1) Shall be free of objectionable environmental characteristics, such as poor drainage, air pollution, undue noise, unsightliness, and similar problems.

(2) Shall be so located as to assure a maximum of compatibility with other types of development.

(3) Shall be connected to a public or private community water and sanitary sewer facilities. No planned unit development shall be approved without written certification from the appropriate utilities that adequate water and sewer services are available.

(b) *Open space, site size, and density:* Around every principal building, there shall be a minimum required open space, unobstructed by any other building; there shall be a minimum size for projects; there shall be a maximum density. The following rules apply:

(1) *Minimum site size:* Adequate for the intended use as determined by the planning commission.

(2) *Maximum density:* Ten (10) units per acre.

(3) *Property line setback:* The minimum setbacks shall be compatible with the minimum setbacks as required in an R-7(A) Apartment District.

(4) *Minimum usable open space:* Twenty-five (25) percent.

30-7 Review procedure.

The following shall apply:

(1) The developer should schedule an initial meeting with the planning commission.

(2) For the initial meeting, a sketch plan of the proposed project should be furnished by the developer. If, during the initial meeting, it is determined that the project is a subdivision as defined by Alabama

law, the developer shall comply with all requirements of the subdivision regulations.

(3) If all land in the project is to remain under one ownership, as defined herein, the following points should be discussed with the developer:

(a) The present uses and character of the area.

(b) The road and street system, especially peripheral streets and proposed internal circulation patterns as related to requirements by planned unit developments.

(c) Public and private open areas and parks and trails.

(d) Public utilities and services or their counterpart such as water, sewer, fire protection, surface drainage, school facilities, if any.

(e) Types of structures to be built.

(f) Proposed uses to be developed.

30-8 Application procedure.

(a) *The sketch plan:* Upon completion of initial discussions, the developer proposing a planned development should complete an application form requesting initial general review and approval of the project by the planning commission.

This stage of review is often called sketch plan stage, although, if he wishes, the developer may submit items from the preliminary plan stage.

All sketches for planned development projects shall be submitted to the planning commission for review to ascertain the plan for any project complies with the conditions set forth in this article and other applicable sections of this Ordinance.

The following items shall be submitted with the initial application:

(1) A letter of transmittal officially submitting the proposal for development, signed by the developer or his authorized representative. If submitted by someone other than the current owner of the property, the letter should include or be accompanied by satisfactory evidence of the existence of a purchase or lease agreement or other instrument, to ensure the current owner is in agreement with the proposed development.

(2) Three (3) copies of a scaled general site development plan of the proposal showing the following information:

(a) Boundary lines of the property, including dimensions.

(b) Location and names of all public streets adjoining or traversing the site. In the event no public street now adjoins the site, sufficient description by metes and bounds to identify the location of the site.

(c) Identification of the name, plat book, and page number of any recorded subdivision comprising all or part of the site.

(d) Identification and location of any existing easements, water courses, lakes, or other significant natural features upon the site.

(b) *The preliminary plan:* The developer, after review and discussion of the sketch plan, shall prepare and submit a preliminary plan for review by the planning commission.

The purpose of a preliminary plan is to provide an opportunity for somewhat detailed showing of the intent of the developer with regard to compliance with the requirements as outlined in this article and to provide an initial hearing on the proposal.

The following items shall be submitted with the preliminary plan application:

(1) The preliminary plan shall be received by the planning commission and if a rezoning of land will be necessary to accommodate any project, this plan can be used for the public hearing to be held in accordance with Alabama law.

(2) Maps and written statement setting forth the details of the proposed development shall be included in the preliminary plan. The maps must show enough of the area

surrounding the proposed development to demonstrate the relationship of the planned unit development to the adjoining uses, both existing and those proposed by the developer.

The facilities are to be identified as public or private. The maps shall be in a general schematic form and contain the following information:

(a) Maps should include the following information:

(1) The approximate topography at two-foot intervals.

(2) Proposed land uses and the approximate location of existing and proposed buildings and other structures and uses adjacent to the site.

(3) The character and approximate density of the dwellings.

(4) The approximate location of all streets and rights-of-way, and walkways, and parking facilities.

(5) Public uses including schools, parks, playgrounds and other open spaces.

(6) Number of parking spaces.

(7) Amount of impervious surface.

(8) Generalized drainage plan.

(9) Development staging, if appropriate.

(b) The written statements shall contain an explanation of:

(1) The character of the proposed development and the manner in which it has been designed to take advantage of the planned unit development concept.

(2) The proposed sewage disposal facilities.

(3) Water supply and surface drainage provisions.

(4) Evidence of adequate financial stability to complete the proposed project.

(5) The present ownership of all of the land included within the planned unit development project.

(6) The method proposed to maintain private common open areas, buildings or other facilities, including copies of all legal documents necessary to accomplish this.

(7) The general indication of the expected schedule of development.

(c) If, after a public hearing, the planned unit development project is approved, any rezoning needed shall be instituted subject to revocation and reversion to the original zoning designation of the land, if the final plan is not approved.

(d) In the event approval has been conditioned on modification to the plan, then such preliminary plan approval shall not be effective until the developer has filed written consent to the modifications as required.

(e) If the developer wishes to develop the planned unit development project in stages, the final plan submitted for review and approval may cover only the first stage to be developed, but succeeding stages of the final plan must be in substantial conformance to the approved preliminary plan.

(f) If a final plan covering at least a portion of the area in the approved preliminary plan has not been filed within one (1) year, the preliminary plan approval shall expire.

(c) *The final plan:* The plan provides a specific and particular plan by which development and construction will take place. The final plan serves as the plan on which the planning commission and local government base a decision.

(1) In addition to those items specified for the preliminary plan, the final plan must include:

A map showing:

(a) Street location and nature of improvement.

(b) Lot lines and lot designs.

(c) The landscaping and tree planting plan.

(d) Surface drainage system.

(e) Peripheral setback forty (40) feet.

(f) All easements.

(g) Areas proposed to be conveyed, dedicated, or reserved for parks, parkways, playgrounds, school sites, public buildings and similar public and semi-public uses.

(h) A plot plan for each building site, except single-family residential lots and the common area, shall show the approximate location of all buildings, structures, improvements, and indicate the common area surrounding the buildings and structures.

(i) Elevations or perspective drawings of all typical proposed structures and improvements, except single-family residences and their accessory buildings. The drawings need not be in construction detail.

(j) A development schedule indicating:

(1) The approximate date when construction of the project can be expected to begin.

(2) The stages in which the project will be built and the approximate date when construction of each stage can be expected to begin.

(3) The approximate dates when the development of each of the stages in the development will be completed.

(4) The location of common area that will be provided for each phase.

(k) The following plans and diagrams will be provided when the planning commission finds that the planned unit development creates special problems of traffic or parking:

(1) An off-street parking and loading area plan.

(2) A circulation diagram indicating the proposed movement of vehicles, goods and pedestrians within the planned unit development and to and from existing thoroughfares.

(3) Any special engineering features and traffic regulation devices needed to facilitate or ensure the safety of this circulation pattern must be shown.

(l) The plan shall be accompanied by written legal documents on behalf of the owner, his heirs, successors, and assigns shall include:

(1) Provisions of the proposed development, as shown on the plans and as set forth in specifications, shall be completed in detail within such time frame as agreed upon by the planning commission.

(2) Provisions of all land improvements intended for the common use of all residents, including drives, walks, parking areas, recreation facilities, equipment, all landscaped or other common areas shall be maintained in perpetuity including such servicing as may be required for the use of such land improvements.

(3) Provisions of no future changes in the development shall be made which would encroach upon the land used to comply with the provisions of this article as to density, common area, yards, courts, vehicular access, automobile parking, building coverage, or other outdoor requirements.

(4) Provisions of all easements for private drives, utility lines, and similar purposes shall be open at all times for access by publicly employed personnel and equipment for police and fire protection, for inspection of utility systems, and for any other public purpose.

(5) Articles of incorporation and bylaws for the formation of a property owners' association for the planned unit development.

(6) A declaration of restrictions and covenants which shall include agreements and provisions to govern the use, maintenance and continued protection of the planned unit development, and all of its common areas. Such declarations shall be consistent with Fannie Mae, Freddie Mac, or other similar federal or state requirements.

(7) A written legal opinion from the applicant/owner's attorney stating the above legal documents comply with applicable federal and state laws.

(d) *Final plan approval:* The following shall govern approval of a final plan:

(1) The planning commission shall compare the final plan with the preliminary plan and with the standards set forth in this article to assure that the final plan conforms to said standards. The planning commission may place conditions upon the granting of approval which, in its judgment, will ensure conformance to the plan as approved.

(2) The approval of the final plan or any stage of it shall be valid for a period of one (1) year following the date of such approval.

(3) Factors to be considered by the administrative staff and the planning commission in reviewing any planned unit development are that the development is in harmony with the comprehensive plan and with the character of the neighborhood and will provide an overall density and standard of open space as required by this Ordinance.

(4) The final plan or any stage of the planned unit development shall not be approved if the average of the allowable dwelling units per acre, up to and including the stage which is to be approved, exceeds by more than ten (10) percent of the average number of dwelling units per acre which is allowable for the development.

(5) A report of its findings and recommendations on a proposed planned unit development shall be prepared for and acted on by the planning commission. Such report shall constitute a recommendation to the city council for action should rezoning be necessary.

(6) Upon final approval and after all conditions have been met, the planning commission shall approve the recording of the final plan in the deed records of the county. When no parcels are to be sold, the developer will process and have recorded the subdivision plat in the manner designated by the commission.

(e) *Substantial conformance:* The determination of substantial conformance between the preliminary plan and the final plan shall be at the discretion of the planning commission.

Slight variation in conformance is intended solely to facilitate the minor adjustments which may be necessary as the plans approach a final construction stage. The commission may refuse to

grant approval of substantial conformance if, in their opinion, the adjustments are being used to significantly modify the approved plan.

(f) *Site improvements:* The developer, at his option, may place street improvements, sidewalks, utilities, and other permanent site improvements after preliminary plan approval or stake the location of the buildings and make application for building permits.

Under no circumstances, however, will any building permit be issued until final approval has been granted and the necessary portions of the final plan recorded. The placing of improvements will not obligate the local government to approve such improvements on the final plan if not in conformance with the terms of this article.

(g) *Public record:* The final plan is the permanent public record of the planned unit development and will be the manner in which the development is constructed as provided herein.

(h) *Contents:* The final plan shall contain, in final form, the information required above. In addition, the following will apply:

(1) If parcels of land are to be sold, a subdivision plat on the forms prescribed by according to the criteria as set forth in Article XVII, Subdivision Review, and shall be filed for approval in the appropriate manner.

ARTICLE XXXI. HOME OCCUPATIONS, AUTOMOBILE SERVICE STATIONS, CEMETERIES, BED AND BREAKFAST ESTABLISHMENTS, EXTENDED STAY HOTEL FACILITIES

31-1 Home occupations.

Home occupations shall be incidental to the residential use of the dwelling and shall not change the essential residential character of the dwelling or adversely affect the uses permitted in the district of which the home occupation is to occur. No home occupation shall be permitted which might interfere with the general welfare of the surrounding residential area due to potential noise, increased pedestrian and vehicular traffic, or any other condition which would constitute an objectionable use of residentially zoned property. Limitations on the type of home occupations are as follows:

(a) Area used shall not exceed twenty (20) percent of the gross floor area in the principal building.

(b) It shall be confined entirely to the principal building, accessory building, or outside storage building for which twenty (20) percent of gross floor area would apply.

(c) Employment shall be limited to members of the family residing in the dwelling. There shall be no employment of employees other than members of the resident family. In no case shall more than two (2) persons be engaged in the home occupation.

(d) No internal or external addition, alteration, or remodeling of the dwelling is permitted in connection with the home occupation.

(e) Chemical, mechanical, or electrical equipment that creates odors, light, glare, noises, or interference in radio or television reception detectable outside of the dwelling shall be prohibited.

(f) No display of products shall be visible from the street and only articles made on the premises may be sold; except nondurable articles, consumable products, which are incidental to a service or which service shall be the principal use in the home occupation may be sold on the premises.

(g) Instruction in music, dancing, and similar subjects shall be limited to two (2) students at a time.

(h) The activity carried on as a home occupation shall be limited to the hours between 7:00 a.m. and 10:00 p.m.

(i) One (1) professional or announcement sign may be used to identify the customary home occupation. Such sign shall not exceed one and one-half (1½) square feet in

area exposed to view and must be mounted flat to the main wall of the principal building. No such sign shall be directly illuminated.

(j) The nature of some uses tends to increase beyond the limits permitted for a home occupation and could impair the use and value of a residentially zoned area; therefore, the following shall not be permitted as a customary home occupation:

(1) Uses which do not meet the provision listed above.

(2) Automobile body and/or fender repairing.

(3) Barber shops and beauty parlors.

(4) Food handling on a large-scale basis, processing, or packing.

(5) Repair, manufacturing and processing uses; however, this shall not exclude the home occupation of a dressmaker where goods are not manufactured for stock, sale, or distribution.

(6) Restaurants.

(7) Uses which entail the harboring, training, raising or treatment of dogs, cats, birds, or other animals.

(8) Ammunition sales.

(9) Acupuncture office and/or practice.

(10) Dental offices and/or practice.

(11) Gun sales.

(12) Medical offices and/or practices.

(13) Painting of vehicles.

(14) Private schools with organized classes.

(15) Small engine repairs.

(16) Welding shop.

(17) Contractors, provided no commercial trucks which exceed the criteria listed herein, materials or construction equipment are kept on premises. Commercial trailers shall not exceed sixteen (16) feet. Commercial trucks/vehicles shall have no more than six wheels.

(18) Outdoor display or storage of materials, goods, supplies, or equipment used in the operation of the business shall be permitted outside the dwelling.

(19) Automobile/truck/boat/vehicle related business is permitted as a home occupation. Vehicle related businesses include but are not exclusive to: vehicle maintenance, repair, renovation, restoration and/or sales.

(20) Flammable, caustic or noxious material not commonly found in the home may not be stored or kept on the premises.

(k) Customary home occupations may be subject to annual inspection by the code enforcement officer and/or revenue officer. The following is a list of permissible home occupations which may be allowed, provided such use meets the criteria and limitations in section 31-1(a) through (i):

(1) Carpentry, wood working.

(2) Child daycare/family daycare in a residential dwelling for no more than six (6) children and meet the state requirements.

(3) Cleaning services, maid services.

(4) Dance /music instruction, tutoring.

(5) Dressmaking, tailoring, sewing.

(6) Free-lance photography or art studio.

(7) Handyman services.

(8) Insurance salesman.

(9) Landscaping services.

(10) Making custom home furnishings.

(11) Massage therapist.

(12) Mental health specialist, psychoanalysis practice, psychiatry office.

(13) Office of religious or church leader.

(14) Professional offices: attorney, architect, planner, engineer, accountant, consulting, accounting, book keeping, architect, designer.

(15) Screen writer, authors, composers.

(16) Speech pathologist.

(17) Television repair, computer repair.

(18) Therapist.

(19) Upholstering.

(20) Website designer.

(l) All commercial vehicles associated with a home occupation shall be parked on private property, outside of the city right-of-way.

31-2 Automobile service stations.

Within the districts permitting automobile service stations, the following requirements shall apply:

(a) *Location:* The property on which an automobile service station is located shall not be within one hundred (100) feet of any residential district or any property containing a school, public playground, church, hospital, public library, or an institution for children, elderly, or dependents.

(b) *Site requirements:* An automobile service station shall have a minimum frontage on the primary street of one hundred twenty (120) feet and a minimum lot area of twelve thousand (12,000) square feet. All buildings shall be set back forty (40) feet from all street right-of-way lines, fifty (50) feet for U.S. Highway 98, and all canopies shall be set back fifteen (15) feet from all street right-of-way lines.

(c) *Access to site:* Vehicular entrances or exits at an automobile service station:

(1) Shall not be provided with more than two (2) curb cuts for the first one hundred twenty (120) feet of street frontage or a fraction hereof.

(2) Shall contain an access width along the curb line of the street of not more than forty (40) feet as measured parallel to the street at its narrowest point and shall not be located closer than ten (10) feet to the adjoining property.

(3) Shall not have any two (2) driveways, or curb cuts, any closer than twenty (20) feet at both the right-of-way line and the curb or edge of the pavement along a single street.

(d) *Gasoline pump islands:* All gasoline pump islands shall be set back at least fifteen (15) feet from the right-of-way line, or where a future widening line has been established, the setback line shall be measured from such line, and where pump islands are constructed perpendicular to the right-of-way line, they shall also be at least fifteen (15) feet from the right-of-way, however, the pumps shall be at least sixty (60) feet from the center line of an arterial street, fifty-five (55) feet from the center line of a collector street and forty-five (45) feet from the center line of other streets.

(e) *Off-street parking:* A minimum of two (2) off-street parking spaces are required with an additional off-street parking space for each lubrication or wash bay.

(f) *Other site improvements:* In addition to the above referenced requirements, the following site improvements shall be adhered to:

(1) A raised curb of at least six (6) inches in height shall be erected along the street property lines, except for driveway openings.

(2) A wall or fence of a solid appearance shall be at least six (6) feet in height and of a construction and design approved by the planning commission and/or a staggered double row of Evergreen plantings at least ten (10) feet in width which shall grow to at least ten (10) feet in height at planting and spaced in a manner which after three (3) years will provide an impervious visual barrier. Said protection buffer shall be main-

tained by the owner of the property in order to conceal such areas or facilities from a residential district adjoining, facing, across a street, in the rear, or on the side of the principal building or use.

(3) Outdoor lighting of all types shall be directed so as to reflect away from all residential dwellings and shall be so situated as not to reflect directly onto a public right-of-way.

(4) Signs, whether permanent or temporary, shall not be placed within the public right-of-way and shall be arranged so they do not obstruct visibility for drivers or pedestrians.

(5) All driving, parking, storage, and service areas shall be paved and curbed and a good stand of grass shall be maintained on the remainder of the lot.

31-3 Cemeteries.

Within districts permitting cemeteries, the following requirements shall apply:

(a) The site proposed for a cemetery shall not interfere with the development of a system of collector or larger streets in the vicinity of such site. In addition, such site shall have direct access to a thoroughfare.

(b) Any new cemetery shall not be located on a site containing less than twenty (20) acres.

(c) All structures shall be set back no less than twenty-five (25) feet from any property line or minor street right-of-way.

(d) All graves or burial lots shall be set back not less than twenty-five (25) feet from any property line or minor street right-of-way line and not less than fifty (50) feet from any collector or arterial street.

(e) The entire cemetery property shall be landscaped and maintained.

(f) An application must be made to the board of zoning adjustment for any extension of an existing cemetery.

31-4 Bed and breakfast establishments.

(a) *General:* A bed and breakfast establishment may be permitted in R-1, R-2 or R-3 Single-family zoning designations, subject to the approval of the board of zoning adjustment. All bed and breakfast establishment operators shall abide by the patron registration requirements as set forth in City Ordinance 2008-67 as amended, an ordinance to require hotel registration and retention of registration records. Bed and breakfasts shall only be permitted in single-family detached dwellings, shall only be operated by the owner and resident of the dwelling, and shall comply with the following provisions:

(b) *Definition:*

Bed and breakfast: The renting of rooms in a private residence for brief periods of time together with the provision of breakfast for the guests by the home owner in an establishment having one to five guest rooms which are subordinate and incidental to the main, owner occupied, single-family residential use. All service is to be provided by the home owner.

(c) *Performance standards:* Approval of a bed and breakfast establishment may be permitted only upon determination that the application and evidence presented clearly indicate that all of the following standards will be met:

(1) There shall be at least five hundred (500) square feet of interior floor area within the bed and breakfast for each guest room it houses. All guest rooms shall be located within the principal structure.

(2) No more than five (5) guest rooms shall be included in any one establishment.

(3) No more than two (2) persons shall be allowed to occupy any one (1) guest room at any time, except in the case where a child less than five (5) years of age occupies the same room. In no case shall any bed and breakfast be allowed to exceed its total occupancy limit as established by the city at the time of approval of the use.

(4) Except for serving meals to overnight guests, the establishment shall not en-

gage in the restaurant business. Guest rooms shall not contain cooking facilitates.

(5) Guest stays shall be limited to four (4) weeks.

(6) At least one (1) off-street parking space shall be provided for each guest room, plus two (2) for the owner.

(7) All requirements, standards, and conditions contained herein shall be met.

(d) *Bed and breakfast general operating regulations and requirements:*

(1) *Length of stay:* In order to ensure that bed and breakfast establishments operate as transient accommodations, rather than as rooming houses, the maximum length of stay shall be limited to thirty (30) consecutive days and guests shall be prohibited from staying at the same bed and breakfast establishment for more than sixty (60) days within any one-year period.

(2) *Limitation on total number of guests per room/establishment:* No more than two (2) persons shall be allowed to occupy any one (1) guest room at any time, except in the case where a child occupies the same room. In no case shall any bed and breakfast be allowed to exceed its total occupancy limit as established by the City of Daphne at the time of planning commission approval.

(3) *Parking requirements:* For each and every guest room as approved by the City of Daphne, there shall be provided one (1) parking space which is in addition to all other required parking spaces. Such additional required parking spaces shall be properly situated on site, shall be properly screened from adjacent properties, and shall be arranged so that each space has direct access to a driveway. Parking areas shall be designed and arranged on the site so as to not detract from the character of the neighborhood. Such parking areas should not detract from the residential character of the neighborhood. Recreational vehicle parking shall be prohibited.

(4) *Signs:* Signs should identify the establishment, not advertise it. Therefore, only one (1) non-illuminated wall sign, attached to the front wall of the establishment, shall be allowed. Such signs shall not exceed two (2) square feet in size. The maximum allowable square footage established in each zoning designation and/or overlay district shall apply as provided in each district. Said allowable area shall not be exceeded. In the event that channel letters, as defined in Article VIII, Definitions, are proposed, then the maximum allowable square footage shall be calculated at a rate of eighty (80) percent in lieu of the standard rate of one hundred (100) percent.

(5) *Food preparation:* The only meal provided to guests shall be breakfast, and it shall be served only to guests lodging in the facility. Additionally, individual guest rooms shall contain no cooking facilities, and no food preparation or cooking shall be allowed.

(6) *Building design standards:*

(a) *Interior:* Only minimal interior modifications shall be allowed whenever it is necessary to meet building code or health department requirements, and rooms shall not have been specifically constructed or remodeled for rental purposes.

(b) *Exterior:* Aside from any alterations necessary to ensure the safety of the structure, no exterior modifications shall be allowed (other than provision of a separate entrance) unless approved by the planning commission as a part of the initial approval process. Approved exterior modifications should not detract from the residential character of the structure or the neighborhood.

31-5 Extended stay hotel facilities.

An extended stay hotel facility may be permitted in a B-2, General Business, zoning district in accordance with Article XXXV, Table of Permitted Uses. All extended stay hotel facility operators shall abide by the patron registration requirements as set forth in City Ordinance 2008-67 as amended, an ordinance to require hotel registration and retention of registration records.

(a) *Definition:*

Extended stay hotel facility. A building or structure under a single management that provides no fewer than five (5) rental room or suite units intended primarily as short term lodging accommodations for public rental on a daily, weekly, or other short term basis for registered guests.

(b) *Performance standards:* An extended stay hotel facility may be permitted by the planning commission in accordance with site plan review procedures provided in Article XV, Procedures for Site Plan Approval. All extended stay hotel facilities shall provide for and meet the following criteria:

(1) Maintain a central, internal lobby, and provide daily room cleaning and linen changes for its guests.

(2) May include supportive areas such as meeting rooms, incidental retail sales and commercial services, central kitchen facility, dining rooms, restaurants, lounges, office areas, swimming amenities, etc., intended principally as services for registered guests.

(3) Individual room or suite units shall be furnished and may include mini-refrigerators, bars, bar sinks, and microwave ovens, but shall not include more than two (2) bathrooms or more than two (2) bedrooms.

(4) The determination of the number of bedrooms contained in a room or suite unit shall be made based on the suitability of a room or articulated room space, including, without limitation, alcoves and lofts, for use as a defined sleeping area distinct from associated internal living space. The characterization of a room or articulated room space as a bedroom shall be determined objectively on the basis of its physical suitability for use as a distinct defined sleeping area, not on the basis of the manner in which such room or space is denominated.

(5) A building or structure owned under a condominium form of ownership that satisfies this definition of extended stay hotel facility shall be subject to all area and dimensional requirements and limitations applicable to hotels and motels.

(6) No more than six (6) persons per room.

ARTICLE XXXII. TELECOMMUNICATION TOWERS AND FACILITIES PROVISIONS

32-1 Purpose.

The intent of this article is to establish minimum standards for wireless telecommunications facilities. The underlying principals of these standards are to:

- Achieve a balance among the number, height, and density of wireless telecommunications facilities that are appropriate for our communities; and,
- Encourage and maximize the use of existing and approved towers, buildings, and other structures to accommodate new wireless telecommunications facilities; and,
- Ensure the compatibility of towers with, and avoid adverse impacts to, nearby properties; and,
- Discourage the proliferation of obsolete towers throughout the city.

32-2 Definitions.

- *Accessory structure compound:* A fenced, secured enclosure in which a wireless telecommu-

nications facility and its equipment, buildings, access roads, parking area and other accessory devices/auxiliary structures are located.

• *Alternative support structure:* Any structure other than a wireless telecommunications tower, which may include, but is not limited to, buildings, water towers, light poles, power poles, telephone poles, and other essential public utility structures.

• *Antenna:* An electromagnetic device which conducts radio signals, through an attached cable or waveguide, to or from a radio transmitter or receiver. Typically this includes "whips," "cornucopia horns," "panels," and parabolic "dishes."

• *Antenna support structure:* Any structure on which telecommunications antennas and cabling can be attached. Typically this includes steel towers with guy-wires (guyed towers); wooden, steel or concrete single poles (monopoles); self-supporting steel towers with three (3) or four (4) "legs" (self-supporting/lattice towers); rooftops of existing buildings or structures (such as elevated water storage tanks). (See also Tower).

• *Co-location:* The placement of more than one (1) wireless communications antenna by one (1) or more telecommunications service providers on a single existing or new antenna support structure.

• *Concealment techniques:* Design techniques used to blend a wireless telecommunications facility, including any antennas thereon, unobtrusively into the existing surroundings so as to not have the appearance of a wireless telecommunications facility. Such structures shall be considered wireless telecommunications facilities and not spires, belfries, cupolas, or other appurtenances usually required to be placed above the roof level for purposes of applying height such as building bulk, massing, and architectural treatment of both the wireless telecommunications facility and surrounding development. Concealed towers on developed property must be disguised to appear as either a part of the structure housing, a principal use, or an accessory structure which is normally associated with the principal use occupying the property. Concealed towers developed on unimproved property must be disguised to blend in with the existing vegetation. Example: a tower of such design and treated with architectural material so camouflaged to resemble a woody tree with a single trunk and branches on its upper part, also known as a "monopine".

• *FAA:* Federal Aviation Administration.

• *FCC:* Federal Communications Commission.

• *Height:* When referring to a tower or other structure, the distance measured from the ground level at the base of the tower to the highest point on the tower or structure, including if said highest point is an antenna placed on a structure or tower.

• *Tower:* Any structure that is designed and constructed primarily for the purpose of supporting one (1) or more antenna, including self-supporting lattice towers, guyed towers, or monopole towers. The term includes radio and television transmission towers, microwave towers, common carrier towers, cellular telephone towers, and the like (See Also Antenna Support Structure).

32-3 Procedures and standards.

(a) *Permitted zones:* Wireless telecommunications facilities shall be permitted by special exception in a B-2, General Business, district and by right in a C/I, Commercial/Industrial, district. Antennas located on existing towers (co-location antennas) and antennas located on alternative support structures shall be permitted by right.

(b) *Height:* Tower height shall be limited to one hundred and eighty (180) feet, not including the antenna.

Antennas located on alternative support structures shall not exceed fifteen (15) feet in height above the existing structure on which they are placed.

(c) *Setbacks:* Where a tower is permitted in a zoning district adjacent to any residential district, the required setback from all residentially zoned property lines shall be a distance equal to the height of the tower.

(d) *Co-location:* To minimize adverse visual impact associated with the proliferation and clustering of telecommunication towers, co-location of facilities on existing or new towers shall be encouraged by:

(1) Only issuing permits to qualified shared facilities at locations where it appears there may be more demand for towers than the property can reasonably accommodate; or,

(2) Giving preference to qualified shared facilities over other facilities and authorizing use at particular locations;

(3) For a facility to become a qualified shared facility, the facility owner shall show the following:

(a) The facility is appropriately designed for sharing; and,

(b) The facility owner is prepared to offer adequate space on the facility so others share fair and reasonable nondiscriminatory terms.

(c) Co-location of communications antennas by more than one (1) provider on existing or new telecommunications towers shall take precedence over the construction of a new single-use telecommunications tower.

(d) For any telecommunications tower approved for shared use, the owner of the tower shall provide notice of the location of the telecommunication tower.

(e) No new antenna support structure shall be permitted unless the applicant demonstrates that no existing antenna support structure can accommodate the applicant's needs.

(f) No signage, symbols, or advertisements may be attached to the pole, tower or antenna.

(g) Monopole structures shall have the ability to accommodate at least one (1) additional set of antennas.

(h) Guyed structures and self-supporting towers shall have the ability to accommodate at least two (2) additional sets of antennas.

(e) *Aesthetics:* The aesthetic properties of each individual wireless telecommunications facility shall be approved as part of the site plan review process.

(f) *Appearance:* The design of the tower shall be of a type that has the least visual impact on the surrounding area.

(1) Towers and antennas shall be painted a neutral or blending color so as to reduce visual obtrusiveness, unless subject to any applicable FAA standards. If an antenna is installed on a structure other than a tower, the antenna and supporting telecommunications facilities must be of a neutral color that is identical to, or closely compatible with, the color of the supporting structure.

(2) No signage, symbols, or advertisements may be attached to the pole, tower, or antenna.

(3) Towers camouflaged to resemble trees or indigenous vegetation in order to blend in with the native landscape shall be subject to administrative review as are types of concealment techniques. (See Concealment techniques).

(g) *Accessory structures:*

(1) The design of the compound and its accessory structures shall, to the extent possible, maximize use of building materials, colors, textures, screening, and landscaping that effectively blend the tower facilities within the surrounding natural setting and built environment.

(2) In or adjacent to developed properties, accessory structures must be aesthetically and architecturally compatible with the surrounding environment. Materials such as wood, brick, and stucco should be appropriate. The use of metal or metallic looking materials shall be prohibited.

(h) *Non-vegetative screening:*

(1) Non-vegetative screening shall be required unless it is necessary to reduce the visual impact of a wireless telecommunication compound on adjacent public ways, properties, or the neighborhood in which it is located.

In or adjacent to developed properties, non vegetative screening shall be provided in a manner compatible with the surrounding character of development, buildings, natural vegetation, and landscaping.

Such screening, as required and subject to site plan review, shall have a minimum height of eight (8) feet, and may consist of one of the following: brick masonry walls, a fence of a solid appearance, berms, or opaque barriers. All non-vegetative screening shall be properly maintained by the property owner or lessor.

(2) In certain locations where the visual impact of the tower would be minimal, such as remote, agricultural, or rural or heavily developed industrial areas, the non-vegetative screening requirement may be reduced.

(3) Wireless telecommunications facilities utilizing underground vaults rather than above ground equipment buildings may be exempted from screening requirements.

(i) *Landscaping:*

(1) Landscaping will be required to reduce the visual impact of the compound and its accessory structures on adjacent public ways, properties, or the neighborhood in which it is located. In or adjacent to developed properties, landscaping shall be provided in a manner that is compatible with the surrounding character of development, buildings, and natural vegetation.

(2) The perimeter of the compound shall be landscaped with a buffer of plant materials which effectively screen the view of the compound from adjacent property and public ways. The standard buffer shall consist of a landscape strip of at least five (5) feet in width outside the perimeter of the compound. In locations where the visual impact of the tower would be minimal, the landscaping requirement may be reduced.

(3) A row of trees a minimum of eight (8) feet in height and a maximum of ten (10) feet apart shall be planted around the perimeter of the compound fence. A continuous hedge at least thirty (30) inches in height at planting capable of growing to at least thirty-six (36) inches in height within eighteen (18) months shall be planted in front of the tree line.

(4) All landscaping shall be of the evergreen variety. All landscaping shall be xerophilous (heat tolerant) or irrigated and properly maintained by the property owner or lessor to ensure good health and variety.

(j) *Lighting:*

(1) Towers shall not be artificially lighted unless required by the FAA or other authority for safety purposes. If lighting is required, "dual lighting," red at night/strobe during day, shall be preferred unless restricted by the FAA.

Lighting must be shielded or directed upward to the greatest extent possible so as to minimize the amount of light that falls onto nearby properties or residential districts.

(2) Basic security lighting for the compound may be permitted, but shall be focused only on the compound itself, and shall be directed away from any adjacent residential districts.

(k) *Environmental impact:* All wireless telecommunications facilities shall comply with the National Environmental Policy Act. If an environmental assessment is required by the Federal Communications Commission (FCC), a copy of the assessment, as well as documentation of the FCC's subsequent approval thereof, must be submitted at the time of application.

(l) *Safety:*

(1) *Radio frequency:* The applicant shall be required to submit documentation that the proposed wireless telecommunications facility complies with the FCC standards for radio frequency emissions, as adopted by the FCC on August 1, 1996.

(2) *Structural:* A professional engineer shall certify that all antenna support structures and wireless telecommunications equipment are erected and/or installed so as to comply with the co-locations requirements of this Ordinance, wind loading and other structural standards contained in the Building Code as adopted by the City of Daphne and the applicable technical codes established by the Electronic Industries Association (EIA/TIA 22-E "Structural Standards for Steel Antenna Towers and Antenna Supporting Structures) or the Telecommunications Industry Association. This shall apply to new and modified structures and facilities.

(3) *Security of the site:* Fencing shall be required to ensure that antenna support structures and their accessory buildings are fully secured. Sufficient anti-climbing measures must be incorporated into each facility, as needed, to reduce potential for trespass and injury.

(4) *Obsolete towers:* In the event the use of any wireless telecommunications facility has been discontinued for the period of one hundred and eighty (180) calendar days, the wireless telecommunications facility shall be deemed to be abandoned.

The determination of the date of the abandonment shall be made by the building official.

Upon such abandonment, the owner/operator of the wireless telecommunications facility shall have an additional one hundred and eighty (180) calendar days within which to reactivate the use of the wireless telecommunications facility to another owner/operator who makes actual use of the wireless telecommunications facility, dismantle, or remove the wireless telecommunications facility.

ARTICLE XXXIII. SIGN PROVISIONS

33-1 Purpose.

The intent of this article is to further the purpose stated in Article I and is designed to govern the effective use of signs as a means of communications; to protect and promote the public health, safety and welfare by governing the type, number, location, physical dimensions, setback and other standards to signs in each of the use districts established in this Ordinance; to prevent the disruptions, obstructions and hazards to vehicular and pedestrian traffic that signs may cause; to minimize the possible adverse effect of signs on nearby public and private property; and to encourage a positive visual environment in harmony with the natural beauty of the City of Daphne.

33-2 General provisions.

The following apply:

(a) *General prohibition:*

(1) *Signs prohibited:* No sign, unless herein excepted, shall be erected, constructed, posted, painted, altered, maintained, or relocated, until a permit has been issued by the code enforcement officer. Before any permit shall be issued an application prescribed forms, which shall indemnify and hold harmless the City of Daphne of all damages, all demands or expenses of every character which may in any manner be caused by the erection and use of said sign or sign structure, shall be filed together with drawings and specifications maybe necessary to fully advise and acquaint the code enforcement officer with location, size, construction, materials, manner of illuminating, and securing or fastening, and number of size applied for in the wording of the sign or advertisement to be carried on the sign. A decision by the code enforcement officer shall be made

within thirty (30) calendar days from the date of when the application is received. Further, an application for a business license shall be a prerequisite for applying for a sign permit.

(2) *Electrical permit requirement:* All signs which are electrically illuminated by neon or by any other means shall require a separate electrical permit and inspection. Each sign requiring a permit shall be clearly marked with the permit number and the name of the person or firm placing the sign on the premises. The absence of a proper ID tag shall be prima facie evidence that the sign or advertising structure is being operated in violation of this Ordinance.

(3) *Size restrictions applicable:* Any permitted sign shall be subject to the size and height limitations imposed by this Ordinance for the district in which said sign is located, except as otherwise provided herein.

(4) *Right-of-way placement prohibited:* No outdoor advertising sign or sign structure shall be placed upon any street or highway right-of-way, except as otherwise provided herein.

(5) *View obstruction prohibited:* No outdoor advertising sign or sign structure shall be located in such a manner as to materially impede the view of any street or highway intersection.

(6) *Ingress / egress impediment prohibited:* No outdoor advertising sign shall be erected, relocated or maintained so as to prevent free ingress/egress from any door, window, or fire escape.

33-3 Special provisions.

The following apply:

(a) *Minimum height requirements:* No portion of any outdoor advertising sign shall be less than nine (9) feet above the level of a sidewalk or other pedestrian thoroughfare, nor shall be less than fifteen (15) feet above the level of a public driveway, alley or street.

(b) *Aesthetic standard:* Signs shall be harmonious with the environment and with the nature of our special local characteristics of site, aesthetic tradition, and development potential. Signs made of natural woods and materials, featuring earth tones and indirect external lighting are encouraged to reflect the natural beauty of our mostly residential and recreational area.

(c) *Time requirements:* A sign permit shall be null and void if the sign for which the permit was issued has not been completed and erected within a period of six (6) months from the date of issuance of the permit.

33-4 Nonconforming signs.

Any sign in existence on the date of adoption of this Ordinance that is not in conformance shall be considered a nonconforming sign and shall be permitted to continue to exist subject to the following conditions and this section shall also apply to the prohibitions set forth in section 33-6, Signs prohibited in all districts.

(a) *Grandfather clause, legal nonconforming signs:*

(1) *Existing off-premises signs and billboards:* At such time as any existing off-premises sign or billboard is removed or destroyed the replacement sign or billboard shall be in conformance with the provisions of this Ordinance. No new off-premises signs or billboards will be permitted in any zone. A permit shall not be issued for any on-premises sign for any premises on which there exists a grandfathered off-premises sign or billboard until the off-premises sign or billboard is permanently removed.

(2) *Legal nonconforming sign status:* Any sign located within the corporate limits prior to the enactment of the Land Use and Development Ordinance, September 21, 1987, or located on property prior to its annexation, which does not conform to the provisions as set forth by this Ordinance, is eligible for characterization as a "legal nonconforming" sign

and is permitted, provided there is only one (1) ground-mounted, on-premises sign, and all other signage is in conformance with these regulations. A permit for a legal nonconforming sign shall be obtained prior to the date when the next business license is due.

(b) *Loss of legal nonconforming status:* A legal nonconforming sign shall immediately lose its legal nonconforming status and must come into conformance upon the following:

(1) *Amortization schedule:* Legally nonconforming signs shall be either removed, replaced with a conforming sign by January 1, 2005, or a date three (3) years from the date in which the property is annexed into the corporate limits.

It is intended that this provision shall ensure that those who hold legally nonconforming status will recoup initial investment costs and remaining useful life of such signs. It is further intended that this provision shall not deprive any owners of property rights without just compensation so as to avoid the occurrence of a taking.

It is envisioned that the time period allotted herein shall allow for amortization and depreciation of such signs based upon the following factors:

Initial investment costs, remaining useful life, length of time of ownership of the premises, the sign thereon, maintenance expenditures, cost of removal, and replacement.

(2) *Structural alteration, abandonment, discontinuation, relocation or replacement:* If such sign is, after the date of adoption of this Ordinance, structurally altered, abandoned, discontinued, relocated or replaced, including the result of an act of God.

(c) *Additional permits prohibited:* No permits for additional signs shall be issued for any premises on which there are nonconforming signs.

(d) *Building permit provision:* Wherever a building permit is required for any kind of improvement to a building, structure or land attached to which or on which there exists any nonconforming sign(s), then all signs attached to the building or structure or on the land, shall be replaced with a sign or signs that conform to the requirements of this Ordinance.

(e) *Destruction / structural deterioration:* If any nonconforming sign is removed or destroyed or becomes fifty (50) percent or more structurally deteriorated as determined by the code enforcement officer, then the replacement sign shall conform to the requirements of this Ordinance.

(f) *Mandatory compliance:* Any nonconforming sign which is neither grandfathered nor permitted as a "legally nonconforming sign" according to subsection (a) of this section and which is prohibited under section 33-6, Signs prohibited in all districts of this Ordinance shall be removed or made to conform to this Ordinance within ninety (90) days of the date of adoption of this Ordinance.

(g) *Variance:* The board of zoning adjustment may, in special cases and for good reason, and where owing to conditions peculiar to the property and not the result of the actions of the applicant, permit the erection of a sign not in conformance with the requirements of this article.

The board, at its discretion, may require the posting of a bond in sufficient amount to protect the City of Daphne against all liabilities that may result from the erection and use of such sign.

33-5 Signs for which no permit is required.

The following signs may be erected or constructed without a permit but shall comply with

the structural and safety requirements of the current building codes and all other applicable provisions of this Ordinance.

(a) *Traffic signs:* Official traffic signs or sign structures, or municipal information signs and provisional warning signs or sign structures, when erected or required to be erected by a governmental agency.

(b) *Vehicle signs:* Any sign on a truck, bus, or other vehicle that is used in the normal course of a business for transportation and not for the sole purpose of advertising, except where a vehicle is offered for sale.

(c) *Weather flags:* Weather flags for providing information on weather conditions: one (1) set for each premises.

(d) *Residential real estate signs:*

(1) *General provisions:* Real estate signs, temporary in nature, non-illuminated, not exceeding six-and-one-half (6½) square feet in area, advertising real estate for sale or lease or rent, or announcing contemplated improvements of real estate; one (1) sign for each street frontage will be allowed on the site and shall be removed within ten (10) days, upon closing.

(2) *Directional signs:* Directional signs will not be allowed, except as provided below:

"Open House" signs, which identify homes/houses when a selling agent is on the site that are open for the general public to view. Said sign(s) size shall not exceed one and one-half (1½) feet in width and three (3) feet in height.

Such signs may be placed at intersections in a manner such that they do not constitute a traffic hazard for a period of one (1) day before the open house and removed the day of the open house, upon closing.

No more than four (4) directional open house signs may be placed in the corporate limits for any one (1) open house and only one (1) route designated by signs to a particular open house and only one (1) sign per company at any one (1) intersection.

(3) *Violations:* Any person who fails to remove the sign (s) within the prescribed time period outlined above shall be fined upon conviction, not less than fifty dollars ($50.00) per sign remaining. Chronic violations may result in the enforcement of Article XXXXV, section 45-7, entitled Penalties and remedies.

(e) *Temporary promotional sign allowance for commercial and retail establishments:* The following signage shall be permitted. That which is not specifically provided herein is expressly prohibited:

(1) *Council authorization required:* Temporary signs and banners not exceeding fifty (50) square feet in area, temporary decorative flags, tethered inflatable items, bunting, pennants and streamers for recognizing holidays and other occasions authorized by the city council.

(2) *Promotional weekend and nationally recognized holidays:* On the last Friday of each month, commencing no earlier than 6:00 a.m., the following Saturday and Sunday, as well as Monday, if such Monday should coincide with a national holiday (Labor Day, Memorial Day, or the Fourth of July) and/or any other state recognized holiday, retail and commercial establishments duly licensed to do business within the corporate limits shall be permitted to display a reasonable number of three (3) of the following items provided; however, all such items shall be removed from the premises at the close of the final business day of the weekend or at the close of the business day on

Monday, should Monday fall on a holiday the requirements outlined above shall apply.

Temporary decorative signs, pennants, banners (not to exceed two (2), twenty (20) square feet each), streamers, bunting, balloons, and flags. (Reference: Section 33-5, subsection (g), for provisions governing use of flags).

Each commercial or retail establishment shall be permitted to choose any three (3) types of signage from the foregoing list on each weekend specified and shall be limited to the use of only those three (3) types of items chosen during any given promotional weekend.

(f) *Political signs:* Political signs shall be displayed for the duration of a campaign and shall be removed within five (5) days following the election. A candidate shall not place signs prior to qualifying to run for office with the qualifying entity administering the election. Such signage shall be subject to the requirements of Ordinance 1989-04, Establishing Sign Control during Political Campaigns. Signs located within residential districts shall not exceed four (4) square feet in area.

(g) *Flags:* National flags and flags of political subdivision of the United States and flags of bona fide civic, charitable, fraternal, and welfare organizations when displayed from one (1) flag staff per premises in accord with United States Public Law 623 (Flag Display Practice).

(h) *Directional signs and symbols:*

(1) Non-advertising directional signs or symbols (e.g., entrance, exit, caution, slow, no trespassing) located on and pertaining to a parcel of private property, not to exceed two (2) square feet and forty-two (42) inches in height. Such directional signs may have the name of the business, but may not contain advertisements for sales, specials, and the like.

(2) *Property owners associations (POAs).* Property owners associations will be allowed to place interior directional signs along city right-of-ways in neighborhoods. Said signs shall be no greater than six (6) square feet and not to exceed forty-two (42) inches in height, constructed of wood material, and sand blasted, carved or other similar lettering, aesthetically designed to harmoniously blend with the surrounding neighborhood.

(i) *Memorial signs and historical markers:* Memorial signs and historical markers constructed of bronze, stone or other incombustible material after historical authentication and location is approved by the city council.

(j) *Professional, announcement or occupational signs:* One (1) each professional, announcement or occupational sign non-directly illuminated and flat wall mounted, and/or one (1) each outdoor advertising sign for privately-owned premises or business location, provided the area of the sign or the combined areas of both signs, if two (2) signs are erected, does not exceed five (5) square feet, and provided the premises or business location is without a permitted sign. (See Home occupations, as defined in Article XXXI.)

(k) *Non-commercial yard or garage sale temporary signs:* Noncommercial yard or garage sale temporary signs not exceeding one and one-half (1½) square feet, which display the date(s) and the address of the sale. No more than four (4) directional yard sale signs may be placed. Said signs shall be removed as soon as the sale is concluded.

(l) *Signs incorporated on machinery or equipment:* Signs incorporated on machinery or equipment which advertise only the product or service dispensed by the machine or equipment, such as signs customarily affixed to vending machines, newspaper racks, telephone booths, and gasoline pumps, provided the combined area of

such signs does not exceed two (2) square feet. This shall include signs commonly referred to as "Pump Toppers" on top of gasoline pumps and shall be limited to two and one-half (2½) square feet in dimensions. In recognition that parent oil companies often provide said signs to the subsidiary stations, minor deviations in size shall be allowed, subject to the approval of the code enforcement officer.

(m) *Indoor signage or window signs:* Indoor signage or window signs which identify or advertise activities, services, goods, or products available within the building, and which collectively cover no more than twenty (20) percent of the window glass surface area.

(n) *Marquee or canopy signs:* One (1) each business or professional identification sign mounted to extend vertically below a marquee or canopy, provided its area does not exceed six (6) square feet nor exceed the width of the marquee or canopy nor provide less than nine (9) feet of clearance above the sidewalk or pedestrian thoroughfare.

(o) *Temporary promotional banner:* One (1) temporary promotional banner in compliance with section 33-5, Signs prohibited in all districts, no greater than twenty (20) square feet may be attached to and parallel to the face of the building wall for a period, not to exceed thirty (30) calendar days. (See Article VIII, Definition of Terms, Temporary use).

33-6 Signs prohibited in all districts.

The following signs are prohibited in all districts:

(a) *Prohibited placement:* Any sign erected or painted upon a sloped roof, fence, tree, stand pipe, fire escape, or utility pole, except the manufacturer's or installer's ID plate shall not exceed five (5) by eight (8) inches in size.

(b) *Prohibited wording:* Any sign which uses the word "Stop" or "Danger" prominently displayed and/or which is a copy or imitation of official traffic control signs.

(c) *Flashing signs prohibited:*

(1) *General prohibition:* Signs which contain intermittent illuminations are prohibited.

(2) *Exceptions:* This subsection does not prohibit the following:

(a) Signs required for traffic control.

(b) Signs which exhibit time, date, temperature, and other customary public information.

(c) Signs which contain intermittent illuminations provided the change is less than twelve (12) times per hour.

(d) *Prohibited sign types:* Portable signs, bench signs, snipe signs, sandwich signs, except as allowed in section 33-5, Subsections (d), (e) or ladder-type signs.

(e) *Prohibited sign effects:* Signs which produce sound, noise, cause interference with radio, telephone, television or other communication transmission, produce or reflect motion pictures; emit visible smoke, vapor, particles, odor, are animated, or produce any rotation, motion, or movement.

(f) *Billboards and off-premises signs:* Billboards and off-premises signs as defined in this Ordinance.

(g) *Vehicle advertisement:* Any sign attached to or painted on a vehicle parked adjacent to or on a public right-of-way, thoroughfare, or public parking lot dedicated for public use for the principal purpose of advertising.

(h) *Illuminated tubing:*

(1) *General prohibition:* Any illuminated tubing or strings of lights that outline property lines, sales area, roof

lines, doors, windows, wall edges, similar areas or other architectural features of a building.

(2) *Exception:* This prohibition shall not apply to temporary displays erected in connection with holiday decorations and community decorations.

(3) *Grandfather clause:* Any illuminated tubing located within the corporate limits prior to the enactment of this Ordinance is hereby grandfathered, provided however, that a permit for which no charge will be made is obtained for the illuminated tubing prior to the date upon which the next City of Daphne business license is due. Upon obtaining such permit, the business shall be granted "legal nonconforming" status as described in section 33-4, subsection (a), and shall be subject to the restrictions and provisions for loss of legal nonconforming status as set forth in section 33-4, subsection (b).

33-7 Maintenance and removal of signs.

(a) *General maintenance requirement:* All signs shall be maintained in good condition and appearance.

The code enforcement officer, after due notice in writing to the owner, may remove, at the owner's expense, any sign which shows neglect or which appears abandoned, dilapidated, or dysfunctional, or an area of a distance ten (10) feet around such sign that is not kept free of weeds, rubbish, debris, or uncut grass, and maintained in compliance with city standards.

(b) *Vacation of premises:* Any sign associated with premises that have been vacated shall be either removed from the premises by the owner or lessee with three (3) months of the time of vacation, or said sign shall be altered or resurfaced by the owner or lessee within the same time period so that it does not display letters, numerals, symbols, figures, designs, or any other device for visual communication that would pertain to the activity formerly associated with the vacated premises.

(c) *Public right-of-way:* The code enforcement officer shall remove or cause to be removed any sign erected or maintained on any public right-of-way within the city, or which is in violation of any of the provisions of this Ordinance.

(d) *Penalty for violation:* The erection or maintenance of any sign in violation of this Ordinance is a misdemeanor and shall be subject to the penalties set forth in Article XXXXV, Penalties and Remedies.

33-8 Traffic control devices on private property.

When the owner of real property allows it to be used by the public for the purpose of vehicular traffic and/or as a public or quasi-public parking lot for the use of customers, tenants or employees of said property, the owner shall erect and maintain all traffic control signs and other devices in accordance with the Alabama Manual on Uniform Traffic Control Devices, and any revisions thereof. In addition, the owner shall meet the requirements of Code of Ala. 1975, § 32-5-31(a), with respect to local authorities in their respective jurisdictions.

33-9 Municipal identification or directional signage.

(a) *Criteria:* That in any business park, office park, commercial park, and/or municipal facility, as distinguished from retail shopping centers for which such shall be specifically prohibited information/directional signs may be permitted subject to the following:

(1) That information/directional signs shall be permitted at locations as more specifically referenced herein, subject to prior licensing approval by the code enforcement officer;

(2) That information/directional signs may be placed at a primary entrance to such business park, office park, commercial park, and/or municipal facility;

(3) That information/directional signs may be placed on public right-of-ways, on public places, and/or private property which private property may be common area

servicing the business park, office park, or commercial park located within the park;

(4) That each information/directional sign may be single or double faced, and shall not exceed fifteen (15) feet in total height from ground level, which height shall include the city's identification logo with color to match to the existing logo at the top of the sign.

Such information/directional sign shall not have a total area in excess of fifty (50) square feet, excluding the city logo and shall not contain more than twelve (12) eight-inch panels, with each panel to be six (6) feet long. Each individual directional sign panel shall not include the city's identification logo. Each information/directional sign shall be appropriately landscaped with circumference of not less than three (3) feet around the base of the sign with bedding and appropriate seasonal planting.

(5) That each individual information/directional sign panel shall list only those users located within such business park, office park, commercial park, and/or municipal facility and shall be designed to provide directional assistance to travelers or otherwise only to identify users located within such business park, office park, and/or commercial park.

(6) That the city shall have final approval for the location, material, content, color, and design of the signs and individual panels, whether the information/directional sign is located on public or private property.

(7) That when the informational/direction sign is to be located on public property, the city shall be responsible for the erection, operation, content, and maintenance of each sign. The city may impose fees and enter into such written agreements for one-year intervals with interested businesses for the construction, installation and maintenance of such information/directional sign.

(8) That when the informational/direction sign is to be located on private property, all costs for construction, installation, design, and maintenance shall be incurred by the applicant.

(9) That information/directional signs shall not be considered a sign of any user, including users who own the land upon which the information/directional sign is located for purposes of determining the maximum number of signs, as otherwise permitted under section 33-11, Schedule of permitted sign requirements, of this Ordinance.

(10) That such information/directional signs shall not be located in such a manner as to materially impede the view of any street or highway intersection, nor shall such sign be located so as to prevent free ingress or egress from any door or window for a fire escape route.

(b) *Issuance of permits and approval:*

(1) That the city clerk's office and/or code enforcement officer shall establish suitable forms and documentation to authenticate the issuance of such permit as approved by the city from time-to-time. Such permit for the placement of such sign shall be for a one-year interval subject to renewal annually from the initial issuance with the permitting to be re-approved by the city council.

The city may deny the re-issuance of the information/directional sign permit should the sign and surrounding landscaping not be maintained in a satisfactory fashion during the preceding year.

(2) That should a private owner of such sign allow the sign or landscaping to become in disrepair or to otherwise be unkempt, the code enforcement officer shall provide the permitted owner thirty (30) calendar days written notice to correct the deficiency to the satisfaction of the code enforcement officer. Should the permitted owner not complete the remedial work within thirty (30) calendar days, the city may upon thirty-day notice thereafter revoke the permit of the owner and order the re-

moval of the sign. Should the owner fail and/or refuse to remove the sign after the thirty-day time period, the city may enter upon the real property where the sign is situated for the limited purposes to effectuate the removal of the sign, and the cost incurred by the city for removal shall be taxed against applicant.

(c) *Sign construction:* All signage utilized in accord with the provisions of this Ordinance, shall be constructed in accordance with the following:

That all upright posts shall be eight (8) inches by eight (8) inches treated wood, embedded in the ground a minimum of four (4) feet, surrounded by a minimum circumference of six (6) inches of three thousand (3,000) psi concrete.

(1) That all two (2) inches by twelve (12) inches treated wooded wooden cross supports shall be pinned together and routed into the eight (8) inches by eight (8) inches wooden posts, and then lag bolted into each post from the outside.

(2) That the city logo panel shall be constructed of sand blasted sign foam and painted pursuant to the standard color scheme of the logo.

(3) That all wooden posts and cross supports shall be painted black in color.

(4) That each individual sign panel shall be white plastic with appropriate colored lettering selected by the user.

33-10 Permitted signs.

The maximum allowable square footage established in each zoning designation and/or overlay district shall apply as provided in each district. Said allowable area shall not be exceeded. In the event that channel letters, as defined in Article VIII, Definitions, are proposed, then the maximum allowable square footage shall be calculated at a rate of eighty (80) percent in lieu of the standard rate of one hundred (100) percent.

Unless otherwise specified herein, the schedule in section 33-11 contains requirements for signs permitted in each use district.

(a) *Property owners association:* Signs conveying information regarding association activities and/or the use of common areas and other amenities of an incorporated property owners association may be permitted subject to approval of the planning commission.

Such signs shall be of a material and design approved by the planning commission and shall not exceed thirty-five (35) square feet in area nor be greater than six (6) feet in height with changeable copy on no more than two (2) faces. Signs so permitted may be placed at up to a maximum of four (4) locations only within the subdivision on common property owned by the property owners association.

(b) *Name indication signs:* Signs indicating the name of any fixed dwelling or mobile home subdivision; mobile home park; apartment, townhouse, condominium or planned unit development; office park, shopping center, industrial park or other residential or business complex permitted in any district; and signs for any use permitted by right, with planning approval, or special exception in any residential district, are permitted.

Such signs shall not exceed fifty (50) square feet in area per face, two (2) faces, and a maximum of twenty-one (21) feet in height. One (1) such sign may be placed perpendicular to each city street frontage to be served.

Premises classified as "General Business (Shopping Center)" in section 33-11, Schedule of permitted sign requirements, shall be permitted one (1) sign, the area of which shall be determined according to the following formula: one (1) square foot of signage per thousand (1,000) square feet of the building; however, such sign shall not exceed one hundred fifty (150) square feet in area per face, two (2) faces, fifteen (15) feet in width, and a maximum of twenty-one (21) feet in height. Additionally, those so classified shall be permitted one sign not to exceed fifty (50) square feet in area per

face, two (2) faces, maximum of twenty-one (21) feet in height. One (1) such sign may be placed perpendicular to each city street frontage to be served, of which is not supporting the larger sign.

Signs permitted under section 33-10 shall require a permit, except as otherwise provided herein.

(c) *Wall-mounted signs:* Each establishment in a shopping center or each business premises in B-1, Local Business, B-2, General Business, B-3, Professional, and C/I, Commercial/Industrial, districts may acquire an additional permit for a wall-mounted sign of a size not to exceed the lesser of three hundred (300) square feet or twenty (20) percent of the surface frontal area of its building or portion of building. Signs mounted on mansards, marquees, and awnings are deemed to be wall signs.

(d) *Menu type signs:* One (1) menu type sign per drive-thru window service not to exceed forty (40) square feet in area or eight (8) feet in height.

(e) *Automobile dealerships:* Automobile dealerships in the sale of the new vehicles shall be subject to the following:

(1) *Numerical limitation:* In addition to the allowed one (1) sign per street frontage, one (1) secondary ground sign per street frontage shall permitted only if two (2) or more automotive product lines (automotive makers) are offered for sale on the premises.

(2) *Area limitation:* The maximum area of the face for a secondary ground sign shall not exceed twenty-four (24) square feet and not higher than ten (10) feet above ground level.

(f) *Gasoline and fuel signs:* Gasoline or other motor vehicle fuel pricing signs, in addition, to permitted name or identification signs, are permitted in any business or industrial district. Such signs shall not exceed twelve (12) square feet in area and must comply with the other sign requirements for the district in which they are located.

(g) *New construction signs:*

(1) *General provision:* Temporary non-illuminated signs not more than thirty-two (32) square feet in area, erected in connection with new construction work and displayed on the premises during such time as the actual construction work is in progress.

One (1) such sign, which shall not exceed ten (10) feet in height, is allowed for each street frontage. Such signs shall be removed upon completion of the project.

(2) *Temporary advertising sign:* A temporary advertising sign will be permitted to the owner for the development for each individual business premises, shopping center premises, commercial/industrial business, subdivision, planned unit development, mobile home park and mobile home subdivision, provided the area of each sign shall not exceed thirty-two (32) square feet, is non-illuminated, and is within the confines of the development. A temporary sign advertising property for sale in a commercial/industrial (C/I) and all business (B-1, B-2 and B-3) zones, provided the area of each sign shall not exceed sixteen (16) square feet, is non-illuminated and is within the confines of the development.

These signs shall be the height no greater than ten (10) feet mounted from the ground, for no more than one (1) sign, either single or double faced, per street frontage.

Permits shall be issued for a period of one (1) year. An additional one-year permit may be issued if the code enforcement officer has determined the promotion of the development is active and the temporary sign meets the maintenance requirements in section 33-7. The temporary sign will be removed when a permitted permanent sign is erected.

(3) *Time limitations and size requirements:* A temporary sign will be permitted on each premises for a new business or a business starting in a new location where the premises is without a permitted permanent sign for a period of not more than sixty (60) days or until mounting of a permanently permitted sign, whichever occurs

first, provided the temporary sign does not exceed thirty-two (32) square feet, is non-illuminated, mounted from a ground to a height not to exceed ten (10) feet. Said sign may be single or double faced.

(h) *Conventions and grand openings:* Temporary signs and banners not exceeding fifty (50) square feet in area and temporary decorative flags, bunting, pennants and streamers for recognizing conventions and grand openings. Said temporary decorations and signs shall be kept in good condition and shall be permitted no more than fourteen (14) days.

(i) *Public interest directional signs:* A permanent or temporary sign, erected on private or public property, not exceeding six (6) square feet to denote the route to any city, town, village, historic or religious place, shrine, public building or facility, school, hospital, health care facility, public meeting, or public event when authorized by the city council.

(j) *Electronic signs:*

(1) *General prohibition:* Electronic signs are prohibited within the corporate limits with the following exception(s):

Public entities, limited to the Daphne Civic Center, Recreation, and Library Complex and Schools of the Baldwin County School System shall be allowed to maintain electronic signs on the premises of such entities for the sole purpose of providing (1) information regarding onsite activities or (2) community information of general public interest (i.e.: city council meetings, public service announcements (P.S.A.s), provided, however that such signs comply with the following requirements:

(a) *Size:*

(1) Signs shall be of the monument style.

(2) Signs shall not exceed ten (10) feet in height.

(3) Sign area shall not exceed fifty (50) square feet.

(4) Electronic display area shall not exceed thirty (30) square feet.

(b) *Electronic display method:* Information shall be displayed via simple fade in/fade out manner.

(c) *Time:*

(1) Each message must be displayed for a minimum of twenty (20) seconds.

(2) Commercial advertising:

(a) *Prohibition:* In no case, however, is commercial advertising permissible within the electronic display area of any electronic sign facing a public road, in front of a school or public building, or on or around the supporting structure of the sign.

(k) *Interstate corridor signs:* One (1) "Name Indication" sign shall be allowed for any lot or parcel of property having a minimum of two hundred (200) feet of frontage space parallel, abutting to or otherwise sharing a common boundary line with Interstate 10 and/or interstate right-of-way, when a right-of-way that has no property other than a city, county, or state right-of-way between the subject real property and the interstate right-of-way. No sign shall be erected on any lot or parcel containing less than two hundred (200) feet of said frontage space. The sign shall be located at or very near the interstate right-of-way of the parcel, and shall contain no more than two hundred and fifty (250) square feet of signage.

Said sign shall be no greater than forty (40) feet in height, measured from the finished grade of the property and shall be no greater than twenty (20) feet in width. Any proposed sign to be erected shall be subject to the approval of the planning commission.

(l) *Commercial / retail development interior street signs:* Inasmuch as commercial developments continue to arise within the city limits which contain private interior streets with retail and/or business space being located on both sides of said private interior streets, advertising signs shall be allowed to be placed at each end of the private interior street. Said sign shall be either a monu-

ment, street lamp, or hanging sign style. Said signs shall be limited to thirty (30) square feet on each side of the sign, regardless of the number of businesses located on said private interior street.

Monument style signs shall be no higher than five (5) feet, and street lamp style signs shall be no higher than twenty (20) feet, both to be measured from the finished grade. Any proposed sign to be erected shall be subject to the approval of the planning commission.

33-11 Schedule of permitted sign requirements.

Zoning District	*Type of Use*	*Max. Area / Face*	*No. of Faces*	*Max. Height*	*Max. No. of Signs Permitted*
R-1	SF Residential	6 sq. ft.	1	6 ft.	1 per premises
R-2	SF Residential	6 sq. ft.	1	6 ft.	1 per premises
R-3 & R-6(D,G)	SF Residential	6 sq. ft.	1	6 ft.	1 per premises
R-4 & R-7(A,M,T)	MF Residential	6 sq. ft.	1	6 ft.	1 per premises
R-5	MH Residential	6 sq. ft.	1	6 ft.	1 per premises
B-1	Local Business	50 sq. ft.	1 per premises	21 ft.	1 per street frontage
B-2	General Business	50 sq. ft.	2 per premises	21 ft.	1 per street frontage 2 if premises frontage is greater than 1,000 linear ft.
B-2	General Business (Shopping Center)	—	2 per premises	21 ft.	1 sq. ft. of signage per 1,000 sq. ft. of floor space for facilities or commercial buildings over 50,000 sq. ft. of floor space. Max. signage of 150 sq. ft. and max. width of sign, 15 ft.
		50 sq. ft.	2 per premises	21 ft.	1 per street frontage, which is not supporting the larger sign.
B-3	Professional Business	30 sq. ft.	2 per premises	10 ft.	1 per street frontage
C/I	Commercial/ Industrial	50 sq. ft.	2 per premises	21 ft.	1 per street frontage

33-12 Fees.

Fees for each permitted sign under sections 33-10 and 33-11 shall be as specifically enumerated in Article XXXIV, entitled the Schedule of Fees.

ARTICLE XXXIV. SCHEDULE OF FEES

34-1 Fees.

With the exception of sign permits, the following is a schedule of fees assessed by the department of community development in the administration of the Land Use and Development Ordinance. Sign permit requests shall be reviewed by the code enforcement officer as provided in Article XXXIII, Sign Provisions.

Description	*Fee*
• Administrative Review Request—BZA	$300.00
• Annexation with R-1 zoning	n/a
• Annexation with Zoning Petition	$500.00
• Final Plat Application (see also*)	$250.00
• Grand Opening Sign Permit	$25.00
• Master Plan Review or Master Plan Amendment Review	$50.00
• Mobile Home Park Annual License	Contact Revenue Department
• Mobile Home Park Application	See Site Plan
• Notice to Public by Certified Mail Per adjoining property owner plus one*	The greater of $5.75 per letter or standard rate of USPS
• Plat Amendment	$100.00
• Preliminary or Preliminary/Final Plat Application	$300.00
• Public Hearing Advertisement Fee**	$35.00
• Request for the Extension (Site Plan or Preliminary Subdivision Plat approval)	$100.00 per request
• Request for the Extension of Reversionary Period	$500.00
• Sign Permit	$2.50 per square foot (minimum $25.00)
• Site Disturbance Permit Said fee is based upon site costs, not to include cost of building construction. Application shall be accompanied by a cost estimate of incomplete work certified by the project engineer.	$20.00 application fee plus $5.00 per $1,000.00 or fraction thereof
• Site Plan Application	$500.00
• Site Plan Renewal/Extension Fee	$100.00
• Special Exception Application—BZA	$300.00
• Subdivision Per Lot Fee	$20.00
• Subdivision Plat Exemption and/or Modification	$50.00
• Vacation of Easement and/or Right-of-Way	$200.00
• Variance Application—BZA	$300.00
• Zoning Amendment Application	$500.00

a. Any application which requires a public hearing shall be assessed a fee determined as follows: [application fee + (public notice fee) x (number of adjacent properties plus one) + advertisement fee]. **

b. Subdivisions requiring a public hearing shall be calculated as above plus an additional fee for each lot (number of lots) x (per lot fee).

c. Sign permit applications shall be submitted to the City of Daphne Revenue Department.

d. Mobile home park annual license shall be submitted to the City of Daphne Revenue Department.

ARTICLE XXXV. TABLE OF PERMITTED USES*

The Table of Permitted Uses lists all of the allowable uses within the city limits and shows the zoning district in which such uses are allowed. Uses not provided for herein are prohibited. In order to promote consistency and fairness, and to avoid arbitrary and capricious decisions, the North American Industry Classification System (NAICS), most current edition is hereby adopted as a reference and shall become a part of the Land Use Ordinance as an expansion of uses similar in nature but not expressly provided in the Table of Permitted Uses. The NAICS manual shall be used to provide definitions of each use or use groupings listed in the table. All sub-uses listed under a use in the NAICS manual, which is permitted in the zoning designation in question, shall be considered as a permitted use.

35-1 Definitions.

The uses permitted in each of the zoning districts are categorized in the Table of Permitted Uses as follows:

Uses by right: Uses permitted by right are subject to the conditions specified in the following table or otherwise provided herein.

Uses requiring planning approval: Uses permitted upon approval by the planning commission depend on the location and determining whether the use is appropriate having considered the following: transportation, access, water supply, waste disposal, fire and police protection, and as not causing undue traffic congestion or traffic hazards, and harmony with the orderly and appropriate development of the district in which the development is to occur.

Special exceptions: These uses are subject to the same approval of location and site plan as uses requiring planning approval; in addition, these uses are subject to approval of the board of zoning adjustment in accordance with the provisions provided herein.

35-2 List of districts and cross reference for R-4 designation.

Residential Zoning Districts

R-1, Low Density Single-Family Residential District

R-2, Medium Density Single-Family Residential District

R-3, High Density Single-Family Residential District

R-4, High Density Single and High Density Multi-Family Residential District

R-5, Mobile Home District

R-6(D), Duplex—Two-Family District

R-6(G), Garden or Patio Home District

R-7(A), Apartment District

R-7(M), Mid-Rise Condominium District

R-7(T), Townhouse District

Business Districts

B-1, Local Business District

B-2, General Business District

B-3, Professional Business District

MU, Mixed Use District

Industrial Districts

C/I, Commercial Industrial District

Outdoor Amusement District

C-2, Outdoor Amusement District

Golf Course District

GC, Golf Course District

*Note—Properties subject to a substantial change in use may be required to make site improvements including, but not limited to parking, buffering, landscaping or other improvement necessary to meet the spirit and intent of the Land Use and Development Ordinance as determined by the director of community development in the administrative review process.

The term R-4 shall be synonymous with the newly adopted zoning designations as provided in Article XII, Establishment of Districts. The planning commission shall no longer consider zoning or rezoning amendments for an "R-4 zoning district". All existing R-4, High Density Single and Multi-Family Residential Districts shall be developed in accordance with the standards provided herein; however, R-6(G), R-6(D), R-7(A), R-7(M) and R-7(T) shall be respectively considered for all garden/patio homes, duplexes, apartments, mid-rise condominiums and townhouses requests.

35-3 Permitted uses and conditions.

Permitted Uses and Conditions	*Right*	*Planning Commission Approval*	*Special Exception BZA Approval*
Accessory buildings and uses, when located on the same lot or parcel as the principal structure or use and customarily incidental thereto, provided the requirements in all pertinent sections of this Ordinance are met	R-1		
	R-2		
	R-3		
	R-4		
	R-5		
	B-1		
	B-2		
	B-3		
	C/I		
	C-2		
	GC		
Agriculture and related farming operations, including horticulture, plant nurseries market gardening, field crops, orchards, and home gardens	R-1		
	R-2		
	R-3		
	R-4	GC	
	R-5	C-2	
	B-1		
	B-2		
	B-3		
Air conditioning sales and service	B-1		
	B-2		
	C/I		
Ambulance/EMS service	B-1		
	B-2	B-3	
	C/I		
Amusement arcade	B-2		
Kiddie land	B-2	C/I	
Animal clinic/kennels for small animals; need not be enclosed within a structure	B-2		
	C/I		
Antique store, including repairing, restoration and refinishing	B-2		
	C/I		
Apparel and accessory store	B-1		
	B-2		
Appliance store	B-1		
	B-2		
Armory	B-1	C/I	R-4
	B-2		R-5
Art gallery or museum			R-1
	B-1		R-2
			R-3
	B-2		R-4
			R-5
			B-3

Permitted Uses and Conditions	*Right*	*Planning Commission Approval*	*Special Exception BZA Approval*
Art sculptures, statues, monuments		B-1	R-1
		B-2	R-2
		B-3	R-3
		C/I	R-4
			R-5
Art supplies	B-1		
	B-2		
Auditoriums, stadiums, coliseums, and other such places of public assembly			R-1
			R-2
		B-2	R-3
		C/I	R-4
			R-5
Automobile Air Conditioning Sales and Service	B-2		
	C/I		
Automobile Glass and Upholstery Installation	B-2		
	C/I		
Automobile laundry, where the primary function is washing automobiles, but not including trucks or trailers; operations shall be conducted only within a completely enclosed structure, and all wastes shall be discharged directly into the sewer	B-2		
	C/I		
Automobile parts sales, except used parts	B-2		
	C/I		
Automobile wrecking and salvage; need not be enclosed within a structure, but must be enclosed with a solid fence sufficiently high to obstruct noise and view; chain link or similar open fence may be permitted if a screen planting adequate to obstruct view is provided		B-2	
		C/I	
Automobile, travel trailer, camper, farm equipment and implements and mobile home sales (new and used); need not be enclosed within a structure, but any mechanical or body repair must be done entirely within a structure which shall not have any opening, other than a stationary window, within 100 feet of a residential district	B-2		
	C/I		
Automobile and truck laundry, including steam cleaning	C/I		
Automobile and truck repair garage, mechanical and body; must be conducted in a structure which shall not have any openings other than a stationary, within 100 feet of a residential district and which shall not store or otherwise maintain any parts or waste materials outside such structures	B-2		
	C/I		
Automobile and truck sales and service; but not including commercial wrecking, dismantling, or auto salvage yard; need not be enclosed within a structure provided the unenclosed part shall comply with the requirements for maintenance of off-street parking facilities	B-2		
	C/I		
Automobile and truck service station including minor repair, subject to the requirements listed under Special Provisions, where the primary function is retail sale of gasoline, oil, grease, tires, batteries and accessories and where services are limited to installation of the items sold, washing, polishing, tire changing, greasing and minor repairs, but not including commercial wrecking, dismantling or auto salvage yard, major mechanical overhauling or body work; fuel pumps need not be enclosed within a structure	C/I	B-1	
		B-2	
Bakery, retail	B-1		
	B-2		
Bakery, wholesale	B-2		
	C/I		
Bank, including drive-in bank	B-1		
	B-2		
	B-3		

Permitted Uses and Conditions	*Right*	*Planning Commission Approval*	*Special Exception BZA Approval*
Barber shop or beauty parlor	B-1		
	B-2		
Barber and beauty supplies and equipment sales	B-2		
	C/I		
Bed and Breakfast		R-1	
		R-2	
		R-3	
Bicycle, lawnmower sales, service and repair	B-2		
	C/I		
Billiard or pool hall	B-2		
Boat construction, storage, service and repair, wet and dry, major; need not be enclosed within a structure	C/I	B-2	
Boat dry storage; pleasure boats having lengths not greater than 31 feet	B-2		
	C/I		
Boat sales, accessories and service	B-2		
	C/I		
Boat storage, service and repair, minor; a marina for docking pleasure boats and providing services thereto and to the occupants thereof, including minor servicing and minor repair to boats while in the water, sale of fuel and supplies, and provision of lodging, food, beverages and entertainment as accessory uses, may include dry storage in an enclosed structure	B-2		
	C/I		
Book store	B-1		
	B-2		
Bottling works	C/I	B-2	
Bowling Alley	B-2		
Building materials supply, provided that major storage areas are screened from view and that any machine operations are conducted entirely within an enclosed structure with no opening other than a stationary window within 100 feet of a residential district	B-2		
	C/I		
Bus and railroad terminal facilities	B-2		
	C/I		
Business machines sales and service	B-2	B-1	
	C/I		
Business school or college		B-1	
		B-2	
		B-3	
Butane and other liquefied petroleum gas products storage and sales; need not be enclosed within a structure			B-2
			C/I
Cabinet or carpenter shop; customized marble, granite, stone countertops	B-2		
	C/I		
Cafe, grill, lunch counter and restaurant but not including night club, bar, tavern and drive-in restaurant	B-1		
	B-2		
Camera and photographic supply store	B-1		
	B-2		
Candy, nut and confectionery store	B-1		
	B-2		
Canvas products manufacture	C/I	B-2	
Carting, express, crating, hauling, storage	B-2		
	C/I		
Catering shop or service	B-1		
	B-2		

Permitted Uses and Conditions	*Right*	*Planning Commission Approval*	*Special Exception BZA Approval*
Cemetery, subject to requirements of the Special Provisions			R-1
			R-2
			R-3
			R-4
			R-5
			B-1
			B-2
			B-3
			C/I
			GC
			C-2
Churches and related accessory buildings			R-1
			R-2
	B-1		R-3
	B-2		R-4
	B-3		R-5
			C/I
City Hall, police station, fire station, courthouse, federal office building and similar public building	R-1		
	R-2		
	R-3		
	R-4	C-2	
	R-5		
	B-1	GC	
	B-2		
	B-3		
	C/I		
Clay and clay products manufacture; need not be enclosed within a structure	C/I	B-2	
Clinic, dental, medical or psychiatric for humans	B-1		R-1
	B-2		R-2
	B-3		R-3
			R-4
			R-5
			C/I
Club or lodge, fraternal, civic, charitable or similar organization, public or private, but not including any such club, lodge or organization, the chief activity of which is a service or product customarily carried on as a business			R-1
	B-1		R-2
	B-2	C/I	R-3
			R-4
			R-5
College or university, provided that they are located on a lot fronting on an arterial street or road and that no building is located within 100 feet of any property line			R-1
		B-1	R-2
		B-2	R-3
		B-3	R-4
			R-5
College sorority or fraternity house			R-1
		B-1	R-2
		B-2	R-3
		B-3	R-4
			R-5
Communications Towers		C/I	B-2
Concrete and concrete products manufacture; need not be enclosed within a structure	C/I		

Permitted Uses and Conditions	*Right*	*Planning Commission Approval*	*Special Exception BZA Approval*
Contractor's storage yard for vehicles, equipment, materials and supplies; need not be enclosed within a structure, but must be enclosed within a solid fence to screen view; chain link or similar open fence may be permitted if a screen planting adequate to obstruct the view is provided	B-2		
	C/I		
Convenience Store	B-2	B-1	
Correctional, detention or penal institution			B-2
			C/I
Dairy equipment sales	B-2		
	C/I		
Dairy products sales	B-1		
	B-2		
Delicatessen	B-1		
	B-2		
Department store	B-2		
Dog pound; need not be enclosed within a structure	C/I	B-2	
Drive-in restaurant	B-2	B-1	
Drug Store	B-1		
	B-2		
Dry cleaning shop, including self-service	B-1		
	B-2		
Dry goods or fabric store	B-1		
	B-2		
Dwelling, one-family	R-1		
	R-2		
	R-3		
	R-4		
Dwelling, two-family	R-4		
Dwelling, multi-family	R-4		
Electric power generating plant			B-2
			C/I
Electric power substation; need not be enclosed within a structure, but must be secured by a chain link or similar fence, or raised above ground so as to be inaccessible to unauthorized persons; requires visual screen in most districts		R-1	
		R-2	
		R-3	
		R-4	
		R-5	
		B-1	
		B-2	
		B-3	
		C/1	
		GC	
		C-2	
Electric repair shop	B-2		
	C/I		
Electric Supply Store	B-2		
	C/I		
Elevator maintenance service	B-2		
	C/I		
Employee credit union office	B-1		
	B-2		
	B-3		
Exterminator service office	B-2	B-1	
	C/I		
Farm and garden equipment and supply store	B-2		
	C/I		

Permitted Uses and Conditions	*Right*	*Planning Commission Approval*	*Special Exception BZA Approval*
Farmers' markets	B-2		
	C/I		
Fix-it shop, including small appliance repair	B-1		
	B-2		
	C/I		
Floor covering sales and service	B-1		
	B-2		
	C/I		
Floral shop	B-1		
	B-2		
Food locker plant including rental of lockers for the storage of food; cutting and packaging of meats and game, but not the slaughtering of animals or fowl.	B-2		
	C/I		
Food products processing plant	B-2		
	C/I		
Food products, wholesale storage and sales	B-2		
	C/I		
Freight depot, railway or truck	C/I	B-2	
Fruit and produce, retail	B-1		
	B-2		
Funeral home, mortuary or undertaking establishment	B-1		
	B-2		
Furniture and home furnishing store, including office furniture and equipment	B-2		
	C/I		
Furniture repair, including upholstering and refinishing	B-2		
	C/I		
Gas regulator station		R-1	
		R-2	
		R-3	
		R-4	
		R-5	
		B-1	
		B-2	
		B-3	
		C/I	
		GC	
		C-2	
Gift shop	B-1		
	B-2		
Grocery store, retail	B-1		
	B-2		
Gymnasium, commercial	B-1		
	B-2		
Hardware store, retail, wholesale, storage and sales	B-1		
	B-2		
Hatchery, poultry or fish	C/I		
Heating and plumbing equipment, supplies and service	B-2		
	C/I		
Hobby shop and supply store	B-1		
	B-2		
	C/I		

Permitted Uses and Conditions	*Right*	*Planning Commission Approval*	*Special Exception BZA Approval*
Home occupation	R-1		
	R-2		
	R-3		
	R-4		
	R-5		
	B-1		
	B-2		
	B-3		
Hospital, clinic, convalescent or nursing home, extended care facility or sanitarium for humans			R-1
		B-1	R-2
		B-2	R-3
		B-3	R-4
			R-5
Hotel	B-2	B-1	
Extended stay hotel facility	B-2		
Motel	B-2	B-1	
Ice cream parlor	B-1		
	B-2		
Ice plant	C/I		
Industrial park	C/I		
Innovative design developments		R-4	
Institution for children or the aged, day care			R-1
			R-2
			R-3
			R-4
			R-5
			B-1
			B-2
Interior decorating shop	B-1		
	B-2		
Junk yard including storage, baling or sale of rags, paper, iron or junk; need not be enclosed within a structure but must be enclosed within a fence of sufficient height to obstruct view and noise; chain link or similar fence may be permitted if screen planting is provided.	C/I		
Kindergarten, play school or day care center, public or private, provided that all activities are carried on in an enclosed building or fenced yard and that all applicable federal, state and local requirements are met.			R-1
			R-2
			R-3
			R-4
			R-5
			B-1
			B-2
Laboratory, scientific	C/I		B-2
Laboratory, medical or dental	B-1		
	B-2		
	C/I		
Landscape garden sales; need not be enclosed within a structure	B-1		
	B-2		
	C/I		
Laundry, self-service	B-1		
	B-2	R-4	
Laundry, and dry cleaning pick-up station	B-1		
	B-2		
Laundry and dry cleaning plant	B-2		
	C/I		

Permitted Uses and Conditions	*Right*	*Planning Commission Approval*	*Special Exception BZA Approval*
Laundry, linen supply or diaper service	B-2		
	C/I		
Leather goods or luggage goods store	B-1		
	B-2		
Liquor, wine or beer sales not to be consumed on premises and meeting local and state requirements.	B-1		
	B-2		
Library	R-1		
	R-2		
	R-3		
	R-4		
	R-5		
	B-1		
	B-2		
Loan office	B-1		
	B-2		
Locksmith	B-1		
	B-2		
Lodging and tourist homes			R-4
			B-1
			B-2
Lumber yards and building materials; need not be enclosed within a structure	B-2		
	C/I		
Machine Shop	C/I	B-2	
Machinery, tools and construction equipment, sales and service	C/I		B-2
Mail order house	B-2		
	C/I		
• MANUFACTURING, REPAIR, OF A LIGHT INDUSTRIAL NATURE, ASSEMBLY OR INCLUDING, PROCESSING BUT NOT LIMITED ESTABLISHMENTS TO THE FOLLOWING:			
Automobile assembly	C/I		
Clothing and garment manufacturing	C/I		
Food products processing and packaging	C/I		
Glass products manufacturing	C/I		
Laboratories for testing materials, chemical analysis, photographic processing.	C/I		
Metal products manufacturing	C/I		
Millwork and similar wood products manufacturing	C/I		
Musical instruments and parts manufacturing	C/I		
Paper products manufacturing	C/I		
Plastics manufacturing	C/I		
Scientific, optical and electronic equipment—assembly and manufacturing	C/I		
Shipbuilding and repair yard; need not be enclosed within a structure	C/I		
Souvenirs and novelties manufacturing	C/I		
Surgical and dental supplies manufacturing	C/I		
Toy, sporting goods and athletic goods manufacturing	C/I		
Marine stores and supplies	B-2		
	C/I		
Manufactured Home	R-5	R-3	
		R-4	
Mobile Home and/or Mobile Home Park	R-5		
Mobile Home Subdivision	R-5		

Permitted Uses and Conditions	*Right*	*Planning Commission Approval*	*Special Exception BZA Approval*
Motorcycle sales, service, and repair	B-2		
	C/I		
Music store	B-1		
	B-2		
Natural preservation areas including bird and wildlife sanctuaries, nature and hiking trails		R-1	
		R-2	
		R-3	
		R-4	
		R-5	
		B-1	
		B-2	
News stand	B-1		
	B-2		
Night club, bar, tavern and cocktail lounge when separate from a restaurant	B-1		
	B-2		
Office buildings, general	B-1		
	B-2		
	C/I		
Office buildings, professional	B-1		
	B-2		
	B-3		
Office equipment and supplies, retail	B-1		
	B-2		
Oil and gas exploration and production activities			R-1
			R-2
			R-3
			R-4
			R-5
			B-1
			B-2
			B-3
			C/I
			C-2
			GC
Optician	B-1		
	B-2		
	B-3		
Paint and wallpaper store	B-1		
	B-2		
	C/I		
Painting and decorating contractor	B-2		
	C/I		
Paper supplies, wholesale	B-2		
	C/I		
Pawn Shop	B-2		B-1
Pet shop	B-2		B-1
Photographic studio and/or processing	B-1		
	B-2		
Picture framing and/or mirror silvering	B-2	C/I	B-1
Planned Unit Development, fixed dwelling		R-1	
		R-2	
		R-3	
		R-4	
Planned Unit Development, mobile home		R-5	

Permitted Uses and Conditions	*Right*	*Planning Commission Approval*	*Special Exception BZA Approval*
Plastic fabrication	C/I	B-2	
Plumbing shop	B-1		
	B-2		
	C/I		
Police substation, including Highway Patrol		R-1	
		R-2	
		R-3	
		R-4	
		R-5	
		B-1	
		B-2	
		B-3	
		C/I	
		GC	
		C-2	
Post office		R-1	
		R-2	
		R-3	
		R-4	
		R-5	
		B-1	
		B-2	
		B-3	
		C/I	
		GC	
		C-2	
Printing, blueprinting, bookbinding, photostating, lithographing and publishing establishment.	B-1		
	B-2		
	C/I		
Public utility production and maintenance buildings with proper screening		B-1	
		B-2	
		C/I	
Public utility substation with proper screening		R-1	
		R-2	
		R-3	
		R-4	
		R-5	
		B-1	
		B-2	
		B-3	
		C/I	
Radio and television antenna (amateur)	R-1		
	R-2		
	R-3		
	R-4		
	R-5	GC	
	B-1	C-2	
	B-2		
	B-3		
	C/I		
Radio and television station and transmitting tower (commercial)		C/I	B-2

Permitted Uses and Conditions	*Right*	*Planning Commission Approval*	*Special Exception BZA Approval*
Racquetball or tennis courts, indoor		R-1	
		R-2	
		R-3	
		R-4	
		R-5	
		B-1	
		B-2	
		C/I	
		GC	
		C-2	
Roofing and sheet metal shop	C/I	B-2	
Rug and/or drapery cleaning service contained within a structure	C/I	B-2	
Sand and gravel storage yard; need not be enclosed within a structure	C/I	B-2	
Sawmill or planning mill	C/I	B-2	
Schools, public and/or private, elementary and/or secondary meeting the requirements of the education laws of the State of Alabama			R-1
			R-2
			R-3
			R-4
			R-5
			B-1
			B-2
			B-3
			C/I
Seafood store, retail	B-1		
	B-2		
Sewage disposal plant; need not be enclosed within a structure		B-2	
		C/I	
Shoe repair shop	B-1		
	B-2		
Shoe store, retail	B-1		
	B-2		
Sign shop	B-2		
	C/I		
Sporting goods store	B-1		
	B-2		
Stone monument sales, retail; may include cutting and processing merchandise sold at retail on the site; need not be enclosed within a structure	C/I		B-2
Studio for dance or music	B-1		
	B-2		
Studio for professional work or teaching of fine arts such as photography, drama, speech and painting	B-1		
	B-2		
Surgical or dental supplies retail	B-2		
	C/I		
Tailor shop	B-1		
	B-2		
Taxi dispatching station	B-1		
	B-2		
Taxi terminal, storage and repair of vehicles	B-2		
	C/I		
Taxidermy shop	B-1		
	B-2		
	C/I		

Permitted Uses and Conditions	*Right*	*Planning Commission Approval*	*Special Exception BZA Approval*
Teen club or youth center			R-1
			R-2
			R-3
			R-4
			R-5
			B-1
			B-2
Telephone exchange		R-1	
		R-2	
		R-3	
		R-4	
		R-5	
		B-1	
		B-2	
		B-3	
		C/I	
		GC	
		C-2	
Telephone equipment storage including shops and garage; need not be enclosed within a structure but must provide adequate screening	B-2		
	C/I		
Temporary uses, including revival tents, sale of Christmas trees, carnivals, sale of seasonal fruit and vegetables from roadside stands, and similar uses, for a period not to exceed four (4) weeks in any calendar year	B-1		
	B-2		
Theater, indoor	B-2	B-1	
Tires, batteries and other automotive accessories sales establishments	B-2		
	C/I		
Tobacco store	B-1		
	B-2		
Tourist Home			R-4
			B-1
			B-2
Toy Store	B-1		
	B-2		
Trade school or college			
Transit vehicle storage and servicing; need not be enclosed within a structure		B-2	
		C/I	
Variety Store	B-1		
	B-2		
Veterinary service	B-2		
	C/I		
Warehouse and storage facilities, minor; mini-type do-it-yourself storage facilities		B-2	
		C/I	
Water storage; need not be enclosed within a structure		R-1	
		R-2	
		R-3	
		R-4	
		R-5	
		B-1	
		B-2	
		B-3	
		C/I	
		GC	
		C-2	

Permitted Uses and Conditions	*Right*	*Planning Commission Approval*	*Special Exception BZA Approval*
Water or sewage pumping station		R-1	
		R-2	
		R-3	
		R-4	
		R-5	
		B-1	
		B-2	
		B-3	
		C/I	
		GC	
		C-2	
Welding shop	C/I	B-2	
Well drilling company	B-2		
	C/I		
YMCA, YWCA and similar institutions			R-1
			R-2
			R-3
			R-4
			R-5
			B-1
			B-2
Zoo			B-2
			C/I

35-4 Permitted outdoor amusement uses and conditions.

Permitted Outdoor Amusement Uses and Conditions	*Right*	*Planning Commission Approval*	*Special Exception BZA Approval*
Amusement park	C-2	B-2	
Amphitheater	C-2		
Archery range	C-2	B-2	
Athletic field or stadium such as baseball, football, soccer, etc. or similar use, provided that no building for such purposes is located within 100 feet of any property line	C-2		
Baseball batting range	C-2	B-2	
Boat docking only of pleasure boats as an accessory use to a permitted principal use; maximum of three (3) slips per unit. Boat service is prohibited	C-2	B-1	
		B-2	
		R-1	
		R-2	
		R-3	
		R-4	
		R-5	
Circus or carnival, fairground	C/I	B-2	
	C-2		
Golf, driving range and practice tee	C-2	B-2	
		B-1	
Golf course, miniature	C-2	B-1	
		B-2	
Marina, minor; see boat storage, service and repair minor		B-2	
	C-2	C/I	
Marina, major; see boat construction, storage, service and repair, wet and dry, major; may also include boat sales, accessories and service	C/I	B-2	
	C-2		

Permitted Outdoor Amusement Uses and Conditions	*Right*	*Planning Commission Approval*	*Special Exception BZA Approval*
Other (outdoor) commercial amusement establishment	C-2		
Park or playground including recreation centers; need not be enclosed within a structure		B-1	
		B-2	
		R-1	
		R-2	
		R-3	
		R-4	
		R-5	
Riding stables or academy, horses; need not be enclosed within structure	C-2	B-1	
		B-2	
		R-1	
		R-2	
		R-3	
		R-4	
		R-5	
Roller-skating and ice-skating rink	C-2		
Skate board park	C-2		
Swimming pool, commercial	C-2	B-2	
Tennis courts or club, outdoor; need not be enclosed within a structure; no building for such purposes is located within 100 feet of any property line	C-2	R-1	
		R-2	
		R-3	
		R-4	
		R-5	
		B-1	
		B-2	
		C/I	
Theater, outdoor/drive-in; need not be enclosed within a structure	C-2		

35-5 Permitted golf course uses and conditions.

Permitted Golf Course Uses and Conditions	*Right*	*Planning Commission Approval*	*Special Exception BZA Approval*
Golf Course may include country club, golf course and ancillary use, privately or publicly owned and operated, provided that no building for such purposes is located within 100 feet of any property line and/or green space.	GC		

ARTICLE XXXVI. THE VILLAGE OVERLAY DISTRICT

36-1 Purpose.

The intent of this article is to provide for the creation of the district in order to establish minimum standards and provisions for residential, business, or commercial development in the areas outlined the map provided herein and to achieve a healthy, beautiful, and safe community by the following means:

- *Aesthetics:* Improve the appearance of all areas through the incorporation of innovative landscaping and open space into development in ways that harmonize and enhance the natural beauty of the environment.

- *Land values:* Maintain and increase the value of land by incorporating innovative designs and criteria into development, thus becoming itself a valuable capital asset.
- *Human values:* Provide direct and important physical and psychological benefits to human beings through the use of landscaping and tree preservation as a buffer zone between residential and business development to reduce noise and glare, and to break up the monotony and soften the harsher aspects of urban development.
- *Improved design:* Promote innovative and cost conscious approach to the design and construction of the district.
- *Improved administration and enforcement:* Establish procedures and standards for the administration and enforcement of this article.

36-2 Uses permitted.

The following zoning districts provided herein established and most specifically defined in Article XII, Establishment of Districts: B-1, Local Business, B-2, General Business, B-3, Professional Business, R-4, Single-Family and Multi-Family Residential, and MU, Mixed Use. Article XXXV, the Table of Permitted Uses and Conditions, outlines the restrictions for each district.

The term R-4 shall be synonymous with the newly adopted zoning designations as provided in Article XII, Establishment of Districts. The planning commission shall no longer consider zoning or rezoning amendments for an R-4 zoning district. All existing R-4, High Density Single and Multi-Family Residential Districts shall be developed in accordance with the standards provided herein; however, R-6(G), R-6(D), R-7(A), R-7(M) and R-7(T) shall be respectively considered for all garden/patio homes, duplexes, apartments and townhouses, and mid-rise condominiums requests.

36-3 Special provisions.

The following shall apply:

(a) The provisions of this article shall be required for all residential projects involving the construction of two (2) or more dwelling units including apartments, town homes, condominiums, planned unit developments, subdivisions, business, commercial, industrial, and/or institutional structures; all existing structures which increase the gross floor area by thirty (30) percent or more, except a single-family residence; construction of a park, public way, open space, public building or structure; construction of a public utility whether publicly or privately owned; and other uses as required by the planning commission. A golf course which was in existence prior to the enactment of this Ordinance is hereby exempt from the provisions of this article.

(b) Size of properties reserved or laid out for business, or commercial purposes shall be adequate to provide for the off-street service and parking facilities required by the type of use and development contemplated.

(c) A site plan review shall be accomplished by the recommendation of the director of community development and approval of the planning commission to assure compliance with the provisions of Land Use and Development Ordinance in conformity with its purpose as stated in Article I, as well as, applicable Building and Fire Codes, latest edition.

(d) Said approval shall be authorization to begin work, subject to the issuance of a site disturbance permit. Such approval shall become void upon one (1) year from the date of approval if no such permit has been acquired and/or if no such building or construction activity has occurred.

(e) When all required improvements are installed, the developer/owner shall call for a final inspection. The director of community development or his/her duly authorized representative shall inspect the site to determine if the required improvements are satisfactorily installed according to the plans and specifications.

(f) Applicant shall be responsible for posting a sign providing public notice of site plan review. Failure to post said sign fifteen

(15) calendar days prior to planning commission review, shall cause the application to be withdrawn from the meeting agenda. Said sign shall not be an advertisement sign for the proposed project, but an advertisement of the planning commission meeting dates and times in accordance with the standards established for such provided in the supplemental information.

36-4 Plan content.

The plan shall contain all information shown on the current departmental check list for a site plan which may be modified at the discretion of the director of community development when applicable.

36-5 Waiver.

The director of community development may waive certain requirements contained in this article if, in his/her opinion, the requirements are not essential to a proper decision on the project; or, he/she may supplement the list with other requirements deemed necessary to clarify the nature of the proposed development.

36-6 Fees.

An application for site plan review shall be accompanied by the appropriate fee as more specifically enumerated in Article XXXIV, Schedule of Fees.

36-7 Issuance of site disturbance permit.

Each person, firm, corporation, utility, entity or agent thereof engaged in any site preparation and/or construction activities shall acquire a site disturbance permit from the department of community development prior to commencement of such activities as established pursuant to the provisions of this article and no such activity shall commence prior to the approval of the site plan by the planning commission. Fees for said permit shall be as more specifically enumerated in Article XXXIV, Schedule of Fees.

36-8 Issuance of building permit.

Upon approval of the site plan, either as submitted or with changes and/or special conditions required by the planning commission, the building official may issue a building permit for a portion or all of the proposed development provided that the application is in compliance with all applicable city, county, state and federal requirements.

36-9 Parking requirements.

Any business use located within the Village Overlay District with a lot frontage of fifty (50) feet shall require a minimum of four (4) parking spaces, with a lot frontage of twenty-five (25) feet shall require a minimum of two (2) parking spaces, and shall also comply with the minimum design and improvements standards as otherwise outlined in this Ordinance and ADA requirements.

Off-street parking for multi-use or mixed use developments shall be located in the rear of the building(s) adjacent to the street.

For any use for which the above referenced parking requirement cannot be met due to the unique conditions of a particular parcel of property, off-street parking spaces of the public type may be considered toward the requirements necessary to comply with the article upon determination of the director of community development and approval of the planning commission.

36-10 Signage.

The maximum allowable square footage established in each zoning designation and/or overlay district shall apply as provided in each district. Said allowable area shall not be exceeded. In the event that channel letters, as defined in Article VIII, Definitions, are proposed, then the maximum allowable square footage shall be calculated at a rate of eighty (80) percent in lieu of the standard rate of one hundred (100) percent.

(a) *Nonconformance:* Any sign in existence on the date of the adoption of this Ordinance that is not in conformance shall be considered a nonconforming sign and shall be permitted to continue to exist subject to

the conditions and prohibitions set forth in the provisions of Article XXXIII, Sign Provisions.

(b) *Single-use building (A commercial building with one (1) tenant):* Signs indicating the name of a business or retail use permitted in this district with a single-use building shall have one (1) sign not to exceed fifteen (15) square feet in area per face, five (5) feet in height, of the ground sign or pylon type, and have two (2) faces. Each establishment of a business or retail use permitted in this district with a single-use building may acquire an additional permit for a wall-mounted sign of a size not to exceed ten (10) percent of the surface frontal area of its building or portion of the building. Signs mounted on mansards, marquees, windows, and awnings are deemed to be wall signs.

(c) *Multi-use building (A commercial building which houses more than one (1) commercial tenant):* Signs indicating the name of a business or retail use permitted in this district with a multi-use building shall have one (1) sign not to exceed thirty-two (32) square feet in area per face, ten (10) feet in height, of the ground sign or pylon type, and have two (2) faces. Each establishment of a business or retail use permitted in this district with a multi-use building may acquire an additional permit for a wall-mounted sign of a size not to exceed ten (10) percent of the surface frontal area of its building or portion of building. Signs mounted on mansards, marquees, windows, and awnings are deemed to be wall signs.

(d) *Fees:* Signs permitted under this article shall require a permit as more specifically enumerated in Article XXXIII, Sign Provisions. Fees for each permitted sign shall be as more specifically enumerated in Article XXXIV, Schedule of Fees.

36-11 Sidewalks.

A sidewalk of a minimum six (6) feet in width shall be required to be located adjacent to the front property line and in the interior of multi-use developments.

36-12 Landscape standards.

(a) *General requirements:* Any use in this district shall suitably landscape at least five (5) percent of the subject property and also comply with the requirements of Article XIX, Landscape and Tree Protection.

Innovative landscape designs to include planters and/or hanging plants, as well as, a "natural cluster of trees" may be approved; if recommended by the director of community development and given approval by the planning commission; if it is determined the landscape design is compatible with the character of the district.

More stringent design and landscape standards may be required if it is determined that the design would be more compatible with the development and more beneficial to the aesthetics of the city.

(b) *Off-street parking landscape requirements:* The design and appearance of parking areas are intended to be compatible with the character of the community. Toward this objective, the following landscaping standards shall be observed in the construction of off-street parking areas:

(1) Landscaped areas and perimeter areas shall be so graded as to receive a reasonable portion of the rainfall from the surrounding pavement. Protective curbing around landscaped areas will leave openings for the flow of water onto unpaved areas.

(2) Landscaped areas shall be protected from vehicular encroachment by the use of curbing or wheel stops.

(3) The owner, tenant and/or agent, if any, shall be jointly and severally responsible for watering and maintaining all landscaping in a healthy, neat and orderly condition, replacing it when necessary, and keeping it free of refuse and debris.

(4) Adjacent residential property owners may jointly agree on the establishment of a common landscaped or fenced area between their properties which meet the requirements of this article.

(c) *Buffer zone requirements:* Where a business district abuts any part of a residential district, a buffer zone ten (10) feet in width shall be required. The buffer shall run the entire length of the abutting lot line(s). Under no circumstances shall this buffer impair vehicular flow and shall be part of the yard requirements. Said protection buffer shall be maintained in such a manner to accomplish its purpose continuously.

This district shall comply with the following minimum standards and said buffer zone shall be constructed of at least one (1) of the following three (3) designs or a combination thereof as determined by the director of community development and approved by the planning commission:

(1) *Wall or fence:* If a wall or fence of solid appearance is provided as a protection buffer, it shall be at least six (6) feet in height and of a construction and a design approved by the planning commission.

(2) *Screen planting strip:* A staggered double row of Evergreen plantings at least ten (10) feet in width which will grow to at least ten (10) feet in height and spaced in a manner in which after three (3) years it will provide an impervious visual barrier.

(3) *Natural forest:* A natural, undisturbed forest which provides a nearly impervious visual barrier due to the dense nature of the plants and/or trees. If this option is chosen, the width of the buffer zone shall be ten (10) feet in width and shall be included on the landscape plan.

The director of community development shall determine whether the barrier is satisfactory via site inspection prior to approval.

36-13 Supervision.

The landscape architect shall be responsible for the supervision of all plantings. After completion, the landscape architect shall certify in writing to the City of Daphne that the submitted, approved landscape plan has been implemented and complies with the requirements of this article.

36-14 Certificate of occupancy.

A certificate of occupancy shall not be issued until the submitted, approved landscape plan has been implemented or a bond has been posted. Said bond shall be in an amount equal to one hundred and fifty (150) percent of the actual landscape cost which shall be certified by a professional landscape architect.

36-15 Penalties.

The Code Enforcement Officer of the City of Daphne shall serve the owner of said property, each person, firm or corporation engaged in the activities regulated hereunder in which the activities are being conducted in violation of any provision of this article with a summons and complaint citation. The person(s) shall be fined upon conviction, not less than twenty-five dollars ($25.00) nor more than five hundred dollars ($500.00) and costs of the court for each offense.

36-16 Setbacks.

MINIMUM DISTRICT REQUIREMENTS				
DISTRICT	*FRONT YARD*	*REAR YARD*	*SIDE YARD*	*CORNER LOT SIDE YARD*
R-4, Single-family or R-6(G)	15	20	6	25
R-4, Multi-Family or R-7(A, T or M) or MU	15	20	a	25
B-1, Local Business	10	b	b	25

MINIMUM DISTRICT REQUIREMENTS				
DISTRICT	*FRONT YARD*	*REAR YARD*	*SIDE YARD*	*CORNER LOT SIDE YARD*
B-2, General Business	10	b	b	25
B-3, Professional Business	10	b	b	25

(a) When dwelling unit faces the side yard, the dwelling unit shall not be less than twenty-five (25) feet from the side lot line.

(b) None. If there is a rear alley, the setback shall be twenty-five (25) feet. When abutting a residential district it shall be not less than ten (10) feet. (See Buffer requirements, section 36-12).

36-17 Maximum building height.

Except as otherwise provided herein, no structure shall exceed thirty-five (35) feet in height in any R-4, Single-Family and Multi-Family Residential, district or more than fifty (50) feet in height in any Business or Mixed use District. Structures of more than fifty (50) feet may be permitted subject to the approval of the city council (See definition of height, Building, in Article VIII, Definition of Terms).

36-18 Drainage.

Any use in this district shall comply with Article XVIII, Drainage and Stormwater Management.

36-19 Subdivision regulations.

Any use in this district shall comply with Article XVII, Procedures for Subdivision Review where applicable.

36-20 District map.

The Village Overlay District Map, Exhibit C, is hereby adopted and as a part of this Ordinance. (See Appendix).

ARTICLE XXXVII. EASTERN SHORE PARK OVERLAY DISTRICT GENERAL PROVISIONS

37-1 Creation of overlay district.

The City of Daphne, Alabama, a municipal corporation (the "city") hereby adopts the following provisions for the establishment of the Eastern Shore Park Overlay District (the "district"), said provisions to constitute Article XXXVII (the "District Regulations") of the Land Use and Development Ordinance of the city (the "Land Use Ordinance"). No building, other improvements or land shall hereafter be used or occupied, and no building or other improvements shall be erected, constructed, moved, or altered in the district, except in conformity with the district regulations as the same may be amended from time to time.

The land constituting the district is described in Schedule "A" attached hereto. In the event Malbis Properties, L.L.C. (the "owner/developer") acquires any portion of that land adjacent to the district and described in Exhibit "B" attached hereto, on or before January 1, 2006, then any such additional acquired land described in Exhibit "B" shall become part of the district and subject to the district regulations without further action by the city or the owner/developer. (See also section 37-16.)

37-2 Minimum street requirements.

	Major Street	*Collector Street*	*Local Street*	*Cul-de-Sac (Turn around)*	*Alley*
Minimum Right-of-Way:	100'	60'	50'	50' (100' diam.)	30'
Minimum Pavement: As Req'd	36'	27'	28'	20' (80' diam.)	20'
Maximum Grade:	3%	5%	5%	5%	5%
Minimum Angle of Intersection in degrees:	80°	60°	60°	60°	60°
Minimum Curb Radius at Intersection:	40'	30'	15'	15'	15'
Minimum Horizontal Curve Radius:	300'	250'	100'	100'	100'
Minimum Reverse Curve Tangent:	100'	100'	100'	100'	100'

Notes:

1 Cul-de-sacs shall not be longer than six hundred (600) feet measured from the centerline of the intersecting street to the center of the turnaround.

2 Minimum pavement width is measured from back of curb to back of curb.

3 Maximum grade may vary with topography subject to planning commission approval based on recommendation of director of community development.

37-3 Improvement standards.

All streets in the district, whether private or dedicated for public use, shall be paved and adequately drained.

The full width of any public road improvements in the district shall be graded, including the subgrade of the areas to be paved. This requirement may be modified for the purpose of preserving the natural beauty of an area. A base course consisting of at least eight (8) inches of a sand-clay mixture with one hundred (100) percent standard compaction shall be laid on a soundly prepared subgrade. A prime coat shall be sprayed uniformly over the base course. An approved type wearing surface in conformance with State Highway Standard 416-A one and one-half (1½) inches thick compacted shall be laid over the prime coat. If curbs and gutters are required, they must be in conformity with approved state and county highway department standards.

All grading in the subdivision shall be related to the topography and environmental features of the surrounding area. Unpaved areas within a dedicated street right-of-way shall also be graded and shall be seeded in a manner that enhances the appearance of the environment.

All water mains, sanitary sewers and laterals, and storm sewers shall be installed as necessary to prevent the future cutting of the pavement of any street, sidewalk, or other required pavement.

37-4 Issuance of site disturbance permit.

Each person, firm, corporation, utility, entity, or agent thereof engaged in any site preparation and/or construction activities shall acquire a site disturbance permit from the planning department prior to commencement of such activities pursuant to the provisions of this article and no such activity shall commence prior to the approval of a preliminary plat by the planning commission. Fees for said permit shall be as more specifically enumerated in Article XXXIV of the Land Use Ordinance, entitled "Schedule of fees."

37-5 Inspection of improvements.

When all required improvements are installed, the developer/owner shall call for a final inspection. The public work director or his duly authorized representative shall inspect the site to determine if the required improvements are satisfactorily installed according to the plans and specifications.

To determine if the streets are installed to minimum design standards, the city shall select an independent testing laboratory to make the necessary tests. These tests shall be conducted at the expense of the developer/owner.

37-6 Sidewalks.

It is the intent of this section to require sidewalks to be installed on both sides as a part of the improvement of all streets prior to the issuance of certificate of occupancy.

Construction of sidewalks shall comply with the following standard:

Sidewalk width	5 feet

37-7 Water and sewer connections.

Developments, individual lots, or parcels shall be properly connected to a public community water and public sanitary sewer system.

37-8 Special provisions.

(a) *Utility placement:* Water, sewer, gas, electric power, telephone, cable television, and other utility lines shall be installed underground by the developer and/or owner in all new commercial or industrial developments, expansions and/or renovations of existing development. Said developments shall be connected to a central distribution system, unless for good reasons other than cost, the planning commission approved a modification or waiver of this requirement in part or in whole, or if a special condition requires otherwise.

(b) *Location of roadway fire hydrants:* Roadway fire hydrants shall be installed along each street at the center of each block and at one corner of each roadway intersection, provided, however, that in no event shall fire hydrants be spaced so that any fire hydrant is located more than five hundred feet from another fire hydrant. The water supply and pressure shall be sufficient to provide adequate fire protection and the future needs of the intended land use. Additional fire hydrant placement may be required on the interior of developed lots pursuant to local ordinance and fire regulations as adopted by the city.

(c) *Location of street lighting:* Lighting shall be installed at all intersections, curves, and cul-de-sacs. If additional lighting is consistent with safety and other community needs is deemed necessary, the director of community development shall require the developer to present a street lighting plan developed in conjunction with the appropriate utility company having jurisdiction within the area.

(d) *Placement of street signs:* Appropriate permanent type street name signs shall be placed at all intersections within the subdivision. The developer may select signs which will be in keeping with the theme of the development, subject to approval of the director of community development.

37-9 District requirements.

The following limitations and requirements are hereby placed on uses in the district.

(a) *Table of Permitted Uses, compliance with district requirements and setbacks:* The permitted uses in the district are as provided in sections 13-2, 13-3, and 13-6 of Article XIII, Minimum District Requirements of the Land Use Ordinance. Furthermore, the outdoor display of merchandise is permitted by the operator of a store, provided that the outdoor areas for such activities are limited to off-street parking areas and sidewalks in the district. Any outdoors sales for special events shall require a special permit issued by the city.

(b) *Maximum building height:* Structures of more than five (5) stories or sixty-five (65) feet are not permitted.

(c) *Performance standards for the district:* All lots in the district, and improvements thereon, shall comply with the following minimum standards:

1. Lots shall be of sufficient size to be used for the purpose intended, provide adequate parking and loading facilities in addition to space required for conduct of other operation of the business, and otherwise comply with the provisions provided herein.

2. No entrances or exits shall direct traffic into adjacent residential districts.

3. Noise, air pollutants including dust emissions, and surface runoff shall not to exceed background levels by more than ten (10) percent.

4. Uses in all business districts must comply with all applicable health and safety standards, including sanitary facilities, paved and landscaped parking areas, and other requirements of this Ordinance, as well as, state and federal regulations.

5. Non-permanent structures such as trailers, sheds, and other such buildings used for business purposes may for business purposes may be permitted in business districts, provided, however, that such structures may only be located at the rear and side of permanent structures and must be adequately screened by landscaped buffers or opaque fencing.

37-10 Procedures for site plan review.

USE AND APPLICABILITY

The district regulations shall be complied with for all development in the district, regardless of whether such development involves the construction of business and commercial structures, additions thereto, construction of a park, public rights-of-way, open space, public building or structure, or public utility, whether publicly or privately owned, and other uses as required by the planning commission.

SPECIAL PROVISIONS

The following shall apply:

(a) A site plan review shall be accomplished by the recommendation of the director of community development and approval of the planning commission to assure compliance with the provisions of these district regulations, as well as applicable building and fire codes.

(b) Said approval shall be authorization to begin work, subject to the issuance of a site disturbance permit. Such approval shall become void upon one (1) year from the date of approval if a site disturbance permit has been acquired and no building or construction activities have occurred on the permitted site.

(c) When all required improvements are installed, the developer/owner shall call for a final inspection. The director of community development or his duly authorized representative shall inspect the site to determine if the required improvements are satisfactorily installed according to the plans and specifications.

(d) Applicant shall be responsible for posting a sign providing public notice of site plan review. Failure to post said sign fifteen (15) days prior to planning commission review, shall cause the application to be withdrawn from the meeting agenda. Said sign shall not be an advertisement sign for the proposed project, but an advertisement of the planning commission meeting dates and times in accordance with the standards established for such provided in the supplemental information.

PLAN CONTENT

The plan shall contain all information as reflected on the current departmental checklist for a site which may be modified at the discretion of the director of community development when applicable.

WAIVER

The director of community development may waive certain requirements contained in this article if, in his opinion, the requirements are not essential to a proper decision on the proposed development; or, he may supplement the list with other requirements deemed necessary to clarify the nature of the proposed development.

ISSUANCE OF SITE DISTURBANCE PERMIT

Each person, firm, corporation, utility, entity or agent thereof engaged in any site preparation and/or construction activities shall acquire a site disturbance permit from the planning department prior to commencement of such activities as established pursuant to the provisions of this article and no such activity shall commence prior to the approval of a site plan by the planning commission. Fees for said permit shall be as more specifically enumerated in Article XXXIV of the Land Use Ordinance, entitled the Schedule of Fees.

REQUIREMENT OF BOND

Whenever a person, firm, corporation, developer or other entity proposes to develop a commercial site that, in the opinion of the director of community development, constitutes a land disturbing activity which may pose a risk of drainage and/or siltation damage outside the boundaries of the project, such person, firm, corporation, developer or other entity conducting the land disturbing activity shall be required to submit a performance bond to the city prior to the issuance of a site disturbance permit.

At the time of approval of the site plan by the planning commission, the bond shall become effective and shall extend for a period of at least two (2) years following the issuance of the certificate of occupancy by the city. The bond shall be in the amount of ten (10) percent of the total cost for the performance of all site work on the said location with bond to cover such drainage, erosion and siltation damage, if any.

The director of community development or other administrative official as designated by the city council shall determine the prescribed bond, as well as the adequacy and the security thereon.

RELEASE OF BOND

At the expiration of two (2) years from the issuance of the certificate of occupancy, the director of community development shall determine if the drainage design implementation of the project has:

(a) Been performed in accordance and functions within the parameters of the design standards as set forth by the project engineer;

(b) Received from the project engineer a certificate of performance which states the drainage functions have been constructed in substantial accordance with the plans, specifications, and engineering guidelines;

(c) Had any material adverse impact on any streams, waterways or third parties; and,

(d) Complied with all ADEM regulations in effect at the time of said completion.

Upon the director of community development's receipt and evaluation thereof of the criteria as enumerated above and upon recommendation of the planning commission, the city shall release the developer and/or the bondholder from further obligations under said bond.

If it is determined that the requirements have not been met then the bond may be extended for one (1) six-month interval to allow the developer and/or bondholder additional time to correct the deficiencies which prohibited the release of bond. If a site contractor is unable and/or unwilling to satisfy the deficiencies as enumerated by the director of community development, the bond shall be forfeited with the bond being payable to the city for the direction of such work and/or activities necessary for the completion of the improvements. The developer and/or bondholder of the property thereof shall be liable for any additional cost incurred.

ISSUANCE OF BUILDING PERMIT

Upon approval of the site plan, either as submitted or with changes and/or special conditions required by the planning commission, the building official may issue a building permit for a portion or all of the proposed development pro-

vided the application is in compliance with all applicable city, county, as well as state and federal requirements.

37-11 Parking requirements for overlay district.

GENERAL

Off-street automobile storage or parking space shall be provided with vehicular access to a street or alley. Parking shall comply with the minimum requirements noted.

PARKING SCHEDULE

	Land Use on Lot:	Parking Requirements
(a)	Dwellings:	
	Hotels/Motels:	
	Without restaurants, lounges, and banquet facilities	One (1) for each bedroom
	(With in-house restaurants, convention/meeting capabilities):	One and one-half (1.5) banquet facilities, or one and one-half (1.5) spaces for each guest bedroom
(b)	Public Assembly:	
	(1) Theaters, Auditoriums, Coliseums, Stadiums, and Similar Places of Assembly:	One (1) space for each four (4) seats
(c)	Health Facilities:	
	(1) Hospitals, Sanitariums, Nursing Homes, Homes for the Aged and Similar uses:	One (1) space for each four (4) beds, plus one (1) space for each employee on the maximum shift.
	(2) Kennels and Animal Hospitals	A parking area equal to thirty (30) percent of the total enclosed or covered area.
	(3) Medical, Dental and Health Offices and Clinics:	One (1) space for each two hundred (200) square feet of floor area used for offices and similar purposes.
	(4) Mortuaries and Funeral Parlors	Ten (10) spaces per parlor, chapel unit or one
(d)	Business:	
	(1) Restaurants (including bars, grills, diners, cafes, taverns, night clubs, lunch counters, and all similar dining and/or drinking establishments)	Ten (10) parking spaces for each one thousand (1,000) square feet of floor area.
	(2) Commercial and Shopping Centers:	One (1) space per two hundred fifty (250) square feet of floor area.
(e)	Uses Not Listed Above	Four and one-half (4.5) parking spaces per one thousand (1,000) square feet of floor area.

CALCULATION OF FLOOR AREA: In the calculation of floor area to determine parking ratios, the term "floor area" shall mean enclosed areas which are heated and cooled. Expressly excluded from this term are garden center floor areas and outdoor storage areas or outdoor sales areas.

DESIGN STANDARDS

(a) *Definition:* An off-street parking space is an all-weather surfaced area not in a street or alley, permanently reserved for the temporary storage of one (1) automobile and connected with a street or alley by an all-weather surfaced driveway which affords unobstructed ingress and egress to each space.

(b) *Parking area dimensions:* The design and dimensions of the standard parking area shall have a minimum nominal dimension of eighteen (18) feet in depth and nine (9) feet in width.

The design and dimension of handicap parking areas shall be in accordance with the Americans with Disabilities Act.

(c) *Width of two-way access driveways:* The minimum width of two-way access driveways within parking areas shall be twenty-four (24) feet.

(d) *Paving standards:* Parking spaces and driveways shall be paved to the standards established by the city.

(e) *Drainage:* Off-street parking facilities shall be drained to prevent damage to abutting property and streets and to prevent pollutants from draining onto such streets and the adjacent lots. Landscape and perimeter areas shall be so graded as to direct runoff to the storm drainage system. The storm drainage system shall be designed to include water quality measures for the first one (1) inch of rainfall.

(f) *Off-street loading and unloading space:* Off-street loading/unloading spaces shall be provided as hereinafter required by these district regulations.

(1) *Size of spaces:* Each off-street loading/unloading space shall have minimum dimensions of fourteen (14) feet in height, twelve (12) feet in width, and fifty-five (55) feet in length.

However, upon sufficient demonstration a particular loading space will be used exclusively by shorter trucks, the planning commission may reduce the minimum length accordingly to as much as thirty-five (35) feet.

(2) *Connection to street or alley:* Each required off-street loading and unloading space shall have direct access to a street or alley or have a driveway which offers satisfactory ingress and egress for trucks.

(3) *Floor area more than ten thousand (10,000) square feet:* There shall be provided for each commercial building, or similar use requiring the receipt of distribution of materials or merchandise and having a floor area of more than ten thousand (10,000) square feet, at least one (1) off-street loading and unloading space. Such space shall be so located as not to hinder the free movement of pedestrians and vehicles over a sidewalk, street, or alley.

(4) *Location:* All required off-street loading and unloading spaces shall be located on the same lot as the building which they are intended to serve or on an adjacent lot when shared with the user occupying said adjacent lot.

37-12 Subdivision regulations.

Article XVII, Procedures for Subdivision Review, of the Land Use Ordinance is incorporated herein by reference.

37-13 Drainage and erosion control requirements.

Article XVIII, Drainage and Stormwater Management Facilities and Erosion/Sediment Control, of the Land Use Ordinance is incorporated herein by reference.

37-14 Landscape and tree protection.

PURPOSE

The intent of this section is to establish minimum standards for the provision, installation, and maintenance of landscape plantings and trees in order to achieve a healthy, beautiful, and safe community.

APPLICABILITY AND USE

(a) *Applicability:* The provisions of this article apply to all projects within the district involving the construction of business and commercial structures, all existing structures which increases the gross floor area by thirty (30) percent or more, and other projects as required by the planning commission.

(b) *Use or ownership provision:* In the event of a change in: (a) use of property, (b) occupancy, or (c) ownership regardless of name change to any business, commercial, or industrial development, it shall be the responsibility of the owner to comply with the provisions of this article within one hundred and eighty (180) days from the date in which the change occurs.

LANDSCAPE STANDARDS

(a) *Site plan review:* A site plan shall not be approved by the planning commission without an acceptable landscape and irrigation plan.

(b) *Subdivision review:* A subdivision shall not be approved by the planning commission without an acceptable landscape and irrigation plan, as the same is defined pursuant to the provisions of this section of the district regulations.

All subdivisions shall require a landscape plan for the common areas of the subdivision: the entrance, detention pond, and other areas which are deemed appropriate by the planning commission.

(c) *Interstate 10 North landscaping.* To the extent the city has authority to do so, it authorizes the developer/owner to remove all trees in that portion of Interstate 10 which is north of the northern boundary of the district. Such removal is conditioned upon the following:

(1) The prior submission to and approval by the planning commission of a landscaping plan prepared by the developer/owner;

(2) Obtaining any necessary permits from the Alabama Department of Transportation for the installation of landscaping improvements within the area from which trees are removed; and,

(3) The developer/owner's installation of the landscaping improvements according to the approved landscaping plan. Upon developer/owner's installation of the landscaping improvements according to the approved landscaping plan, the city shall assume the maintenance of said landscaping improvements in accordance with the approved landscaping plan and in compliance with any maintenance requirements of the Alabama Department of Transportation and any other applicable governmental entity.

Each owner of real property, its successors and or assigns in the district abutting any portion of Interstate 10 having landscaping installed pursuant to this section, shall be obligated to reimburse the city on a semi-annual basis for the city's public works department cost of maintaining that portion of the owner's real property fronting the Interstate. The city shall remit invoice to each such owner with payment due within forty-five (45) days of invoice.

Should each owner not pay said invoice within the time frame herein, the city shall have the right to charge interest at the State of Alabama statutory post judgment interest rate and the city shall further have the right to initiate appropriate civil action in such court having competent jurisdiction to recover said costs, plus reimbursement of reasonable attorney fees and cost associated herewith. The obtaining of any necessary permits from the Alabama Department of Transportation

for the installation of landscaping improvements shall be the responsibility of the developer/owner.

(d) *Revisions to landscape plan:* If proposed construction shall cause changes in the landscape or irrigation plan, a revised plan shall be submitted to the director of community development for re-evaluation.

(e) *Issuance of site disturbance permit:* A landscape and irrigation plan shall be submitted for review by and the recommendation or other comments of the director of community development and shall be subject to the approval of the planning commission prior to the issuance of a site disturbance permit.

(f) *Compliance with landscape provisions:* All subject properties, as well as those owned by the city, shall comply with the provisions of this article.

(g) *Certification and plan requirements:* Landscape plans shall be drawn and stamped by a licensed landscape architect. The landscape plan shall be of professional quality and include the following:

(1) Date, scale, north arrow, title, and names and contact information for property owner(s), developer, and the landscape architect.

(2) Location of existing boundary line dimensions of the building site, existing water sources, significant drainage features, existing and proposed streets or alleys, existing or proposed utility easements on or adjacent to the building site, rights-of-way, setbacks, locations of proposed parking spaces, and location of existing and/or proposed sidewalks.

(3) The location(s) and dimension(s) of the proposed landscaped areas within the parking area(s) including a description of new trees and plant materials to be placed within landscaped area(s). Both common and botanical names shall be included.

(4) Locations, type, and design of the proposed irrigation system.

(5) Location and species of buffer zone vegetation.

(h) *Certification by local landscape architect:* Any and all landscape plans as required in this section shall, in addition to any other requirements, be reviewed and approved by a local landscape architect to be designated by the planning commission with the professional costs for such services to be reimbursed to the city by the party submitting the plans for approval. Such local landscape architect's review shall include the design, irrigation, location and type of planting, and any and all other criteria necessary so as to ensure that the planting and design is consistent with local standards.

If the local landscape architect's review fee is known at the time of the plan's submission, the submitting party shall pay the fee upon submission. Otherwise, the fee shall be paid by the submitting party within ten (10) days of receipt of a statement of the amount of the fee.

BUFFER ZONE REQUIREMENTS

Where a business district in the district abuts, without any intervening public road right-of-way, any part of an adjoining residential area, a buffer zone twenty (20) feet wide shall be required.

The buffer shall run the entire length of the abutting lot line(s). Under no circumstances shall this buffer impair vehicular flow and shall be part of the yard requirements. Said protection buffer shall be maintained in such a manner to accomplish its purpose continuously. This district shall comply with the following minimum standards and said buffer zone shall be constructed of at least one of the following three (3) designs or a combination thereof as determined by the director of community development and approved by the planning commission:

(a) *Wall or fence:* If a wall or fence of solid appearance is provided as a protection buffer, it shall be at least six (6) feet in height and of a construction and a design recommended and approved by the planning commission.

(b) *Screen planting strip:* A staggered double row of evergreen plantings at least ten (10) feet in width which will grow to at

least ten (10) feet in height and spaced in a manner in which after three (3) years it will provide an impervious visual barrier.

(c) *Natural forest:* Natural, undisturbed forest which provides a nearly impervious visual barrier due to the dense nature of the plants and/or trees. If this option is chosen, the width of the buffer zone shall be twenty-five (25) feet and shall be shown on the landscape plan. The director of community development shall determine whether the barrier is satisfactory via site inspection prior to approval.

OFF-STREET PARKING FACILITIES

The design and appearance of parking areas are intended to be compatible with the character of the community. Toward this objective, the following landscaping standards shall be observed in the construction of off-street parking areas which accommodate six (6) or more parking spaces:

(a) At least fifteen (15) percent of the total lot area intended for off-street parking shall be suitably landscaped.

(b) Interior portions of the parking area at intervals of twelve (12) parking spaces shall be broken by provision of landscaped islands. Such landscape islands shall include the placement of shade or flowering trees at least two and one-half (2½) inches or greater in caliper and ten (10) feet in height at planting.

(c) Each separate landscaped area must be a minimum of two hundred eighty (280) square feet if it is to be counted toward the minimum landscaped area requirements.

(d) Landscaped areas shall be protected from vehicular encroachment by the use of curbing or wheel stops.

(e) The owner, tenant and/or agent, if any, shall be jointly and severally responsible for watering and maintaining all landscaping in a healthy, neat and orderly condition, replacing it when necessary, and keeping it free of refuse and debris.

(f) A minimum of five (5) feet side and rear landscaping may be required in the landscape plan depending on the topography and arrangement of parking facilities.

If required, such areas shall be planted with a combination of trees, shrubs, and grass or other ground cover adequate to break the expanse of contiguous parking areas and to present an attractive appearance as determined by the director of community development.

(g) Innovative landscape designs using "natural cluster of trees" rather than the required one (1) tree at intervals of twelve (12) parking spaces may be used if approved by the planning commission.

37-15 Sign provisions.

A. *Signs prohibited in this district.* The following signs are prohibited:

(a) *Prohibited placement:* Any sign erected or painted upon a sloped roof, fence, tree, stand pipe, fire escape, or utility pole is prohibited, except that a manufacturer's or installer's ID plate shall be permitted, provided that such plate does not exceed five (5) by eight (8) inches in size.

(b) *Prohibited wording:* Any sign which is not a traffic control sign and uses the word "Stop" or "Danger" prominently displayed and/or which is a copy or imitation of official traffic control signs is prohibited.

(c) *Flashing signs prohibited:*

(1) *General prohibition:* Except as otherwise provided below, flashing signs, signs which contain intermittent illuminations and digital LED signs/reader boards are prohibited.

(2) *Exceptions:* This subsection does not prohibit the following:

(a) Signs required for traffic control; and,

(b) Signs which exhibit time, date, temperature, and other customary public information.

(d) *Prohibited sign types:* Portable signs, bench signs, snipe signs, sandwich signs, except as allowed in Article XXXIII, Sign Provisions of the Land Use Ordinance, ladder-type signs, billboard signs or off-premises signs. "Billboard" is defined as "an off-premises or off-site sign advertising an establishment, merchandise, product, service, or entertainment which is not sold, provided, manufactured, or furnished on the property on which said sign is located." "Off-premises sign" is defined as "a billboard or other sign on which any portion thereof relates to a premises (or activities thereon) other than the property on which said sign is located."

(e) *Prohibited sign effects:* Signs which produce sound, noise, cause interference with radio, telephone, television or other communication transmission, produce or reflect motion pictures; emit visible smoke, vapor, particles, odor, are animated, or produce any rotation, motion, or movement.

(f) *Illuminated tubing:*

(1) *General prohibition:* Illuminated tubing or strings of lights that outline property lines, sales area, roof lines, doors, windows, wall edges, similar areas or other architectural features of a building are prohibited.

(2) *Exception:* This prohibition shall not apply to temporary displays erected in connection with holiday decorations and community decorations.

B. *Permitted signs.* The following signs are permitted, subject to review by the planning commission to determine compliance with the sign criteria provided below in this subsection B. and further subject to the requirement that permitted signs shall have internal illumination only.

The maximum allowable square footage established in each zoning designation and/or overlay district shall apply as provided in each district. Said allowable area shall not be exceeded. In the event that channel letters, as defined in Article VIII, Definitions, are proposed, then the maximum allowable square footage shall be calculated at a rate of eighty (80) percent in lieu of the standard rate of one hundred (100) percent.

(a) *Monument and pylon signs:* Except as otherwise provided in these district regulations, the following monument and pylon signs are permitted in the district.

(b) *District interstate pylon sign:* The developer/owner is permitted to install and maintain one (1) pylon sign at or near the Northeastern boundary of the district. This sign is permitted to have panels for multiple businesses in the district, provided that the panel space on each side of the district interstate pylon sign shall not exceed one thousand two hundred (1,200) square feet in the aggregate and no individual panel shall have more than three hundred and fifty (350) square feet or less than one hundred and fifty (150) square feet per side. The height of the interstate pylon sign shall not exceed one hundred and twenty (120) feet and shall be determined based on a sight line study obtained by the developer/owner and approved by the planning commission.

The sight line study shall consider the topographical elevation of the location of the district interstate pylon sign, the obstruction to the sign panels by trees and the Interstate 10 overpass at the northeast corner of the district, so as to insure that the top panel on the sign is visible traveling in both directions on Interstate 10.

Each lot in the district which borders Interstate 10 and either (A) has at least five hundred (500) front feet on Interstate 10, or (B) is located at the intersection of Interstate 10 and Alabama Highway 181, shall be permitted one (1) pylon sign at or near said lot's common boundary with Interstate 10.

Permitted individual lot interstate signs are not to exceed fifteen (15) feet in width, or forty-five (45) feet in height, and shall have a maximum area of three hundred (300) square feet per face. Lots in the

district which border Interstate 10, other than those described immediately above, may not have such an individual lot pylon sign without a variance from the board of zoning adjustments.

(c) *Development signs:* One (1) sign is permitted on Alabama Highway 181 and one (1) sign on U.S. Highway 90 identifying the development. Each side may also have panels beneath the development identification not exceeding one hundred and fifty (150) square feet each for multiple businesses within the district. Each sign shall not exceed thirty (30) feet in height.

(d) *Monument signs:* Each lot having frontage on Alabama Highway 181, U.S. Highway 90, or any other public road or right-of-way within or abutting the district shall be permitted to have one (1) monument sign for each public road right-of-way which the lot abuts. The sign shall be placed perpendicular to the said highways and/or boulevards. The permitted sign shall not exceed fifty (50) square feet per face if the lot's frontage on the public road right-of-way is three hundred (300) feet or less, and shall not exceed one hundred (100) square feet per face if the lot's frontage on the public road right-of-way exceeds three hundred (300) feet. All monument signs shall have a pedestal and shall not exceed twenty-one (21) feet in height (including the pedestal).

No sign which qualifies under this definition shall be construed to have any supportive structure and/or structural elements of the sign bearing no advertising matter that would be exempt from calculating the square footage dimensions of the sign. The entire dimensions of the monument itself shall be computed for the maximum square footage per face allotted.

(e) *Directional signs:* Directional signs shall be permitted at the intersection of all roads in the district. Directional Signs shall not exceed sixteen (16) square feet per face.

(f) *Wall-mounted signs:* Each establishment in a shopping center or each business premises in B-1, Local Business, B-2, General Business, B-3, Professional, and C/I, Commercial/Industrial districts may acquire an additional permit for a wall-mounted sign of a size not to exceed the lesser of three hundred fifty (350) square feet or thirty (30) percent of the surface frontal area of the building. Signs mounted on mansards, marquees, and awnings are deemed to be wall signs.

A business establishment with over forty thousand (40,000) square feet of building area may have on (1) additional wall-mounted sign of a size not to exceed one hundred (100) square feet for the purpose of advertising an accessory use.

A business with over one hundred thousand (100,000) square feet of building area may have two (2) additional wall-mounted signs of a size not to exceed one hundred (100) square feet each for the purpose of advertising accessory uses. No business establishment can have more than three (3) wall-mounted signs.

(g) *Menu type signs:* One (1) menu type sign per drive-thru window service not to exceed forty (40) square feet in area or eight (8) feet in height.

(h) *Automobile dealerships:* Automobile dealerships in the sale of the new vehicles shall be subject to the following:

(1) *Numeric limitation:* Each lot on which an automobile dealership operates shall be permitted the following:

(a) One (1) monument sign for each new automobile manufacturer line of cars offered on the lot, together with one (1) monument sign for used cars, if the same are for sale on the lot; and,

(b) Lots operated as automobile dealerships and have a common boundary with Interstate 10 are permitted to have one

(1) pylon sign as provided in section 37-15.B above of these district regulations.

(2) *Height limitation:*

(a) The monument signs shall not exceed twenty-one (21) feet in height; and,

(b) Any pylon sign for lots adjoining Interstate 10 North shall not exceed forty-five (45) feet in height.

(i) *Gasoline and fuel signs:* Gasoline or other motor vehicle fuel pricing signs, in addition to permitted name or identification signs, are permitted in any business or industrial district. Such signs shall not exceed twelve (12) square feet in area and must comply with the other applicable sign requirements for the district.

(j) *New construction signs:*

(1) *General provision:* Temporary non-illuminated signs not more than thirty-two (32) square feet in area, erected in connection with new construction work and displayed on the premises during such time as the actual construction work is in progress. One (1) such sign, which shall not exceed ten (10) feet in height, is allowed for each street frontage. Such signs shall be removed upon completion of the project.

(2) *Temporary advertising sign:* A temporary advertising sign will be permitted to the owner for the development for each individual business premises, shopping center premises, commercial/industrial business, subdivision, planned unit development, mobile home park and mobile home subdivision, provided the area of each sign shall not exceed thirty-two (32) square feet, is non-illuminated, and is within the confines of the development. These signs shall be the height no greater than ten (10) feet mounted from the ground, for no more than one (1) sign, either single or double faced, per street frontage.

(3) *Temporary promotional banners:* Two (2) temporary signs or banners not exceeding fifty (50) square feet each in area and temporary decorative flags, bunting, pennants and streamers for recognizing grand openings are permitted. Said temporary banners shall be kept in good condition and shall be permitted no more than fourteen (14) days. Furthermore, decorative seasonal banners are permitted on light standards at all times, provided that the same are maintained in good condition.

(k) No sign, unless herein excepted, shall be erected, constructed, posted, painted, altered, maintained, or relocated, until a permit has been issued by the code enforcement officer. Before any permit shall be issued an application prescribed forms, which shall indemnify and hold harmless the City of Daphne of all damages, all demands or expenses of every character which may in any manner be caused by the erection and use of said sign or sign structure, shall be filed together with drawings and specifications maybe necessary to fully advise and acquaint the code enforcement officer with location, size, construction, materials, manner of illuminating, and securing or fastening, and number of size applied for in the wording of the sign or advertisement to be carried on the sign. A decision by the code enforcement officer shall be made within thirty (30) calendar days from the date of when the application is received. Further an application for a business license shall be a prerequisite for applying for a sign permit.

37-16 District map.

The Eastern Shore Park Overlay District Map, Exhibit "D", is hereby adopted and as a part of this Ordinance, (See Appendix).

ARTICLE XXXVIII. RESIDENTIAL HIGH-RISE CONDOMINIUM DEVELOPMENT DISTRICT

38-1 Purpose.

The intent of this district is to provide opportunity for high-rise condominium high density urban type residential developments exceeding fifty (50) feet in height. The area is described as being located on the west side of U.S. Highway 98, extending from the south side of Interstate 10, south to Van Buren Street.

38-2 Height exceptions.

The maximum livable height requirements does not include structures or other appurtenances such as screening, parapet walls, condensers or other mechanical apparatus, communication antennas necessary for the operation of the building. Mechanical equipment, chimneys, air conditioners, elevator penthouses, church spires and steeples, water towers, parapet walls and similar appurtenances are excluded from height restrictions. However, the exclusions apply only to those elements that are appurtenant to the structure. The excluded element shall not exceed the maximum height by more than fifteen (15) feet.

(a) Building height may be allowed up to two hundred (200) feet or sixteen (16) stories by the planning commission.

(b) Additional net area minimums and setbacks shall be required.

(c) International Building Code Standards, current edition, shall be required for buildings over fifty (50) feet.

38-3 Setbacks.

The minimum setbacks for structures shall not be less than fifty (50) feet or one-half (0.5) foot to one (1) foot to building height ratio, which ever is greater, and calculated as follows:

High-Rise Condominium Development
Minimum Setbacks

Height (ft.)	*Minimum Setback (ft.)*	*Net Acres Minimum Net Buildable Acres Required (ac)*
200	100	1.89
175	87.5	1.57
150	75	1.29
125	62.5	1.03
100	50	0.80
75	50	0.80
50	50	0.80

38-4 Additional requirements.

(a) Not less than two (2) parking spaces per dwelling unit.

(b) Any use in this district shall set aside at least twenty (20) percent of the area to be used as a landscaped and green area.

(c) Additional buffers may be required for the protection of streams, rivers, watersheds, wetlands or the like. See Article 18, Drainage and Stormwater.

38-5 Water and sewer connections.

(a) Developments, individual lots, or parcels shall be properly connected to a public or private community water and sanitary sewer system. Residential high-rise developments shall not be approved unless the appropriate utility has the capacity to provide the required service.

(b) All residential high-rise structures shall be required to install a grease trap which is accessible for regular inspection and cleaning.

38-6 Sign provisions.

Signs shall be restricted to monument style signs. See Article XXXIII, Sign Provisions. The maximum allowable square footage established in each zoning designation and/or overlay district shall apply as provided in each district. Said allowable area shall not be exceeded. In the event that channel letters, as defined in Article VIII, Definitions, are proposed, then the maximum allowable square footage shall be calculated at a rate of eighty (80) percent in lieu of the standard rate of one hundred (100) percent.

38-7 Parking.

(a) Underground parking facilities shall be required and shall not be counted in the height; however, ground level parking beneath the building shall be counted as a story.

i. Internal parking shall not exceed twenty-five (25) percent of the structure height. There shall not be less than two (2) interior parking spaces per dwelling unit. Visitor parking may be provided outside of the building footprint.

(b) There shall be no overnight storage of travel trailers, motor homes, hauling trailers, boat trailers, boats, wrecked or disabled vehicles on the property. In no case may commercial vehicles used for hauling dangerous or hazardous products be parked or stored on premises. See Article XVI, Parking Requirements, Storage and Parking of Trailer and Vehicles.

38-8 Sidewalks.

Sidewalks within the "Gated Compounds" shall be provided and not be less than four (4) feet in width.

38-9 Traffic impact analysis.

A traffic impact analysis shall be required for residential high-rise developments. The results and any corrective measures necessary shall be included as part of, and in addition to, the requirements for site plan review and approval.

38-10 Environmental compatibility.

It is the intent of this section to ensure environmental compatibility of the proposed development with the natural environment. Additional buffers may be required for the protection of streams, rivers, watersheds, wetlands or the like. See additional requirements herein. Other requirements that may be considered by the planning commission may include, but not be limited to, reflective or specialized glass and lighting to serve as a flight path deterrent for migrating birds.

38-11 District map.

Residential High-Rise Overlay District Map, Exhibit E is hereby adopted as a part of this Ordinance (See Appendix).

Editor's note—Residential High-Rise Overlay District Map, Exhibit E, can be found in department of community development.

ARTICLE XXXIX. JUBILEE RETAIL DISTRICT OVERLAY

39-1 General provisions.

(a) *Purpose of the Jubilee Retail Overlay District:* Whereas the City of Daphne promotes a quality living environment that sustains a balanced mix of commercial development that serves the day-to-day needs of its residents and promotes its image as a desirable and economically stable community. The Jubilee Retail Overlay District is hereby created to recognize and reinforce the importance of the existing interstate retail business corridor as a major commercial center for the City of Daphne. The intent is to enhance and encourage the retention of existing businesses and the establishment of new entrepreneurial businesses along Interstate 10 as demonstrated in the Eastern Shore Park District Overlay.

(b) *Boundaries:* The Jubilee Retail Overlay District is hereby established. The boundaries are as shown on the Jubilee Retail Overlay District Map and shall be considered an amendment to the official zoning map of the City of Daphne. The map shall be amended in the same manner as any other zoning district permitted by the Land Use

and Development Ordinance, and shall be amended in accordance with the provisions of Article III, Official Maps and Plans.

This district shall be in addition to and shall overlay all other zoning districts where it is applied, so that any parcel of land lying in such an overlay district shall lie in one or more other zoning districts provided for by the Land Use and Development Ordinance.

39-2 District requirements.

The following zoning districts shall be allowed as established and most specifically defined in Article VII, Establishment of Districts: B-2, General Business and B-3, Professional Business.

(a) *Permitted uses:* Permitted uses in the district are as provided in Article XXXV, Table of Permitted Uses. Article XXXV, Table of Permitted Uses and Conditions, outlines the restrictions for each district. Furthermore, the outdoor display of merchandise is permitted by the operator of a store, provided that the outdoor areas for such activities are limited to off-street parking areas and sidewalks in the district. Any outdoor sales for special events shall require a special permit issued by the city.

(b) *Setbacks:* The following setback requirements shall apply in districts as outlined below.

MINIMUM ZONING DISTRICT SETBACK REQUIREMENTS

Zoning District	*Front Yard (ft.)*			*Rear Yard*	*Side Yard*	*Corner Lot[c] Side Yard (ft.)*	
	Arterial & Collector Streets	*Local Streets & Service Roads*	*U.S., State or County Roads*			*Arterial & Collector Streets*	*Local Streets & Service Roads*
B-2	30	20	100	a, b	a, b	30	25
B-3	30	20	100	a, b	a, b	30	25

Table Notes:

a. None, except it will be five (5) feet where abutting an alley, or where abutting a residential district it shall be at least thirty (30) feet.

b. Where a public or semi-public use abuts any part of a single-family residential district, a buffer zone ten (10) feet wide shall be required. Where a commercial district abuts any part of a residential district a buffer zone of twenty (20) feet shall be required. Said buffer zone shall be designed in compliance with the provisions established in section 19-10.

c. Lot Orientation: On corner lots the front yard shall be considered as parallel to the street upon which the lot has its least dimension.

(c) *Maximum building height:* Structures of more than five (5) stories or sixty-five (65) feet shall not be permitted.

(d) *Performance standards for the district:* All lots in the district, and improvements thereon, shall comply with the following minimum standards:

(1) Lots shall be of sufficient size to be used for the purpose intended, provide adequate parking and loading facilities in addition to space required for conduct of other operations of the business, and otherwise comply with the provisions provided herein.

(2) No entrances or exits shall direct traffic into adjacent residential districts.

(3) Noise, air pollutants including dust emissions, and surface runoff shall not exceed background levels by more than ten (10) percent.

(4) Uses in all business districts must comply with all applicable health and safety standards, including sanitary facilities, paved and landscaped parking areas, and other requirements of this Ordinance, as well as, state and federal regulations.

(5) Non-permanent structures such as trailers, sheds, and other such buildings used for business purposes may be permitted in business districts, provided, however, that such structures may only be located at the rear and side of permanent structures and must be adequately screened by landscaped buffers or opaque fencing.

(6) All dumpsters shall be enclosed on all four sides in order to conceal them from public view and screened from public view with an opaque fence or wall of permanent construction.

39-3 Improvement standards.

(a) All streets in the district, whether private or dedicated for public use, shall be paved and adequately drained.

(b) The full width of any public road improvements in the district shall be graded, including the subgrade of the areas to be paved. This requirement may be modified for the purpose of preserving the natural beauty of an area. A base course consisting of at least eight (8) inches of a sand-clay mixture with one hundred (100) percent standard compaction shall be laid on a soundly prepared subgrade. A prime coat shall be sprayed uniformly over the base course. An approved type wearing surface compliant with State Highway Standard 416-A one and one-half (1½) inches thick compacted shall be laid over the prime coat. If curbs and gutters are required, they must conform to approved state and county highway department standards.

(c) All grading in the subdivision shall be related to the topography and environmental features of the surrounding area. Unpaved areas within a dedicated street right-of-way shall also be graded and shall be seeded in a manner that enhances the appearance of the environment.

(d) All water mains, sanitary sewers and laterals, and storm sewers shall be installed as necessary to prevent the future cutting of the pavement of any street, sidewalk, or other required pavement.

39-4 Minimum street requirements.

	Major Street	*Collector Street*	*Local Street*	*Cul-de-Sac (Turn-around)*	*Alley*
Minimum Right-of-Way:	100'	60'	50'	50' (100' diam.)	30'
Minimum Pavement: As Req'd	36'	27'	28'	20' (80' diam.)	20'
Maximum Grade:	3%	5%	5%	5%	5%
Minimum Angle of Intersection in Degrees:	80°	60°	60°	60°	60°
Minimum Curb Radius at Intersection:	40'	30'	15'	15'	15'
Minimum Horizontal Curve Radius:	300'	250'	100'	100'	100'

	Major Street	*Collector Street*	*Local Street*	*Cul-de-Sac (Turn-around)*	*Alley*
Minimum Reverse Curve Tangent:	100'	100'	100'	100'	100'

Table Notes:

1. Cul-de-sacs shall not be longer than six hundred (600) feet measured from the centerline of the intersecting street to the center of the turnaround.
2. Minimum pavement width is measured from back of curb to back of curb.
3. Maximum grade may vary with topography subject to planning commission approval based on recommendation of director of public works, community development or city engineer.

39-5 Sidewalks and pedestrian walkways.

It is the intent of this section to require the installation of five (5) feet wide concrete or asphalt sidewalks on both sides of the street in the district in order to encourage vehicles and pedestrian connectivity within the City of Daphne. Sidewalks are counted toward the improvement standards of all streets and shall be installed prior to the issuance of a certificate of occupancy unless an agreement for future installation has been presented to the city by the developer. In no case shall the City of Daphne be responsible for the installation of sidewalks within any subdivision development.

(a) *Installation:* Sidewalks shall provide for pedestrian traffic and design thereof shall encourage safe means of access that minimize conflicts between vehicles and pedestrians. The use of pervious and/or permeable material or other innovative low impact design measures that promote may be considered by the planning commission in lieu of typical sidewalk installation. Due consideration shall be given to the practicality and feasibility of sidewalk installation depending upon the proposed development and the location. Except where exempted or modified by the planning commission, sidewalks shall be installed as follows:

(1) Along the perimeter of all developments where adjacent to city right-of-way.

(2) Along the right-of-way where adjacent to the perimeter of any common area within the development; except where walking trails and/or paths are incorporated into the design for formal/recreational open space as provided in Article XI, Minimum Standards and Required Improvements. No final plat shall be approved until this provision is satisfied.

(3) At the discretion of the planning commission, the subdivider(s)/developer(s) may be required to provide access through greenways and common areas by sidewalk or trail. In such an instance, a trail may be implemented in lieu of the installation of sidewalks or to augment the sidewalk system. The trail path and design shall be reviewed and approved by the planning commission. Said trail shall be no less than ten (10) feet wide and shall be composed of permeable, porous paving materials.

(4) Pedestrian crosswalks, not less than ten (10) feet wide, shall be required where deemed necessary to provide circulation or access to schools, playgrounds, shopping centers, bus stops, and other community facilities.

(5) For all new subdivisions, restrictive covenants, as are required in Article XVII, Subdivision Review, shall provide for the installation sidewalks and/or trails by the developer.

(6) The planning commission may, at its discretion, approve a final plat prior to the installation of sidewalks upon receipt of an agreement to install sidewalks, a cost estimate for sidewalk installation and a surety in the amount of two hundred (200) percent of the estimated cost. Said surety shall not expire prior to a twenty-four-month period.

39-6 Water and sewer connections.

All developments, individual lots, or parcels shall be properly connected to a public community water and public sanitary sewer system.

39-7 Drainage and erosion control requirements.

Article XVIII, Drainage and Storm Sewers, of the Land Use Ordinance is incorporated herein by reference.

39-8 Special provisions.

(a) *Utility placement:* Water, sewer, gas, electric power, telephone, cable television, and other utility lines shall be installed underground by the developer and/or owner in all new commercial or industrial developments, expansions and/or renovations of existing development. Said developments shall be connected to a central distribution system, unless for good reasons other than cost, the planning commission approves a modification or waiver of this requirement in part or in whole, or if a special condition requires otherwise.

(b) *Location of roadway fire hydrants:* Roadway fire hydrants shall be installed along each street at the center of each block and at one corner of each roadway intersection, provided, however, that in no event shall fire hydrants be spaced so that any fire hydrant is located more than six hundred (600) feet from another fire hydrant. The water supply and pressure shall be sufficient to provide adequate fire protection and the future needs of the intended land use. Additional fire hydrant placement may be required on the interior of developed lots pursuant to local ordinance and fire regulations as adopted by the city.

(c) *Location of street lighting:* Lighting shall be installed at all intersections, curves, and cul-de-sacs. If additional lighting is deemed necessary, the director of community development shall require the developer to present a street lighting plan developed in conjunction with the appropriate utility company having jurisdiction within the area.

(d) *Placement of street signs:* Appropriate permanent type street name signs shall be placed at all intersections within the subdivision. The developer may select signs consistent with the theme of the development, subject to approval of the director of community development.

39-9 Commencement of construction or site disturbance.

Each person, firm, corporation, utility, entity, or agent thereof engaged in any site preparation and/or construction activities shall acquire a site disturbance permit from the department of community development prior to commencement of such activities pursuant to the provisions of this article and no such activity shall commence prior to the approval of either a preliminary plat or site plan as is applicable. Fees for said permit shall be as are more specifically enumerated in Article XXXIV, Schedule of Fees.

39-10 Final inspection of improvements.

To ensure compliance with development regulations the project shall be inspected by all applicable entities prior to final approval by the City of Daphne. Under no circumstance shall the city be held liable for faulty workmanship, defects or improper engineering for private property.

Street Improvements:

To certify that streets are installed to minimum design standards, the developer/owner shall select an independent testing laboratory to perform necessary tests and submit test results to the department of community development for prior to final inspection.

When all required improvements are installed and test results are submitted, the developer/owner shall call for a final inspection. Inspections shall be made in regard to the following: imple-

mentation of engineering design for stormwater management and related improvements, utility improvements, environmental stability, landscaping, compliance with fire code and building code standards. All appropriate entities including but not limited to the director of community development, public works, and/or the city engineer or a duly authorized representative shall inspect the site to determine if the required improvements are satisfactorily installed according to the plans and specifications prior to final plat approval or issuance of a certificate of occupancy.

39-11 Subdivision regulations.

Article XVII, Procedures for Subdivision Review, of the Land Use Ordinance is incorporated herein by reference.

39-12 Procedures for site plan review.

(a) *Use and applicability:* The district regulations shall be complied with for all development in the district, regardless of whether such development involves the construction of business and commercial structures, additions thereto, construction of a park, public rights-of-way, open space, public building or structure, or public utility, whether publicly or privately owned, and other uses as required by the planning commission.

(b) *Special provisions:* The following shall apply:

(1) A site plan review shall be accomplished by the recommendation of the director of community development and approval of the planning commission to assure compliance with the provisions of these district regulations, as well as applicable building and fire codes.

(2) Said approval shall be authorization to begin work, subject to a pre-construction meeting and the issuance of a site disturbance permit. Such approval shall become void upon one (1) year from the date of approval if a site disturbance permit has been acquired and no building or construction activities have occurred on the permitted site.

(3) When all required improvements are installed, the developer/owner shall call for a final inspection. The director of community development, and/or the city engineer and/or director of public works or authorized representative shall inspect the site to determine if the required improvements are satisfactorily installed according to the plans and specifications.

(c) *Plan content:* The plan shall contain all information as reflected on the current departmental checklist for a site which may be modified at the discretion of the director of community development when applicable.

(d) *Reconsideration of certain of requirements:* The director of community development may waive certain requirements contained in this Article if it is determined that the requirements are not essential to a proper decision on the proposed development; or may supplement the list with other requirements deemed necessary to clarify the nature of the proposed development. The director of community development may waive the requirement for a pre-construction conference if it is determined that the project would create minimum impact to the surrounding properties.

(e) *Issuance of site disturbance permit:* Each person, firm, corporation, utility, entity or agent thereof engaged in any site preparation and/or construction activities shall acquire a site disturbance permit from the department of community development prior to commencement of such activities as established pursuant to the provisions of this article and no such activity shall commence prior to the approval of a site plan by the planning commission. Fees for said permit shall be as are more specifically enumerated in Article XXXIV, Schedule of Fees.

(f) *Issuance of building permit:* Upon approval of the site plan, either as submitted or with changes and/or special conditions required by the planning commission, the building official may issue a building permit for a portion or all of the proposed development provided the application is in compliance with all applicable city, county, as well as state and federal requirements.

(g) *Requirement of bond:* Whenever a person, firm, corporation, developer or other entity proposes to develop a commercial site that, in the opinion of the city engineer, director of community development or public works, constitutes a land disturbing activity, which may pose a risk of drainage and/or siltation damage outside the boundaries of the project, such person, firm, corporation, developer or other entity conducting the land disturbing activity shall be required to submit a performance bond to the city prior to the issuance of a site disturbance permit.

At the time of approval of the site plan by the planning commission, the bond shall become effective and shall extend for a period of at least two (2) years following the issuance of the certificate of occupancy by the city. The bond shall be in the amount of ten (10) percent of the total cost for the performance of all site work on the said location with bond to cover such drainage, erosion and siltation damage, if any.

The director of community development or other administrative official as designated by the city council shall determine the prescribed bond, as well as the adequacy and the security thereon.

(h) *Release of bond:* At the expiration of twenty-four (24) months from the issuance of the certificate of occupancy, the city engineer, director of public works shall determine if the drainage design implementation of the project has:

(1) Been performed in accordance and functions within the parameters of the design standards as set forth by the project engineer;

(2) Received from the project engineer a certificate of performance which states the drainage functions have been constructed in substantial accordance with the plans, specifications, and engineering guidelines;

(3) Had any material adverse impact on any streams, waterways or third parties; and,

(4) Complied with all ADEM regulations in effect at the time of said completion.

Upon the director of community development's receipt and evaluation of the criteria as enumerated in this section and upon recommendation of the planning commission, the city shall release the developer and/or the bondholder from further obligations under said bond.

If it is determined that the requirements of this section have not been met then the bond may be extended for one (1) six-month interval to allow the developer and/or bondholder additional time to correct the deficiencies which prohibited the release of the bond. If a site contractor is unable and/or unwilling to satisfy the deficiencies as enumerated by the city engineer/director of public works, the bond shall be forfeited with the bond being payable to the city for the direction of such work and/or activities necessary for the completion of the improvements. The developer and/or bondholder of the property thereof shall be liable for any additional cost incurred.

39-13 Parking requirements for overlay districts.

(a) *General:* Off-street automobile storage or parking space shall be provided with vehicular access to a street or alley. Parking shall comply with the minimum requirements noted.

PARKING SCHEDULE

	LAND USE ON LOT	*PARKING REQUIREMENTS*
(a)	Dwellings:	
	(1) Hotels/Motels: Without restaurants, lounges, and banquet facilities	One and one-half (1.5) space for each bedroom
	(With in-house restaurants, convention/meeting capabilities):	One and one-half (1.5) banquet facilities, or one and one-half (1.5) spaces for each guest bedroom
(b)	Public Assembly:	

	LAND USE ON LOT	*PARKING REQUIREMENTS*
	(1) Theaters, Auditoriums, Coliseums, Stadiums, and Similar Places of Assembly:	One (1) space for each four (4) seats
(c)	Health Facilities:	
	(1) Hospitals, Sanitariums, Nursing Homes, Homes for the Aged and Similar uses:	One (1) space for each four (4) beds, plus one (1) space for each employee on the maximum shift.
	(2) Kennels and Animal Hospitals:	A parking area equal to thirty (30) percent of the total enclosed or covered area.
	(3) Medical, Dental and Health Offices and Clinics:	One (1) space for each two hundred (200) square feet of floor area used for offices and similar purposes.
	(4) Mortuaries and Funeral Parlors:	Ten (10) spaces per parlor, chapel unit or one
(d)	Business:	
	(1) Restaurants (including bars, grills, diners, cafes, taverns, night clubs, lunch counters, and all similar dining and/or drinking establishments	Ten (10) parking spaces for each one thousand (1,000) square feet of floor area.
	(2) Commercial and Shopping Centers:	One (1) space per two hundred fifty (250) square feet of floor area.
(e)	Uses Not Listed Above	Four and one-half (4.5) parking spaces per one thousand (1,000) square feet of floor area.
	CALCULATION OF FLOOR AREA: In the calculation of floor area to determine parking ratios, the term "floor area" shall mean enclosed areas which are heated and cooled.	Expressly excluded from this term are garden center floor areas and outdoor storage areas or outdoor sales areas.

(b) *Design standards:*

(1) *Definition:* An off-street parking space is an all-weather surfaced area not in a street or alley, permanently reserved for the temporary storage of one (1) automobile and connected with a street or alley by an all-weather surfaced driveway which affords unobstructed ingress and egress to each space.

(2) *Parking area dimensions:* The design and dimensions of the standard parking area shall have a minimum nominal dimension of eighteen (18) feet in depth and nine (9) feet in width.

The design and dimension of handicap parking areas shall be in accordance with the Americans with Disabilities Act.

(3) *Width of two-way access driveways:* The minimum width of two-way access driveways within parking areas shall be twenty-four (24) feet.

(4) *Paving standards:* Parking spaces and driveways shall be paved to the standards established by the city.

(5) *Drainage:* Off-street parking facilities shall be drained to prevent damage to abutting property and streets, and to prevent pollutants from draining onto such streets and the adjacent lots. Landscape and perimeter areas shall be so graded as to direct runoff to the storm drainage system. The storm drainage system shall be designed to include water quality measures for the first one (1) inch of rainfall.

(6) *Off-street loading and unloading space:* Off-street loading/unloading spaces shall be provided as hereinafter required by these district regulations.

(a) *Size of spaces:* Each off-street loading/unloading space shall have mini-

mum dimensions of fourteen (14) feet in height, twelve (12) feet in width, and fifty-five (55) feet in length.

However, upon sufficient demonstration a particular loading space will be used exclusively by shorter trucks, the planning commission may, upon request, reduce the minimum length accordingly to as much as thirty-five (35) feet.

(b) *Connection to street or alley:* Each required off-street loading and unloading space shall have direct access to a street or alley or have a driveway which offers satisfactory ingress and egress for trucks.

(c) *Floor area more than ten thousand (10,000) square feet:* There shall be provided for each commercial building, or similar use requiring the receipt or distribution of materials or merchandise and having a floor area of more than ten thousand (10,000) square feet, at least one (1) off-street loading and unloading space. Such space shall be so located as not to hinder the free movement of pedestrians and vehicles over a sidewalk, street, or alley.

(d) *Location:* All required off-street loading and unloading spaces shall be located on the same lot as the building which they are intended to serve or on an adjacent lot when shared with the user occupying said adjacent lot.

39-14 Landscape and tree protection.

(a) *Purpose:* The intent of this section is to establish minimum standards for the provision, installation, and maintenance of landscape plantings and trees in order to achieve a healthy, beautiful, and safe community.

(b) *Applicability and use:*

(1) *Applicability:* The provisions of this article apply to all projects within the district involving the construction of business and commercial structures, all existing structures which increases the gross floor area by thirty (30) percent or more and other projects as required by the planning commission.

(2) *Use or ownership provision:* In the event of a change in: (a) use of property, (b) occupancy, or (c) ownership regardless of name change to any business, commercial, or industrial development, it shall be the responsibility of the owner to comply with the provisions of this article within one hundred and eighty (180) days from the date in which the change occurs.

(c) *Buffer zone requirements:* Where a business district in the district abuts, without any intervening public road right-of-way, any part of an adjoining residential area, a buffer zone twenty (20) feet wide shall be required.

The buffer shall run the entire length of the abutting lot line(s). Under no circumstances shall this buffer impair vehicular flow and shall be part of the yard requirements. Said protection buffer shall be maintained in such a manner to accomplish its purpose continuously. This district shall comply with the following minimum standards and said buffer zone shall be constructed of at least one (1) of the following three (3) designs or a combination thereof, as determined by the director of community development and approved by the planning commission:

(1) *Wall or fence:* If a wall or fence of solid appearance is provided as a protection buffer, it shall be at least six (6) feet in height and of a construction and a design recommended and approved by the planning commission.

(2) *Screen planting strip:* A staggered double row of evergreen plantings at least ten (10) feet in width which will grow to at least ten (10) feet in height and spaced in a manner in which after three (3) years it will provide an impervious visual barrier.

(3) *Natural forest:* A natural forest is in its undisturbed forest which provides a nearly impervious visual barrier due to the dense nature of the plants and/or trees. If this

option is chosen, the width of the buffer zone shall be twenty-five (25) feet and shall be shown on the landscape plan. The director of community development shall determine whether the barrier is satisfactory via site inspection prior to final approval.

(d) *Landscape standards:*

(1) *Site plan review:* A site plan shall not be approved by the planning commission without an acceptable landscape and irrigation plan. A certificate of occupancy shall not be issued for any development project unless a certification of compliance letter has been submitted from the design engineer and the design landscape architect. Said certification shall include the following: inspection date; signature and seal of said engineer and landscape architect; list of deficiencies and/or deviations from plans approved by the planning commission; and a statement regarding compliance with plans submitted.

(2) *Subdivision review:* A subdivision shall not be approved by the planning commission without an acceptable landscape and irrigation plan, as the same is defined pursuant to the provisions of this section of the district regulations.

All subdivisions shall require a landscape plan for the common areas of the subdivision: the entrance, detention pond, and other areas which are deemed appropriate by the planning commission.

(3) *Jubilee Retail Overlay District landscaping retrofit:* Jubilee Retail Overlay District shall be developed as a low impact development (LID) wherein the planning commission shall consider innovative low impact development landscape design, techniques and methods as a means to decrease stormwater runoff, pollution, erosion and to recharge groundwater. Bio-retention areas, porous asphalt, permeable pavers, pervious walkways, elevated landscape beds, bio-retention cells, vegetated swales, infiltration trenches, and dry wells to increase storage volume and facilitate infiltration are encouraged.

(4) *Interstate 10 landscaping:* To the extent the city has authority to do so; it authorizes the developer/owner to remove some trees in that portion of Interstate 10 which abuts the northern boundary of the district. Such removal is conditioned upon the following:

(a) Submission to and approval by the planning commission of a landscaping plan prepared by the developer/owner;

(b) Obtaining any necessary permits from the Alabama Department of Transportation for the installation of landscaping improvements within the area from which trees are removed; and,

(c) The developer/owner's installation of the landscaping improvements according to the approved landscaping plan.

(e) *Revisions to landscape plan:* If proposed construction shall cause changes in the landscape or irrigation plan, a revised plan shall be submitted to the director of community development for re-evaluation.

(f) *Issuance of site disturbance permit:* A landscape and irrigation plan shall be submitted for review by and the recommendation or other comments of the director of community development and shall be subject to the approval of the planning commission prior to the issuance of a site disturbance permit.

(g) *Compliance with landscape provisions:* All subject properties, as well as those owned by the city, shall comply with the provisions of this article.

(h) *Certification and plan requirements:* Landscape plans shall be drawn and stamped by a licensed landscape architect registered in the State of Alabama.

The landscape plan shall be of professional quality and include the following:

(1) Date, scale, north arrow, title, and names and contact information for property owner(s), developer, and the landscape architect.

(2) Location of existing boundary line dimensions of the building site, existing water sources, significant drainage features, existing and proposed streets or alleys, existing or proposed utility easements on or adjacent to the building site, rights-of-way, setbacks, locations of proposed parking spaces, and location of existing and/or proposed sidewalks.

(3) The location(s) and dimension(s) of the proposed landscaped areas within the parking area(s) including a description of new trees and plant materials to be placed within landscaped area(s). Both common and botanical names shall be included.

(4) Locations, type, and design of the proposed irrigation system.

(5) Location and species of buffer zone vegetation.

(i) *Certification by Alabama licensed landscape architect:* Any and all landscape plans as required in this section shall, in addition to any other requirements, be reviewed and approved by an Alabama licensed and registered landscape architect to be designated by the planning commission with the professional costs for such services to be reimbursed to the city by the party submitting the plans for approval. Such landscape architect's review shall include the design, irrigation, location and type of planting, and any and all other criteria necessary so as to ensure that the planting and design is consistent with local standards.

If the landscape architect's review fee is known at the time of the plan's submission, the submitting party shall pay the fee upon submission. Otherwise, the fee shall be paid by the submitting party within ten (10) days of receipt of a statement of the amount of the fee.

39-15 Off-street parking facilities.

The design and appearance of parking areas are intended to be compatible with the character of the community. Toward this objective, the following landscaping standards shall be observed in the construction of off-street parking areas which accommodate six (6) or more parking spaces:

(a) At least fifteen (15) percent of the total lot area intended for off-street parking shall be suitably landscaped.

(b) Interior portions of the parking area at intervals of twelve (12) parking spaces shall be broken by provision of landscaped islands. Such landscape islands shall include the placement of shade or flowering trees at least two and one-half (2½) inches or greater in caliper and ten (10) feet in height at planting.

(c) Each separate landscaped area must be a minimum of two hundred eighty (280) square feet if it is to be counted toward the minimum landscaped area requirements.

(d) Landscaped areas shall be protected from vehicular encroachment by the use of curbing or wheel stops.

(e) The owner, tenant and/or agent, if any, shall be jointly and severally responsible for watering and maintaining all landscaping in a healthy, neat and orderly condition, replacing it when necessary, and keeping it free of refuse and debris.

(f) A minimum of five (5) feet side and rear landscaping may be required in the landscape plan depending on the topography and arrangement of parking facilities.

(g) If required, such areas shall be planted with a combination of trees, shrubs, and grass or other ground cover adequate to break the expanse of contiguous parking areas and to present an attractive appearance as determined by the director of community development.

(h) Innovative landscape designs using "natural cluster of trees" rather than the

required one (1) tree at intervals of twelve (12) parking spaces may be used if approved by the planning commission.

39-16 Sign provisions.

(a) *Signs prohibited in the Jubilee Retail Overlay District:* The following signs are prohibited:

(1) *Prohibited placement:* Any sign erected or painted upon a sloped roof, fence, tree, stand pipe, fire escape, or utility pole is prohibited, except that a manufacturer's or installer's identification (ID) plate shall be permitted, provided that such plate does not exceed five (5) by eight (8) inches in size.

(2) *Prohibited wording:* Any sign which is not a traffic control sign and uses the word "Stop" or "Danger" prominently displayed and/or which is a copy or imitation of official traffic control signs is prohibited.

(3) *Flashing signs prohibited:*

(a) *General prohibition:* Except as otherwise provided in subsection (b) (1) below, flashing signs, signs which contain intermittent illuminations and digital LED signs/reader boards are prohibited.

(b) *Exceptions:* This subsection does not prohibit the following:

1. Signs required for traffic control; and,

2. Signs which exhibit time, date, temperature, and other customary public information.

(4) *Prohibited sign types:* Portable signs, bench signs, snipe signs, sandwich signs, except as allowed in Article XXXIII, Sign Provisions, ladder-type signs, billboard signs or off-premises signs. "Billboard" is defined as "an off-premises or off-site sign advertising an establishment, merchandise, product, service, or entertainment which is not sold, provided, manufactured, or furnished on the property on which said sign is located." "Off-premises sign" is defined as "a billboard or other sign on which any portion thereof relates to a premises (or activities thereon) other than the property on which said sign is located."

(5) *Prohibited sign effects:* Signs which produce sound, noise, cause interference with radio, telephone, television or other communication transmission, produce or reflect motion pictures; emit visible smoke, vapor, particles, odor, are animated, or produce any rotation, motion, or movement.

(6) *Illuminated tubing:*

(a) *General prohibition:* Illuminated tubing or strings of lights that outline property lines, sales area, roof lines, doors, windows, wall edges, similar areas or other architectural features of a building are prohibited.

(b) *Exception:* This prohibition shall not apply to temporary displays erected in connection with holiday decorations and community decorations.

(b) *Permitted signs:* The following signs are permitted, subject to review by the planning commission to determine compliance with the sign criteria provided below in this and further subject to the requirement that permitted signs shall have internal illumination only.

The maximum allowable square footage established in each zoning designation and/or overlay district shall apply as provided in each district. Said allowable area shall not be exceeded. In the event that channel letters, as defined in Article VIII, Definitions, are proposed, then the maximum allowable square footage shall be calculated at a rate of eighty (80) percent in lieu of the standard rate of one hundred (100) percent.

(1) *Monument and pylon signs:* Except as otherwise provided in these district regulations, the following monument and pylon signs are permitted in the district.

(2) *Jubilee Retail Overlay District pylon sign:*

(a) The developer/owner or designee thereof is permitted to install and maintain one (1) on-premises pylon sign on their development at a loca-

tion approved by the planning commission. This sign is permitted to have panels for multiple businesses in the district, provided that the panel space on each side of the Jubilee Retail Overlay District Interstate pylon sign shall not exceed nine hundred (900) square feet in the aggregate and no individual panel shall have more than two hundred and fifty (250) square feet or less than one hundred and fifty (150) square feet per side.

(b) The height of the Jubilee Retail Overlay District Interstate pylon sign shall not exceed ninety (90) feet and shall be determined based on a sight line study obtained by the developer/owner and approved by the planning commission as justification for the proposed height and to insure that the top panel on the sign is visible while traveling in any direction on Interstate 10.

The sight line study shall consider the following:

a. The topographical elevation of the location of the Jubilee Retail Overlay District Interstate pylon sign;

b. Any obstruction to the sign panels by trees, other signs, structures or items along Interstate 10.

(c) Any lot in the district which abuts Interstate 10 and either has at least two hundred (200) feet along the right-of-way of Interstate 10, or is located at the intersection of the Interstate 10 ramp/right-of-way and Highway 90, shall be permitted one (1) individual lot interstate pylon sign at or near said lot's common boundary with Interstate 10.

(d) Permitted individual lot interstate signs shall not exceed fifteen (15) feet in width, or forty-five (45) feet in height, and shall have a maximum area of three hundred (300) square feet per face. Lots in the Jubilee Retail Overlay District which border Interstate 10, other than those described immediately above may not have an individual lot interstate pylon sign unless approved as a variance by the board of zoning adjustment.

(3) *Shopping center or development signs:* One (1) sign is permitted on U.S. Highway 90 identifying the development. Each side may also have panels beneath the development identification not exceeding one hundred and fifty (150) square feet each for multiple businesses within the district. No sign shall exceed twenty-one (21) feet in height or fifteen (15) feet in width.

(4) *Monument signs:* Each lot having frontage on U.S. Highway 90, or any other public road or right-of-way within or abutting the district shall be permitted to have one (1) monument sign for each public road right-of-way which the lot abuts. The sign shall be placed perpendicular to the said highways and/or right-of-way. If the lot's road frontage is three hundred (300) feet or less, then the permitted sign area shall not exceed fifty (50) square feet per face. If the lot's road frontage exceeds three hundred (300) feet then the permitted sign area shall not exceed one hundred (100) square foot per face. All monument signs shall have a pedestal. The sign shall not exceed fifteen (15) feet in height, pedestal included.

(5) *Directional signs:* Directional signs shall be permitted at the intersection of all roads in the Jubilee Retail Overlay District. Directional signs shall not exceed sixteen (16) square feet per face.

(6) *Wall-mounted signs:* Each establishment/business premises under sixty-five thousand (65,000) square feet of building area in B-1, Local Business and B-2, General Business districts may acquire an additional permit for a wall-mounted sign of a size not to exceed the lesser of three

hundred fifty (350) square feet or thirty (30) percent of the surface frontal area of the building. Each establishment sixty-five thousand (65,000) square feet of building area or larger may acquire a permit for wall mounted signage of a size not to exceed six and one-half (6.5) percent of the surface frontal area of the building. Signs mounted on mansards, marquees, and awnings are deemed to be wall signs.

(a) *Side surface area wall-mounted signage:* A business establishment sixty-five thousand (65,000) square feet of building area or more may have two (2) additional wall-mounted signs of a size not to exceed five (5) percent of the surface area of the side of the building. Said signage shall be limited to one (1) side of the building, either the left or right side or the rear of the building.

(b) *Accessory use advertisement wall-mounted sign:* A business establishment between forty thousand (40,000) square feet of building area to one hundred thousand (100,000) square feet of building area may have one (1) additional wall-mounted sign of a size not to exceed one hundred (100) square feet for the purpose of advertising an accessory use.

A business with over one hundred thousand (100,000) square feet of building area may have two (2) additional wall-mounted signs of a size not to exceed one hundred (100) square feet each for the purpose of advertising accessory uses. No business establishment may have more than three (3) wall-mounted signs.

(7) *Menu type signs:* One (1) menu type sign per drive-thru window service shall not exceed forty (40) square feet in area or eight (8) feet in height.

(8) *Gasoline and fuel signs:* Gasoline or other motor vehicle fuel pricing signs, in addition to permitted name or identification signs, are permitted in any business or industrial district. Such signs shall not exceed twelve (12) square feet in area and must comply with the other applicable sign requirements for the Jubilee Retail Overlay District.

(9) *New construction signs:*

(a) *General provision:* Temporary non-illuminated signs not more than thirty-two (32) square feet in area, erected in connection with new construction work and displayed on the premises during such time as the actual construction work is in progress may be permitted. One (1) such sign, no greater than ten (10) feet in height, is allowed for each street frontage. Such signs shall be removed upon completion of the project.

(b) *Temporary advertising sign:* A temporary advertising sign will be permitted to the owner for the development for each individual business premises, shopping center premises provided the area of each sign shall not exceed thirty-two (32) square feet, is non-illuminated, and is within the confines of the development. These signs shall be the height no greater than ten (10) feet mounted from the ground, for no more than one (1) sign, either single or double faced, per street frontage.

(c) *Temporary promotional banners:* Two (2) temporary signs or banners not exceeding fifty (50) square feet each in area and temporary decorative flags, bunting, pennants and streamers for recognizing grand openings are permitted. Said temporary banners shall be kept in good condition and shall be permitted no more than fourteen (14) days. Furthermore, decorative seasonal banners are permitted on light standards at all times, provided that the same are maintained in good condition.

39-17 District map.

Jubilee Retail Overlay District Map, Exhibit F is hereby adopted as a part of this Ordinance (See Appendix).

ARTICLE XXXX. SELF SERVICE VENDING UNITS

40-1 Purpose and applicability.

The purpose of this article is to promote the health, safety, convenience, order, prosperity, and general welfare of residents and to facilitate the goals, objectives and recommendations of the Comprehensive Plan through the development of regulations that help maintain the character of the City of Daphne and to encourage proper development in the community by governing the size, location, physical dimensions, setbacks and other standards of self-service vending machines larger than five (5) feet in width, three (3) feet in depth, and seven (7) feet in height, and other similar uses in each district established in this Ordinance; to prevent disruptions, obstructions and hazards to vehicular and pedestrian traffic that may result from these uses; to minimize the possible adverse effect on nearby public and private property; and to encourage a positive visual environment in harmony with the natural aesthetics of the City of Daphne.

No self service vending unit or other similar use shall be located in the City of Daphne except in accordance with the provisions provided herein. This article intends to regulate outdoor self service vending units, kiosks, or similar uses which exceed fifteen (15) square feet in area and seven feet in height. This article does not propose to regulate indoor vending machines.

40-2 Words and terms defined.

(a) *Portable vending machine:* Any unattended self-service device that, upon insertion of money, credit cards, check cards, token, or similar means, dispense something of value including food, beverages, goods, and merchandise. Such vending machine requires an electrical permit only. Such vending machine does not require a city business license or site plan approval, and are not larger than five (5) feet in width by three (3) feet in depth by seven (7) feet in height.

(b) *Ice vending machine:* A modular unit or structure that produces, stores, bags and or vends ice to the consumer in an automated fashion located inside of a business or similar use. Such vending machine may not require a city business license or site plan approval, if considered part of an established business.

(c) *Self-service vending unit:* Self-service vending unit is a stand-alone vending machine larger than five (5) feet in width by three (3) feet in depth by seven (7) feet in height that may operate without full time service personnel. These units are activated by the insertion of money; the product is automatically or dispensed in bulk outside to the consumer. In addition to site plan review by the planning commission, several permits and approvals including but not limited to electrical, plumbing, sewer connection, city business license, and health department certification may be required. It should be noted that all independently owned and operated establishments and vending franchises under contract to lease space must acquire a separate business license.

(d) *Similar uses:* Any unattended self-service distribution unit that, upon insertion of money, credit cards, check cards, token, or similar means, dispense something of value, an automated convenience stores and/or any other automated vending use except those defined herein as portable vending machine and/or vending machine.

40-3 Prohibited districts.

Self-service vending units and other similar uses shall be prohibited in the Olde Towne Daphne District and the Village Overlay District.

40-4 Permitted districts.

Self-service vending units or other similar use may be permitted in a B-2, General Business, district by planning commission approval upon site plan review and in a C/I, Commercial Industrial, district by right upon administrative review of site plan by the director of community develop-

ment or designee thereof. Such uses shall be prohibited in all other zoning districts. Permitted uses must comply with the requirements of the district in which it is located, unless a variance from such requirements is specifically requested and granted by the board of zoning adjustment.

40-5 Site plan application.

Prior to making any improvements, the developer/owner shall submit to the planning commission a site plan of the project for review in accordance with procedures established in Article XV, Site Plan Review. These items shall be received in the department of community development not less than thirty (30) days prior to a regularly scheduled meeting of the planning commission at which meeting the site plan is to be formally submitted for review.

40-6 Standards.

Where permitted, self service vending units shall comply with the following minimum standards:

(a) Self-service vending units may be a primary use of property or as an accessory to an existing business or commercial entity. Said uses would need to be considered compatible with a convenience store, car wash, grocery store, camp ground, marina, shopping center, shopping mall, RV park and large recreational event locations.

(b) A self-service vending unit may be permitted as a principal or accessory use along a collector road or a major thoroughfare in areas with high pedestrian activity. Said units shall not be located on a residential street.

(c) Where such self-service vending unit such as a self-service ice, movie, or similar unit is proposed as a principal use of property, no additional outside portable vending machines shall be permitted, unless deemed appropriate by the planning commission.

(d) A self-service vending unit shall be no closer than one hundred (100) feet to any single-family residential district.

(e) No self service vending unit shall encroach into the minimum required setback or adjacent parking for a previously permitted use. Except where directly abutting an existing business or commercial establishment, additional setbacks may be required if deemed appropriate by the planning commission.

(f) Architectural features of any self-service-vending unit shall be complementary to existing development in the immediate area. Building elevations shall be submitted with each application considered for approval, and will be appropriate as deemed by the planning commission.

(g) The foundation of each unit shall be screened by skirting, foundation plantings, landscaping, and anchored per building code requirement(s) to the subgrade to resist hurricane force winds.

(h) Roof-mounted or other equipment on top of the unit shall be screened by a parapet wall.

(i) Within thirty (30) calendar days of the closure or ceasing of operations of any self-service vending unit, all equipment and incidentals shall be removed from the premises.

(j) Applicants shall acquire approval from the planning commission or where applicable the director of community development, and the Baldwin County Health Department prior to the issuance of a City of Daphne business license or permits by the building official.

(k) No vending machine shall be placed on or next to any public or building sidewalk that would inhibit the path of any handicap person or violate any ADA requirement.

40-7 Signs.

All signage shall be provided in accordance with Article XXXIII, Sign Provisions. Signs incor-

porated on machinery or equipment shall be in accordance with the provisions enumerated in Article XXXIII, Sign Provisions, Signs Incorporated on Equipment or Machines.

40-8 Landscaping.

Where a self-service vending unit is proposed as a primary use of property, requirements of Article XIX, Landscape Provisions, of the Land Use and Development Ordinance shall apply.

40-9 Parking.

(a) Where a self-service vending unit is proposed as an accessory to an existing business location that has an approved site plan on record in the department of community development and that has adequate off-street parking, no additional parking shall be required. In no case shall the addition of said unit create nonconformity in the parking requirements of the original business.

(b) Where a self-service vending unit is proposed as a primary use of property, four (4) off-street parking spaces shall be provided per unit. All parking spaces shall be designed in accordance with the parking requirements in Article XVI.

40-10 Access.

(a) Ingress and egress shall be located where such will not impede pedestrian or vehicular traffic flow.

(b) Where used as an accessory to an existing business, the existing access or driveway shall be utilized, unless deemed inappropriate by the planning commission.

40-11 Waste disposal.

No accessory structure shall be allowed except an enclosed trash container which shall be located to the rear of the machine or in a location deemed appropriate by the planning commission.

40-12 Maximum building area.

The allowable unit size shall be determined on a case-by-case basis by the planning commission. It shall depend upon size of the site, lease space, site location, and the potential impact of the proposed use on the surrounding properties. In no case shall a self-service vending unit be more than two hundred (200) square feet in area.

40-13 Legal nonconforming self-service vending unit status.

Any self-service vending unit located within the corporate limits prior to the enactment of this article, or located on property prior to its annexation, which does not conform to the provisions as set forth by this article, is eligible for characterization as a "legal nonconforming" self-service vending unit or other similar use and is permitted.

40-14 Structural alteration, abandonment, discontinuation, relocation or replacement.

If a legal nonconforming self-service vending unit is after the adoption of this article, structurally altered, abandoned, discontinued, relocated or replaced, including the result of a natural disaster or weather related event, such unit shall be removed where prohibited, and otherwise replaced with a conforming unit.

40-15 Loss of legal nonconforming status.

Legally nonconforming self-service vending unit shall be either removed, replaced with a conforming machine by three (3) years from the date in which the property is annexed into the corporate limits. It is intended that this provision shall ensure that those who hold legally nonconforming status will recoup initial investment costs and remaining useful life of such machine. It is further intended that this provision shall not deprive any owners of property rights without just compensation so as to avoid the occurrence of a taking. It is envisioned that the time period allotted herein shall allow for amortization and depreciation of such units based upon the following factors: initial investment costs, remaining useful life, length of time of ownership of the premises, the building, maintenance expenditures, cost of removal and replacement.

ARTICLES XXXXI—XXXXIV. RESERVED

ARTICLE XXXXV. ADOPTION

45-1 Grandfather clause.

Any use of buildings or land existing prior to the enactment of the Land Use and Development Ordinance, September 21, 1987, and does not conform to the provisions set forth by the Ordinance shall be allowed to continue as a nonconforming use. Any land development projects within the territorial and legal authority of this Ordinance that have been initiated since January 1, 1985, and is not located in a district designated for the intended use, may be permitted to continue provided that:

(a) Written, dated, and verifiable documents other than deeds for the purchase of land, e.g., plans, permits, applications to appropriate permitting agencies, etc., can be produced in support of the proposed project.

(b) The City of Daphne reserves the right to require compliance with the requirements of this Ordinance for districts in which similar uses are permitted.

(c) Other conditions may be required by the city due to the unique circumstances of the land.

45-2 Conflict with other laws.

Whenever the requirements of this Ordinance conflict with the requirements of any other lawfully adopted statutes, rules, regulations, or ordinances the more restrictive, or that which imposes the higher standard shall govern.

45-3 Validity.

Each phrase, sentence, paragraph, section, or other provision of this Ordinance is severable from all other such phrases, sentences, paragraphs, sections, and provisions.

Should any phrase, sentence, paragraph, section, or provision of this Ordinance be declared by the courts to be unconstitutional or invalid, such declaration shall not affect any other section or provision of this Ordinance.

45-4 Repeal of regulations and ordinances.

This is a comprehensive enactment of a zoning ordinance and subdivision regulations for the City of Daphne and all prior zoning ordinances and subdivision regulations are hereby superseded and repealed.

45-5 Disclaimer of liability.

These regulations shall not create liability on the part of the City of Daphne, the planning commission, any officer, or employee thereof for any damages that may result from reliance on this Ordinance or any administrative decision lawfully made there under.

45-6 Effective date.

This Ordinance shall take effect and be in force upon and hereinafter the date of its adoption by the city council.

45-7 Penalties and remedies.

(a) *Penalties:* Any person violating any provision of this Ordinance shall be fined upon conviction, not less than twenty-five dollars ($25.00) nor more than five hundred dollars ($500.00) and costs of court for each offense. Each day such violation continues it shall constitute a separate offense.

(b) *Remedies:* In case any building or structure which exists or is proposed to be erected, constructed, reconstructed, altered, renovated, or maintained; or any building, structure, or land which is proposed to be used in violation of this Ordinance; or any adjacent or neighboring property owner would be specially damaged by such violation the building official, code enforcement officer, or other appropriate authorized representative may, in addition to other remedies, institute injunction, mandamus, other appropriate action, proceeding to prevent such unlawful erection, construction, reconstruction, alteration, renovation, maintenance, use, correction or abatement of such violation, or to prevent the occupancy of

said building, structure, or land. Each and every day such unlawful erection, construction, reconstruction, alteration, conversion, maintenance or use continues, it shall be deemed a separate offense and shall be subject to the fines and penalties.

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