

CITY COUNCIL BUSINESS MEETING AGENDA
1705 MAIN STREET, DAPHNE, AL
JULY 1, 2013
6:30 P.M.

- 1. CALL TO ORDER**
- 2. ROLL CALL / INVOCATION /** Pastor Michael Huntley / Holy Trinity Lutheran Church
- 3. APPROVE MINUTES:** Council meeting minutes / June 17, 2013
Council Strategic Plan meeting minutes / June 24, 2013
- 4. REPORT STANDING COMMITTEES:**
 - A. FINANCE COMMITTEE /** Conaway
 - B. BUILDINGS & PROPERTY COMMITTEE-** Davis
Review minutes / June 3rd
 - C. PUBLIC SAFETY -** Rudicell
 - D. CODE ENFORCEMENT/ORDINANCE COMMITTEE -** Fry
 - E. PUBLIC WORKS COMMITTEE / SOLID WASTE AUTHORITY -** LeJeune
Review minutes / June 17th
- 5. REPORTS OF SPECIAL BOARDS & COMMISSIONS:**
 - A. Board of Zoning Adjustments –** Adrienne Jones
 - B. Downtown Redevelopment Authority -** Conaway
 - C. Industrial Development Board –** Davis
 - D. Library Board -** Lake
 - E. Planning Commission –** Scott
 - F. Recreation Board -** LeJeune
 - G. Utility Board -** Fry
- 6. REPORTS OF OFFICERS:**
 - A. Mayors Report**
 - a.) Report on the Paris Air Show
 - B. City Attorney’s Report**
 - C. Department Head Comments**
City Clerk Report:
- 7. PUBLIC PARTICIPATION:**
- 8. RESOLUTIONS & ORDINANCES:**

RESOLUTIONS:
 - a.) Establishment of “On Call” and Project Engineering Services/Resolution 2013-36
 - b.) Confiscated Funds Signatories./Resolution 2013-37

ORDINANCES:

2ND READ

- a.) Appropriation of Funds: Daphne High School Band. /Ordinance 2013-33
- b.) Appropriation of Funds: 2012 Assistance to Firefighters Grant. /Ordinance 2013-34
- c.) Fiscal 2013 Amended Budget: New Personnel and Personnel Restructuring. /Ordinance 2013-35
- d.) Bicyclist Safety. /Ordinance 2013-36

1ST READ

- e.) An Ordinance Regulating Public Indecency. /Ordinance 2013-31
- f.) Rezone: Earth Inc. / R-3 to R-6 (G). /Ordinance 2013-37
- g.) Regulating Community Standards. /Ordinance 2013-38

9. COUNCIL COMMENTS

10. ADJOURN

**CITY OF DAPHNE
CITY COUNCIL**

ROLL CALL

CITY COUNCIL:

COUNCILWOMAN CONAWAY	PRESENT___	ABSENT___
COUNCILMAN RUDICELL	PRESENT___	ABSENT___
COUNCILMAN LAKE	PRESENT___	ABSENT___
COUNCILMAN FRY	PRESENT___	ABSENT___
COUNCILMAN SCOTT	PRESENT___	ABSENT___
COUNCILMAN LEJEUNE	PRESENT___	ABSENT___
COUNCILMAN DAVIS	PRESENT___	ABSENT___

MAYOR:

MAYOR HAYGOOD	PRESENT___	ABSENT___
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CITY CLERK:

REBECCA HAYES	PRESENT___	ABSENT___
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CITY ATTORNEY:

JAY ROSS	PRESENT___	ABSENT___
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BUSINESS MEETING
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1. CALL TO ORDER:

Council President Scott called the meeting to order at 6:33 p.m.

2. ROLL CALL/INVOCATION/PLEDGE OF ALLEGAANCE:

Pastor Jerry Hewett, Bay Community Church gave the invocation.

COUNCIL MEMBERS PRESENT:

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

Also present: Rebecca Hayes, City Clerk; Sarah Toulson, Assistant City Clerk; Jay Ross, City Attorney; Kyle Navarro, Attorney; David Carpenter, Police Chief; James White, Fire Chief; Vickie Hinman, HR Director; Margaret Thigpen, Civic Center Director; Kim Briley, Finance Director; David McKelroy, Recreation Director; Richard Johnson, Public Works Director; Adrienne Jones, Director of Community Development; Suzanne Henson, Senior Accountant; Ashley Campbell, Environmental Programs Manager; Bob Segalla, Utility Board; Tomasina Werner, Beautification Committee; Willie Robison, BZA; Dorothy Morrison, Beautification Committee; Joe Lemoine, Planning Commission; Al Guarisco, Village Point Foundation.

Absent: Mayor Haygood; Tonja Young, Library Director; Richard Merchant, Building Official; Michael Hoyt, Municipal Judge.

3. APPROVE MINUTES:

**June 3, 2013 Council meeting minutes
June 10, 2013 Council Work Session minutes**

Councilman Davis amended the minutes to reflect that he reported the date of the IDB as June 24th instead of June 27th.

The minutes stand approved as amended.

PROCLAMATION: Appreciation for Mrs. Kim Briley, Finance Director

Councilman Lake read and presented the proclamation of appreciation to Mrs. Kimberley Sue Morrow Briley upon her retirement along with her husband Andy, daughter Jennifer, mother Mrs. Sue Morrow and her sister Pam Alburl. Councilman Lake then presented from the Mayor and City Council a water color picture of city hall by Ann Calagaz to Mrs. Briley.

PUBLIC HEARING: Rezoning: Earth Inc.

Location: Southwest of the intersection of Park Drive and Tallent Lane, east of the Daphne Sports Complex
Present Zoning: R-3, High Density Single Family Residential District
Requested Zoning: R6 (G), Garden or Patio Homes
Recommendation: Motion Failed to set forth an unfavorable recommendation which is no recommendation

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Mrs. Adrienne Jones, Community Development Director gave the presentation.

Council President Scott opened the Public Hearing at 6:48 p.m.

Mr. Richard Johnson - Public Works Director – spoke regarding the proposed rezoning from a solid waste point of view on noise coming from trucks bringing debris from disasters to fill the dirt pit, and dangers of children playing around the pit. They have put up fencing around the facility and built an embankment and planted pine trees. Mr. Johnson said it will take around 37 years to fill the pit.

Mr. Don Oulette – Madison Place which adjoins Caroline Woods – echoed Mr. Johnson’s comments, and thinks the city is opening itself up to a lawsuit.

Robert Stankoski – Attorney for the Tiawasee Trace POA – spoke regarding the vote by the Planning Commission saying according to the Land Use Ordinance that when there is a lack of a negative vote the item is approved.

Council President Scott closed the Public Hearing at 7:00 p.m.

MOTION: Appoint Sign Committee

MOTION BY Councilman LeJeune to appoint the following to the Sign Committee:

District 1	Elnora Jackson	District 5	John Peterson
District 2	Steve Robinson	District 6	Victor LeJeune
District 3	Bill Burdick	District 7	Frieda Romanchuk
District 4	Terry Eady		

Seconded by Councilman Lake.

AYE ALL IN FAVOR NAY NONE OPPOSED MOTION CARRIED

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MOTION: Set Dates for Strategic Planning meetings

MOTION BY Councilman Davis to set the dates and times for the Strategic Plan meetings on the second and fourth Mondays of the month. On the second Monday the time will be 5:00 p.m. or right after the Finance Committee meeting. On the fourth Monday the time will be 4:30 p.m. Both meetings will take place in the Executive Conference room. Seconded by Councilwoman Conaway.

AYE ALL IN FAVOR NAY NONE OPPOSED MOTION CARRIED

4. REPORT OF STANDING COMMITTEES:

A. *FINANCE COMMITTEE* – Conaway

The June 10th minutes are in the packet.

Treasurers Report

The balance ending May 31, 2013 is \$17,885,283.37.

Sales & Use Tax Collections / April 30, 2013

The Sales & Use Tax collection for April was \$1,039,770

Lodging Tax Collections, April 30, 2013

Lodging Tax collected in April was \$47,435

B. *BUILDINGS & PROPERTY COMMITTEE* - Davis

The committee met on June 3rd, and the minutes will be in the next packet.

C. *PUBLIC SAFETY COMMITTEE* – Rudicell

The minutes for the June 12th meeting are in the packet. The next meeting will be July 10th at 4:30 p.m.

D. *CODE ENFORCEMENT/ORDINANCE COMMITTEE* – Fry

The minutes for the June 12th meeting are in the packet. They have a couple of ordinances they are reviewing, the Public Indecency Ordinance will be on the July 1st agenda for a first read, and the Bicycle Ordinance is on tonight's agenda which is following the trend of the three foot rule when passing a bicyclist.

E. *PUBLIC WORKS COMMITTEE* – LeJeune

The minutes for the May 20th meeting are in the packet. Lake Forest Phase II will wrap up July 12th, and July 15th Phase III will start.

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5. REPORTS OF SPECIAL BOARDS & COMMITTEES:

A. *Board of Zoning Adjustments* – Adrienne Jones

The May 2nd meeting minutes are in the packet. There will not be a meeting in July.

B. *Downtown Redevelopment Authority* – Conaway

The next meeting will be June 26th at La Rosso's restaurant.

C. *Industrial Development Board* – Davis

The next meeting will be June 24th at 6:00 p.m. They will be discussing the charter and by-laws to make sure they meet the latest information by State Code.

D. *Library Board* – Lake

The next meeting will be July 11th at 4:00 p.m. at the Library.

E. *Planning Commission* – Scott

The commission had a special called meeting on June 11th, and council needs to set a public hearing date for two rezonings.

MOTION BY Councilman Lake to set a Public Hearing date for July 15, 2013 to consider the following rezoning requests and approve advertising of hearing:

1.

**Rezoning: John & Deborah Kim
Location: Southwest of the intersection of Pollard Road and County Road 64
Present Zoning: R-2, Medium Density Single Family Residential District
Requested Zoning: B-3, Professional Business District
Recommendation: Unanimous Unfavorable**

2.

**Rezoning: Interstate-Baldwin Investment, LLC
Location: Northwest of the intersection of TimberCreek Subdivision and Interstate 10
Present Zoning: B-2, General Business District
Requested Zoning: R-6 (G), Garden or Patio Homes
Recommendation: Unanimous Favorable**

Seconded by Councilman Davis.

AYE ALL IN FAVOR NAY NONE OPPOSED MOTION CARRIED

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F. Recreation Board – LeJeune

The next meeting will be July 10th. Councilman LeJeune stated he is looking forward to the July 4th Fireworks Celebration.

G. Utility Board – Fry

The next meeting will be June 26th at 5:00 p.m. in the Council Chambers

6. REPORTS OF OFFICERS:

A. Mayor’s Report

a.) ABC License / LA Rosso / 040 – Retail Beer (On or Off Premises / 060 – Retail Table Wine (On or Off Premises) / Transfer of License from Benedetto’s

b.) **MOTION:** Authorize the Mayor to enter into a contract with Ecumenical Ministries for \$1,000

MOTION BY Councilman Rudicell to approve the ABC License for La Rosso / 040 – Retail Beer (On or Off Premises / 060 – Retail Table Wine (On or Off Premises). *Seconded by Councilman Davis.*

AYE ALL IN FAVOR NAY NONE OPPOSED MOTION CARRIED

MOTION BY Councilman Lake to authorize the Mayor to enter into a contract with Ecumenical Ministries for \$1,000. *Seconded by Councilwoman Conaway.*

AYE Conaway, Lake, Fry, LeJeune, Davis, Scott NAY Rudicell

MOTION CARRIED

B. City Attorney’s Report

No report.

C. Department Head Comments

Suzanne Henson – Senior Accountant – commented that the presentation to Mrs. Briley was very nice, and that Mrs. Briley set high standards for the finance department, and she will be missed by all the staff.

Council President Scott mention that Mrs. Briley has compiled for the first time a Comprehensive Annual Finance Report, and there is a copy at the Library, and if citizens get a chance to look at it go to the back for the statistical comparison report on where the city was and where it is today.

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Richard Johnson – Public Works Director – thanked the Council and Mayor for passing the capital budget whereby they were able to purchase a new truck.

David Carpenter – Police Chief – stated that Mrs. Briley has done an incredible job for all the departments and keeping our money the way it should be. She is a great asset to the city. They are going to miss her.

David McKelroy – Recreation Director - reported that there are two (2) more Wet & Wild Wednesday's left for children to come out and enjoy. They will have the inflatable slides at the July 4th Fireworks Celebration at Trione Sports Complex from 5:00 p.m. to 8:00 p.m.

James White – Fire Chief – thanked council for coming out to the grand opening of the new Fire Station.

Adrienne Jones – Community Development Director – reminded everyone that the Site Preview meeting is Wednesday and the Planning Commission meeting is next Thursday June 27th. She reported that Dunkin Donuts is coming to Daphne.

City Clerk Report – Rebecca Hayes –

Mrs. Hayes said in her 13 years with the City of Daphne Mrs. Briley has been tireless in her efforts to keep the city above water, and keeping the city out of trouble. She will be missed very much.

7. PUBLIC PARTICIPATION:

Mrs. Ann Strickland – 8799 North Lamhatty Lane – expressed her feelings that the Planning Commission, city staff and City Council was not competent or professional, and that the process for appointing the Planning Commission was flawed. She thinks the Planning Commission and city staff should receive certification training for their jobs.

Ms. Carlotta Brown – Tiawasee Trace – spoke against the proposed annexation, and asked the council to stand by their vote.

Mr. Richard Davis – Attorney in Daphne and Attorney for the Developer of GCOF Retreat at Tiawasee – said that the Planning Commission is made up of professionals that recommend projects, and that the Planning staff are professionals. The Planning Commission is an apolitical body that gives objective opinions.

Mr. Robert Stankoski – Attorney for the Tiawasee Trace POA - spoke regarding the annexation of the Retreat at Tiawasee making a case for amending the annexation ordinance regarding the access point.

Mr. Richard Johnson – 27150 Bit & Spur Drive – Public Works Director – spoke regarding the proposed annexation saying that the streets in Tiawasee are public streets, and the city has a Right-of-Way Ordinance that says they cannot deny access. It gives the developer the right to access public streets. He reminded council that the neighborhood across the street has 256 homes with one entrance, and his subdivision has 126 houses served by one entrance. The proposed subdivision and the other two at Tiawasee will have a combined total of 135 houses. He asked council to reconsider the vote on the annexation of GCOF Retreat at Tiawasee.

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Mrs. Adrienne Jones – Community Development Director – shared some information with Council from the annexation files of Wooland Bay Group in 2006. She had a map that she shared with council which were exhibits of the zoning and annexation of Tiawasee, and said that it was interesting that the map shows the access just as it has been presented by GCOF, and this was back in 2006.

Mr. Willie Robison – 560 Stuart Street – said that they have heard from the elected officials and city employees their praise and applause for Mrs. Kim Briley. He as a citizen of Daphne would like to also thank Mrs. Briley for her many, many years of service to the city of Daphne. In his many years of attending Daphne council meetings she has always sat in the back with her quite way, and a smile on her face. When she was asked questions, some of them trying to be intimidating questions by certain council members, she always smiled and answered those questions in her quite way. He knows that there were many times she was at the city council meetings that she did not want to be there because of her health, but she was there to serve her city. So he, Willie Robison, as a citizen of Daphne would like to thank Mrs. Kim Briley for her service to the City of Daphne.

Mr. Shane Bergin – 8838 North Lamhatty Lane – said that the map they requested did not show the connection that Mrs. Jones showed to council. The final plat does not have a stub-out as complete parcel with complete streets, and whole network. As it sits what was approved that map Mrs. Jones showed was not what was approved.

8. RESOLUTIONS & ORDINANCES:

RESOLUTIONS:

a.) **Bid Award: Truck Chassis and Knuckleboom Loader /
 Gulf City Body & Trailer Works/Resolution 2013-34**

b.) **Bid Award: Pine Straw / John Deere Landscapes. /Resolution 2013-35**

MOTION BY Councilman Lake to waive the reading of Resolutions 2013-34 and 2013-35. *Seconded by Councilwoman Conaway.*

AYE ALL IN FAVOR NAY NONE OPPOSED MOTION CARRIED

MOTION BY Councilman Lake to adopt resolutions 2013-34 and 2013-35. *Seconded by Councilwoman Conaway.*

AYE ALL IN FAVOR NAY NONE OPPOSED MOTION CARRIED

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ORDINANCES:

FOR RECONSIDERATION:

Annexation: GCOF Retreat at Tiawasee, LLC. /Ordinance 2013-27

**MOTION BY Councilman Fry to reconsider to deny or approve Ordinance 2013-27.
*Seconded by Councilman Rudicell.***

Councilman Lake said he will vote nay on the annexation. He thinks it is the developers problem to find a way into his property. He does not think it is fair to put the added traffic on this subdivision. He feels strongly that council does not need to send a message to the citizens of this community that they are going to change their minds. They are going to send a message to the developer that they need to look at the people of the community where they are developing, and they need to let those individuals know that they care about the community.

Councilman Davis wishes this had come to council as merely an annexation question. He voted the way he did because he has been where those people are right now. He was concerned about the phrase that this was the most studied topic, if it was as well studied it was the worst communicated to the council or at least to him. He hopes that they will be able to annex the property, and they will be able to work with the developer in a way that accomplishes what the developer needs and accomplish what these people desire too. What they can do and what they should do should never be confused.

Mrs. Conaway asked Mr. Ross to address the question of amending the ordinance.

Mr. Ross stated that council has approved Roberts Rules of Order 10th edition, and the motion to reconsider is properly before the council. It had to be held over to the next meeting, and the motion has to be made by someone who voted on the prevailing side, and Mr. Fry made it. However, this council cannot amend the motion that is before this body for several reasons one of which is Roberts Rules of Order 10th edition says on a motion to reconsider it is debatable but not subject to amendment, and only has to be passed by a majority of council. Number two, council is dealing with an ordinance not just a regular motion, and to do something else there is a process in the city, as well as by state law, that you cannot make material changes to ordinances unless it goes back through the process and starts over. So if council makes a motion tonight to send it back to the Planning commission, in his opinion, does not go back to the Planning Commission it just dies. Then the developer, if he wishes to, can go back to the Planning Commission and start over. To answer Mrs. Conaway's question, it is not subject to amendment. So council will vote on the ordinance as it is prepared, and vote it up or down. If it is denied it cannot be brought back up

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again. When this issue of bringing the ordinance back up again came up he reached out to the developer, and the developer consented to this motion being brought back up again.

Councilman Fry said when he left the council chambers two weeks ago he did not feel the best decision for the City of Daphne was made. It has been weighing on him, and it is not something that just came up two weeks ago. For those who have been involved this has been going on for several months. There have been a lot of issues surrounding this property, but the main thing that made him want to bring it back up was that he did not feel the best decision was made for the City of Daphne. He wants everybody to know that he is not obligated to any special interests. His only obligation is to the residents of District 4 of this city, and the rest of the residents of all the districts, and that he is appreciative of the trust that has been placed in him, and the opportunity to serve this community. If anybody thinks something has been done improperly they have their legal representation if they want to take actions they are free to do so. There are so many advantages that outweigh the factors of not to bring it into the city. This is certainly not a perfect situation, but the main point is they can't stop this from happening, and they are going to vote whether it is going to be in the city limits or not. It is a difficult decision, and he has done much research on this, and he has talked with a lot of people on it, and it is certainly not a perfect situation. But, their best choice in the end that he has come to is to annex the property, and whatever is going to happen on it down the road, and he is going to vote for the annexation.

ROLL CALL VOTE

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

AYE Rudicell, Fry, LeJeune, Scott **NAY Conaway, Lake, Davis**

MOTION CARRIED

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MOTION BY Councilman LeJeune to adopt Ordinance 2013-32. *Seconded by Councilman Rudicell.*

MOTION BY Councilman Lake to amend the ordinance to read 50/50 funding source from Lodging Tax fund and General fund.

VOTE ON AMENDMENT

AYE ALL IN FAVOR NAY NONE OPPOSED **MOTION CARRIED**

VOTE ON MAIN MOTION AS AMENDED

AYE ALL IN FAVOR NAY NONE OPPOSED **MOTION CARRIED**

Council President Scott explained that Ordinance 2013-37 was inadvertently left off the agenda and asked for a motion to amend the agenda to add it as a 1st read.

MOTION BY Councilman Rudicell to amend the agenda to add Ordinance 2013-37 / Rezone Earth Inc. *Seconded by Councilman LeJeune.*

Must be a unanimous vote.

ROLL CALL VOTE

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

AYE Conaway, Rudicell, Fry, LeJeune, Davis, Scott NAY Lake

MOTION FAILED

Ordinance 2013-37 / Rezone Earth Inc. will be on the July 1, 2013 council meeting agenda as a 1st Read.

ORDINANCES 2013-33, 2013-34, 2013-35 and 2013-36 ARE 1ST READ.

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9. COUNCIL COMMENTS:

Councilman Davis said that he did not get a chance to work very much with Mrs. Briley except as a member of the Finance Committee, but seeing the records and reports that she presented to them and from comments from his colleagues tells him that they are losing a very valuable member of the team. He thinks it is very important for them to keep in contact with her, although, she has done a great job with the how to documents there is always gray areas where they might need her input. He would hope that she would be available. With regard to strategic planning, and topics discussed at the retreat being the newest of the new he evidently has already made a lot of mistakes, but he made them by co-mission, and hopefully, not by omission. They way to avoid omission is through communication. Even if it is something somebody is not going to like. He has been sitting back waiting for answers, he is going to start asking questions whether he is supposed to or not or whether his colleagues want him to, because that is the only way he knows to get information. Then from information they can all make whatever decisions they think is in the best interest of the City of Daphne. He is very much pro annexation. When you look at the eastern border it needs a lot of work, because the people that don't live in the city need city services. Some are already getting them, and some of them have 38 minutes response time for police needs when the city's police would be on top of it in much shorter time. There are many people that live in some of the areas along 64 that he thought were already in the city, and they are not, and they were ask him about annexation as soon as he got on council. When you get into the pros and cons and what it cost and what the benefits will be that has to be carefully presented at a work session. They talked about communication both internally and externally, and he thinks it is vital that they put forward a strategic plan. Not by the seven of them, but by the staff, the council and the citizens, because the city is going to grow, and it is about managing change. He is tickled to be here, and if he is not doing the job they want him to do to remind him, because a lot of people have reminded him so he said for them to jump in line and he will take their calls.

Councilman LeJeune appreciated the difficulty Mr. Fry had tonight. It took a lot of courage, and whether Mr. Fry was right or wrong or he was right of wrong just the weight of that decision takes a lot of character to be able to do that whether he is right or wrong. He just wanted to let Mr. Fry know that he appreciated the difficulty of making that decision, and to deal with everything he has had to deal with, and be upfront with his constituents. On a lighter note he reported that the 8-U Girl All Star Softball Teams and the 12-U Girls All Star Softball Teams, and this is the first year Daphne has had All Star Girls Softball teams qualify for state tournament out of this area. They will be going to Birmingham in about two weeks. He hopes to

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have them come to a council meeting to stand in front of everyone so that people can see there is more than Dixie Youth Boys out there.

Councilman Fry commended Mrs. Briley for her many years of dedicated service to the city. Certainly, they are going to have a tough time trying to find somebody to live up to the standards she has set in that position. He wished her all the best, and he hopes she is very happy in her retirement.

Councilman Lake knows the Planning Commission is a group of dedicated individuals. They work hard. They have a site plan preview meeting Thursday during the day, and they have to give a lot of their time to their job. He thinks they have just as hard of a job as council. He really appreciates all that they have done, and all that they give being on the Planning Commission. He wanted to ask, and he knows it was not the Planning Commissions fault, but in the past council used to pass vacation of easements for the City of Daphne, and from what he understands they vacated an easement of two lots to make the road going into the other piece of property, and it never came to council for the vacation of easement. He knows there must have been a change, and he would like to know what that change was so that he could explain it. When they vacated this easement everybody in Tiawasee should have been notified. It is just like anywhere when someone is vacating two easements or an easement then decide to make a road through it there is something there that really everybody in the community needs to know. He said that Mr. Fry had a hard choice and he made the decision, and he does not think in the future he will regret it. He made his based on his own personal standards. When he makes a decision on zoning or something like that he makes it based on the fact that that is a developer that wants to develop land, that somebody's home is going to be impacted. The persons home that it impacts is how he looks at it. The developer wants to develop his property, and they need to communicate better with the land owners. If a developer had done his work and earned his money before he runs out of town, if he had worked with the citizens and educated them a little better this might not have all happened. He thinks it was in the developers realm. He is going to ask the Planning Commission to please look at the burden that happens on these kind of things. He said of Kim Briley that they have truly lost a valuable asset to this community. He remembers one time an audit came back, and this was a \$17 million audit, they were off \$2.25, and she wanted to know where that \$2.25 was, and she found it. That is how strict she was or how much she held herself to a standard. They have lost a valuable asset in that lady. He hopes everybody will pray for her health, and for her future. She is an awesome lady.

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6:30 P.M.**

Councilwoman Conaway will also miss Mr. Briley. As chairperson for the Finance Committee she has gone to her with a lot of questions, and she has always been available to answer those questions. She reported that there was a nice group for the ribbon cutting for Navigator Credit Union. At least four council members were there along with the Mayor. There was a nice representation for the ribbon cutting for Fire Station #1. She thanked Chief White and his staff for an excellent job.

Council President Scott thanked Mrs. Briley for her service to the city. She truly does a fabulous job. She has an awfully good staff with Mrs. Henson and the others in the department. They are tireless people. They really have a lot of work to do in that department. He too wants to commend Mr. Fry for his courage. It was not an easy choice. Mr. Fry has spent over five hours in discussion and answering questions with these folks, and has attended their POA meetings. To him it boiled down to a situation where there was a piece of property that was going to be developed, and if there were are some legal issues about the access point then the attorney and POA certainly have the right to take that to the court system, and let the court decide if there was anything that was not done in a legal manner. It appears to the city staff and the city attorney that everything was done in a legal manner, but anyone can bring legal action and if that is their choice then that is their choice. Whether they annexed it or not the fact is if they would not have annexed it now then they would have never gotten that property into the city. There has to be a reason for someone to want to come into the city. They annexed Dunmore, Bellaton and Oldfield, but they first went to Fairhope, but did not like their stipulations so they came to Daphne, and it was more appealing. Whatever the reason, it was to their advantage so they annexed them into the city. There are close to 500 homes out there that would not have been in the city if they had not annexed them. He wants Daphne to continue to be the leading city Baldwin County. He thinks their decision was correct. He appreciates the other council members point of view.

**JUNE 17, 2013
CITY COUNCIL MEETING
BUSINESS MEETING
1705 MAIN STREET
DAPHNE, AL
6:30 P.M.**

10. ADJOURN:

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

AYE ALL IN FAVOR NAY NONE OPPOSED MOTION CARRIED

THERE BEING NO FURTHER BUSINESS TO DISCUSS, THE MEETING ADJOURNED AT 8:24 P.M.

Respectfully submitted by,

Rebecca A. Hayes, City Clerk

Certification of Presiding Officer,

Ron Scott, Council President

STRATEGIC PLAN MEETING

JUNE 24, 2013

1705 MAIN STREET

4:30 P.M.

PRESENT: Councilwoman Conaway; Councilman Rudicell; Councilman Lake; Councilman Fry; Council President Scott; Councilman LeJeune; Councilman Davis; Rebecca Hayes, City Clerk; Vickie Hinman, Human Resources Director; David Carpenter, Police Chief; Jane Ellis, Mayor's Assistant; Sarah Toulman Assistant City Clerk; Margaret Thigpen, Civic Center Director.

1. PUBLIC PARTICIPATION

No one spoke.

2. VISION STATEMENT

Council discussed and looked at other cities vision statements.

They will start with IDB vision statement in the Strategic Economic Plan that they had prepared by the Baldwin County Economic Development Alliance and SARPC.

Council can write one of their own and submit it to the City Clerk.

HOMEWORK

- a.) Think about guiding principles, and which ones are geared to a broader topic
- b.) Think about strategic goals. (*Things already accomplished, but may trigger other ideas*)
- c.) Think about the Vision Statement (*Write one if they want to*)

Council President Scott asked Mrs. Hayes to give council the complete information from Bellvue Washington.

Chief Carpenter said Public Safety will help emphasize quality of life in Daphne

Meeting adjourned at 5:30.

The next meeting in two weeks, July 8th.

**REPORT
OF
STANDING COMMITTEES**

Buildings & Property Committee Meeting
Monday, June 3, 2013 5:30 PM
Daphne City Hall

Committee

Councilman Joe Davis, Chair
Councilman Randy Fry
Councilman Pat Rudicell
Mayor Dane Haygood
Richard Merchant, Building Official
Frank Barnett, Maintenance Supervisor
Margaret Thigpen, Civic Center Director
Rick Whitehead, IT Coordinator

Committee Minutes (Summary)

Present: Mayor Dane Haygood, Frank Barnett, Councilman Randy Fry, Jane Ellis, Councilman Pat Rudicell, Richard Johnson, Margaret Thigpen, Councilman Joe Davis, Richard Merchant, Tommy Bozeman, Ronnie Champion, Councilman John Lake, Councilman Ron Scott

A.) Minutes from April & May Meeting: Motion to accept April minutes. Motion to accept May minutes – APPROVED.

B.) DAPHNE SEARCH AND RESCUE: There was discussion with Tommy and Ronnie about their facility needs. After looking at existing city property they didn't think there would be a piece of property big enough for the facility and the pads surrounding the building. Being near the water would be good but not necessary. Richard Johnson noted that the city has 35 acres on Johnson Road – only half of it is utilized and new road would allow use of the other acreage. Joe Davis asked if we have a site for them where will the funds to build come from. Currently the money received from the city goes to operations and maintenance. They get funds from smokeless tobacco tax that is used for equipment.

Mayor Haygood asked about possible grants that would help – Tommy said they used to get grants through the Fire Department. But once they separated it is not an option.

Joe Davis asked Tommy and Richard to look at the 32 acres Richard mentioned and get specific building costs, low, medium and high. Bring back to the committee along with a financial statement for the Search and Rescue.

C.) Civic Center & Bayfront: Margaret distributed and discussed her monthly reports noting there are very few days left in the year for bookings. Civic Center only has 6 Saturdays available and Bayfront has 3. Two upcoming events that are high profile –

one being the Baldwin County Republican Party Summer Dinner this month and the TASTE in August.

Margaret stated that the parking lot at Bayfront seriously needs to be paved and asked could funds coming from the lodging tax be used for this. Richard Johnson said that Ashley had already done the environmental work and can get a cost – estimate of \$65,000. A report was given on the TASTE.

- D.) Building Inspection** – Reports distributed - results are 106 permits for the month for a total of \$10M with approximately \$71,000 in fees for the city. Richard Merchant said that the Energy Codes will kick in July 1, 2013.
- E.) Building Maintenance** – Frank reported that there is a serious leak in the Executive Conference Room that has existed since the building was building. Many attempts to locate the leak have been made but the internal wall will need to be taken down or portions of it to locate the leak.
- F.) New Business** – Pipe needs to be replaced and will require breaking down the switchback at Gator Alley. It will take 3 weeks for drainage repairs and involved 335 ft. of boardwalk we will take down and put back up.
- G.) City Property Map** – Richard Johnson distributed a great map of city properties that he and Sarah have been working on.

I. CALL TO ORDER

The June meeting of the Public Works Committee was called to order at 5:02 PM

Present:

Councilwoman Tommie Conaway, Councilman John Lake, Robin LeJeune (Chairman), Councilman John Lake, Councilman Ron Scott, Councilman Pat Rudicell, Richard D. Johnson-Director Public Works, Sandra Cushway-Administrative Assistant Public Works, Dorothy Morrison-Daphne Beautification Committee, Randy Davis-Volkert, Tim Lawley-HMR Engineers

II. PUBLIC PARTICIPATION & CORRESPONDENCE

- A. Work Request Report for May 2013 was reviewed. No Comments.
- B. Vehicle/Equipment Maintenance Reports for May 2013 and 2012 were reviewed. Duke has started adding comments to his report when a large repair has been performed. Richard reported that this year's repairs are up by \$80K vs. 2012. Approximately \$50K is Fire and about \$25K from Solid Waste.
- C. Public Participation – None
- D. Correspondence – Mayhan E-mail. Citizen's request for sidewalk noted. Richard reported that the plan is to start on the Wilson end of Locke. Then Pollard to Randall Avenue. Richard will contact Mr. Mayhan to let him know. Councilman Lake commented that he would like to see the sidewalks in Park City extended. Councilman Scott commented that the city is getting close to having all schools joined by sidewalks. He stated that he would like to see sidewalks from Whispering Pines to the High School and on Lawson. This is the route that the DHS track team runs and it would keep them off the street.

III. OLD BUSINESS

- A. Minutes from April 15, 2013 **Meeting were reviewed and accepted as written. Motion by Councilwoman Conaway to accept minutes. Motion seconded by Councilwoman Lake.**
- B. Mosquito Report – Richard reported that citizen's calls are down for this time of the year. Councilman Scott reported that this is the first time that we have seen reports tracking the number of miles treated.
- C. Street Sweeper Reports for May 2013 were reviewed. Councilman Lake commented that he liked the changes to the report so that you can better differentiate the traveling time versus sweeping time.
- D. US 98 Service Road – Enclosed in the packet was a copy of the "Two-Step" agreement with Dr. Booth, Final Layout, Proposal for Engineering services (Volkert) and the ALDOT agreement. In the "Two-Step" agreement, the City will share costs equally. There was discussion regarding the Owner Consultant Agreement for Hwy 98 West Service Road extension to west Van Buren. Richard requested that the committee recommend that this project go before the Finance Committee for appropriation of funds for Engineering and Geotechnical services. There was concern expressed that citizens would attempt to make a right turn from Van Buren onto the service road extension. Randy Davis explained that this would be a right turn onto Hwy 98 only and that there would be a barrier in place to prevent drivers from attempting to turn right onto the service road. Richard stated that eventually ALDOT would come in and replace the current traffic signals with LED lights. **A motion was made by Councilwoman Conaway to advance the documents related to the US 98 Service Road Extension to the Finance Committee for consideration. Motion was seconded by Councilman Lake. Motion Carried.**

IV. NEW BUSINESS

- A. Councilman Scott asked if we could get an MPO quarterly for this committee. He feels that a BRATS terminal would be beneficial to the City.

V. DIRECTOR'S REPORT

- A. Gator Alley – Richard reported that the parking lot at Gator Alley is one of the highest used parking lots in the City. It is currently a gravel parking lot and is in bad shape. Jade consulting put together a plan for more aesthetic parking. The copy of the plan showed the expanded area which includes the Breeland property. The city is applying for a \$400K grant that has an 80/20 match. Councilman Scott stated that he wouldn't be opposed if a portion of Lodging Tax was used in this project. The council has already passed a resolution regarding this parking lot.

VI. DAPHNE SOLID WASTE DISPOSAL AUTHORITY

- A. Monthly Equipment Use Report for May 2013 was reviewed. Richard reported that the two rear loading Solid Waste trucks are almost exhausted. We will replace them with automated trucks which will eliminate the need for hoppers.
- B. Monthly Recycle Tonnage Report (Tonnage Comparison) for May 2013 was reviewed. Recycling had a good month. 141 tons for the month. That is 20+ more tons than last year. Prior to going single stream, costs were a lot higher. Currently, the trucks go directly to the buyer (Tarpon). At our current population level, single stream is more cost efficient.
- C. Solid Waste New Customer Report for May 2013 was reviewed. Ten (10) new residential customers and one (1) Commercial customer in the City this past month.

VII. MUSEUM COMMITTEE

- A. Minutes from May 13, 2013 Meeting. Minutes reviewed. No Comments.

VIII. BEAUTIFICATION COMMITTEE

- A. Minutes from June 5, 2013 Meeting were reviewed.
- B. Dorothy reported that the boards have been replaced at Gator Alley.
- C. Hwy 98 looks great. All of the Crape Myrtles have pine straw.
- D. The committee wanted to get the flags out by Memorial Day, but that didn't happen. She is hoping that they will be up in time for July 4th.
- E. Richard reported that there will be a flag at each of the City entrances, the Civic Center complex, KFC triangle, etc. He is hoping that once the City starts putting up flags, that businesses will participate.
- F. The Church on Hwy 98 removed their old fence which was in bad shape. Dorothy inquired as to who owns the Eastern Star building next to the church. It is in serious disrepair and an eye sore.
- G. Councilman Scott noted that the Committee requested volunteers from several districts, but doesn't have anyone representing District 7.
- H. The dedication of the new walkway at Gator Alley will be held on Wednesday – July 10th at 10:30 AM. At this time we have no minister to bless the new walkway.

IX. ENVIRONMENTAL ADVISORY COMMITTEE

- A. No meeting in May – Richard reported that the EAC committee is drafting changes to the existing Tree Ordinance. One issue that has been identified is identifying species that are desirable and environmentally beneficial. If a tree is in someone's back yard and they wish to remove it, do we want to regulate whether a person can cut down that tree on their own private property? Several local municipalities such as Fairhope and Foley have protected species. Councilman Lake stated that if a tree presents a potential hazard to a person or property, they should be allowed to remove it. Councilman LeJeune questioned how it was worded in the other municipality's ordinances. Richard clarified that if an insurance provider deems that a

tree is a hazard, that they are exempt. The other city's ordinances have designated protected species and guidelines where a certain number of trees must be planted for every tree removed when building a residence. Councilman LeJeune stated that he wouldn't feel comfortable telling a homeowner that they cannot cut down a tree that is on their private property. Councilman Scott asked if they needed to get some type of direction for the committee. He agrees with Councilman LeJeune. Richard reported that there is no fee to obtain a tree permit. It is simply a tracking method. Councilman Lake suggested that the City educate the public on the value of trees. Dorothy reported that this type of information is provided each year at the Arbor Day tree give-a-way.

X. ENGINEER'S REPORT

- A. HMR: Lake Forest Phase II under construction. Expected July 12 completion. Sports complex striping and stabilization underway. Gator Alley walkway close to completion. Lake Forest Phase III sent to ALDOT. Bid will open June 28th. Will see contracts in July. Usually about 60 days before project will start. Resurfacing of N. Main, CR 13, and Johnson Road all submitted for ATRIP.
- B. Volkert: No current projects

XI. FUTURE BUSINESS

- A. Next Meeting for July 15, 2013 was announced

XII. ADJOURNMENT

Meeting adjourned at 6:13 PM **Motion made by Councilwoman Conaway to adjourn the meeting. Motion seconded by Councilman Lake.**

**REPORT
OF
SPECIAL BOARDS**

**REPORT
OF
OFFICERS**

RESOLUTIONS
&
ORDINANCES

CITY OF DAPHNE

RESOLUTION 2013-36

Establishment of “On Call” and Project Engineering Services for the City of Daphne

WHEREAS, Resolution 2013-08 established that the CITY OF DAPHNE was to open Project Engineering Services up to qualified Engineering Firms for City projects on an equitable basis; and

WHEREAS, Resolution 2013-08 established that the CITY OF DAPHNE would determine and select qualified Engineering Firms through a Request For Qualifications (RFQ); and

WHEREAS, Resolution 2013-08 established that the CITY OF DAPHNE desired to maintain a relationship with HUTCHINSON, MOORE AND RAUCH, L.L.C. for reoccurring “On Call” Engineering Services; and

WHEREAS, the CITY OF DAPHNE has received and reviewed Statements of Qualifications from Engineering Firms and ranked them based upon their qualifications; and

WHEREAS, the CITY OF DAPHNE desires to enter into a contract for professional services with selected Engineering Firms to provide project engineering services; and

WHEREAS, the CITY OF DAPHNE desires to enter into a contract for professional services solely with HUTCHINSON, MOORE AND RAUCH, L.L.C. to provide “on call” engineering services;

NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF DAPHNE, ALABAMA TO:

1. Authorize the Mayor to enter into a contract for professional services (Exhibit A) with the following selected Engineering Firms:
 - a. Hatch Mott MacDonald
 - b. Hutchinson, Moore & Rauch, LLC (HMR)
 - c. Preble-Rish
 - d. Volkert Inc.
2. Authorize the Mayor to enter into a contract with HUTCHINSON, MOORE AND RAUCH, L.L.C. as the sole provider of “on call” engineering services; and
3. Authorize the Mayor, through the Public Works Director, to establish a protocol for the equitable assignment Project Engineering Services on a rotational basis to the above selected Engineering Firms.

ADOPTED AND APPROVED on this the ____ day of _____, 2013.

DANE HAYGOOD,
MAYOR

ATTEST:

REBECCA A. HAYES,
CITY CLERK

WHEREAS, the City desires to use qualified Consulting Engineers to perform certain professional planning, programming, and engineering services as outlined in the Scope of Services;

WHEREAS, the qualified Consulting Engineers desires to perform said professional services for the City;

NOW, THEREFORE, for and in consideration of the mutual covenants hereinafter stipulated to be kept and performed, the parties (as listed in Appendix A) hereto agree as follows:

ARTICLE I - SCOPE OF SERVICES

The City will assign Projects to the pre-qualified Consulting Engineer (to be referred to as Engineer) on an equitable rotation basis. The Scope for each individual Project will be prepared by the City Public Works Director in conjunction with the selected Engineer.

Once a Scope is agreed upon for a Project, the selected Engineer will prepare a Construction Cost Estimate and schedule required to complete that Project and will submit that to the City for approval. The professional services to be provided will be based on the enclosed fee schedule. Once the Project Scope and corresponding Professional Fee Cost Estimate and schedule have been approved by the City, a fee agreement will be prepared for that Project in accordance with Method of Payment.

SECTION I - GENERAL SERVICES

The Engineer shall perform certain professional engineering services relating to infrastructure improvements and other Projects as authorized by the City, as follows:

- A. Survey, Design, and Letting
 1. Attend meetings regarding proposed projects.
 2. Prepare preliminary layouts and sketches if needed.
 3. Prepare preliminary construction cost estimates.
 4. Field surveys for design and layout.
 5. Design the work.
 6. Prepare detailed contract drawings and specifications for construction.
 7. Prepare construction estimates of quantities and cost.
 8. Assembling and mailing Contract Documents on behalf of the City.
 9. Assist the City in receiving bids.
 10. Tabulate bids and make recommendations concerning award.
 11. Assist the City in the award of the Contract.

B. Construction Services

1. Attend meeting with the City officials as required and assist in administering the construction contracts.
2. Recover and/or furnish reference line and bench marks for control of the work.
3. Review shop drawings and manufacturer's drawings pertaining to the improvements for compliance with the design concept.
4. Review laboratory, mill and shop tests of materials to be incorporated into the work.
5. Provide field reviews of the work and interpret the plans and specifications by periodic visits to the site by one or more design engineers.
6. Provide the services of a resident project representative, and assistants if required, in order that the work under progress shall have continuous close review. The ENGINEER will endeavor to protect the City against defects and deficiencies in the work of contractors, but does not guarantee the work or performance of the contractors. Duties, Responsibilities, and Limitations of Authority of Resident Project Representative have been attached to this Agreement in Appendix B.
7. The ENGINEER is not responsible under this Agreement to act as foreman, superintendent, and safety engineer or for the safety of the contractor's personnel.
8. Review and approve contractor's estimates for work performed for payment by the City.
9. Make final review of the construction upon completion and revise the construction drawings to show the project "record drawing", and certify that in accord with knowledge required to meet professional engineering standards of practice, the project was built in accordance with the Construction Contract Plans and Specifications.
10. Field measure pay quantity items of work for preparation of final construction estimate for approval by contractor and payment by the City.
11. The City will provide Laboratory services for all soils studies, material testing, and reports and for all inspectors and tests requiring the services of a laboratory throughout the construction of the project.
12. The ENGINEER will furnish the City with up to a reasonable number of sets of all plans, reports, and specifications. Additional sets will be furnished at cost.

C. Work Not Included

Specialized services, unless specifically stated in the established Project Scope, such as laboratory testing of materials, subsurface borings and activities of a similar nature, which require specialized equipment and technicians are not part of this Agreement. These special services also include the performance of property, or boundary surveys, services on calculations of special assessment, or operating manuals and operator training. The ENGINEER is not responsible under this Agreement to audit contractor's payrolls or records, or to check payrolls for compliance with wage rates or to act as foreman, superintendent, safety engineer, or for the safety of the contractors personnel, or to enforce governmental

clauses made part of the construction contract as to consideration of the City receiving governmental loans or grants.

SECTION II - SPECIAL SERVICES

At the written request of the City, the Engineer shall accomplish such special services as required by the City. When the Engineer is requested to provide special services, such services may be provided by Engineer's own forces or through subcontracts with other professionals. However, contracts with other professionals for special services must have the written approval of the City before the work is initiated. Special services which may be requested include, but are not necessarily limited to the following:

- A. Land Surveys and Engineering as necessary to establish property boundaries and prepare descriptions, and prepare property maps required for property right-of-way or easement acquisition purposes.
- B. Soils and Material Investigations including test borings, laboratory and field testing of soils and materials and related reports as required for design and construction quality control purposes.
- C. Engineering Surveys (other than required for design and construction) to include topographic surveys, base fine surveys, cross section surveys, aerial photography, etc., as required and approved by the City.
- D. Assistance to the City as expert witness in litigation arising from development or construction of any project.
- E. Accomplishment of special surveys and investigations, and the preparation of special reports and drawings as may be requested or authorized in writing by the City.
- F. Prepare pre-applications and applications for federal and/or state assistance grants for funding of projects.
- G. Assist the City, or other engineers engaged by the City, as requested in the development of information required to complete and submit permit applications or permit compliance responses.
- H. Attend meetings with the City and other governmental agencies as requested during planning and permitting processes.
- I. Perform other services as requested by the City.

ARTICLE II - GENERAL PROVISIONS

SECTION I - RESPONSIBILITIES OF THE CITY

The Engineer agrees to provide professional services for all services included in Article I - Scope of Services and the City agrees to pay the Engineer as compensation for its services as specified below:

Fees - It is mutually agreed that compensation to the ENGINEER will be as follows:

- A. For all work associated with Survey, Design, and Letting as specified in General Services, the fee shall be based on either (a) a percentage of the estimated* construction cost of each individual construction project as specified below, or (b) a lump sum basis for each individual construction project, as authorized by the City.

*If the project is undertaken by the City, fees shall be corrected based on “Actual” Construction cost.

The percentage of construction cost for determination of Survey, Design, and Letting fees based on a percentage of construction costs shall be in accordance with the following:

CONSTRUCTION COSTS		SURVEY, DESIGN, & LETTING PHASE – FEE %	
\$	\$	GDBP*	RRR**
Less than	\$ 100,000	10.5%	9%
\$ 100,000	\$ 250,000	9.5%	8%
\$ 250,000	\$ 500,000	8.5%	7%
\$ 500,000	\$ 750,000	7.75%	6.25%
\$ 750,000	\$1,000,000	7.5%	6%
\$1,000,000	\$2,000,000	7%	5.5%
\$2,000,000	\$4,000,000	6.75%	5.25%
\$4,000,000	And above	6.25%	5%

*GDBP – Grading, Drainage, Base, and Pavement Projects

**RRR - Resurfacing, Restoration and Rehabilitation Projects

It is mutually agreed that the ENGINEER's Design fee by this method shall not be less for construction cost in the lower range of one construction step than is available by utilizing the maximum construction cost and percentage for the preceding lower construction step.

For all work associated with Survey, Design, and Letting required to complete detailed plans and specifications for individual construction projects, payment shall be made periodically, based on City approved percentage of completion of the plans and specifications for each project.

- B. For all work associated with construction services as specified in Construction Services, the fee shall be based on either (a) a percentage of the construction cost of each individual construction project as specified below, or (b) a lump sum basis for each individual construction project, as authorized by the City. The percentage of construction costs for determination of construction services fees based on a percentage of construction costs shall be in accordance with the following:

CONSTRUCTION COSTS		CONSTRUCTION (CE&I) PHASE – FEE %	
\$	\$	GDBP*	RRR**
Less than	\$ 100,000	12.75%	11.25%
\$ 100,000	\$ 250,000	11.5%	10%
\$ 250,000	\$ 500,000	10.5%	9%
\$ 500,000	\$ 750,000	9.5%	8%
\$ 750,000	\$1,000,000	9.25%	7.75%
\$1,000,000	\$2,000,000	8%	6.5%
\$2,000,000	\$4,000,000	7.75%	6.25%
\$4,000,000	And above	7.5%	6%

*GDBP – Grading, Drainage, Base, and Pavement Projects

**RRR - Resurfacing, Restoration and Rehabilitation Projects

It is mutually agreed that the ENGINEER's Construction Services fee by this method shall not be less for construction cost in the lower range of one construction step than is available by utilizing the maximum construction cost and percentage for the preceding lower construction step.

The length of time covered by the above fee shall be the length of time in calendar days in which construction contractors will have to complete the various contracts and will be agreed upon by the City and the ENGINEER prior to issuance of contract documents and will be so stated therein. The City will reimburse the Engineer for Construction Phase Services required in completion of the project beyond the agreed to calendar days due to the delinquency or insolvency of the contractor or for any reason beyond the control of the Engineer, other than time extensions granted the contractor due to an increase in the scope of work.

No additional compensation shall be paid to the Engineer until project time is exceeded 115% of contracted calendar days. Compensation shall be made on the basis of on a cost of average daily fee basis calculated as follows:

$$Average\ Daily\ Fee = \frac{(Const.\ Cost \times Fee\ \%)}{(\# \ Contract\ Days)}$$

Payment to be made within 30 days after receipt of certified invoices by the Engineer.

- C. For all work associated with Special Services as specified in that section, The City shall submit a scope of work requested to the selected or qualified engineer(s). The selected or qualified engineer(s) shall submit a "lump sum" quote for the Special Services outlined in the scope of work. The selected or qualified engineer(s) shall be paid on a lump sum basis for each individual Special Service construction project, as authorized by the City. The quoted fee shall remain fixed unless the City changes the scope of work significantly altering construction cost or quantities in excess 10% of the original bid cost. Prior to acceptance of the change order or a significant change in scope of work, the engineer must submit an amended quote for approval. This fee change should correlate with the same percentage rate increase of the construction cost.
- D. Partial payments for all services performed by the Engineer under the terms of the Agreement shall be made no more often than monthly to the Engineer by the City upon receipt and approval of invoices and other evidence of performance as may be deemed necessary by the City. The City is allowed up to forty-five (45) days of the date of invoice to make payment of properly submitted and approved invoices.
- E. For Projects involving a supplemental agreement, the scope of services and amount of compensation to be paid will be included herein.
- F. The City will pay the Engineer for special services performed by sub-consultants at the actual invoice amount times a factor of 1.10 for assisting and coordinating the sub-consultants services. Prior to the City authorizing the employment of sub-consultants, the full provisions of Article II, Section I, Subsection C apply.
- G. The City as purchaser of the services described herein shall pay any applicable sales tax in the manner and in the amount as required by law.

SECTION III - MISCELLANEOUS

- A. Extra Work: It is mutually understood and agreed that the City will compensate the Engineer for services resulting from significant changes in general scope of a project or its design, including but not necessarily limited to, change in size, complexity. Project schedules, character of construction, revisions to previously accepted studies, reports, design documents or contract documents and for preparation of documents for separate bids, when such revisions are due to causes beyond the Engineer control and when requested or authorized by the City. Compensation for such extra work when authorized by the City shall be mutually agreed upon prior to beginning the extra work.
- B. Extra Work caused by deficiency in design: It is mutually understood and agreed that extra work cause by errors and omissions of the engineer shall not be subject to compensation by the City and shall be the sole burden of the engineer. In addition if said deficiencies in design lead to project time overruns the obligation of the engineer to manage the construction remains without any expectation of compensation for the additional time.
- C. Ownership of Documents and Electronic Media: All documents and electronic media including Drawings, CAD files and Specifications prepared or furnished by Engineer (and Engineer's independent professional associates and consultants) pursuant to this

Agreement are instruments produced for and shall be owned by the City. If these documents are reused by the City or others on extensions of the Project or on any other project will be at Owner's sole risk and without liability or legal exposure to the original Engineer, or to Engineer independent professional associates or consultants, and the City shall indemnify and hold harmless the Engineer and Engineer's independent professional associates and consultants from all claims, damages, losses and expenses including attorney's fees arising out of or resulting therefrom.

- D. Responsibility of the Engineer: The Engineer shall be responsible for the professional quality, technical accuracy, timely completion, and the coordination of all designs, drawings, specifications, reports, and other services furnished by the Engineer under this Agreement. These services when performed in accordance with acceptable engineering and architectural practices shall be the limit of the Engineers responsibility under this Agreement. The Engineer shall, without additional compensation, correct or revise any errors, omissions or other deficiencies in his designs, drawings, specifications, reports and other services.

- E. Responsibility for Claims and Liability: To the fullest extent permitted by law, the total liability, in the aggregate, of Engineer and Engineer's officers, directors, employees, agents and independent professional associates and consultants, and of any of them to the City and anyone claiming by, through or under the City, for any and all injuries, claims, losses, expenses, or damages whatsoever arising out of or in any way related to Engineer's services, the project or this agreement from any cause or causes whatsoever, including but not limited to the negligence, errors, omissions, strict liability or breach of contract Engineers or Engineer's officers, director, employees, agents or independent professional associates or consultants, or any of them, shall be the maximum compensation required to satisfy all injuries, claims, losses, expenses, or damages, including punitive damages.

- F. Insurance: Engineer shall furnish the City with Certificate of Insurance from a carrier approved by the Finance Director confirming the following coverages:

Comprehensive and Business Liability

Bodily Injury and Property Damage	Limits of Liability
Each Occurrence	\$500,000.00
General Aggregate	\$2,000,000.00
Products Completed	
Operations Aggregate	\$2,000,000.00

Workers' Compensation and Employers Liability

Workers' Compensation	Statutory
Bodily Injury	
Each Accident	\$100,000.00
Disease Each Employee	\$100,000.00
Disease - Policy Limit	\$500,000.00

Automobile

Bodily Injury Per Person/Occurrence	\$500,000.00/\$500,000.00
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Property Damage	\$100,000.00
Uninsured Motorist Per Person/Occurrence	\$100,000.00/\$300,000.00

- G. Termination: In the event of failure by the Engineer to fulfill in timely and proper manner his obligations under this Agreement, or if the Engineer violates any of the covenants, contracts, or stipulations of this Agreement, the City shall thereupon have the right to terminate that Engineer’s involvement in this Agreement by written notice to the Engineer of such termination, specifying the effective date thereof at least five days before the effective date of such termination.

- H. Contract Period: All contracts, agreements, provisions and stipulations of this Agreement shall remain in full force for a period of three (3) years from the date of the Agreement, and for such periods as the contract time may be extended by mutual written agreement between the City and the participating Engineer(s).

- I. Successors and Assigns:
 - 1. The City and Engineer each is hereby bound and the partners, successors, executors, administrators and legal representatives of the City and Engineer (and to the extent permitted by paragraph 2, the assigns of the City and Engineer) are hereby bound to the other party to this Agreement and to the partners, successors, executors, administrators and legal representatives (and said assigns) of such other party, in respect of all covenants, agreements and obligations of this Agreement.
 - 2. Neither the City nor Engineer shall assign, sublet or transfer any rights under or interest in (including, but without limitation, moneys that may become due or moneys that are due) this Agreement without written consent of the other, except to the extent that any assignment, subletting or transfer is mandated by law or the effect of this limitation may be restricted by law. Unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under this Agreement. Nothing contained in this paragraph shall prevent Engineer from employing such independent professional associates and consultants as Engineer may deem appropriate to assist in performance of services hereunder.
 - 3. Nothing under this Agreement shall be construed to give any right or benefits in this Agreement to anyone other than the City and Engineer, and all duties and responsibilities undertaken pursuant to this Agreement will be for the sole and exclusive benefit of the City and Engineer and not for the benefit of any other party.

IN WITNESS WHEREOF, the parties hereto have made and executed this Agreement in duplicate as of the _____ day of _____, 20_____.

ATTEST:

The City of Daphne

Signature
Rebecca A; Hayes, City Clerk

Signature
Dane Haygood, Mayor

Appendix A – Approved Consulting Engineers

**Hatch Mott MacDonald
John W. Peterson, PE
P.O. Box 1290 (805 Daphne Ave)
Daphne, AL 36526**

ATTEST:

Signature

Signature

Title

Title

**Hutchinson, Moore & Rauch, LLC (HMR)
Scott Hutchinson, PE
P.O. Box 1127
Daphne, AL 36526-1127**

ATTEST:

Signature

Signature

Resident Civil Engineer

Title

Title

Appendix A – Approved Consulting Engineers (Continued)

**Preble-Rish
Joe Bullock, P.E.
9949 Bellaton Ave
Daphne, AL 36526**

ATTEST:

Signature

Signature

Resident Civil Engineer
Title

Title

**Volkert Inc.
Randy Davis, P.E.
316 South McKenzie St.
Foley, AL 36535**

ATTEST:

Signature

Signature

Resident Civil Engineer
Title

Title

Appendix B – Resident Construction Surveillance Representative (Page 1/3)

A. General

Resident Construction Surveillance Representative is Engineer's Agent, will act as directed by and under the supervision of Engineer, and will confer with Engineer regarding his actions. Resident Construction Surveillance Representative's dealings in matters pertaining to the on-site work shall in general be only with the Engineer and Contractor, and dealings with subcontractors shall only be through or with the full knowledge of Contractor. Written communication with the City will be only through or as directed by Engineer.

B. Duties and Responsibilities

Resident Construction Surveillance Representative will:

1. Conferences: Attend preconstruction conferences. Attend progress meetings and other job conferences as required in consultation with Engineer.
2. Schedules: Review the progress schedule, schedule of Shop Drawing submissions and schedule of values prepared by Contractor.
3. Representative:
 - a. Serve as Engineer's Representative with Contractor, working principally through Contractor's superintendent and assist him in understanding the intent of the Contract Documents. Assist Engineer in serving as the City's Representative with Contractor when Contractor's operations affect the City's on-site operations.
 - b. As requested by Engineer, assist in obtaining from the City additional details or information, when required at the job site for proper execution of the Work.
4. Advise Engineer and Contractor or its superintendent immediately of the commencement of any Work requiring a Shop Drawing or sample submission if the submission has not been approved by Engineer.
5. Review of Work, Rejection of Defective Work, Inspections and Tests:
 - a. Conduct, on-site observations of the Work in progress to assist Engineer in determining if the Work is in general proceeding in accordance with the Contract Documents.
 - b. Report to Engineer whenever he believes that any work is unsatisfactory, faulty or defective or does not conform to the Contract Documents, or does not meet the requirements of any inspections, tests or approval required to be made or had been damaged prior to final payment; and advise Engineer when he believes Work should be corrected or rejected or should be uncovered for observation, or requires special testing, inspection or approval.

Appendix B – Resident Construction Surveillance Representative (Page 2/3)

- c. Verify that tests, equipment and systems start-ups and operating and maintenance instructions are conducted as required by the Contract instructions are conducted as required by the Contract Documents and in presence of the required personnel', and that Contractor maintains adequate records thereof; observe, record and report to Engineer appropriate details relative to the test procedures and start-ups.
 - d. Accompany visiting inspectors representing public or other agencies having jurisdiction over the Project, record the outcome of these inspections and report to Engineer.
6. Interpretation of Contract Documents: Transmit to Contractor Engineer's clarifications and interpretations of the Contract Documents.
7. Modifications: Consider and evaluate Contractors suggestions for modifications in Drawings or Specifications and report them with recommendations to Engineer.
8. Records and Reports:
 - a. Maintain at the job site orderly files for correspondence, reports of job conferences, Shop Drawings and samples, submissions, reproductions of original Contract Documents including all addenda, change orders, field orders, additional Drawings issued subsequent to the execution of the Contract, Engineer's clarifications and interpretations of the Contract Documents, Progress Reports, and other Project related documents.
 - b. Keep a diary or log book recording hours on the job site, weather conditions, data relative to questions of extras or deductions, list of visiting officials and representatives of manufacturers, fabricators, suppliers and distributors, daily activities,' decisions, observations in general and specific observations in more detail as *in* the case of observing test procedures. Send copies to Engineer.
 - c. Record names, addresses and telephone numbers of all Contractors, subcontractors and major suppliers of materials and equipment.
 - d. Furnish Engineer periodic reports as required of the Work and Contractor's compliance with the approved progress schedule.
 - e. Consult with Engineer in advance of scheduling major tests, inspections or start of important phases of the Work.
 - f. Report immediately to Engineer upon the occurrence of any accident.
9. Payment Requisitions: Review applications for payment with Contractor for compliance with the established procedure for their submission and forward them with recommendations to Engineer, noting particularly their relation to the schedule of values, Work completed and materials and equipment delivered at the site but not incorporated in the Work.

Appendix B – Resident Construction Surveillance Representative (Page 3/3)

10. Completion:

- a. Before Engineer issues a Certificate of Substantial Completion, submit to Contractor a list of observed items requiring completion or correction.
- b. Conduct final inspection in the company of the Engineer, the city and the Contractor and prepare a final list of items to be completed or corrected.
- c. Verify that all items on final list have been completed or corrected and make recommendations to Engineer concerning acceptance.

C. Limitations of Authority

Except upon written instructions of Engineer, Resident Construction Surveillance Representative:

1. Shall not authorize any deviation from the Contract Documents or approve any substitute materials or equipment.
2. Shall not exceed limitations on Engineer's authority as set forth in the Contract Documents.
3. Shall not undertake any of the responsibilities of Contractor, subcontractors or Contractor's superintendent.
4. Shall not advise on or issue directions relative to any aspect of the means, methods, techniques, sequences of procedures of construction.
5. Shall not advise on or issue directions as to safety precautions and programs in connection with the Work.
6. Shall not authorize the City to occupy the Project in-whole or in part, unless it is in the City's best interest.
7. Shall not participate in specialized field or laboratory test, unless directed by the City.
8. Shall not accept shop drawings or submittals, as these shall be made to the Engineer.

RESOLUTION 2013-37

Confiscated Funds Signatories

WHEREAS, a separate bank account for Confiscated Funds was heretofore established and authorized by Resolution 1999-60; and

WHEREAS, the signatories for such Confiscated Funds were established to be the current Mayor or Finance Director and a certain representative from the Daphne Police Department; and

WHEREAS, the Resolution 2007-67 named Kimberly Briley , Fred Small, Daniel Bell, Judson Beedy, and Brian Gulsby as such Daphne Police Department signatories; and

WHEREAS, revisions to the authorized signatories are needed.

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

- 1) Kimberly Briley and Fred Small are hereby removed as a signatory of the Confiscated Funds account; and
- 2) The authorized signatories for the Confiscated Funds account are hereby established as the Mayor or Finance Director and Captain Daniel Bell or Lieutenant Judson Beedy or Sergeant Brian Gulsby; and
- 3) All other provisions of Resolutions 1999-60, 2006-19, and 2007-67 remain in full force and effect.

ADOTED AND APPROVED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF DAPHNE, ALABAMA, this _____ day of _____, 2013.

Dane Haygood, Mayor

ATTEST:

Rebecca A. Hayes, City Clerk

**CITY OF DAPHNE
ORDINANCE NO. 2013-31**

AN ORDINANCE TO REGULATE PUBLIC INDECENCY

WHEREAS the City Council of the City of Daphne desires separate the regulation of Public Indecency from the regulation of Sexually Oriented Businesses and Tattoo Facilities; and

WHEREAS the City Council of the City of Daphne will pass an ordinance regulating Sexually Oriented Businesses and Tattoo Facilities concurrently herewith.

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

PUBLIC INDECENCY

A)

Definitions. As used in this section, the following words and terms shall have the following meanings:

- (1) *Nude* (Nudity). The showing, display or appearance of:
 - (a) All or any part of the human male or female genitals, pubic area or anus with less than a fully opaque covering;
 - (b) More than two-thirds (2/3) of the buttocks of the human male or female with less than a fully opaque covering;
 - (c) Any portion of the human female areola or nipple with less than a fully opaque covering; or
 - (d) The covered male genitals in a discernibly turgid state.

- (2) *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.

(3) *Sexual Activity*. Activities consisting of the following:

- (a) The stimulation, fondling or touching of male or female human genital organs or anus.
- (b) The stimulation, fondling or touching of the female breast.
- (c) Flagellation, torture, fettering, binding or other physical restraint of any persons in a sexual relationship.

(4) *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;
- (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;
- (5) Display films, motion pictures, or other photographic reproductions which depict Nudity or Sexual Activity unless done in the operation of a Sexually Oriented Business as so provided under the Community Standards Ordinance;

- (6) Display instruments or devices (excluding contraceptives) which are used in Sexual Activity unless done in the operation of a Sexually Oriented Business as so provided under the Community Standards Ordinance;

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)

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.

SEVERABILITY

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

REPEALER

Ordinance No. 2003-09 is hereby repealed in its entirety. All other City Ordinances or parts thereof in conflict with the provision of this Ordinance, in so far as they conflict, are hereby repealed.

EFFECTIVE DATE

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

ADOPTED AND APPROVED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF DAPHNE, ALABAMA on this the ___ day of _____ 2013.

CITY OF DAPHNE

ATTEST:

DANE HAYGOOD, MAYOR

REBECCA A. HAYES, CITY CLERK

ORDINANCE 2013-33

DAPHNE HIGH SCHOOL BAND FY 13 APPROPRIATION

WHEREAS, Ordinance 2012-58 approved and adopted the Fiscal Year 2013 Budget on October 1, 2012; and

WHEREAS, subsequent to the adoption of the Fiscal Year 2013 budget, the City Council has determined that a certain appropriation is required and should be approved and made a part of the Fiscal Year 2013 budget; and

WHEREAS, the City of Daphne recognizes Daphne High School and the importance of its band to the citizens of Daphne.

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Daphne, Alabama, that \$ 35,000 is hereby appropriated to the Baldwin County Board of Education for the benefit of the Daphne High School Band with a total of \$ 25,000 to be withheld from future allocations to the band through the City's annual Taste of Eastern Shore Event with annual withholdings not to exceed \$ 5,000.

APPROVED AND ADOPTED by the Mayor and City Council of the City of Daphne, Alabama, this _____ day of _____, 2013.

Dane Haygood, Mayor

ATTEST:

Rebecca A. Hayes, City Clerk

STATE OF ALABAMA)
COUNTY OF BALDWIN)
CITY OF DAPHNE)

COOPERATION AGREEMENT

THIS COOPERATION AGREEMENT between the City of Daphne, Alabama, a municipal corporation existing under the laws of the State of Alabama (the “City”) and the Baldwin County Board of Education, an agency of the State of Alabama (the “Board”) made and entered this _____ day of _____, 2013.

RECITALS

WHEREAS, the Board is vested with the general administration and supervision of the public schools and educational interests of Baldwin County, Alabama; and

WHEREAS, the City Council of the City of Daphne desires to promote the health, safety, and welfare of the citizens of the City of Daphne; and

WHEREAS, the Daphne High School Band (DHS Band) has requested that the City appropriate funds for the DHS Band’s use for the benefit, either directly or indirectly, of the residents of the City; and

WHEREAS, the City desires to have the Board, by and through organizations like the DHS Band, to promote discipline while representing the City of Daphne and serving as the City’s good will ambassadors while representing the City in various competitions, performances, and school functions; and

WHEREAS, the City proposes to make a \$ 35,000 (thirty-five thousand dollar) payment to the Board, and in return the Board shall appropriate the same \$ 35,000 (thirty-five thousand dollars) to Daphne High School which shall be restricted for use only by the DHS Band; and

WHEREAS, it is further agreed and understood that the funds received and allocated to the DHS Band through the City of Daphne’s annual Taste of Eastern Shore Event shall be withheld by the City until such time as \$ 25,000 (twenty-five thousand dollars) is collected and “paid back” to the City. (Total annual amount to be withheld not to exceed \$ 5,000.)

NOW, THEREFORE, in consideration of the benefits moving each to the other, it is mutually agreed by and between the City and the Board as follows:

SECTION 1. Authority

The Board represents and warrants to City that it is authorized by law to receive funding from City and that such funding will not be in violation of Article IV, Section 94, or amendments thereto, of the Constitution of Alabama, 1901, or any other

constitutional or statutory provision, provided however that the Board makes no representation or warranty regarding the propriety of the subject funding as a municipal expenditure.

The Board further warrants that funding from the City shall be used in accordance herewith and for no other purpose.

SECTION 2. Services

The Board shall direct the DHS Band to promote discipline while representing the City of Daphne and serving as Daphne's good will ambassadors by representing the City in various competitions, performances and school functions, which shall be a public service to the City and its citizens. If the Board provides public services both inside and outside the Corporate Limits of the City, then, if requested by the City or its representative, it shall provide appropriate documentation demonstrating that the funding provided for herein was used within the Corporate Limits of the City.

SECTION 3. Agreement of City to Provide Funds

The City shall appropriate funds to the Board in the following amount for the 2013 fiscal year: \$ 35,000 (Thirty-Five Thousand Dollars) with \$ 25,000 (Twenty-Five Thousand Dollars) to be withheld by the City from future allocations to the DHS Band through the City's annual Taste of Eastern Shore Event. (Total annual amount to be withheld not to exceed \$ 5,000.) The Finance Director of the City or his/her designee shall be the representative of the City for the administration and implementation of the provisions hereof on behalf of the City.

SECTION 4. Separate Agreements

The City shall be under no obligation to the Board except to the extent set out expressly in this Agreement. Provided, however, in the event there is a separate valid written agreement between the City and Board, then this Cooperation Agreement is supplemental thereto and in the event of a conflict the terms of the latest written agreement shall prevail.

SECTION 5. Term, Termination

This Agreement shall take effect upon the date hereof and shall not be terminated by either party until the obligations set forth in Sections 2 and 3 herein are performed in full.

SECTION 6. Non-Discrimination and Compliance

The Board hereby covenants and agrees that in performing its responsibilities and obligations hereunder, the Board, its officers, agents and employees will not, on the grounds of race, color, sex, religion, national origin, or disability, discriminate or permit discrimination against any person or group of persons, in any manner. The Board further agrees to comply with all applicable state and federal ordinances and

regulations, including but not limited to the Rehabilitation Act of 1973, the Americans with Disabilities Act, the Civil Rights Act of 1964, and any regulations promulgated thereunder. The Board further agrees to appoint an ADA coordinator. Said coordinator will be responsible for ensuring that the Board is in compliance with the Americans with Disabilities Act and will advise the City of Daphne ADA Coordinator for services and programs as to the Board's state of compliance with the Americans with Disabilities Act.

SECTION 7. Audit

The City may require appropriate documentation from the Board to document the disbursement and use of the funding provided herein. The City may have the Board records provided in accordance herewith audited by an independent CPA firm.

SECTION 8. Severability

It is expressly understood and agreed by and between the parties hereto that in the event any covenant, condition or provision herein contained is held to be invalid by any court of competent jurisdiction, or otherwise appears to both parties to be invalid, the invalidity of any such covenant, condition, or provision herein contained, shall not affect other remaining and valid covenants or conditions herein unless such invalidity renders performance of the essential elements of the contract impossible.

SECTION 9. Final Integration

This Agreement together with any amendments, constitutes the entire agreement of the parties, as a complete and final integration thereof with respect to its subject matter. In the event of a direct conflict between the provisions hereof and any prior agreement or amendment, the latter shall supersede the former. All written or oral understandings and agreements heretofore had between and among the parties are merged into this Agreement, which alone fully and completely expresses their understandings. No representation, warranty or covenant made by any party which is not contained in this Agreement or expressly referred to herein has been relied on by any party in entering into this Agreement.

SECTION 10. Force Majeure

Neither party to this Agreement shall hold the other party responsible for damages or delay in performance caused by acts of God, strikes, lockouts or other circumstances beyond the reasonable control of the other or the other party's employees, agents or contractors.

SECTION 11. Amendment in Writing

This Agreement may not be amended, modified, altered, changed, terminated or waived in any respect whatsoever, except by a further agreement in writing, properly executed by all of the parties.

SECTION 12. Captions

The captions of this Agreement are for convenience and reference only, are not a part of this Agreement, and in no way define, describe, extend or limit the scope or intent of this Agreement.

SECTION 13. Mandatory and Permissive

"Shall", "will", and "agrees" are mandatory, "may" is permissive.

SECTION 14. Governing Laws

The laws of the State of Alabama shall govern the validity of this Agreement, the construction of its terms, the interpretation of the rights, the duties of the parties, the enforcement of its terms, and all other matters relating to this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and date first set forth above.

CITY OF DAPHNE, a Municipal Corporation

Dane Haygood, Mayor

ATTEST:

Rebecca A. Hayes, City Clerk

BALDWIN COUNTY BOARD OF EDUCATION, an Agency of the State of Alabama

BY: _____

TITLE: Superintendent and Ex-officio Secretary

Federal ID# _____

WITNESS:

By: _____

STATE OF ALABAMA

COUNTY OF BALDWIN

I, _____, a Notary Public, in and for said County in said State, hereby certify that _____ and _____, whose names as Mayor and City Clerk of the City of Daphne, Alabama, an Alabama municipal corporation, are signed to the foregoing instrument and who are known to me, acknowledged before me on this day that, being informed of the contents of the instrument, they in their capacities as such officers and with full authority, executed the same voluntarily on the day the same bears date.

Given under my hand and seal this _____ day of _____, 2013.

Notary Public

My Commission Expires: _____

STATE OF ALABAMA

COUNTY OF BALDWIN

I, _____, a Notary Public, in and for said County in said State, hereby certify that _____ whose name as Superintendent and Ex Officio Secretary of the Baldwin County Board of Education, an Agency of the State of Alabama, is signed to the foregoing instrument and who is known to me, acknowledged before me on this day that, being informed of the contents of the instrument, he in his capacity as such and with full authority, executed the same voluntarily on the day the same bears date.

Given under my hand and seal this _____ day of _____, 2013.

Notary Public

My Commission Expires: _____

June 18, 2013

Baldwin County Board of Education
Jean McCutchen, Director of Business & Finance
2600-A North Hand Avenue
Bay Minette, AL 36507

RE: Agreement: Daphne High School Band

Dear Ms. McCutchen:

During the June 17, 2013, Daphne City Council meeting the City Council appropriated \$ 35,000 to the Daphne High School Band. Of this amount, \$ 25,000 will be withheld from future collections allocated to the DHS Band from the City's annual Taste of Eastern Shore Event. (total annual withholdings not to exceed \$ 5,000) To that effect, enclosed are three copies of the Cooperation Agreement. Please have each Agreement executed and notarized. Then, return them to me. Upon execution of the Agreement by the Mayor and City Clerk, a copy of the Agreement and payment according to the contract terms will be forwarded to you.

Thank you for your assistance and should you need to contact me, I can be reached at 625-2000.

For the City of Daphne,

Kimberly Briley, Finance Director

ORDINANCE 2013-34

2012 Assistance to Firefighters Grant (AFG)

WHEREAS, Ordinance 2012-58 approved and adopted the Fiscal Year 2013 Budget on October 1, 2012; and

WHEREAS, subsequent to the adoption of the Fiscal Year 2013 budget, the City Council has determined that certain appropriations are required and should be approved and made a part of the Fiscal Year 2013 budget; and

WHEREAS, the City of Daphne has applied and been awarded a grant through the Fiscal Year 2012 Assistance to Firefighters Grant program to receive funding to assist with the purchase of a complete set of turnout gear for each firefighter to include coat, pants, rubber boots, gloves, and hood; and

WHEREAS, this personal protective equipment is critical to each fireman's safety and will also be used when providing mutual aid response to any requesting department county wide.

WHEREAS, the total Grant award is \$83,250, (*Federal share (90%)- \$74,925 & City's match (10%) - \$8,325*); and

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Daphne, Alabama, that: the Fiscal Year 2013 Budget is hereby amended to include a General Fund appropriation for \$8,325 the required match for the AFG Grant and the Mayor is hereby authorized to execute any and all documents relative to this grant project.

APPROVED AND ADOPTED by the City Council of the City of Daphne this _____ day of _____, 2013.

Dane Haygood, Mayor

ATTEST:

Rebecca A. Hayes, City Clerk

Ordinance 2013-35

**Fiscal 2013 Amended Budget:
New Personnel and Personnel Restructuring**

WHEREAS, Ordinance 2012-58 approved and adopted the Fiscal Year 2013 Budget on October 1, 2012; and

WHEREAS, subsequent to the adoption of the Fiscal Year 2013 budget, Ordinance 2013-25 amending the Fiscal 2013 budget was adopted by the City Council and certain personnel amendments were funded; and

WHEREAS, there is a need to increase the total personnel in the Court, Police, Public Works, and Recreation Departments and to restructure existing personnel in the Library and Fire Departments; and

WHEREAS, such new personnel and personnel restructuring have been evaluated by the Mayor and deemed necessary.

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

A) The following new positions are hereby created and the total authorized positions in the requisite departments is hereby increased as follows:

- (1) Magistrate- Municipal Court
- (2) Patrol Officers- Police
- (1) Part-Time- Grounds
- (1) Part-Time- Recreation

B) The following positions are hereby restructured with no increase in total authorized positions:

- (1) Library Svcs Tech Grade 8 to Library Computer Svcs Tech Grade 14
- (1) Part-Time Library Aide from Grade 6 to Library Technician Grade 8
- (3) Firefighters from Grade PF 20 to Fire Lieutenants Grade PF 22

The Library Services Technician, Part-Time Library Aide, and 3 Firefighter positions shall no longer be funded, filled, or authorized until such time as the City Council determines necessary.

Such new positions and restructuring shall be effective with the pay period beginning July 11, 2013.

APPROVED AND ADOPTED by the City Council of the City of Daphne, Alabama, this _____ day of _____, 2013.

Dane Haygood, Mayor

ATTEST:

Rebecca A. Hayes, City Clerk

**CITY OF DAPHNE
ORDINANCE NO. 2013-36**

AN ORDINANCE CONCERNING THE SAFETY OF BICYCLISTS

WHEREAS the City Council of the City of Daphne has determined that the safety of bicyclists is important; and

WHEREAS the City Council of the City of Daphne has determined that the following ordinance is in the interest of the public health, safety and welfare of the citizens of the City of Daphne.

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

- a) The driver of a motor vehicle overtaking and passing a bicyclist that is proceeding in the same direction shall pass the bicyclist at a safe distance between the motor vehicle and the bicyclist of not less than three (3) feet and shall maintain such clearance until safely past the overtaken bicyclist.
- b) The driver of a motor vehicle that passes a bicyclist proceeding in the same direction may not make a right turn at any intersection or into any roadway or driveway unless the turn can be made with reasonable safety.
- c) 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.

ADOPTED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF DAPHNE, ALABAMA this _____, day of _____, 2013.

Dane Haygood,
Mayor

ATTEST:

Rebecca A. Hayes,
City Clerk

**CITY OF DAPHNE, ALABAMA
ORDINANCE NO. 2013-37**

**Ordinance to Rezone Property Located
Southwest of the intersection of Park Drive and Tallent Lane,
East of the Daphne Sports Complex
Earth, Inc.**

WHEREAS, Earth, Inc., as the owner of certain real property located within the City of Daphne, Alabama, has requested that said property be rezoned from R-3, High Density Single Family Residential District to R-6 (G), Garden or Patio Home District; and,

WHEREAS, said real property is located southwest of the intersection of Park Drive and Tallent Lane, east of the Daphne Sports Complex, and more particularly described as follows:

DESCRIPTION OF PROPERTY TO BE REZONED FROM R-3, HIGH DENSITY SINGLE FAMILY RESIDENTIAL, TO AND R-6(G) GARDEN OR PATIO HOME:

Legal Description:

Beginning at the Southwest corner of Lot 27, Northern Division of Jackson Oaks Subdivision, as recorded in Map Book 3, Page 28 and recorded in Map Book 7, Page 36 Probate Court Records, Baldwin County, Alabama, run North 88°-49'-48" East, along the South line of said Lot 27, a distance of 271.86 feet; thence North 89°-13'-17" East, along the South line of Lot 28 In said subdivision, a distance of 226.43 feet; thence South 00°-39'-37" West, along the West right-of-way line of Tallent Lane, 19.86 feet; thence South 89°-07'-36" West, along the North boundary of property now or formerly of Revelation Missionary and property now or formerly of Felix B. Harrison, a distance of 414.49 feet; thence South 00°-16'-05" East, along the West line of said Harrison property and said Revelation Missionary property, a distance of 419.4 feet; thence North 89°-14'-00" East, along the South boundary of said Revelation Missionary property, a distance of 400.6 feet; thence South 00°-08'-04" East, along the West line of property now or formerly of the City of Daphne, 417.85 feet; thence South 89°-15'-47" West, along the North boundary of property now or formerly of Plan B Investments, LLC, a distance of 499.17 feet; thence North 00°-05'-40" West, along the East line of property now or formerly of the City of Daphne, a distance of 855.55 feet to the Point of Beginning.

WHEREAS, at the City of Daphne Planning Commission meeting on May 2, 2013 the Commission considered said request and failed to set forth an unfavorable recommendation which is no recommendation to the City Council of the City of Daphne that said property be rezoned; and,

WHEREAS, due notice of said proposed rezoning has been provided to the public as required by law through publication and open display at the Daphne Public Library and City Hall, a public hearing was held before the City Council on June 17, 2013; and,

WHEREAS, the City Council of the City of Daphne after due consideration and upon consideration of the recommendation of the Planning Commission, and the public hearing deemed that said application for rezoning of the above described real property is proper and in the best interest of the health, safety and welfare of the citizens of the City of Daphne, Alabama.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF DAPHNE, ALABAMA, as follows:

SECTION I: ZONING

That above described real property is hereby rezoned from R-3, High Density Single Family Residential District to R-6 (G), Garden or Patio Home District, and that the zoning ordinance and zoning map be amended to reflect the said zoning change.

SECTION III: REPEALER.

All other City Ordinances or parts thereof in conflict with the provisions of this Ordinance, in so far as they conflict, are hereby repealed.

SECTION IV: SEVERABILITY.

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

SECTION V: EFFECTIVE DATE.

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

ADOPTED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF DAPHNE, ALABAMA, THIS _____ day of _____, 2013.

Dane Haygood,
Mayor

ATTEST:

Rebecca A. Hayes, City Clerk

EARTH, INC.

ZONING AMENDMENT REVIEW

**SOUTHWEST OF THE INTERSECTION OF PARK DRIVE
AND TALLENT LANE, EAST OF THE DAPHNE
SPORTS COMPLEX**

EXHIBIT "A"

**STATE OF ALABAMA)
COUNTY OF BALDWIN)**

**DESCRIPTION OF PROPERTY TO BE REZONED FROM R-3, HIGH DENSITY
SINGLE FAMILY RESIDENTIAL, TO AND R-6(G) GARDEN OR PATIO
HOME:**

Beginning at the Southwest corner of Lot 27, Northern Division of Jackson Oaks Subdivision, as recorded in Map Book 3, Page 28 and recorded in Map Book 7, Page 36 Probate Court Records, Baldwin County, Alabama, run North 88°-49'-48" East, along the South line of said Lot 27, a distance of 271.86 feet; thence North 89°-13'-17" East, along the South line of Lot 28 In said subdivision, a distance of 226.43 feet; thence South 00°-39'-37" West, along the West right-of-way line of Tallent Lane, 19.86 feet; thence South 89°-07'-36" West, along the North boundary of property now or formerly of Revelation Missionary and property now or formerly of Felix B. Harrison, a distance of 414.49 feet; thence South 00°-16'-05" East, along the West line of said Harrison property and said Revelation Missionary property, a distance of 419.4 feet; thence North 89°-14'-00" East, along the South boundary of said Revelation Missionary property, a distance of 400.6 feet; thence South 00°-08'-04" East, along the West line of property now or formerly of the City of Daphne, 417.85 feet; thence South 89°-15'-47" West, along the North boundary of property now or formerly of Plan B Investments, LLC, a distance of 499.17 feet; thence North 00°-05'-40" West, along the East line of property now or formerly of the City of Daphne, a distance of 855.55 feet to the Point of Beginning.

**CITY OF DAPHNE
ORDINANCE NO. 2013-38**

AN ORDINANCE REGULATING COMMUNITY STANDARDS

WHEREAS, based on the evidence contained in Jules B. Gerard & Scott D. Bergthold entitled: *Local Regulation of Adult Businesses* (2013 ed.) along with the studies and various court decisions cited therein, the City Council of the City of Daphne has determined that Sexually Oriented Businesses (hereinafter defined) have negative secondary effects and are often associated with crime, downgrading of real property values and sexual exploitation; and

WHEREAS the City Council of the City of Daphne desires to minimize the negative secondary effects of Sexually Oriented Businesses in order to protect the public health, safety and welfare of the citizens, preserve the quality of life, property values and character of the City of Daphne and deter the spread of urban blight; and

WHEREAS it is the intent of the City Council of the City of Daphne to enact a content-neutral ordinance regulating Sexually Oriented Businesses to further a compelling governmental interest of minimizing the negative secondary effects of Sexually Oriented Businesses in the City of Daphne; and

WHEREAS it is not the intent of the City Council of the City of Daphne to suppress any speech activities protected by the United States Constitution or the Alabama Constitution;

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

COMMUNITY STANDARDS

Section I Definitions. As used in this section, the following words and terms shall have the following meanings:

Adult Cabaret/Entertainment Facility. A nightclub, bar, theater, concert hall, auditorium, restaurant or similar establishment which, having entertainment, staff, live performances or appearances by Nude or Topless females, or entertainment, live performances or appearances characterized by their emphasis on matters depicting, describing or relating to Nudity or Sexual Activity.

Adult Companionship Establishment. An establishment of business which provides the service of engaging in or listening to conversation, talk or discussion between an employee of the establishment and a customer, if such service is distinguished or characterized by their emphasis on matters depicting, describing or relating to Nudity or Sexual Activity.

Adult Novelty/Book Store. An establishment which, as one of its Profit Centers, offers for sale or rental 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, games, costumes, props or paraphernalia (excluding contraceptives) which are distinguished or characterized by their emphasis on matters depicting, describing or relating to Nudity or Sexual Activity.

Adult Theater. A commercial establishment where films, motion pictures, or other photographic reproductions are regularly shown or created which are distinguished or characterized by their emphasis on matters depicting, describing or relating to Nudity or Sexual Activity.

Distinguished or characterized by. To be “distinguished or characterized by” means the essential character or quality of an item. As applied in this ordinance, no business shall be classified as a Sexually Oriented Business by virtue of showing, selling, or renting materials rated NC-17 or R by the Motion Picture Association of America.

Minor. Any unmarried person under the age of eighteen (18) years who is not emancipated. An emancipated minor is or has been married or has by court order otherwise been legally freed from the care, custody, and control of his or her parents.

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.

Profit Center. A collection of related products, items or services which could be treated as a separate, stand-alone section of the business generating its own profits and losses.

Sexual Activity. Activities consisting of the following:

- (1) The stimulation, fondling or touching of male or female human genital organs or anus;
- (2) The stimulation, fondling or touching of the female breast; or
- (3) Flagellation, torture, fettering, binding or other physical restraint of any persons in a sexual relationship.

Sexually Oriented Businesses. Adult Cabaret/Entertainment Facilities, Adult Companionship Establishment, Adult Novelty/Book Stores or Adult Theaters.

Sexually Oriented Business Permit. As defined in Section II of this Ordinance.

Tattoo Facility. The geographic location at which an individual does one or more of the following for compensation:

- (1) Places an indelible mark upon the body of another individual by the insertion of a pigment in or under the skin.
- (2) Places an indelible design upon the body of another individual by production of scars.
- (3) The perforation of human tissue other than ear for a nonmedical purpose.

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.

Section II Sexually Oriented Businesses.

A. Location Restrictions of Sexually Oriented Businesses.

1. Sexually Oriented Businesses are prohibited within one thousand (1,000) feet of the following:
 - i. A public or private elementary or secondary school.
 - ii. A family day care, day care center for children, nursery, or preschool.
 - iii. A church or other facility or institution used primarily for religious purposes.
 - iv. A public park or trail system.
 - v. A Tattoo Facility.
 - vi. Another Sexually Oriented Business

2. Sexually Oriented Businesses are prohibited within five hundred (500) feet of a residential zone or any single family or multiple-family residential use.
3. Sexually Oriented Businesses shall only be permitted in the Commercial/Industrial Zone (C/I) by right and in the General Business Zone (B-2) with Planning Commission Approval, as defined in Land Use and Development Ordinance, and shall not be permitted or permitted by special exception in any other district. The table of permitted uses within the Land Use Development Ordinance shall be updated to reflect the location restrictions contained in this section.
4. No more than one Sexually Oriented Business shall be permitted within one unified development or shopping center.
5. The location restrictions and requirements contained in this section shall not apply to Sexually Oriented Businesses existing within the City of Daphne prior to the adoption of this Ordinance or to newly annexed properties where Sexually Oriented Businesses were operating for a period of 3 months immediately prior to annexation.

B. Hours of Operation. No Sexually Oriented Businesses shall be open to do business before eight o'clock a.m. (8:00 a.m.), and no Sexually Oriented Businesses shall be open to do business after twelve o'clock (12:00) midnight. No Sexually Oriented Businesses shall be open to do business on Sunday.

C. Permitting.

1. It shall be unlawful to operate a Sexually Oriented Business in the City of Daphne without a valid Sexually Oriented Business Permit.
2. An applicant for a Sexually Oriented Business Permit shall file in person with the Department of Community Development a completed application made on a form provided by the Department of Community Development accompanied by an application fee of \$50.00.
3. An application for an Sexually Oriented Business Permit shall contain:
 - i. Applicant's full name and any other names used by the applicant in the past five (5) years;
 - ii. Written proof of the age of the applicant in the form of a driver's license or other picture identification document issued by a governmental agency;
 - iii. Current business or mailing address of the applicant.

- iv. The proposed name of the proposed Sexually Oriented Business;
 - v. The proposed location of the proposed Sexually Oriented Business; and
 - vi. A legal description of the property where the Sexually Oriented Business is proposed to be located.
4. An application containing all items required by this section shall be considered complete. Within thirty (30) days of the submission of a completed application, the Department of Community Development shall issue a permit unless:
- i. The applicant is a minor;
 - ii. The location of the proposed Sexually Oriented Business is not in compliance with the locational requirement of this ordinance; or
 - iii. The application fee required by the Department of Community Development has not been paid.
5. The Sexually Oriented Business Permit shall not, and does not, relieve the applicant of other relevant licensing or permitting requirements.

D. Alcoholic Beverages.

1. An establishment dealing in alcoholic beverages shall not offer for sale or rental 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, games, costumes, props or paraphernalia which are distinguished or characterized by their emphasis on matters depicting, describing or relating to Nudity or Sexual Activity.
2. An establishment dealing in alcoholic beverages shall not show or create films, motion pictures, or other photographic reproductions which are distinguished or characterized by their emphasis on matters depicting, describing or relating to Nudity or Sexual Activity.
3. An Adult Cabaret/Entertainment Facilities and Adult Companionship Establishment shall not deal in alcoholic beverages.

E. Restrictions on Minors.

1. A Sexually Oriented Business shall not employ a minor.
2. A Sexually Oriented Business shall not permit minors within its commercial establishment unless the Sexually Oriented Business

obtains the prior written informed consent of the parent or legal guardian of the minor. The parent or legal guardian of the minor shall execute the written informed consent required under this subsection in the presence of an employee or agent of that Sexually Oriented Business.

Section III Tattoo Facilities.

(1) Location Restrictions of Tattoo Facilities.

- a. Tattoo Facilities are prohibited within five hundred (500) feet of the following:
 - i. A public or private elementary or secondary school.
 - ii. A family day care, day care center for children, nursery, or preschool.
 - iii. A church or other facility or institution used primarily for religious purposes not located in a commercial building or facility.
 - iv. A public park or trail system.
 - v. A Sexually Oriented Business.
 - vi. Another Tattoo Facility.
- b. Tattoo Facilities are prohibited within two hundred and fifty (250) feet of a residential zone or any single family or multiple-family residential use.
- c. Tattoo Facilities shall only be permitted in the General Business Zone (B-2) by right and in the Local Business Zone (B-1) with Planning Commission Approval, as defined in Land Use and Development Ordinance. The table of permitted uses within the Land Use Development Ordinance shall be updated to reflect the location restrictions contained in this section.
- d. No more than two Tattoo Facilities shall be permitted within one unified development or shopping center.
- e. The location restrictions and requirements contained in this section shall not apply to Tattoo Facilities existing within the City of Daphne prior to the adoption of this Ordinance or to newly annexed properties where Sexually Oriented Businesses were operating for a period of 3 months immediately prior to annexation.

(2) Hours of Operation. No Tattoo Facilities shall be open to do business before eight o'clock a.m. (8:00a.m.), and no Tattoo Facilities shall be open to do business after twelve o'clock (12:00) midnight.

(3) Alcoholic Beverages. A Tattoo Facility shall not deal in alcoholic beverages.

Section IV Miscellaneous.

(1) Distance Measurement. The distances provided in this Ordinance 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.

(2) City or State Regulation. Nothing in this Ordinance 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.

(3) 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 the maximum amount permitted under state law per day a violation has occurred, or by imprisonment for a period not exceeding six (6) months, or both, in the discretion of the municipal judge. Any violation of this section shall be a basis for suspension or revocation of any permits or licenses granted to the person found in violation of this section.

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

(5) Headings. All headings contained in this Ordinance are for reference only and shall no limit, modify or affect the meaning or interpretation of this Ordinance in any matter.

(6) Repealer. This Ordinance shall lift the moratorium placed on the “establishment of adult entertainment stores and tattoo parlors in the City of Daphne” enacted on February 4, 2013.

(7) Effective Date. This Ordinance shall take effect and be in force from and after the date of its approval by the City Council of the City of Daphne and publication as required by law.

**ADOPTED AND APPROVED BY THE MAYOR AND CITY COUNCIL OF
THE CITY OF DAPHNE, ALABAMA ON THIS THE ____ DAY OF
_____, 2013.**

CITY OF DAPHNE

DANE HAYGOOD, MAYOR

ATTEST:

REBECCA A. HAYES, CITY CLERK