

**PRE-MEETING AGENDA  
MOUNTAIN BROOK CITY COUNCIL**

**CITY HALL PRE-COUNCIL ROOM (A108)  
56 CHURCH STREET  
MOUNTAIN BROOK, AL 35213**

**JANUARY 11, 2016, 5:00 PM**

1. Public Assembly Ordinance amendments. (See attached information.)
2. Request for an ordinance to prohibit use of cell phones in school zones during car pool times – Dale Wisely of the Mountain Brook School System. (See attached information.)
3. Pedestrian bridge over Highway 280 on Hollywood Blvd – Virginia Smith. (See attached map.)

a public corporation and to the water works engineer of the Birmingham Industrial Water Supply System.

(Code 1996, § 18-20; Ord. No. 557, § 8)

**Sec. 46-84. Same—Duty of affected utilities and landowners to act.**

Within 30 days after the date of any notice mailed as provided in section 46-83, it shall be the duty of each public utility to which the city clerk has mailed such notice to install all sewers, mains, conduits and other necessary utility installations and to make all needed repairs thereto then necessary or contemplated to be necessary within five years. In the event any abutting property owner to whom a notice is sent pursuant to section 46-83 shall fail, within 30 days after the date of such notice, to install all necessary service lines connecting with any mains, sewers, conduits or other utility installations or to stub out or extend such connections to the property lines, all rights of such owner or his successors in title to make any such installation, except as otherwise provided in this article, shall be forfeited for a period of five years after the date of completion of such new paving.

(Code 1996, § 18-21; Ord. No. 557, § 9)

**Sec. 46-85. Same—Factors beyond applicant's control; charges where notice was not mailed.**

(a) In the event that the city manager shall, in his sound discretion, determine that due to circumstances beyond the control of any person who owns such property as to which notice was mailed as provided in section 46-83, which abuts on or is in any street or alley which has been paved or repaved within five years next preceding the application for a pavement cut permit, improvements on such property have been damaged or destroyed in such manner as to require a permit for a pavement cut to be issued pursuant to the rebuilding or repair of such destroyed or damaged improvements, then the city manager may approve the issuance of a permit for such pavement cut without requiring the payment of such special charge as provided in section 46-82.

(b) In no case shall such special charge be required where notice was not mailed as provided in section 46-83.

(Code 1996, § 18-22; Ord. No. 557, § 1)

**Sec. 46-86. Applicability of article to electric, gas, building and plumbing codes.**

Any and all provisions of the electrical code, gas code, building code and plumbing code of the city relating to excavation in streets or alleys and relating to connections with or use of sewers and utilities requiring a permit for pavement, sidewalk or curb cuts as provided in this article shall be subject to all applicable provisions of this article.

(Code 1996, § 18-23; Ord. No. 557, § 10)

**Sec. 46-87. Costs of restoration on violation of article.**

In addition to any other penalty imposed by the provisions of this Code or other ordinances of the city, any person violating the provisions of this article shall pay all costs of restoring any street, sidewalk, alley or other public way necessitated by such violation.

(Code 1996, § 18-24)

**Secs. 46-88—46-117. Reserved.**

**ARTICLE IV. PUBLIC ASSEMBLIES**

**Sec. 46-118. Definitions.**

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

*Public assembly* means any parade, march, formation, procession, group of pickets, picket line, public demonstration, movement, assemblage, gathering or display of persons, animals, floats, motor vehicles, or combination thereof including any and all runs, walks, or races, whether for charitable or competitive purposes involving persons or motorized or nonmotorized vehicles on the public ways, which requires and necessitates, or may require and necessitate, substantial traffic

control and rerouting of traffic, extraordinary police protection and crowd control or substantial prior planning, whether or not it is for the purpose of presenting a cause, or for the purpose of expressing an opinion before the general public on any particular issue, or for the purpose of protesting or influencing any state of affairs or decision rendered or to be rendered thereon whether political, economic, or social, or for the purpose of celebrating or commemorating any past, present or future event or occurrence, whether historical or otherwise; notwithstanding that such public assembly may be peaceful and devoid of noise and does not disturb the public peace; and regardless of whether the persons participating and engaging therein march, move about, or patrol, display signs, placards, flags, banners, cards or combinations thereof, or sing, shout, chant, yell or clap their hands; provided, however, that a funeral procession and service shall not be considered a public assembly.

*Residential area* means all districts zoned residence A, residence B, residence C, residence D, residence E, or estate, under the city code, including all public ways located within such districts. (Code 1996, § 18-32; Ord. No. 921, § 1-2, 5-12-1986; Ord. No. 1585, § 1, 8-25-2003)

**Sec. 46-119. Permit for parade, procession, or other public assembly required.**

It is and shall be unlawful to promote, organize, or hold or to assist in promoting, organizing or holding, or to take part or to participate in, any parade, procession, public demonstration, or other public assembly, as hereinafter defined, on the sidewalks, streets, highways or other public ways of the city, unless a permit therefor has been secured from the city manager. To secure such a permit, written application as hereinafter provided shall be made to the city manager, setting forth the information required by section 46-121(1). This application shall be submitted to the city manager's office at least 30 days before the date of the proposed parade, procession, public demonstration or public assembly. For good cause shown, the city manager may, at his discretion, accept applications past the 30-day deadline. Within five days of receipt of an application, the city

manager shall review said application and make a recommendation as to approval or disapproval of the application. The city manager then will send the application with his recommendation to the mayor for his review. The mayor shall have the discretion to approve or disapprove the application. If the mayor fails to act within 48 hours of receipt of the application, the city manager's recommendation shall be deemed final. If the mayor acts within 48 hours, then the city manager shall follow the mayor's decision. In either case, if a permit is to be granted, the city manager as hereinafter provided shall grant a written permit for such parade, procession, public demonstration or public assembly unless the application violates any provision of this article; provided, however, that the city manager, upon recommendation of the chief of police, may prescribe that streets, sidewalks, highways or public ways (all of which shall be referred to hereinafter in the article as "public ways") be used, which differ from those requested in the application, or that a different date or hour be used, for reasons of traffic safety, or public safety or convenience in the use of the public ways or as provided in section 46-124; further provided that a permit shall not be issued or approved for a public assembly to be conducted in a residential district of the city unless the city manager and/or the mayor (as herein provided) shall determine that the nature and extent of the activity does not pose a significant threat of public noise, disturbance, disruption of traffic, public discord, or otherwise adversely affect the public safety and welfare. It shall be unlawful to use for such purposes any other public ways, or to hold the parade, procession, public demonstration or public assembly at any other day or hour, than those set out in such permit as approved by the city manager. This section shall not apply to funeral processions. (Code 1996, § 18-31; Ord. No. 921, § 1-1, 5-12-1986; Ord. No. 1585, § 1, 8-25-2003)

**Sec. 46-120. City manager to issue permit.**

The city manager shall issue a permit in writing to any person, organized group or unincorporated association of persons or to any corporation organized and existing under the laws of the state or any other state, provided such corporation is

qualified to do business within the state, upon proper application therefor as hereinafter provided, permitting participation in a public assembly within the city, on the terms and conditions and pursuant to the procedure hereinafter declared.

(Code 1996, § 18-33; Ord. No. 921, § 1-3, 5-12-1986; Ord. No. 1585, § 1, 8-25-2003)

**Sec. 46-121. Form of application for permit.**

The application for a permit shall be directed to the city manager in writing, in accordance with the following provisions:

- (1) *Contents of application.* The application for permit shall contain the following items of information:
  - a. The purpose of the public assembly;
  - b. The type, nature and character of the public assembly;
  - c. The requested date of the public assembly;
  - d. The requested inclusive times of the public assembly;
  - e. The date submitted to the city manager's office;
  - f. The probable number of persons, animals, floats, and motorized vehicles which will participate or engage in the public assembly;
  - g. The requested place, area, locality and route of the public assembly; and
  - h. Any information requested by the city manager for the purpose of evaluating and addressing matters bearing on public safety and security.
- (2) *Execution of application for permit.* Where the proposed public assembly is sponsored by a corporation, an organized group or unincorporated association, the application must be executed in the name of the corporation, organized group or unin-

corporated association of persons by one having the authority of an officer or a general agent thereof.

(Code 1996, § 18-34; Ord. No. 921, § 1-4, 5-12-1986; Ord. No. 1585, § 1, 8-25-2003)

**Sec. 46-122. Contents of permit.**

The permit for a public assembly shall be issued in substantial conformity with terms proposed in the application except as otherwise provided by this article. No other terms or conditions shall be placed in the permit except for reasons of public safety, the protection of those engaging or participating in such public assembly, or the convenience of public use of public ways, as stated in sections 46-119 and 46-124. It shall be a violation of this section for any person participating or engaging in such public assembly to disregard or fail or refuse to obey any term or condition in the permit.

(Code 1996, § 18-35; Ord. No. 921, § 1-5, 5-12-1986; Ord. No. 1585, § 1, 8-25-2003)

**Sec. 46-123. Offenses while participating or engaging in, or observing the public assembly.**

It shall be a violation of this article for any person, while participating or engaging in or observing a public assembly as defined in and permitted by this article, to disobey or disregard any traffic control device, signal or regulation, except when ordered to do so by an officer of the department of police; to utter any insulting or fighting words or abusive language to any person; willfully and intentionally to disobey or disregard any lawful order of any officer of said department of police; to encourage by word or act, or both, the commission of any crime; to attempt to cordon off or assist or participate in cordoning off a public way, or entrance to any building, public or private, allowing no one else to pass; to lie prostrate or sit upon any public way so as to obstruct, impede, hinder, stifle, retard or restrain passage of traffic thereon; to assault, spit on or at or throw any object at any police officer; or to fail or refuse to disperse quickly and quietly at the expiration of the time at which the permit expires.

(Code 1996, § 18-36; Ord. No. 921, § 1-6, 5-12-1986; Ord. No. 1585, § 1, 8-25-2003)

**Sec. 46-124. Conditions on which permit is to be refused.**

The city manager shall refuse to issue a permit for public assembly when any one or more of the following conditions is apparent from clear and convincing evidence or is evident from the application. However, the city manager may, pursuant to section 46-119, issue a permit containing different terms from those in the application where the substituted terms will permit issuance of the permit.

- (1) The purpose of the public assembly, whether so stated in the application or not, is the encouragement of the commission of a crime or is the accomplishment of an unlawful demand, purpose, end or objective.
- (2) The signs, placards, banners, flags or cards to be carried, or the songs to be sung, or the chants to be chanted, encourage or advocate the commission of a crime or the accomplishment of an unlawful demand, purpose, end or objective, or are to be used in such circumstances or are of such nature as to create and present danger of a riot or a disorderly group of persons; but nothing herein contained shall cause words or language merely expressing unpopular views to be so construed.
- (3) The proposed public assembly is so large as to prohibit its control and protection by the department of police; or is so large or is such that it will substantially and materially interrupt and interfere with the free flow of commerce and trade and the use of the public ways of the city for an appreciable period of time.
- (4) The proposed public assembly is in an area prohibited by this article.
- (5) The proposed public assembly presents a clear and present danger of destruction of life or property, or serious invasions of rights of privacy or breaches of the peace, and that danger is imminent and aggravated and amounts to more than slight inconvenience or annoyance.

- (6) The proposed public assembly is at a date or hour, and/or on particular public ways, which will substantially and materially interrupt and interfere with the free flow of commerce and trade and use of the public ways of the city for an appreciable period of time, or which will substantially and materially affect public safety or convenience in the use of the public ways.

(Code 1996, § 18-37; Ord. No. 921, § 1-8, 5-12-1986; Ord. No. 1585, § 1, 8-25-2003)

**Sec. 46-125. Violation of article.**

It shall be a violation of this article to participate or engage in, or to aid, abet, command, counsel or induce any person to participate or engage in a public assembly as herein defined, in the city, without there having been obtained prior thereto a permit for such public assembly.

(Code 1996, § 18-38; Ord. No. 921, § 1-9, 5-12-1986; Ord. No. 1585, § 1, 8-25-2003)

**Sec. 46-126. Action upon public assembly becoming violent.**

Upon any public assembly becoming violent, the senior ranking officer of the department of police who is present shall audibly call a halt to such public assembly and shall cause it to forthwith disperse; and it shall be a violation of this section for any person who having been so ordered, willfully and intentionally to fail or refuse to disperse quickly and quietly.

(Code 1996, § 18-39; Ord. No. 921, § 1-10, 5-12-1986; Ord. No. 1585, § 1, 8-25-2003)

**Sec. 46-127. Presumption of evidence.**

When any object is thrown at any police officer of the city, or at any other person, it shall be presumed that such public assembly has become violent.

(Code 1996, § 18-40; Ord. No. 921, § 1-11, 5-12-1986; Ord. No. 1585, § 1, 8-25-2003)

**Sec. 46-128. Annual Mountain Brook High School homecoming parade.**

Section 46-124(4) shall not apply to the annual Mountain Brook High School homecoming parade, because of the established tradition of said

parade and because of the substantial community interest in this annual event. All other provisions of this article shall apply to said parade.

(Code 1996, § 18-41; Ord. No. 921, § 1-12, 5-12-1986; Ord. No. 1585, § 1, 8-25-2003)

**Sec. 46-129. Waiver of law prohibited.**

No official of the city and no police officer of the city has or possesses the authority to waive any provision of this article.

(Code 1996, § 18-42; Ord. No. 921, § 1-13, 5-12-1986; Ord. No. 1585, § 1, 8-25-2003)

**Sec. 46-130. Administration.**

The city manager shall administer this article and shall exercise the limited discretion herein conferred with the uniformity of method of treatment upon the facts of each application, free from improper or inappropriate considerations and from unfair discrimination, with a systematic, consistent and just order of treatment, and with reference to the convenience of the public ways in the city. In the event of the city manager's absence from the city or his inability to administer this article because of illness or any other good reason, this article shall be administered by the city clerk, and the city clerk may exercise the discretion conferred upon the city manager by this article until the city manager returns to the city or the city manager again becomes able to administer this article.

(Code 1996, § 18-43; Ord. No. 921, § 1-14, 5-12-1986; Ord. No. 1585, § 1, 8-25-2003)

**Sec. 46-131. Punishment for violation.**

Any person violating any of the provisions of this article shall, upon conviction, be fined not less than \$1.00 nor more than \$200.00 or be sentenced to imprisonment or hard labor for the city for a term not exceeding six months or both, fine and imprisonment to be at the discretion of the municipal judge trying the case.

(Code 1996, § 18-45; Ord. No. 921, § 1-16, 5-12-1986; Ord. No. 1585, § 1, 8-25-2003)

**City of Mountain Brook**  
**EVENT PERMIT APPLICATION**  
**FOR EVENT, PARADE, PROCESSION, OR OTHER ASSEMBLY**  
*(Applications submitted less than 30 days prior to the event may not be approved.)*

Date: \_\_\_\_\_ Individual or organization:: \_\_\_\_\_

Contact Information:

(a) Name: \_\_\_\_\_ (b) Title: \_\_\_\_\_

(c) Address: \_\_\_\_\_

(d) Tel. No. \_\_\_\_\_ (e) Cell No. \_\_\_\_\_

(g) Email address: \_\_\_\_\_ (f) Fax No. \_\_\_\_\_

Describe the type, nature, character and purpose of the event (list all activities):

\_\_\_\_\_  
\_\_\_\_\_

Give the inclusive date(s)/time(s) of the event: \_\_\_\_\_

Give the number and composition of the event:	<u>Component</u>	<u>Number</u>
People (riding/walking)	_____	_____
Motor Vehicles	_____	_____
Floats	_____	_____
Animals	_____	_____
Other	_____	_____

Identify the place, area, locality, and/or route of the assembly:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Will it be necessary to block any street or sidewalk during the course of the assembly/event?

If so, explain \_\_\_\_\_

Will alcoholic beverages be sold and/or served? If so, explain circumstances. \_\_\_\_\_

Will money be solicited? If so, explain circumstances? \_\_\_\_\_

Will signs, placards, banners, flags or cards be displayed? \_\_\_\_\_

List all vendors who will be supplying food, drink(s), games, booths, etc.: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

Applicant Signature: \_\_\_\_\_

Telephone Number: ( ) \_\_\_\_\_

\*\*\*\*\*

Approved this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_

\_\_\_\_\_  
Lawrence T. Oden, Mayor

or

\_\_\_\_\_  
Sam S. Gaston, City Manager

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**Parade Safety & Restrictions\***

- **Candy or other objects shall not be thrown or otherwise transferred to anyone along the parade route from vehicles or floats that are active within the parade.**
- **No stopping along the parade route.**
- **All float drivers must be properly licensed and insured. All drivers should be adults.**
- **All floats must have adequate lines of vision for the the drivers to see.**
- **No float or parade participant may turn out of the designated parade route without police approval and direction.**
- **No float participating in the parade event shall exceed 13 feet in height as measured from the ground to the highest point of the float.**

**\*Strict adherence to these restrictions must be maintained. Failure to adhere to these restrictions may cause immediate expulsion from the parade of the offending party, may cause the immediate stoppage of the parade and will jeopardize future parades. Organizing parties must ensure all drivers in the parade are furnished a copy of these restrictions.**

I have read, understand and agree to comply with these guidelines. \_\_\_\_\_  
Signature

**Police Department Remarks**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Signed: \_\_\_\_\_ Date: \_\_\_\_\_

\*\*\*\*\*

**Revenue Department Remarks:**

\_\_\_\_\_  
\_\_\_\_\_

Signed: \_\_\_\_\_ Date: \_\_\_\_\_

**The approved application serves as the permit.**

If you have any questions, please contact Doris Kenny at 802-3800 or [kennyd@mtnbrook.org](mailto:kennyd@mtnbrook.org) .

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**Sam Gaston**

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**From:** WISELY, DALE  
**Sent:** Friday, January 08, 2016 6:57 AM  
**To:** 'gastons@minbrook.org'  
**Subject:** FW: possible ordinance  
**Attachments:** ORDINANCE.docx

To Members of the City Council:

A few years ago, I spoke to a Dr. Dicky Barlow, Chief Cook and Billy Pritchard about the possibility of asking the City Council to consider an ordinance prohibiting the use of cell phones by motorists in school zones during car pool hours. I want to respectfully ask you to consider this matter.

This was prompted by my having recently observed a driver, on a cell phone, sail through a red light, in the middle of kids walking in for school, on Montevallo and Church. Fortunately, she did not collide with any of our students and it was a non-event. But, we routinely see drivers in carpools with phones to their ears, with large SUVs full of children.

I have taken the liberty of drafting an ordinance which is attached. It would grieve me if you were to find this presumptuous. I thought it might be useful to you to see what an ordinance like this might look like. I used an existing MB ordinance as a model. The language of the draft is based on a state law in Louisiana, where it is illegal to use a cell phone in school zones. I am sure it would have to be extensively reworked by people who actually know what they are doing.

I think most people are now aware of the role of distracted driving in causing accidents. As you may know, for 15 years I have been studying teenage driving in order to provide workshops for parents on teenage driving. This has caused me to try to keep up with the research on distracted driving. Much of the national conversation around this has properly been focused on texting while driving. If you were to consider some kind of action regarding cell phone use in school zones, I am sure you would want to consider that it already illegal, statewide to text while driving.

One unfortunate and unintended consequence of the focus on *texting* while driving is that it has caused people to underestimate the risk of *talking* on the telephone while driving. A fair way to summarize the research is to say that texting while driving increases a driver's risk of causing an accident about tenfold. *Talking* on one's phone while driving increases the chances of accident about fourfold. That is not a trivial increase in the risk of accidents which could cause severe injury or death, including injury and death of school children. The benchmark often employed by researchers to evaluate the risk of distracted driving is to compare it to DUI. In many studies, the impairment of a driver from use of a cellphone while driving is similar to the impairment of drivers under the influence of alcohol. Given that, I do not see a way around a conclusion that when motorists are on their phones, in school zones, during car pool times, our students are at greater risk of injury or death than otherwise.

Finally, let me address the question of enforcement. It is clear to me that there are problems associated with enforcing measures of this kind. First, I do believe there would be ample opportunities to cite drivers who are on their phones during car pool times in school zones. But, even if there were not, I do think laws and ordinances of this kind have an educational value, not to mention that there actually are people who obey laws even when the risk of getting caught are low!

I am at your service and looking forward to any conversations about this matter you find appropriate.

Thanks,

Dale Wisely

1/8/2016

## ORDINANCE

### **AN ORDINANCE TO PROHIBIT THE USE OF WIRELESS COMMUNICATION DEVICES WHILE OPERATING A MOTOR VEHICLE IN SCHOOL ZONES BETWEEN THE HOURS OF 7:30 A.M. AND 8:00 A.M. AND BETWEEN THE HOURS OF 2:30 P.M. AND 3:00 P.M. AND WHEN PEDESTRIANS, WHO ARE MINORS, ARE VISIBLE IN SCHOOL ZONES.**

BE IT ORDAINED by the City Council of the City of Mountain Brook, Alabama, as follows:

1. **Provisions.** It shall be unlawful for the driver of a motor vehicle in a School Zone to operate a wireless communication device between the hours of 7:30 A.M. and 8:00 A.M. and between the hours of 2:30 P.M. and 3:15 P.M. and when pedestrians, who are minors, are visible in school zones. Operating a wireless communication device shall include engaging in a call; writing, sending, or reading text-based communications; accessing, reading, or posting to a social network site or accessing or adding any information to the wireless communication device. The provisions of this Section shall only apply within a school zone upon a public road or highway during posted hours when signs are located in a visible manner in each direction that indicate the use of a hand-held wireless communications device is prohibited while operating a motor vehicle.
2. **"Wireless telecommunications device" defined.** "Wireless telecommunications device" means a cellular telephone, a text-messaging device, a personal digital assistant, a stand-alone computer, or any other substantially similar wireless device that is readily removable from the vehicle and is used to write, send, or read text or data through manual input. A "wireless telecommunications device" shall not include any device or component that is permanently affixed to a motor vehicle. It does not include a hands-free wireless telephone, an electronic communication device used hands-free, citizens band radios, citizens band radio hybrids, commercial two-way radio communications devices, two-way radio transmitters or receivers used by licensees of the Federal Communication Commission in the Amateur Radio Service, or electronic communication devices with a push-to-talk function.
3. **Violations.**
  - (1) Violations of this ordinance shall constitute a moving violation.
  - (2) The first violation of the provisions of this ordinance shall be punishable for a fine of not more than \$XX.
  - (3) Each subsequent violation shall be punishable by a fine of not more than \$XX
  - (4) If a person is involved in a collision at the time of the violation, then the fine shall be equal to double the amount of the standard fine imposed in this ordinance and the law enforcement officer investigating the collision shall indicate on the written report that the person was using a wireless communication device at the time of the collision.
4. **Exceptions:** The provisions of this ordinance shall not apply to a person who uses a wireless telecommunications device and does any of the following:
  - (1) Reports a traffic collision, medical emergency, or serious road hazard.

(2) Reports a situation in which the person believes his personal safety is in 24 jeopardy.

(3) Reports or averts the perpetration or potential perpetration of a criminal act against the driver or another person.

(4) Operates a wireless telecommunications device while the motor vehicle is lawfully parked.

(5) Uses a wireless telecommunications device in an official capacity as an operator of an authorized emergency vehicle.

5. **Repealer.** All ordinances or parts of ordinances heretofore adopted by the City Council of the City of Mountain Brook, Alabama that are inconsistent with the provisions of this ordinance are hereby expressly repealed.
6. **Severability.** If any part, section or subdivision of this ordinance shall be held unconstitutional or invalid for any reason, such holding shall not be construed to invalidate or impair the remainder of this ordinance, which shall continue in full force and effect notwithstanding such holding.
7. **Effective Date.** This ordinance shall become effective immediately upon adoption, publication as provided by law, and the installation of appropriate traffic signage indicating that such turns are prohibited.

