

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

**CITY HALL COUNCIL CHAMBER (A108)
56 CHURCH STREET
MOUNTAIN BROOK, AL 35213**

JANUARY 9, 2023, 5:45 P.M.

As a matter of convenience, members of the public are invited to listen, observe and participate in public meetings by Internet video conference. Presenters and others interested in a particular matter for discussion are encouraged to attend the meeting in-person. The City is not responsible for technical issues that may occur that interfere with the virtual meeting. The City Council, at its sole discretion, may proceed with its in-person business meeting regardless of whether virtual attendees can hear and/or observe the proceedings. The City intends to make the meeting available by way of the Zoom app (re: Meeting ID 801-559-1126, password 01092023)

1. Amwaste update-Rick Sweeney, District Manager of Amwaste
2. Agreement with City of Birmingham on maintenance of Park Lane Road-Mayor Welch (See attached information.)
3. Tree Protection ordinance update-Tyler Slaten and Whit Colvin (See attached information.)
4. Sixty (60) day extension request on the Caldwell Mill Road bridge project-Sammy Harton of Gresham Smith (See attached information. This item may be added to the formal agenda.)
5. Mirror on Right-of-Way at 2820 Cherokee Road-Whit Colvin (See attached information.)
6. Emily Christian to address the City Council regarding real estate and other signs at street corners on the weekends. (See attached information.)
7. Conditional Use application for Magic City Cheer located at 229 Country Club Park, in the former 32 Degrees Yogurt location-Dana Hazen (See attached information. This item may be added to the formal agenda.)

**INTERLOCAL COOPERATION AGREEMENT
BETWEEN
CITIES OF MOUNTAIN BROOK & BIRMINGHAM**

Road Repair – Lane Park Road

The **CITY OF MOUNTAIN BROOK, ALABAMA** (“Mountain Brook”), a municipal corporation, and the **CITY OF BIRMINGHAM, ALABAMA** (“Birmingham”), a municipal corporation, enter into this **INTERLOCAL COOPERATION AGREEMENT** (“Agreement”). Mountain Brook and Birmingham individually may be referred herein as a “Party” and collectively as “Parties.”

WHEREAS, Section 11-102-1, Code of Alabama, provides that: “Except as otherwise provided in this chapter or as otherwise prohibited by law, any county or incorporated municipality of the State of Alabama may enter into a written contract with any one or more counties or incorporated municipalities for the joint exercise of any power or service that state or local law authorizes each of the contracting entities to exercise individually. For purposes of this chapter, it is sufficient if each of the contracting entities has the authority to exercise or perform the power or service which is the subject of the contract regardless of the manner in which the power or service shall be exercised or performed, provided that at least one of the contracting parties has the authority to exercise the power or service in the manner agreed upon by the parties. The joint contract may provide for the power or service to be exercised by one or more entities on behalf of the others or jointly by the entities.”; and

WHEREAS, pursuant to Section 11-102-1 *et seq.*, Code of Alabama, the Parties desire to cooperate in undertaking road repair on Lane Park Road (the “Project”), which provides for patch repair work to portions of the right-of-way on Lane Park Road (a public street connecting the municipal boundaries of both Parties);

WHEREAS, the subject street is a well-traveled and important connector that is regularly utilized by the residents of both Birmingham and Mountain Brook; and

WHEREAS, the total cost for Construction, Engineering and Inspection services required on the Project is estimated to be less than \$50,000.00; and

WHEREAS, Mountain Brook will undertake patch repair work for the Project at no cost to the City of Birmingham; and

WHEREAS, it is in the public interest of the Parties and their respective citizens to cooperate in the implementation of the Project as provided herein; and

WHEREAS, as is contemplated and authorized by Section 11-102-1 *et seq.*, Code of Alabama, the public interests of Mountain Brook and Birmingham are promoted by undertaking the Project as the Project jointly benefits each of the two Parties and their citizens;

NOW WHEREFORE, In consideration of the premises and mutual covenants stated herein, and other good and valuable consideration, the receipt and sufficiency of which is acknowledged, Birmingham and Mountain Brook agree as follows:

- I. **PURPOSE.** This Agreement is entered into by the Parties for the purpose of defining their respective duties and the responsibilities with respect to the Project in order to best serve the interests of their respective citizens through the development of improved road infrastructure that will enhance benefits to the public including safety and mobility.
- II. **IMPLEMENTATION AND ADMINISTRATION OF PROJECT:** The City of Birmingham grants to the City of Mountain Brook the authority to perform patch repair work to portions of the City of Birmingham's right-of-way on Lane Park Road (a public street connecting the municipal boundaries of both Parties). The Project will be administered by Mountain Brook and Mountain Brook agrees to enter into any agreements necessary to undertake the Project and make the payments contemplated in such agreements, subject to the terms and covenants herein. The City of Mountain Brook shall provide at least 48 hours notice to the City of Birmingham before any work is done in the right-of-way and shall notify the City of Birmingham immediately upon completion of the work. Birmingham shall inspect the completed work on the Project and shall notify the City of Mountain Brook within 72 hours if any defect is found in the roadway relating to the work performed on the Project by Mountain Brook. Mountain Brook shall correct any defect within a reasonable time which shall not exceed ten (10) days.
- III. **EFFECTIVE DATE:** This Agreement will become effective on the date on which the last of all of the following has occurred: (1) Approval by the City of Birmingham by adoption of an ordinance of general and permanent operation; (2) Approval by the City of Mountain Brook by adoption of an ordinance of general and permanent operation; (3) the respective, duly authorized representatives of the Parties have executed this Agreement and it has been attested to by the respective City Clerk of each City; (4) any other legally required action has been taken (the "Effective Date").
- IV. **TERM.** This Agreement shall commence on its Effective Date and continue in effect for one hundred eighty (180) days thereafter or, once the Project is commenced, until Project is completed, whichever last occurs. Notwithstanding any other provision, the duration of the Agreement, shall not exceed three years.
- V. **ESTIMATED COSTS OF PROJECT.** Mountain Brook will be responsible for paying the actual costs incurred on the Project. Birmingham will not be responsible for payment or reimbursement of any costs incurred on the Project by Mountain Brook.
- VIII. **DEFAULT.** The Parties acknowledge and agree that any material breach, delay or other failure by either of them to perform their respective obligations hereunder is a default that will have a detrimental impact on the operations of the other Party (a "Default"). A Default hereunder includes, but is not limited to, failure by Mountain Brook to timely pay any contractor retained with respect to the Project. In the event

of a Default by either Party hereunder, the following understanding applies: If the defaulting Party fails to cure the Default within thirty (30) days after receipt of written notice thereof from the non-defaulting Party, the non-defaulting Party, in addition to all other remedies available to it at law or provided herein, may terminate this Agreement effective immediately upon its provision of a second written notice.

IX. MISCELLANEOUS.

- a. Mountain Brook shall duly appropriate and finance their anticipated respective costs of the Project from whatever revenue sources they deem appropriate.
- b. Unless otherwise agreed in writing, the Parties expressly agree that, following the construction of the Project, neither of them assumes any risk or future liability, or any future responsibility for maintaining any portion of any Project improvement that is located outside their respective jurisdiction.
- c. Except as expressly provided in this Agreement, no Party shall have any power to incur any debt which shall become the responsibility of any other contracting party.
- d. The execution of this Agreement or the performance of any act pursuant to the provisions thereof shall not be deemed or construed to have the effect of creating a joint venture or the relationship of principal-agent or partnership between the Parties. The Parties agree that nothing contained in this Agreement, and no act of any Party, shall be deemed or construed to create any third-party beneficiary.
- e. Except as otherwise provided by law and as limited by this Agreement between the parties, any entity which contracts to perform or exercise any service or power shall have the full power and authority to act within the jurisdiction of all contracting entities to the extent necessary to carry out the purposes of the Agreement.
- f. This Agreement may be executed (a) in counterparts, a complete set of which together shall constitute an original and (b) in duplicates, each of which shall constitute an original. Copies of this Agreement showing the signatures of the respective parties, whether produced by photographic, digital, computer, or other reproduction, may be used for all purposes as originals.
- g. With respect to immigration law compliance, the Parties represent and warrant to the other that:
 - (i) They do not knowingly employ, hire for employment, or continue to employ, in Alabama, an "unauthorized alien," as defined by the Beason-Hammon Alabama Taxpayer and Citizen Protection Act, §31-13-1, *et seq.*, Code of Alabama 1975, as amended (the "Act");
 - (ii) They will enroll in the E-Verify program prior to performing any work on the Project in Alabama and shall provide documentation establishing that

the Party is enrolled in the E-Verify program. During the performance of this Agreement, Parties shall participate in the E-Verify program as required under the terms of the Act and shall verify every employee in Alabama that is required to be verified according to the applicable federal rules and regulations;

- (iii) Parties represent and warrant that they shall not hire, retain or contract with any subcontractor to work on the Project in Alabama which the Party knows is not in compliance with the Act; and
 - (iv) By signing this Agreement, the contracting Parties affirm, for the duration of the Agreement, that they will not violate federal immigration law or knowingly employ, hire for employment, or continue to employ an unauthorized alien within the State of Alabama. Furthermore, a Party found to be in violation of this provision shall be deemed in breach of the agreement and shall be responsible for all damages resulting therefrom.
- h. If any provision of this Agreement is declared by a court having jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected; the rights and obligations of the parties shall be construed and enforced as if the agreement did not contain the particular provision held to be invalid.
 - i. This Agreement shall be governed by and construed in accordance with the laws of the State of Alabama as interpreted by Alabama courts.
 - j. As between the Parties, the Parties shall each be responsible for any and all liability resulting from the acts and/or omissions of their respective employees, officers, directors, agents and contractors. Neither Party shall be liable to the other for any liability resulting from the acts and/or omissions of the other Party's employees, officers, directors, agents and contractors. The Parties and their respective officers and employees shall not be deemed to assume any liability for the acts, omissions, and negligence of the other Party or its respective officers and employees.
 - k. Nothing contained herein shall be construed to waive the necessity of a Party complying with the terms and conditions of applicable ordinances or regulations or as conflicting with the responsibilities of either Party under any applicable local, State or Federal law, or as limiting the rights of either Party to take appropriate action pursuant to such laws or regulations. Furthermore, this Agreement is not intended to expand or contract the regulatory authority of either Party or any other public agency. All existing regulatory matters of jurisdiction and exemptions from such jurisdiction under all federal and state laws and regulations remain in full force and effect.

l. Mountain Brook acknowledges and agrees that Birmingham, as a matter of public policy, encourages minority- and women-owned business participation to the maximum extent possible. This policy includes historically under-utilized business enterprises such as architectural firms, engineering firms, investment banking firms, other professional service providers, and construction contractors as part of Birmingham's business, economic and community revitalization programs.

m. During the performance of this Agreement, the Parties agrees as follows:

(1) The Parties will not discriminate against any employee or applicant for employment because of race, color, religion, sex, gender identity, sexual orientation, disability, familial status, or national origin. The Parties will take action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, gender identity, sexual orientation, disability, familial status, or national origin. Such action shall include but not be limited to the following: Employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Parties agree to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.

(2) In the event of Mountain Brook's noncompliance with the nondiscrimination clauses of this Agreement, this Agreement may be canceled, terminated or suspended in whole or in part and Mountain Brook may be declared ineligible for further municipal contracts with Birmingham.

n. Unless otherwise provided herein, all notices or other communications required or permitted to be given under this Agreement shall be in writing and shall be deemed to have been duly given if delivered personally in hand or sent via certified mail, return receipt requested, postage prepaid, and addressed to the appropriate Party at the following addresses or to any other person at any other address as may be designated in writing by a Party:

To Mountain Brook:

City of Mountain Brook
P. O. Box 130009
56 Church Street
Mountain Brook, AL 35213
Attention: City Manager

Copy to:

City Attorney
Bishop, Colvin, Johnson & Kent, LLC
1910 First Avenue North
Birmingham, Alabama 35203

To Birmingham:

City of Birmingham
Mayor's Office
710 20th Street North, 3rd Floor
Birmingham, AL 35203

Copy to:

City Attorney
City of Birmingham
710 20th Street North, 6th Floor
Birmingham, AL 35203

- o. Nothing contained in this Agreement constitutes a waiver of the sovereign immunity of any Party hereto under applicable law.
- p. The section headings herein are for convenience only and are not to be construed as modifying or governing the language in the section referred to.
- q. This Agreement constitutes the entire agreement between the Parties with respect to the subject matter hereof, and no modifications hereof shall be effective unless executed in writing by duly authorized personnel of the Parties. All previous communications between the Parties, whether verbal or written, with reference to the subject matter hereof are hereby superseded by this Agreement.

(Signature Page Follows)

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their undersigned, duly authorized representatives as reflected below.

CITY OF BIRMINGHAM, ALABAMA

Date

BY: _____
Randall Woodfin, Mayor

ATTEST:

Lee Frazier, City Clerk

APPROVED AS TO FORM:

Assistant City Attorney / Date

CITY OF MOUNTAIN BROOK, ALABAMA

Date

BY: _____

Printed Name: _____

Title: _____

ATTEST:

City Clerk

ORDINANCE NUMBER _____

**AN ORDINANCE
APPROVING AN INTERLOCAL COOPERATION AGREEMENT
BETWEEN THE CITY OF BIRMINGHAM
AND THE CITY OF MOUNTAIN BROOK
FOR IMPROVEMENTS LANE PARK ROAD**

WHEREAS, the **CITY OF BIRMINGHAM, ALABAMA** (“Birmingham”), a municipal corporation and the **CITY OF MOUNTAIN BROOK, ALABAMA** (“Mountain Brook”), a municipal corporation, desire to enter into an **INTERLOCAL COOPERATION AGREEMENT** (“Agreement”) for road repair on Lane Park Road (the “Project”), which provides for patch repair work to portions of the right-of-way on Lane Park Road (a public street connecting the municipal boundaries of both Parties; and

WHEREAS, Section 11-102-1, Code of Alabama, provides that: “Except as otherwise provided in this chapter or as otherwise prohibited by law, any county or incorporated municipality of the State of Alabama may enter into a written contract with any one or more counties or incorporated municipalities for the joint exercise of any power or service that state or local law authorizes each of the contracting entities to exercise individually. For purposes of this chapter, it is sufficient if each of the contracting entities has the authority to exercise or perform the power or service which is the subject of the contract regardless of the manner in which the power or service shall be exercised or performed, provided that at least one of the contracting parties has the authority to exercise the power or service in the manner agreed upon by the parties. The joint contract may provide for the power or service to be exercised by one or more entities on behalf of the others or jointly by the entities.”; and

WHEREAS, the subject street is a well-traveled and important connector that is regularly utilized by the residents of both Birmingham and Mountain Brook; and

WHEREAS, the total cost for Construction, Engineering and Inspection services required on the Project is estimated to be less than \$50,000.00; and

WHEREAS, Mountain Brook will undertake patch repair work for the Project at no cost to the City of Birmingham; and

WHEREAS, it is in the public interest of the Parties and their respective citizens to cooperate in the implementation of the Project as provided herein; and

WHEREAS, as is contemplated and authorized by Section 11-102-1 *et seq.*, Code of Alabama, the public interests of Mountain Brook and Birmingham are promoted by undertaking the Project as the Project jointly benefits each of the two Parties and their citizens;

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

SECTION 1. The City Council of the City of Mountain Brook, Alabama hereby, authorizes the Mayor or City Manager to enter into the attached Interlocal Cooperation Agreement with the City of Birmingham, Alabama for road repair on Lane Park Road (the “Project”), which provides for patch repair work to portions of the right-of-way on Lane Park Road (a public street connecting the municipal boundaries of both Parties). The Project will be administered by Mountain Brook. The total cost for Construction, Engineering and Inspection services required on the Project is estimated to be less than \$50,000.00. Mountain Brook will be responsible for paying the actual costs incurred on the Project. Birmingham will not be responsible for payment or reimbursement of any costs incurred on the Project by Mountain Brook. The Term of the Agreement shall be one hundred eighty (180) days or until the Project is completed, but in no event shall the duration of the Agreement exceed a period of three (3) years from its effective date. The Mayor or City Manager is further authorized to execute any other documents necessary to accomplish the purposes of the Agreement.

SECTION 2. The provisions of this Ordinance are hereby declared to be severable. If any of these sections, provisions, sentences, clauses phrases, or parts is held to be unconstitutional or void, the remainder shall continue in full force and effect.

SECTION 3. This Ordinance shall become effective upon publication or as otherwise required by law.

ADOPTED: This __ day of _____, 2022.

Council President

APPROVED: This ____th day of _____, 2022.

Stewart Welch, Mayor

CERTIFICATION

I, Steven Boone, City Clerk of the City of Mountain Brook, Alabama, hereby certify the above to be a true and correct copy of an Ordinance adopted by the City Council of the City of Mountain Brook, Alabama, as its meeting held on _____, 2022, as same appears in the minutes of record of said meeting, and published by posting copies thereof on _____, 2022, at the following public places, which copies remained posted for five (5) days as required by law.

City Hall, 56 Church Street
Gilchrist Pharmacy, 2850 Cahaba Road
The Invitation Place, 3150 Overton Road

Steven Boone, City Clerk

Adopted and approved on this the _____ day of _____, 2022.

Stewart Welch, Mayor

Attest: _____
Steve Boone, City Clerk

ORDINANCE NO. _____ - CITY OF MOUNTAIN BROOK TREE ORDINANCE

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

Section 1. Purpose.

To enhance the quality of life and the present and future health, safety, and welfare of all citizens, to enhance property values, and to ensure proper planting and care of trees on public property, the City Council herein delegates the authority and responsibility for managing public trees, creates a Tree Advisory Board, establishes practices governing the planting and care of trees on public property, and makes provision for the emergency removal of trees on private property under certain conditions.

Section 2. Definitions.

As used in this Article, the following words and phrases shall have the meanings indicated:

Damage—any injury to or destruction of a tree, including but not limited to: uprooting; severance of all or part the root system or main trunk; storage of material on or compaction of surrounding soil; a substantial change in the natural grade above a root system or around a trunk; surrounding the tree with impervious paving materials; or any trauma caused by accident or collision.

Nuisance — any tree, or limb thereof, that has an infectious disease or insect; is dead or dying; obstructs the view of traffic signs or the free passage of pedestrians or vehicles; or threatens public health, safety and welfare.

Parkway—the area along a public street between the curb and the sidewalk; or if there is no curb or sidewalk, the unpaved portion of the area between the street right-of-way line and the paved portion of the street or alley.

Public property— all grounds and rights-of-way (ROWs) owned or maintained by the City.

Public tree— any tree or woody vegetation on city-owned or city-maintained property or rights-of-way.

Top or Topping—the non-standard practice of cutting back of limbs to stubs within a tree's crown to such a degree so as to remove the normal canopy and disfigure the tree.

Section 3. Authority and power.

(a) *Delegation of authority and responsibility.* The City Manager or his designee, hereinafter referred to as the "Director", shall have full authority and responsibility to plant,

prune, maintain and remove trees and woody plants growing in or upon all municipal streets, rights-of-ways, city parks, and other public property. This shall include the removal of trees that may threaten electrical, telephone, gas, or any municipal water or sewer line, or any tree that is affected by fungus, insect, or other pest disease.

(b) *Coordination among city departments.* All city departments will coordinate as necessary with the Director and will provide services as required to ensure compliance with this Ordinance as it relates to streets, alleys, rights-of-way, drainage, easements and other public properties not under direct jurisdiction of the Director.

(c) *Interference.* No person shall hinder, prevent, delay, or interfere with the Director or his agents while engaged in carrying out the execution or enforcement of this Ordinance.

Section 4. Tree Advisory Board.

(a) *Board.* The Board of Landscape Design shall serve as the "Tree Advisory Board," hereinafter referred to as the "Board," for purposes of this Ordinance.

(b) *Duties.* The Board shall act in an advisory capacity to the Director and shall, in addition to the other duties set forth in Section 2-295 of the Mountain Brook City Code:

- (1) Coordinate and promote Arbor Day activities;
- (2) Review and update a five-year plan to plant and maintain trees on city property;
- (3) Support public awareness and education programs relating to trees;
- (4) Review city department concerns relating to tree care;
- (5) Submit an annual report of its activities to the city council;
- (6) Assist with the annual application to renew the Tree City USA designation;
- (7) Develop of a list of recommended trees for planting on city property, and a list of prohibited species; and
- (8) Other duties that may be assigned by City Council.

Section 5. Tree planting and care standards.

(a) *Standards.* All planting and maintenance of public trees shall conform to the American National Standards Institute (ANSI) A-300 "Standards for Tree Care Operations" and shall follow all tree care Best Management Practices (BMPs) published by the International Society of Arboriculture.

(b) *Requirements of franchise utility companies.* The maintenance of public trees for utility clearance shall conform to all applicable utility industry standards.

(c) *Preferred species list.* The Director shall maintain an official list of desirable tree species for planting on public property in two size classes: Ornamental (20 feet or less in height at maturity) and Shade (greater than 20 feet at maturity). Trees from this approved list may be planted without special permission; other species may be planted with written approval from the Director.

(d) *Planting distances.* The Director shall develop and maintain an official set of spacing requirements for the planting of trees on public property. No tree may be planted within the visibility triangle of a street intersection or within ten (10) feet of a fire hydrant.

(e) *Planting trees under electric utility lines.* Only trees listed as Ornamental trees on the official city tree species list may be planted under or within fifteen (15) lateral feet of any overhead utility wire.

(f) *Protection of public trees during construction.* Any person, firm, corporation, or city department performing construction near any public tree must employ appropriate measures to protect the tree, including, but not limited to, placing barriers around the tree to prevent damage.

Section 6. Prohibition against harming public trees.

(a) It shall be unlawful for any person, firm or corporation to damage, remove, or cause the damage or removal of a tree on public property without written permission from the Director.

(b) It shall be unlawful for any person, firm or corporation to attach any cable, wire or signs or any other object to any street, park, or public tree.

(c) It shall be unlawful for any person, firm or corporation to "top" any public tree. Trees severely damaged by storms or other causes, where best pruning practices are impractical may be exempted from this provision at the determination of the Director.

Section 7. Adjacent owner responsibility.

(a) The owner of land adjacent to any city street or highway, when acting within the provisions of this Ordinance, may plant and maintain trees in the adjacent parkway area. Property owners are responsible for the reasonable and routine maintenance of trees and other landscaping in the adjacent parkway area.

(b) No property owner shall allow a tree, or other plant growing on his or her property or within the adjacent parkway to obstruct or interfere with pedestrians or the view of drivers, thereby creating a hazard. If an obstruction persists, the Director shall notify the property owner to prune or remove the tree or plant. If the owner fails to comply with the notice, the City may undertake the necessary work to address the issue(s).

Section 8. Certain trees declared a nuisance.

(a) Any tree, or limb thereof, on private property determined by the Director to have contracted a lethal, communicable disease or insect; to be dead or dying in close proximity to the public right of way; to obstruct the view of traffic signs or the free passage of pedestrians or vehicles; or that threatens public health, safety, and welfare is declared a nuisance and the City may require its treatment or removal.

(b) Private property owners have the right to remove or treat nuisance trees on their property at their own expense.

Section 9. Violations and penalty.

Any person, firm or corporation violating any provision of this Ordinance shall be deemed guilty of a misdemeanor and shall be subject to a fine not to exceed five hundred dollars (\$500.00) for each offense.

Section 10. Appeals.

Appeals to decisions by the Director, the Tree Advisory Board, or penalties imposed after violations of this ordinance, shall be heard by City Council



January 6, 2023

Mr. Sam Gaston
City Manager
City of Mountain Brook
56 Church Street
Mountain Brook, AL 35213

Subject: Time Extension Request Recommendation
Caldwell Mill Road Bridge Replacement
Mountain Brook, AL
Gresham Smith Project No. 42480.00

Dear Mr. Gaston:

Gresham Smith has reviewed the time extension request from Gillespie Construction dated January 5th, 2023 and concur with the request due to the delays referenced in the attached letter. We recommend extending the contract time from the original substantial completion date of December 16th, 2022. This would set the new substantial completion date at February 14th, 2023.

Sincerely,

A handwritten signature in blue ink that reads 'Sammy C. Harton'.

Sammy Harton, P.E.
Project Engineer

SH

Attachment: Gillespie Construction's Time Extension Request Letter

Copy Ronnie Vaughn – City of Mountain Brook
 Blair Perry – Gresham Smith

Genuine Ingenuity

3595 Grandview Parkway
Suite 300
Birmingham, AL 35243
205.298.9200

GreshamSmith.com



Gillespie
CONSTRUCTION
3304 3rd Ave S, Jasper, AL 35501

January 5th, 2023

TO: Sammy Harton

RE: Caldwell Mill Road Bridge Replacement Change Orders and Time Extension

Sammy,

Gillespie Construction, LLC is requesting a time extension for sixty (60) working days for the Caldwell Mill project. This time extension is needed as we have been delayed due to the change to the plans which resulted in delay in the material.

Gillespie Construction, LLC also was directed to delay on the order of guardrail due to potential changes in the direction of the plans. These changes are still ongoing and haven't been resolved.

Gillespie Construction LLC received the pipe last week. Asphalt is planned with weather permitted to be completed at the end of January. Guardrail still hasn't been ordered, and possibly 30-day lead time until guardrail issue is resolved.

If you have any questions about the time extension request, please contact me.

Sincerely,

Gillespie Construction, LLC

Sam Gaston

From: Richard Caudle <richard@skipperinc.com> on behalf of Richard Caudle
Sent: Thursday, December 22, 2022 4:17 PM
To: Sam Gaston
Subject: RE: Mirror on ROW

There are several issues to address with the mirror situation in front of 2820 Cherokee Road:

1. In answer to your question about mounting them to the nearest tree, I do not think that the mirror facing east (the direction of traffic flow toward US-280) will be useful if mounted on the nearest tree.
2. The post used to mount the mirrors appears to be a 6"x6" wood post, although I did not measure it. If this is the case, this post is not crashworthy per NCHRP 350. In order to make it crashworthy, it would have to have a 2" hole drilled through it at the ground line. However, we have many mailboxes in the City within the right-of-way which are not NCHRP 350 crash-worthy.
3. This is the first instance in my recollection that a citizen has constructed a permanent post installation in City right-of-way for a mirror. But we have similar installations of mailboxes and lamp posts all over the City. I wonder if we might see a proliferation of installation of obstacles in the city right-of-way if we let this one pass.
4. The post/mirrors are most probably in the city right-of-way.
5. I don't think that the owner of 2820 Cherokee Road has any basis for requesting that the City get involved in asking the owner of 2825 Cherokee Road for some kind of indemnification.

My recommendation is that the City should request the owner to drill a 2" hole through the bottom of the post to make it crash-worthy.

Richard L. Caudle, P.E. (registered in AL and MS) Skipper Consulting, Inc.
3644 Vann Road Suite 100
Birmingham, Alabama 35235
richard@skipperinc.com
Office (205) 655-8855 Direct (205) 767-0183 Cell (205) 790-4307 Home (205) 594-4708

-----Original Message-----

From: Sam Gaston <gastons@mtnbrook.org>
Sent: Thursday, December 22, 2022 1:18 PM
To: Richard Caudle <richard@skipperinc.com>
Subject: FW: Mirror on ROW

Sam S.Gaston
City Manager
City of Mountain Brook, AL.
56 Church Street
P.O. Box 130009
Mountain Brook AL. 35213
(205) 802-3803 Phone

<https://nam02.safelinks.protection.outlook.com/?url=http%3A%2F%2Fwww.mtnbrook.org%2F&data=05%7C01%7Crichard%40skipperinc.com%7Cf765c806f8754c0ecc4508dae4517e7f%7C6494ab62eff847da81ec8576f0987867%7C0%7C0%7C638073335919058040%7CUnknown%7CTWFpbGZsb3d8eyJWljiMC4wLjAwMDAiLCJQIjoiV2luMzliLjBjTil6k1haWwiLCJXVCi6Mn0%3D%7C3000%7C%7C%7C&sdata=I%2BFJHwE%2FRN9kPm8wffEAWV7FlcSKQtvr9G2YKbhWzA0%3D&reserved=0>

-----Original Message-----

From: Whit Colvin [mailto:wcolvin@bishopcolvin.com]
Sent: Friday, December 02, 2022 12:53 PM
To: Sam Gaston
Cc: Ronald Vaughn
Subject: Re: Mirror on ROW

Pole in the right of way? That seems a bit different from putting a mirror on a tree...

Whit Colvin
Bishop Colvin, LLC
Office: (205) 251-2881
Mobile: (205) 222-6225
wcolvin@bishopcolvin.com

Sent from my iPhone

> On Dec 2, 2022, at 12:49 PM, Sam Gaston <gastons@mtnbrook.org> wrote:

>
> I did find out that the mirrors were on a tree at one time. The tree
> died and fell down. Apparently Dr. Michelson put some new ones up on a
> pole across the street from his driveway, but in front of Goodrich's
> property, although not in front of his house.

>
> Sam S.Gaston
> City Manager
> City of Mountain Brook, AL.
> 56 Church Street
> P.O. Box 130009
> Mountain Brook AL. 35213
> (205) 802-3803 Phone
> (205) 870-3577 Fax

>
>
>
> -----Original Message-----

> From: Whit Colvin [mailto:wcolvin@bishopcolvin.com]
> Sent: Friday, December 02, 2022 12:41 PM
> To: Sam Gaston
> Cc: Ronnie Vaughn
> Subject: Re: Mirror on ROW

>
> Interesting. So he wants the City to require his neighbor to indemnify
> him?
> Not sure we would want to get in the middle of that...

>
> Whit Colvin
> Bishop Colvin, LLC
> Office: (205) 251-2881
> Mobile: (205) 222-6225

> wcolvin@bishopcolvin.com

>

> Sent from my iPhone

>

>> On Dec 1, 2022, at 4:07 PM, Sam Gaston <gastons@mtnbrook.org> wrote:

>>

>> Whit,

>> Mike Goodrich lives at 2820 Cherokee. The person across the street, a Dr.

>> Michelson put up these mirrors to help them navigate their steep

>> drive onto Cherokee Road. I am sure it is on the ROW, but Mike wants

>> Michelson to indemnify him on the placement of these mirror in front

>> of his property.

>> The city use to put up these type mirror, but stopped about 15 years

>> ago due to legal/liability concerns and recommendation from AMIC.

>> Plus they are not in the Uniformed Traffic Control Manual which is

>> our guide to installing traffic control signs/markings.

>> Your thoughts?

>>

>> Sam S.Gaston

>> City Manager

>> City of Mountain Brook, AL.

>> 56 Church Street

>> P.O. Box 130009

>> Mountain Brook AL. 35213

>> (205) 802-3803 Phone

>> (205) 870-3577 Fax

>>

>>

>>

>> -----Original Message-----

>> From: Sam Gaston [mailto:gastons@mtnbrook.org]

>> Sent: Thursday, December 01, 2022 3:53 PM

>> To: Sam Gaston

>> Subject: Mirror on ROW

>> <Untitled attachment 02557.txt>

>> <IMG_6152.jpg>

>> <IMG_6153.jpg>

>> <Untitled attachment 02560.txt>

>> <IMG_6154.jpg>

>> <Untitled attachment 02563.txt>

**T. Michael Goodrich
2820 Cherokee Road
Birmingham, AL 35223**

November 16, 2022

**Dr. Marc Michelson
2825 Cherokee Road
Birmingham, AL 35223**

Dear Marc:

My name is Mike Goodrich. I am your across the street neighbor (2820 Cherokee Road). I have heard many nice comments about you, both professional and personal, and I look forward to meeting you.

I wanted to make you aware of the circumstances around the post and parabolic mirrors on our property. I am told this creates potential liability to me. I certainly understand the need for the mirrors and have no objections to them being there provided we can eliminate any additional liability to me. I think this can be easily accomplished with an indemnity and acknowledgement that the mirrors are located on my property.

I am happy to discuss this with you at your convenience. My cell is (205) 835-1548.

Very truly yours,

MG:rj









Sec. 121-8. Regulations for temporary signs.

It shall be unlawful to erect, display or permit the display of, or maintain any temporary sign unless such sign is expressly permitted by this chapter, subject to all of the limitations and provisions stated herein. Should a temporary sign exceed the permitted display area, it shall be considered a general business sign and shall be subject to every requirement of this chapter governing such signs. Permitted temporary signs are limited to the following types and conditions:

- (1) *Banner for new business.* Each new business may have one temporary banner, placed as a facade sign or a window sign in accord with all other applicable requirements of this chapter, for a period of not more than 45 days, or until a permanent sign is installed, whichever time period is shorter.
- (2) *Special event banner or sign.* For purposes of this subsection, a "special event banner" or "special event sign" is a banner or sign primarily and principally announcing or promoting special events pertaining to the premises or civic, public or community events or interests, and may not contain commercial advertisement or corporate logos that are not the subject of the special event.
 - a. Established businesses and institutions may be permitted to display special event banners or special event signs as follows:
 1. During the holiday period between Thanksgiving Day and New Year's Day ("holiday season"),
 2. In addition to the holiday season, up to 21 days per calendar year.Time extensions may be approved by the city council upon a showing of compelling hardship or exceptional circumstances. The city council may also designate city-wide or village-wide special events during which special event banners or special event signs may be displayed without utilizing the allotment set forth above. In such case, such banners or signs are to be removed on or before the last day of the designated city-wide or village-wide special event.
 - b. The maximum display area allowed for any one special event banner or sign shall be no greater than 20 square feet in the three traditional villages, and outside the three traditional villages, shall be limited to the maximum display area permitted for a general business sign at the permitted premises. No more than one such banner or sign shall be displayed at any one time along or facing each street frontage abutting the premises for which the permit is issued.
 - c. Banners shall be adequately secured at all corners to the facade of a building (but not to the roof), or to poles firmly affixed into the ground in the case of freestanding premises set back from the front property line. Banners shall not be internally illuminated or backlit. For safety reasons, banners shall not be located in the public right-of-way, nor may they be allowed to cause an unreasonable annoyance or inconvenience to users of neighboring premises.
 - d. A special event banner or special event sign permit must be obtained from the city planner prior to the installation of any special event banner or special event sign. A permit may be obtained by submitting an application containing the following information:
 1. Text and other information to be displayed on banner or sign.
 2. Dimensions of banner or sign.
 3. Name of establishment or institution, and address of premises where banner or sign is to be displayed.
 4. Name, address, phone number of the responsible party applying for the permit.
 5. Dates banner or sign will be erected and removed.

-
6. Description of location where banner or sign will be displayed.
- e. Special event banners or signs permitted hereunder may be placed in windows, but the collective display area of such signs or banners and other window signs permitted by this chapter shall not exceed 20 percent of the window area.
- (3) *Hazard sign.* A hazard sign shall be permitted as a temporary sign. Each such sign shall be removed immediately when the hazard no longer exists.
- (4) *Real estate sign.* Temporary signs informing that a property is for sale or lease may be posted on the property that is for sale, rent or lease, provided, however, that only one sign per street fronting the property, not including alleys, shall be permitted, and the display area of each such sign shall not exceed six square feet in residential districts, or 24 feet in all other districts.
- (5) *Sandwich board.* Each business, located within the city, having a direct storefront entrance on the ground floor, and that faces and is adjacent to the back of a sidewalk may display, during the operating hours of such business, a maximum of one sandwich board, which shall be of sturdy construction and of a size no greater than 24 inches in overall width or 36 inches in overall height, placed upon that sidewalk within the frontage of the business in such a manner that it shall not:
- a. Reduce any sidewalk width, as measured perpendicular to the curb, to less than five feet to allow for continuous unobstructed pedestrian traffic; nor
 - b. Be placed in a location that will obstruct the view of a motorist or a pedestrian leaving or passing the business or shopping center.
- (6) *Construction sign.* Construction signs shall be permitted on property that is under development or construction and for which a building permit has been issued and is in good standing. The display area of all such signs in the aggregate shall not exceed six square feet in residential districts or 24 square feet in all other districts. Each such sign shall be removed within 30 days of issuance of a certificate of occupancy or expiration of the building permit, whichever occurs first.

(Ord. No. 1777, § 1, 7-14-2008; Ord. No. 1920, § 1, 10-13-2014)

CITY OF MOUNTAIN BROOK



Dana O. Hazen, AICP
Director of Planning, Building &
Sustainability
56 Church Street
Mountain Brook, Alabama 35213
Telephone: 205/802-3816
Fax: 205.879.6913
hazend@mtnbrook.org
www.mtnbrook.org

DATE: January 9, 2023

TO: Mayor, City Council & City Manager

FROM: Dana Hazen, City Planner

RE: Magic City Cheer (Boutique Tumbling Class) – 229 Country Club Park

Service uses, such as the proposed fitness studio, require council approval of a conditional use. The conditional use is reviewed primarily for its anticipated effect on street parking. Here is what the code says:

“The conditional review and approval process shall ensure that, in addition to the other factors of conditional review, sufficient parking exists so that the use will not negatively impact existing established businesses, and that the proposed service use, either in isolation or in conjunction with other service or office uses, will not have a detrimental impact on public parking in the villages.”

The proposed space at Country Club Park (previous 32 Degrees yogurt and temporary BBVA) has a parking credit of 9 spaces. Based on the square footage of the space and the higher parking requirement for fitness uses, 12 parking spaces in the common parking lot would be required for Magic City Cheer.

Country Club Park currently has a surplus of 13 parking spaces (over and above that required for the current mix of uses). *The on-site credit includes 48 street parking spaces created along Dan Watkins and Keeley Court during the 1997 installation of public sidewalks and parking, part of which is contained on the Scott property (see attached map of Dan Watkins and Keely Court).*

An additional 3 parking spaces would be required for the proposed fitness use, which would lower the shopping center's overall surplus down to 9 parking spaces.

See attached Applicant Request for details on proposed hours of operation, and class size/schedule. It is not anticipated that the proposed use would have a detrimental effect on street parking in Crestline Village.

*Note** The zoning code indicates that a conditional use shall be approved by the city council if all required parking is provided on site and in the quantities set forth in subsection 129-555(a) of this Code, but it does not necessarily prevent the council from placing conditions on the approval on a proposed conditional use that would serve to mitigate any anticipated negative effects on the established businesses in the vicinity of the proposed use.*

Mountain Brook City Council,

Magic City Cheer and tumble would like to ask the approval for a conditional use for the space at Country Club Park (previously 32 degrees yogurt).

We have been approached by many local parents to open up something a little closer than our 280 gym. With our kids in the MB school system we are desiring to open up a small boutique style tumbling class to service over the mountain families.

Our business will consist of private group (30 min to 1 hour) lessons of 4 kids to one coach from the hours after school from 3pm- 7pm.

We have also considered mommy and me classes in the morning from 9-11 with the same style small class of 4 to 5 families per one coach.

We will be closed during the lunch hours of 11-2 in order to help with the known parking situation in the area.

Our employees will park in the underground lot or the all day parking on Dan Watkins to also help with the parking. We will have 1 to 2 employees at the location during our operating hours.

Thank you for your consideration

Stephen and Kendall Hand

