

**MEETING AGENDA
MOUNTAIN BROOK CITY COUNCIL**

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

JULY 24, 2023, 7 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 07242023).

1. Recognize the City of Mountain Brook for receiving the ETC Leading the Way Award
2. Recognize Carter Kirksey as “Mayor for a Day”.
3. Parks and Recreation Month Proclamation.
4. Approval of the minutes of the June 8, 2023, special meeting of the City Council.
5. Approval of the minutes of the June 20, 2023, special meeting of the City Council.
6. Consideration: Resolution ratifying the execution of the agreement with JD Morris with respect to the Cherry Street drainage project.
7. Consideration: Resolution authorizing the execution of an agreement with International Fire Protection, Inc. with respect to the suppression system and backflow preventer inspection services for the municipal complex and O’Neal Library.
8. Consideration: Resolution authorizing the sale or disposal of certain surplus property.
9. Consideration: Ordinance amending Section 50-46 (b)(6) of the City Code relating to the speed limit of certain streets in the City (25 mph) to include Marlboro Drive.
10. Comments from residents and attendees.
11. Announcement: The City Council will have a Special Meeting on Monday, July 31st, 2023 at 8:00 a.m.
12. Announcement: The next regular meeting of the City Council is August 14, 2023 at 7:00 p.m.
13. Adjourn.



July 6, 2023

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

Subject: Leading the Way Award Winners

Dear Mr. Gaston:

On behalf of ETC Institute, **I want to congratulate the City of Mountain Brook for winning our Leading the Way Award.**

ETC Institute's "Leading the Way Award" was created to recognize local governments for outstanding achievement in the delivery of services to residents. Recipients of the award rank in the top 10% of all local governments in the United States with regard to their composite performance in three core areas that are assessed on ETC Institute's DirectionFinder® Survey:

- satisfaction with the overall quality of services
- satisfaction with customer service provided by employees, and
- satisfaction with the value residents think they receive for local taxes and fees.

A maximum of 100 points are awarded in each of these areas based on the results of the survey. In order to rank in the "Top 10% of All Cities", a city must have received a composite score of 210 or more, which means the city scored an average of at least 70 points in all three areas. The threshold of 210 was established using the results of surveys from more than 400 communities that have participated in ETC Institute's Direction Finder® Survey over the past two years. **The City of Mountain Brook's composite rating was 273 which was 101 points above the average composite score of 172 for all cities in the United States.**

The City of Mountain Brook is truly setting the standard in many areas. In addition to ranking in the top 10% overall, the City of Mountain Brook had the highest satisfaction rating among communities that participated in DirectionFinder® between January 2023 and May 2023 in the areas listed below and on the following page.

#1 Rating Among All Communities

- Overall Quality of City Services (tied for 1st)
- Overall Value Received for City Tax Dollars and Fees
- Customer Service Provided by City Employees
- Leadership Provided by Elected Officials



-
- Effectiveness of Department Heads and Staff
 - City as a Place to Live
 - City as a Place to Raise Children
 - Overall Quality of Life in the City
 - Public Safety
 - Effectiveness of Communication
 - Enforcing Codes and Ordinances
 - Library Services
 - Emergency Preparedness
 - Police Services
 - How Quickly Police Respond to Emergencies (tied for 1st)
 - Efforts to Prevent Crime
 - Enforcing Traffic Laws
 - Overall Feeling of Safety
 - Feeling of Safety in Your Neighborhood During the Day
 - Feeling of Safety in Your Neighborhood at Night
 - Feeling of Safety in Retail Areas
 - Feeling of Safety in Parks
 - Fire Services
 - Mowing and Trimming Along Streets and Public Areas
 - Maintenance of City Parks (tied for 1st)
 - Quality of Park Facilities
 - Enforcing Clean Up of Trash and Debris on Private Property
 - City Social Media
 - Appearance of the City

The City of Mountain Brook also rated in the **top 10% of all communities** in the areas listed below.

- Maintenance of Streets and Sidewalks
- Traffic Flow
- Visibility of Police in Neighborhoods
- Emergency Medical Services
- Condition of Major Streets
- Condition of Sidewalks
- Cleanliness of Streets and Public Areas
- Walking and Biking Trails
- Animal Control Services
- Level of Public Involvement in Decision Making
- City's Website
- Image of the City



Helping Organizations Make Better Decisions

725 W. Frontier Lane, Mountain Brook, Kansas 66061

Phone: (913) 829-1215

Fax: (913) 829-1591

Since 1999, ETC Institute's DirectionFinder® Survey has been administered to nearly two million residents in all 50 states. Although ETC Institute has provided "benchmarking" data that has allowed communities, like Mountain Brook, to compare your results with other communities for many years, ETC Institute did not formally recognize the top performers until 2020.

More details about the Leading the Way Award, including the names of other award winners, are available on our website at etcinstitute.com.

ETC Institute will feature the City of Mountain Brook as a winner of the award on our website and social media pages over the next few weeks. If you would like us to present the award virtually at a future meeting, we would be glad to do so. We can even provide a sample press release if needed.

Once again, congratulations to you, the Mayor, your City Council, and all City employees for your outstanding achievements!

Sincerely,

Christopher Tatham, CEO

**PROCLAMATION
PARKS AND RECREATION MONTH**

WHEREAS, the U.S. House of Representatives has designated July as Parks and Recreation Month since they are an integral part of communities throughout this country, including Mountain Brook, Alabama; and

WHEREAS, parks and recreation promotes time spent in nature, which positively impacts mental health by increasing cognitive performance and well-being, and alleviating illnesses such as depression, attention deficit disorders, and Alzheimer's; and

WHEREAS, parks and recreation encourages physical activities by providing space for popular sports, hiking trails, and many other activities designed to promote active lifestyles; and

WHEREAS, park and recreation programming and education activities, such as youth sports and environmental education, are critical to childhood development; and

WHEREAS, parks and recreation increases a community's economic prosperity through increased property values, expansion of the local tax base, increased tourism, the attraction and retention of businesses, and crime reduction.

WHEREAS, the City of Mountain Brook recognizes the benefits derived from parks and recreation resources and has made improvements at the Sports Complex and begun improvements at Jemison Park;

NOW, THEREFORE, I, Carter Kirksey, Mayor for a Day of the City of Mountain Brook, Alabama, do hereby proclaim July 2023 as

PARKS AND RECREATION MONTH

in Mountain Brook, Alabama recognizing the benefits derived from parks and recreation resources.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the Seal of the City of Mountain Brook to be affixed the 24th day of July of the year of our Lord 2023 and of the Independence of the United States of America, the 247th.

Carter Kirksey, Mayor for a Day

**MINUTES OF THE SPECIAL MEETING OF THE
CITY COUNCIL OF THE CITY OF MOUNTAIN BROOK
JUNE 8, 2023**

[As a convenience, members of the public were invited to listen and observe in the public meeting by Internet video conference. There were 2 virtual attendees at the meeting.]

The City Council of the City of Mountain Brook, Alabama met informally in-person at 1:00 p.m. on the 8th day of June, 2023 (others were allowed to listen to the meeting by way of Internet video conference-2 virtual attendees). Council President Pro Tempore Pritchard called the pre-meeting to order and the roll was called with the following results:

Present: William S. Pritchard III, Council President Pro Tempore
Lloyd C. Shelton
Gerald A. Garner
Graham L. Smith
Stewart Welch III, Mayor

Absent: Virginia C. Smith, Council President

Also present were City Attorney Whit Colvin, City Manager Sam Gaston, and City Clerk Heather Richards.

The Council President Pro Tempore Pritchard stated that a quorum was present and that the meeting was open for the transaction of business

1. CONSIDERATION: ORDINANCE AMENDING CHAPTER 26 OF THE CITY CODE WITH RESPECT TO SALES TAX

Steve Boone-Finance Director

- Alabama Legislature passed a bill that will become effective upon the signature of the governor
- The legislation has a revision that will restrict cities on the tax rate (for groceries/food) that is in effect as of the date the bill is signed
- There are no other cities in Jefferson County that has a composite rate of 9% (everyone else is at 10%)
- Mountain Brook has had a composite rate of 9% since 1995
- Does not want to see Mountain Brook prohibited from increasing sales tax (for groceries/food) at a future date
- Mountain Brook has reached a point (financially) to where sales tax increases will need to be considered
- The city has embarked on a lot of capital projects over the last 5-10 years
- The capital reserves are at a point where it is sitting around 28 million
- Contracts underway (and commitments for contracts) that will be performed over the next few years could lower capital reserves to 14 million
- If the capital reserves are lowered to 14 million, this would be the lowest it has been in 20 years
- The only way to change this trend is to either 1) suspend or curtail capitol projects 2) increase revenue or 3) cut operating expenses and divert that savings to capitol
- The capital fund has no source of revenue, can only construct what the city can afford to fund through annual operating string or prepared to issue debt
- Concern is the reserves are getting low enough to rethink the level of capital outlay or increasing revenue

- This discussion would have occurred in the next few weeks; however, this is being accelerated due to the legislation
- Here today to discuss if now is the time to preserve the ability to increase the tax on groceries
- The increase in sales tax would generate around 1 million

Lloyd Shelton-Council Member

- The city funds OPEB and Overfund RSA which is around 1 million
- These funds could be suspended (if needed)

Steve Boone

- Those are discretionary funds that could be “turned off”

Lloyd Shelton

- Inquired if the city could increase taxes to 10% (for example) then suspend it when the governor signs the bill

Whit Colvin-City Attorney

- The language in the bill talks about a levy of the sales tax
- A levy of a tax means you intend to collect it
- Passing a tax that the City does not intend to collect (now) could open up the City to lawsuits down the line if the city decided to start collecting the tax at a later date
- Would not suggest increasing the sales tax, unless the city plans to levy (collect) the tax

Gerald Garner-Council Member

- Does not support raising taxes
- Feels that acting hastily in response to the legislation is not being prudent

Lloyd Shelton-Council Member

- Is not comfortable in making a quick decision regarding increasing the sales tax
- Thinks more discussion is needed

Billy Pritchard-Council President Pro Tempore

- Is in agreement with Council Member Garner and Shelton
- The whole reason this legislation was crafted was to not allow cities to get that portion of the sales tax
- If Mountain Brook increased the food sales tax, even if the City has a need to do so, may be construed as the city being greedy

Steve Boone

- Feels Mountain Brook should not be penalized for being good stewards of the taxpayers money
- Feels Mountain Brook should increase the food sales tax (while we can) because there is a long-term need
- Mountain Brook has more demands than we can set aside

Steward Welch-Mayor

- One way to look at it: If the council feels that within a 5 year window they would likely raise the sales tax by 1%, then the city should make the decision to increase the grocery/food sales tax by 1% now

Steve Boone

- Would not be discussing the grocery/food sales tax increase if it wasn't for the legislation

- The discussion to increase sales tax would have been discussed during the upcoming budget year and the next budget year
- Feels the sales tax will need to be increased within 5 years

Graham Smith-Council Member

- There was a reason this legislation was passed
- Grocery/food sales tax is a regressive tax that the state is trying to do away with
- Taxing groceries is not a good thing
- Alabama is only one of three states that still taxes groceries
- Does not want to increase the grocery/food tax when the state is trying to get rid of the old fashioned tax

Council Member Gerald Garner made a motion to NOT increase the grocery/food tax by 1%. The motion was seconded by Council Member Graham Smith. Thereupon, Council President Pro Tempore Pritchard called for vote with the following results:

Ayes: William S. ("Billy") Pritchard III
Gerald A. Garner
Graham L. Smith
Lloyd C. Shelton

Nays: None

Council President Pro Tempore Pritchard declared that the grocery/food tax will NOT be increased by a vote of 4-0.

2. COMMENTS FROM RESIDENCES AND ATTENDEES

(There were no public comments)

3. ANNOUNCEMENT

Council President Pro Tempore announced the next regular meeting of the City Council is June 12, 2023, 7:00p.m.

4. ADJOURNMENT

There being no further business to come before the City Council, Council President Virginia Smith adjourned the meeting at approximately 1:35 p.m.

5. CERTIFICATION

I, Heather Richards, City Clerk of the City of Mountain Brook, Alabama, certify the above is a true and correct transcript of the regular meeting of the City Council of the City of Mountain Brook, Alabama held at City Hall, Pre-Council (Room A-106) on June 8, 2023, and that the meeting was duly called and held in all respects in accordance with the laws of the State of Alabama and bylaws of the City and that a quorum was present.

City Clerk Approved by
City Council July 24, 2023

**MINUTES OF THE SPECIAL MEETING OF THE
CITY COUNCIL OF THE CITY OF MOUNTAIN BROOK
JUNE 20, 2023**

[As a convenience, members of the public were invited to listen and observe in the public meeting by Internet video conference. There was 1 virtual attendee at the meeting.]

The City Council of the City of Mountain Brook, Alabama met in person at 5:30 p.m. on the 20th day of June, 2023 (others were invited to listen to the meeting by way of Internet video conference—1 attended virtually). Council President Virginia Smith called the meeting to order and the roll was called with the following results:

Present: Virginia Smith, Council President
William S. Pritchard III, Council President Pro Tempore
Gerald A. Garner
Lloyd C. Shelton
Graham L. Smith

Absent: Stewart Welch III, Mayor

Also present were City Attorney Whit Colvin, City Manager Sam Gaston, and City Clerk Heather Richards.

Council President Virginia Smith stated that a quorum was present and that the meeting was open.

1. CONSIDERATION: RESOLUTION AUTHORIZING THE EXECUTION OF ROW ACQUISITION CLOSING DOCUMENTS WITH RESPECT TO THE OLD BROOK TRAIL BRIDGE PROJECT (RESOLUTION NO. 2023-094 EXHIBIT 1, APPENDIX 1)

Council President Pro Tempore Pritchard made a motion to approve the resolution authorizing the execution of ROW acquisition closing documents with respect to the Old Brook Trail bridge project. The motion was seconded by Council Member Graham Smith. Thereupon, Council President Virginia Smith called for vote with the following results:

Ayes: Virginia C. Smith
William S. (“Billy”) Pritchard III
Gerald A. Garner
Graham L. Smith
Lloyd C. Shelton

Nays: None

Council President Virginia Smith declared Resolution (No. 2023-094) is hereby adopted by a vote of 5—0 (Exhibit 1, Appendix 1)

2. PUBLIC HEARING-REQUEST TO REZONE PROPERTY FROM RESIDENCE B DISTRICT TO PLANNED UNIT DEVELOPMENT (PUD) DISTRICT-2305 MONTEVALLO ROAD, MONTEVALLO ROAD PARTNERS, LLC

Charlie Beavers-4301 Dolly Ridge Road (Represents Applicant)

- Introduced team

Louis Nequette-2227 2nd Avenue North (Principal at Nequette Architecture and Design)

- Project vision has not changed
- Project is made up of 1 condominium unit, 3 townhomes, and 13 single family houses
- Removed the stand along trash building (moved into building)
- The entrance into Chester Road is unchanged
- Provided more detail as to control the volume of the townhouse buildings
- There will be an 8 foot tall masonry wall in the back (also an evergreen hedge starting at 6' and growing to 20' over time)
- The elevation of condominium building as it faces Montevallo is not different, the changes were to the back of the building
- Character and details of townhomes will match the design guidelines of the single family houses
- Provided more detail of the zoning overlay requirements around the single family parcels that include the requirements of the interior courtyard and defined that by percentage
- The required interior courtyard as well as the setback would equate to at least a 35% open space
- Put a 4 area ratio governance in place that limits the maximum square footage of each house with relation to the lot size

Virginia Smith-Council President

- Inquired if all of the elevation and height requirements meet the city's code and would not need to go to the BZA

Louis Nequette

- No it would not need to go to the BZA
- As part of the PUD there will be a governing list of zoning requirements that specifically apply to the lots as part of the document, for setbacks and design requirements

Virginia Smith

- Inquired if the utilities will be buried

Charlie Beavers

- There is a commitment in the documents that the utilities will be buried
- The only condition will be if utilities attached to poles will need consent, the commitment would be contingent on the consent

Virginia Smith

- Inquired about the larger trees in the back

Gerald Clarke-7500 South Memorial Parkway (Landscape)

- Recommending the evergreen trees be at least 6' (at planting) with a mature height of 20'
- Can expect 2' of growth on the trees per year (assuming well maintained and irrigated)

Virginia Smith

- Inquired if there will be any other tool shed or trash facility on the exterior of the townhomes or condominium unit

Charlie Beavers

- There will be no other exterior buildings
- The site plans do not reflect any exterior building, must stick with site plan

Virginia Smith

- Inquired as to the construction access and construction parking on Chester Road

Charlie Beavers

- There are provisions in the PUD plan that prohibit the use of Chester Road and requires all construction activity to come off Montevallo Road
- The document provides until the last house is built, no construction access on Chester Road is allowed

Lloyd Shelton-Council Member

- Inquired as to the service traffic using alley only

Charlie Beavers

- To the extent association contracts for landscape, the contract will provide it must come off Montevallo Road
- There will be no community pool at the condominium, townhomes, or single family homes

Gerald Garner-Council Member

- Inquired if the 8' wall and greenery acts as a buffer for headlights

Louis Nequette

- Yes it would act as a buffer

Graham Smith-Council Member

- Inquired about lighting restrictions

Louis Nequette

- There are lighting restrictions in the guidelines for the single family houses

Jared Callhoun-2227 2nd Avenue North

- Most of the lighting restrictions put on the single family houses require it to be wall sconces, accent lighting, and low intensity
- No large overhead street lighting
- The intent was to keep all levels low and fixtures low intensity

Lloyd Shelton

- Inquired as to the lighting for the condominiums

Jared Callhoun

- There is nothing in the PUD for the lighting for the condominiums

Louis Nequette

- The reason the lighting requirement are in the single family and not condominiums is because the single family homes will be sold as lots and designed by other designers and owners
- The condominiums and townhouses will be designed by developer-following the design guidelines
- Intent is to provide same approach to lighting as facing toward the neighborhood

Whit Colvin-City Attorney

- To the extent of ROW, the lighting on ROW will be handled like any other project
- In terms of lighting on building themselves, will hold the applicant to their commitment

Virginia Smith

- There were concerns raised on how storm water will be managed and general rain water (particularly during construction) and its effect on Chester Road
- Asked Schoel representative to address this concern

James Parsons-1001 22nd Street South (Schoel Engineering)

- There will be a basement waterproof barrier between the walls where it site drains toward Chester
- Will have erosion control measures, required by state, that requires permit
- The permit requires monthly inspection

Charlie Beavers

- In the documents is a requirement for a construction barrier that keeps the water from going into Chester road

Virginia Smith

- Inquired if the island and tree will remain on Chester if the PUD was approved

Charlie Beavers

- Yes the tree and island will remain as is

Graham Smith

- Inquired if the Chester Road residents can park and use the motorcourt

Charlie Beavers

- There is a provision that allows for the Chester Road residents to use the parking area for events

Tripp Galloway-4144 Stone River Road

- Asked the council to make it a requirement that the trees be 8 feet tall at the time of installation
- Asked the council to consider lowering the height limitations of the three townhomes
- Feels it has relevance with respect to how the street will be developed down to Bromberg's (if the townhomes are allowed to remain at the same height with what is proposed)
- Asked the council to consider requiring the townhomes to comply with the height requirements of Residence B (35 feet)

Louis Nequette

- If Residence B height restrictions were applied, there would be a 35 foot setback and 35 foot allowable height which would allow two full stories (which would be closer to the rear property line)
- This would also allow a roof line that could occupy three stories of space (two levels and attic space) all over a basement
- Feels this would be more looming and closer to the property line than the stepping consideration given

Victor Hansen-2328 Chester Road

- Asked the council to increase the wall height beyond 8 feet (because it is only 5 feet in the back)
- Feels it needs to be higher to provide the same amount of privacy to the back side as it does the front

Virginia Smith

- There will be a green buffer next to the wall which could be better than a taller wall

Lloyd Shelton

- Inquired what is industry standard when planting trees (6 feet, 8 feet)

- Inquired if the range could be 8 feet at planting

Gerald Clarke

- When trees are specified, the height range is specified
- Changing the tree height at installation is not an uncommon change to make; however, sometimes a certain size is not available

Jane Grant-2317 Chester Road

- Asked the council why the development has to use Chester Road
- Chester Road is quiet and charming and should not be connected to this development

Dan McCreary-2334 Chester Road

- All the time spent on this development has yielded little change
- There has been no change to the use of Chester Road since day 1
- The developer changed one of the condominiums (Building B) to three townhomes which will tower over the homes on Chester
- The Chester residents have raised many issues and arguments regarding PUD application while the applicant has remained silent
- The property is zoned Residential B and the developer knew this when they closed on the property
- The applicant is asking for permission to change the existing zoning
- It is not up to the council to come up with something the applicant likes or satisfies economic wants and wishes
- As a citizen, he expects the council to scrutinize the application and ensure the proposed PUD conforms to all governing state and city laws, codes, and policies
- Feels this matter came before the council prematurely as there are elements to the current design that have never been reviewed by the Planning Commission
- Does not think the role of the Planning Commission can be bypassed at will
- Referenced 129-264(c) of the Code of Mountain Brook that pertains to PUD applications
- Density-Stand-alone family homes-13 houses sitting on 2.24 acres (includes roads, parking, and common areas)
- Lots laid out are under 4700 square feet as compared to Residence B minimum lot of 10,000 square feet
- The 2.24 acres could only contain 8 Residence B houses
- This portion of the proposed PUD is not compatible with the Chester Road neighborhood with regard to density
- 2 solutions: 1) applicant retain high density housing area and close off Chester Road and only use Montevallo Road-two alternate layouts were provided to applicant that did not utilize Chester Road 2) reduce the number of homes in that portion of the PUD to be in compliance with the requirements of Residence B homes (8 or less homes)
- The effect of the tall townhome is made worse by the terrain
- Feels the council should require applicant to bring the townhomes in compliance with Residence B height restrictions of 35 feet
- Asked the council to articulate how and in what manner its ultimate decision in this preceding comports with governing requirements and policies
- (Submitted letter to be included in the record, Appendix 2)

Charlie Beavers

- Significant changes were made: lighting, construction traffic limitations, removed pool, moved trash building indoors, included wall, took out powerlines (will bury them), shifted density to the North West corner (felt it was a better plan), put barrier at entrance to Chester and development during construction, agreed to allow Chester Road residents to park at the development for events

- The idea the developer has no right to use Chester Road is not true, Chester Road is a public road
- Chester Road is changing
- Experts have said the traffic would be greater if the site was Residence B than what is proposed
- Offered to meet with the engineer that provided the alternatives; however, there was no meeting
- Their engineer stated only accessing Montevallo is not appropriate due to site distance
- The planting of the trees says 6 feet but it can be put on record that the planting will be 8 feet (or better)
- Feels the development is much needed in the city
- Despite the fears, this development will not be a deterrent to the neighboring properties

Gerald Garner

- Inquired about the alley behind townhomes with respect to vehicular traffic

Louis Nequette

- Driveways have to go to the back to create access to the garages at the back of the lot

Lloyd Shelton

- Inquired if Residence B is different from Townhome height

Dana Hazen-Director of Planning, Building, and Sustainability

- Residence B is limited to 35 feet and is limited to 2 stories
- Townhomes in a PUD allows 3 stories, 36 feet plus up to 16 feet for the ridge with a maximum of 46 feet
- The property by Bromberg's (if developed) as townhomes, they would be held to 3 stories, 36 feet plus up to 16 feet for the ridge with a maximum of 46 feet
- In the PUD, they are modeling the zoning restrictions for townhomes, but they are not limited to it in a PUD, whereas, the smaller lots by Bromberg's would not be eligible to a PUD

Tripp Galloway

- Inquired if a PUD zoning was granted, if that PUD zoning be expanded by adjoining properties if the council thought it was appropriate in the future

Virginia Smith

- This is a legal question, does not have an answer
- This is not what is before the council
- The council is prepared to vote and has scrutinized this PUD application very closely
- Did not feel it was needed to ask the developer to reduce the number of lots (of the single family housing portion)
- Likes this plan better than the previous plan that had two large condominiums
- Satisfied with this development and changes of the PUD

Billy Pritchard-Council President Pro Tempore

- Fundamental issue has always been that this proposal is not in keeping with the character of the surrounding neighborhoods in Mountain Brook
- Property has been zoned Residence B for decades, everything around it is Residence B
- The density is overwhelming in this application and is not in keeping with the character
- Does not feel it is in the best interest and welfare of the surrounding neighborhood
- Was hopeful there would be a plan that the neighborhood could get behind

Lloyd Shelton

- Disagrees with Council President Pro Tempore Pritchard

- Is in favor of this application

Virginia Smith

- Closed the public hearing

Council President Virginia Smith introduced the ordinance in writing. It was then moved by Council Member Shelton that all rules and regulations which, unless suspended, would prevent the immediate consideration and adoption of said ordinance be suspended and that unanimous consent to the immediate consideration of said ordinance be given and that the reading of the ordinance at length be waived. The motion was seconded by Council Member Garner and was unanimously carried, as follows:

Ayes: Virginia C. Smith
Gerald A. Garner
Lloyd C. Shelton
Graham L. Smith

Nays: William S. (“Billy”) Pritchard III

Council President Virginia Smith declared the motion carried by a vote of 4—1.

After said ordinance had been considered in full by the Council, Council Member Garner then moved for the adoption of said ordinance. The motion was seconded by Council President Virginia Smith. Thereupon, Council President Virginia Smith called for vote with the following results:

Ayes: Virginia C. Smith
Gerald A. Garner
Lloyd C. Shelton
Graham L. Smith

Nays: William S. (“Billy”) Pritchard III

Council President Virginia Smith declared that the ordinance (No. 2143) is hereby adopted by a vote of 4—1 and, as evidence thereof, she signed the same.

3. ANNOUNCEMENT

The City Council will have a Special Meeting on Tuesday, May 2nd, 2023 at 5:30 p.m. to discuss drainage options for Richmar Drive and Mountain Avenue

4. ANNOUNCEMENT

The next regular meeting of the City Council is June 26, 2023 at 7:00 p.m.

5. ADJOURNMENT

There being no further business to come before the City Council, Council President Virginia Smith adjourned the meeting at approximately 7:06 p.m.

6. CERTIFICATION

RESOLUTION NO. 2023-118

BE IT RESOLVED by the City Council of the City of Mountain Brook, Alabama, that the City Council hereby ratifying the execution of a contractor agreement with JD Morris with respect to the Cherry Street drainage project.

ADOPTED: This 24th day of July, 2023.

Council President

APPROVED: This 24th day of July, 2023.

Mayor

CERTIFICATION

I, Heather Richards, City Clerk of the City of Mountain Brook, Alabama hereby certify the above to be a true and correct copy of a resolution adopted by the City Council of the City of Mountain Brook at its regular meeting held on July 24, 2023, as same appears in the minutes of record of said meeting.

City Clerk

MEMORANDUM

To: Steven Boone
From: Whit Colvin
Date: July 14, 2023
Subject: Emergency Exception Under Alabama Public Works Law

In March of 2023, the City undertook a public works project (Resolution No. 2023-036) to install drainage structures and facilities on and along Cherry Street in the City (the "Project"). The Project was necessary as a result of severe flooding which caused property damage and constituted a threat to safety and property of the residents affected by the flooding. The Project was designed by Walter Schoel Engineering and was bid pursuant to the Public Works Law. The successful bidder was Gillespie Construction, LLC.

Part of the Project involved installation of facilities in an area along the driveway at 133 Cherry Street behind a retaining wall that stabilized the driveway serving that address. On or about May 15th, 2023, the City experienced a significant rain event and the retaining wall collapsed, damaging the home at 131 Cherry Street and compromising the flood mitigation improvements installed as part of the Project. The retaining wall itself was over 6 feet in places and a screening fence was located on the top of the wall. The wall and the fence collapsed such that it now lies against the adjacent home (see attached photos). The building envelope was compromised and the areas where the wall now lies are unstable. The concern is that an additional rain event will cause further settlement and compound the damage already caused. A significant rain event could also compromise the newly installed stormwater system as it is not currently backfilled and covered pursuant to the design or construction drawings.

The Project contractor was asked to remediate and correct the damage and conditions, but it is either unwilling or unable to do so in a timely fashion. The City's engineers advise that the condition has to be remedied without further delay as the failure to do so will inevitably result in further damage to the neighbor's home, further degradation of the site conditions where the driveway lies, and damage to the newly constructed stormwater drainage system.

The City's engineer has created a remediation plan and the City plans to pursue a

construction project to restore the pre-incident conditions at the site. (the “Remedial Project”) The City has obtained two informal bids from contractors and one of the contractors can begin work immediately. The City has asked about application for the Public Works Law to the Remedial Project.

The Public Works Law requires that all public works projects be advertised and bid according to its provisions. *See Ala Code § 39-2-1, et seq. (1975)*. The customary bid process under the Public Works Law requires formal advertisement and takes considerable time. The Public Works Law also contains an exception to the ordinary bid process for emergencies. The law was amended in 2023 and the emergency exception provisions were modified. Before the amendment, the Public Works Law only permitted a City to dispense with the *advertisement* process in an emergency. The amended law retains that provision:

In case of an emergency affecting public health, safety, or convenience, as declared in writing by the awarding authority, setting forth the nature of the danger to the public health, safety, or convenience which would result from delay, contracts may be let to the extent necessary to meet the emergency without public advertisement requirement. *Ala Code § 39-2-2 (e)(2)(1975)*.

However, the Legislature added a second emergency provision in the 2023 amendment, which allows for a emergency contract to be let with advertisement *or bidding*:

In case of an emergency for which a delay in remedying would cause immediate harm to a person or public property, contracts may be let to the extent necessary to meet the emergency without public advertisement or bidding. *Ala Code § 39-2-2 (e)(1)(1975)*.

Thus, in cases where this broader exception applies, the City does not have to advertise or bid the contract.

For this provision to apply, the emergency has to be one “for which a delay in remedying would cause immediate harm.” As has been established by Schoel, immediate remediation is essential to safety, to the protection of the newly installed City stormwater facilities and to property. The collapse is uphill of a home at 131 Cherry Street and the wall is currently leaning on that home. The owners have engaged counsel, who have advised the City of the threat to the homeowners and the home posed by the current conditions. The wall also functions to hold up the driveway on the property above. If a significant rain event occurs, major additional damage is expected. Given the current weather patterns, such an event could occur at any time. Further delay in remedying the site conditions would cause immediate harm.

The second part of the emergency exception test is whether the immediate harm is to a “person or public property”. As before stated, the site conditions currently pose a threat of harm to anyone who lives on either of the affected properties. Continued

delay will only exacerbate that risk.

In addition, the City drainage facilities themselves, located in a city easement, would be harmed if the condition is not remedied before a rain event. "Public Property" is defined by the Public Works Law as follows:

PUBLIC PROPERTY. Real property which the state, county, municipality, or awarding authority thereof owns or has a contractual right to own or purchase, including easements, rights-of-way, or otherwise. Ala Code § 39-2-1 (5)(1975)

The property in question meets this definition.

In sum, the Public Works Law permits contracts to be let for public works projects in the case of an emergency where a delay would cause immediate harm to a person or public property and the situation at hand falls within that emergency exception. Accordingly, the contract on the remedial project may be let without advertisement or bidding.

As a side note, even where a contract does not have to be bid, it is prudent to obtain competitive proposals. In this case, the City obtained proposals from two contractors and the prices for both were comparable. The contractor selected was chosen because it could begin almost immediately (thus mitigating the risk of immediate harm) and without delay.

CONTRACTOR AGREEMENT

J.D. Morris Construction, Inc. (hereinafter the "Contractor") enters this Contractor Agreement ("Agreement") with the **City of Mountain Brook, Alabama**, a municipal corporation ("City"), effective as of the date last executed by a party below (the "Effective Date"). Contractor and City may be individually referenced herein as "Party" or collectively as "Parties."

1. **Project.** Unless otherwise stated on the attached Exhibit A - Specifications (which is incorporated by reference), Contractor, at its expense, will furnish all the labor, materials, supplies, supervision, and equipment needed to perform the work, services and operations (collectively, the "Work") at 131 and 133 Cherry Street, Mountain Brook, AL 35213 (the "Site") in accordance with the terms, conditions and specifications in this Agreement and on Exhibit A (the "Project").

2. **Term/Termination.** The term of this Agreement shall commence on the Effective Date and thereafter continue in effect for three (3) months (the "Term"). The period in which Contractor will complete the Project is set forth on Exhibit A.

Notwithstanding the provision immediately above or any other language herein, City may terminate this Agreement before the expiration of its Term at the time designated in a written notice to Contractor if each of the following have occurred: (a) Contractor has defaulted on a material obligation to the City hereunder (a "Default"); and (b) following the City's provision of written notice of Default to Contractor, the Contractor fails to correct or remedy that Default within fifteen (15) days after receipt of that notice. The failure of the Contractor to timely perform the Work shall be considered an event of Default. This remedy is in addition to any other provided in the Agreement or available to City under law or in equity.

3. **Contract Price/Invoice/Certification.** Unless otherwise stated in the Special Conditions on Exhibit A or agreed in a writing signed by the Parties, City will pay Contractor the lump sum amount of One Hundred Thirty Three Thousand Four Hundred and Forty Dollars (\$133,440.00) as compensation for performing the Work (the "Contract Price"). Further, unless agreed in a writing or amendment to this Agreement that is signed by duly authorized representatives of both Parties, the total amount payable to the Contractor for the Work shall not exceed the Contract Price.

Within ten (10) days following the successful completion of the Project, Contractor will submit to City Project Representative an invoice for the Contract Price (as adjusted by any mutually agreed change orders signed by both parties). With such invoice Contractor shall submit records reasonably supporting its payment. Within five (5) days following receipt of that invoice, City Project Representative will review same, consult with Contractor and make any mutually agreed modifications to it, certify that the invoice is due to be paid, and forward that certified invoice to the City Clerk. The City Clerk will remit to the Contractor the amount certified for payment within twenty (20) days after it receives that certification.

4. **Warranties of Contractor.** The Contractor warrants each of the following with respect to its Work:

- (a) that it expeditiously will perform its Work in a good and workmanlike manner that is consistent with level of skill and care that would be provided by other contractors performing operations under the same or similar conditions, and in accordance with the Project schedule;
- (b) that it, and all of its employees or any subcontractors (if authorized), will complete the Work in compliance with all codes, laws and regulations that are applicable to the Project;
- (c) that before commencing the Work, at its own expense, the Contractor will obtain all licenses, permits or other governmental authorizations needed to complete the Project, including without limitation, a business license and building permit issued by the City (collectively, "Licensing"). Contractor further agrees to maintain that Licensing throughout the performance of the Project;
- (d) that it has inspected the Site and any other locations at which it will perform the Work, and, based on that inspection and its expertise, that it has determined that each of those locations is reasonably suitable for Contractor to complete the Work;
- (e) that the Contractor shall be responsible to remove and properly dispose of any debris related to its completion of the Project, and that it will leave each location where the Work is performed in reasonably clean condition;
- (f) that the Work will be free of any material defects in workmanship and materials for a period of one (1) year that shall commence on the date of completion of the Project; and
- (g) that all actions required to be taken by or on behalf of the Contractor to enter or execute this Agreement, and to perform its obligations and agreements hereunder, have been duly taken, and the person signing below on behalf of Contractor is authorized to execute this Agreement.

5. Insurance/Safety/Indemnification.

(a) *Insurance.* For the duration of this Agreement and for limits not less than stated below, Contractor, at its sole expense, shall maintain the following insurance with a company(ies) lawfully authorized to do business in Alabama and reasonably acceptable to City:

- (i) Comprehensive General Liability: One Million Dollars (\$1,000,000.00), combined single limit and aggregate for bodily injury and property damage. This Comprehensive General Liability policy shall include coverage for

premises/operations, products/completed operations, assumed contractual obligations, independent contractors, and broad form property damage;

(ii) **Automobile Liability:** Automobile Liability covering owned and rented vehicles operated with policy limits of not less than One Million Dollars (\$1,000,000.00) combined single limit and aggregate for bodily injury and property damage;

(iii) **Workers Compensation/Employer's Liability:** Workers' Compensation as required by statute and Employer's Liability with limits of Five Hundred Thousand Dollars (\$500,000) per occurrence.

The Contractor may satisfy its insurance obligations hereunder through a combination of primary, umbrella and excess policies. Before the execution of this Agreement, the Contractor shall provide City a certificate(s) of insurance evidencing compliance with the requirements in this section. The certificate shall name City as an additional insured on the Comprehensive General Liability, Automobile Liability, and any applicable umbrella and excess policies.

(b). *Safety.* Contractor agrees that it (a) has the sole responsibility to identify any condition or hazard at the Site or other locations on City property that will prevent it from safely performing the Work, and (b) is exclusively responsible for performing the Work in a safe manner that does not put at risk the safety of persons or endanger property. Contractor shall take all reasonable precautions for the safety of, and shall provide all reasonable protection to prevent damage, injury or loss to: (i) its employees and all other persons who may be affected by the Work; (ii) all the Work and all materials and equipment to be incorporated therein, whether in storage on or off the Site, or under the care, custody or control of the Contractor or any of its representatives; and (iii) other property at the Work Site or adjacent thereto.

(c). *Indemnification.* Contractor agrees to defend, indemnify, and hold harmless City and its agents, employees and officials (hereinafter collectively, the "Indemnitees") from and against all demands, actions, liabilities, expenses (including reasonable attorney's fees) or claims for damages by any third parties (including any employee, subcontractor or representative of the Contractor, hereafter a "Contractor Representative") that arise out of, relate to or are caused by any negligent act, omission or conduct by Contractor or any Contractor Representative in performing or failing to perform the Work or its (or their) responsibilities under this Agreement; provided that nothing herein shall obligate the Contractor to indemnify any of the Indemnitees for any claims resulting from the negligent conduct or the willful misconduct of the Indemnitees.

(d). *Limitation of Liability.* In no event may Contractor recover from the City any special, incidental, consequential or any other indirect damages whatsoever of any description (including, without limitation, damages for lost profits, lost advantage, lost opportunity, loss of savings or revenues or for increased cost of operations) or amount arising from the City's breach of its obligations hereunder.

7. Project Representative. Each Party shall appoint and indicate on Exhibit A its representative who shall coordinate with the other Party on all matters related to the performance

of the Work and the administration of this Agreement (the "Project Representative"). Any notice required hereunder shall be sufficiently given when sent to the appropriate Project Representative via United States certified mail, return receipt requested, or via overnight courier with receipt verification to the address set forth herein, or by personally delivering such notice to the party to be in receipt thereof.

8. Miscellaneous Provisions.

(a). *Entire Agreement.* This Agreement (which is comprised of this instrument and Exhibit A) sets forth the entire understanding between the Parties concerning the matters herein, and all oral representations, prior negotiations, understandings, agreements, conditions, and terms discussed between them prior to acceptance and signing of this Agreement are deemed to have merged herein.

(b). *Counterparts.* This Agreement may be executed in counterparts each of which when executed by the parties shall be deemed to be a complete original. An electronic or facsimile copy of the executed contract or counterpart shall be deemed, and shall have the same legal force and effect as, an original document.

(c). *No Waiver.* Any forbearance or delay on the part of City in enforcing any of its rights under this Agreement shall not be construed as a waiver of such rights. No terms of this Agreement shall be waived unless expressly waived in writing.

(d). *Assignment.* Contractor may not assign its rights, obligations or the benefits of this Agreement to any third party without the written consent of City, which consent may be withheld for any reason.

(e). *No Third Party Rights.* This Agreement is made only for the benefit of the Parties. It is not intended, nor shall it be construed, to grant or bestow any benefit, right or privilege to any third party.

(f). *Independent Contractor.* Contractor is an independent contractor of City. This Agreement does not create any partnership, joint venture or principal-agent relationship between the Parties. Further, City retains no control or authority with respect to its means and methods in which Contractor (or any of its employees or representatives) performs the Work.

(g). *Immigration Law Compliance.* Contractor represents and warrants to the City that: (i) it does 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) it will enroll in the E-Verify program prior to performing any work on the Project in Alabama and shall provide documentation establishing that it is enrolled in the E-Verify program. During the performance of this Agreement, the Contractor 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) it will comply with all applicable provisions of the Act with respect to subcontractors, if any, that it engages on the

Project by entering into an agreement with or by obtaining an affidavit from such subcontractors providing work on the Project in Alabama that such subcontractors are in compliance with the Act with respect to their participation in the E-verify program. Contractor further represents and warrants that it shall not hire, retain or contract with any subcontractor to work on the Project in Alabama which it knows is not in compliance with the Act; and (iv) by signing this Agreement, it affirms, for the duration of the Agreement, that it 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, if Contractor is found to be in violation of this provision, it shall be deemed in breach of the Agreement and shall be responsible for all damages resulting therefrom.

(h). *Amendment.* Neither this Agreement nor any of the provisions herein (including, without limitation, those concerning the Scope, Project Schedule and Contract Price) may be amended or modified except in accordance with the terms of a written instrument (or change order) signed by both Parties.

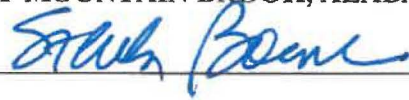
(i). *Delayed Performance/Force Majeure Events.* Neither Party shall be liable to the other for any failure to perform its respective obligations (including payment obligations) under this Agreement during any period in which its performance is delayed by circumstances beyond its reasonable control, such as fire, flood, war, embargo, strike, riot, or the intervention of any governmental authority (a "Force Majeure Event"). However, the delayed Party must promptly provide the other with written notice of the Force Majeure Event, the delayed Party's time for performance will be excused only for the duration of that Event, and, if that Event lasts longer than 30 days, then the other Party may immediately terminate, in whole or in part, this Agreement by giving written notice to the delayed Party.

(j). *Governing Law.* This Agreement shall be governed by, and construed in accordance with, the laws of the State of Alabama.

Whereas, the undersigned, duly authorized representatives of the Parties execute this Agreement on behalf of their respective organization on the date(s) shown below.

Signature page follows:

CITY OF MOUNTAIN BROOK, ALABAMA

By: 

Its: Assistant City Manager/Finance Director

Date: 07/14/2023

J.D. MORRIS CONTRACTING CO., INC.

By: _____

Its: _____

Date: _____

EXHIBIT A – SPECIFICATIONS

1. Scope of Work. *(Describe Project Below)*

The Scope of Work (the “Scope”) is defined by the Site Remediation Drawings dated July 14, 2023 and attached hereto, as well as the Cherry Street Drainage Improvements Technical Specifications Engineering Package. If Contractor desires or is required to perform services on the Project that fall outside the Scope (“Additional Operations”), the Contractor shall advise the City Project Representative of the need for Additional Operations before undertaking those services, the parties shall reach agreement on the expense of any Additional Operations and the City Project Representative shall approve any such Additional Operations before the Contractor performs same.

2. Project Schedule. Contractor will commence performing the Work within no more than two (2) days after the City gives written or verbal notice to proceed, and successfully complete the Project within twenty (20) days following its receipt of that notice.

3. Project Representatives.

City Project Representatives:
Sam Gaston
City Manager
gaston@mtnbrook.org
(205) 802-3803

Contractor Project Representative:

Steve Boone
Assistant City Manager/Finance Director
boones@mtnbrook.org
(205) 802-3825

4. Special Conditions.

RESOLUTION NO. 2023-119

BE IT RESOLVED by the City Council of the City of Mountain Brook, Alabama, that the City Council hereby authorizing the execution of an agreement with International Fire Protection, Inc. with respect to the suppression system and backflow preventer inspection services for the municipal complex and O’Neal Library.

ADOPTED: This 24th day of July, 2023.

Council President

APPROVED: This 24th day of July, 2023.

Mayor

CERTIFICATION

I, Heather Richards, City Clerk of the City of Mountain Brook, Alabama hereby certify the above to be a true and correct copy of a resolution adopted by the City Council of the City of Mountain Brook at its regular meeting held on July 24, 2023, as same appears in the minutes of record of said meeting.

City Clerk

RESOLUTION NO. 2023-120

**A RESOLUTION AUTHORIZING THE SALE OR DISPOSAL
OF CERTAIN SURPLUS PROPERTY**

WHEREAS, the City of Mountain Brook, Alabama, has certain items of personal property which are no longer needed for public or municipal purposes; and

WHEREAS, Section 11-43-56 of the Alabama Code of 1975 authorizes the municipal governing body to dispose of unneeded personal property.

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

Section 1. It is hereby established and declared that the following property, as described in the form as attached hereto as Exhibit A, owned by the City of Mountain Brook, Alabama are no longer needed for public or municipal purposes and is hereby declared surplus property; and

Section 2. That the City Manager, or his designated representative, is hereby authorized and directed to sell said property by way of public Internet auction or to dispose of said items not sold.

ADOPTED: This 24th day of July, 2023.

Council President

APPROVED: This 24th day of July, 2023.

Mayor

CERTIFICATION

I, Heather Richards, City Clerk of the City of Mountain Brook, Alabama, hereby certify the above to be a true and correct copy of a resolution adopted by the City Council of the City of Mountain Brook at its meeting held on July 24, 2023, as same appears in the minutes of record of said meeting.

City Clerk

Surplus

Book carts – 2

One wheel missing from each cart.

Both carts dimensions:

42 inches high

32 inches long

17 inches wide

The library does not have a loading deck, and staff are not available to assist with moving/loading.





ORDINANCE NO. 2147

**AN ORDINANCE TO AMEND SECTION 50-46(b)(6) OF THE CITY CODE
RELATING TO THE SPEED LIMIT ON MARLBORO DRIVE**

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

Section 1. Speed Limit of Marlboro Drive. Section 50-46(b)(6) of the “Code of Ordinances” of the City of Mountain Brook, Alabama which lists those streets or portions thereof that have been ordained a speed limit of twenty-five (25) miles per hour is hereby amended to include the following street along with all other streets or portions thereof currently included therein:

- a. Marlboro Drive

Section 2. Severability. If any part, section, 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.

Section 3. Publication. The City Clerk shall cause a copy of this ordinance to be published by posting or by such other means as may be authorized by law.

Section 4. Effective Date. This ordinance shall be effective immediately after adoption and publication as provided by law.

ADOPTED: This 24th day of July, 2023.

Council President

APPROVED: This 24th day of July, 2023.

Mayor

CERTIFICATION

I, Heather Richards, 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 July 24, 2023, as same appears in the minutes of record of said meeting, and published by posting copies thereof on July 25, 2023, at the following public places, which copies remained posted for five (5) days as required by law.

City Hall, 3928 Montclair Road

Overton Park, 3020 Overton Road

Gilchrist Pharmacy, 2850 Cahaba Road

Cahaba River Walk, 3503 Overton Road

City Clerk