



**CITY OF OPELIKA
CITY COUNCIL
WORKSESSION MEETING AGENDA
300 Martin Luther King Blvd.
October 5, 2021
TIME: 6:40 PM**

1. CALL TO ORDER
 1. George Allen, Erica Norris, Robert Lofton, Todd Rauch, Eddie Smith
2. PRESENTATIONS
 1. Request Advertise for PH, Rezoning, 1200 block South Fox Run Parkway, 3.2 acres, from C-2, GC-P to C-3, GC-P.
 2. Request to Advertise for PH, Amendments to Section IX Sign Regulations.
 3. Ali Rauch, President and CEO, Opelika Chamber of Commerce Annual Report.
3. RESOLUTIONS
 1. Approve Agreement with ALDOT for the Transportation Alternative Program (TAP) Grant for a Bike/Ped Path Along Waverly Parkway - ENG.
4. ORDINANCES
5. GENERAL UPDATES
 1. Ward 2 Community Meeting Announcement - President Pro-Tem Norris.
6. REVIEW/DISCUSS CURRENT COUNCIL MEETING AGENDA
7. GENERAL / DISCUSSION
 1. President Pro-Tem Norris.
8. END OF WORK SESSION

“In compliance with the Americans with Disabilities Act, the City of Opelika will make reasonable arrangements to ensure accessibility to this meeting. If you need special assistance to participate in this meeting, please contact the ADA Coordinator 72 hours prior to the meeting at (334)705-2083.”

City of Opelika

Planning Commission Report

Action Requested: Rezoning 3.2 Acres from C-2, GC-P to C-3, GC-P

Location of Property: 1200 block South Fox Run Parkway

Property Owner(s): HUD-ONE Properties, LLC (David Hudmon)
Michael Johnson, representative

Current Zoning: C-2, GC-P (office-retail, gateway corridor – primary)

Proposed Zoning: C-3, GC-P (general commercial, gateway corridor – primary)

Existing Land Use: Undeveloped

Surrounding Zoning Districts

And Land Uses:	North	C-3, GC-P	Ford dealership
	South	R-1	Interstate 85
	East	C-3, GC-P	Commercial
	West	C-3, GC-P	RV sales lot

Rezoning

The applicant is requesting to rezone 3.2 acres from C-2, GC-P to C-3, GC-P. Two lots adjacent to the rezoning property are currently zoned C-3, GC-P: At the October 2020 meeting, City Council approved rezoning of the adjacent 4 acre lot to C-3, GC-P for a RV and camper sales lot. The RV sales lot made some improvements, the Planning Commission granted conditional use approval, and a business license was issued in April 2021.

The proposed rezoning today is for an expansion of the RV sales lot. The additional 3.2 acres provides a larger inventory for the RV/camper business and increases RV/camper visibility to Fox Run Parkway and I-85 traffic. There are no immediate plans for a new building on the rezoning property, but a building (7,500 sf est.) is planned. The existing 13,000 square foot building (former Harley-Davidson building) on 4 acres will serve as office space and a service department for both lots. If the rezoning property is approved by Council, the applicant is aware that conditional use approval is required including a site plan and landscape plan.

The adjacent properties on the east, west, and north sides are in a C-3, GC-P zoning district. On the north side, Opelika Ford occupies 9 acres and zoned C-3, GC-P zone. Interstate 85 borders the rezoning property on the south side (see map attached).

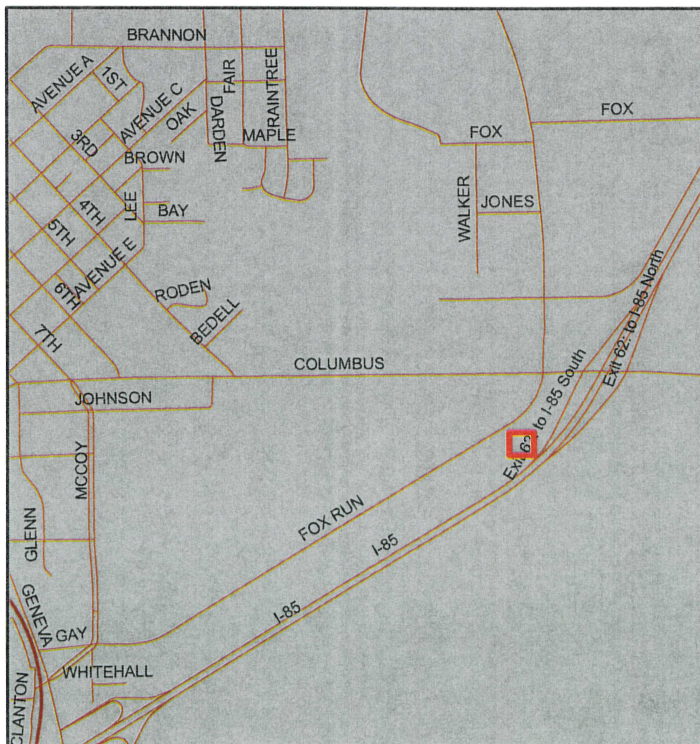
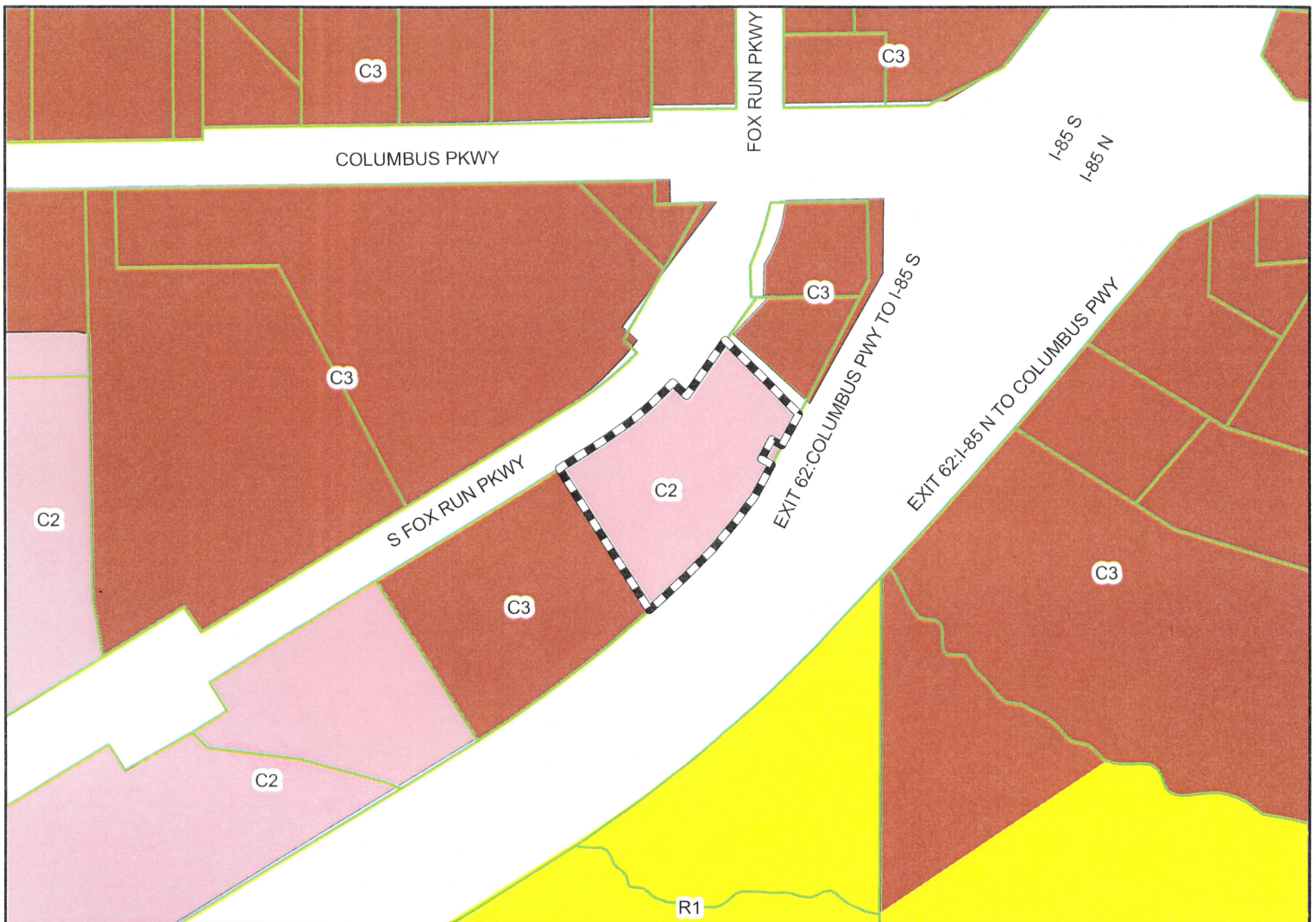
Staff Recommendation

Planning Staff believes that the 3.2 acre rezoning to C-3, GC-P is appropriate given the property is adjacent to three properties zoned C-3, GC-P. Also, the rear property line of the rezoning property is adjacent to I-85. Typically, an RV sales lot locates near an interstate highway providing immediate access to the business and to increase inventory exposure along the interstate.

Planning Staff recommends Planning Commission send a positive recommendation to the City Council to rezone the 3.2 acre property from C-2, GC-P to C-3, GC-P.

At the September 28th meeting, the Planning Commission voted 7 to 0 to send a positive recommendation to City Council to rezone the 3.2 acres from C-2, GC-P to C-3, GC-P.

SOUTH FOX RUN REZONING 1201 SOUTH FOX RUN PARKWAY C-2, GC-P TO C-3, GC-P



The petitioner owns 3.2 acres next to an existing RV & Camper sales lot. The RV sales lot desires to expand into the 3.2 acres if the rezoning is approved.



Subject Property

The City of Opelika does not guarantee this map to be free from errors or inaccuracies. The City of Opelika, Alabama disclaims any responsibility or liability for interpretations from this map or decisions based thereon. The information contained on this map is a general representation only and is not to be used without

RESOLUTION NO. _____

**A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF OPELIKA
RECOMMENDING THAT THE CITY COUNCIL ADOPT AN ORDINANCE
AMENDING SECTIONS 2.2, 6.4, 7.3, 7.6, 7.8, 8.14, 8.18.1, 8.24, 8.26, 8.27 AND
SECTION IX OF THE ZONING ORDINANCE AND
SPECIFICALLY BY ADOPTING NEW SIGN REGULATIONS**

WHEREAS, the Planning staff has prepared an ordinance for consideration to amend Sections 2.2, 6.4, 7.3, 7.6, 7.8, 8.14, 8.18.1, 8.24, 8.26, 8.27, and Section IX of the Zoning Ordinance and specifically by adopting new sign regulations; and

WHEREAS, these provisions are collectively referred to as the “Zoning Ordinance Amendments”; and

WHEREAS, on September 28, 2021, the Planning Commission conducted a duly noticed public hearing in accordance with all applicable requirements of the state planning and zoning law, to consider the Zoning Ordinance Amendments and considered oral and written reports; and

WHEREAS, at the public hearing the Planning Commission considered the staff reports, oral and written, and materials presented by all of those wishing to be heard on the Zoning Ordinance Amendments; and

WHEREAS, the Planning Commission has reviewed and considered the Zoning Ordinance Amendments and recommends approval of such Amendments.

NOW THEREFORE, be it resolved by the Planning Commission of the City of Opelika, Alabama, as follows:

Section 1. The recitals set forth above are true and correct and are hereby incorporated herein by reference as duly set forth in their entirety.

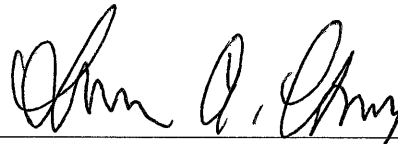
Section 2. The Planning Commission hereby finds that the proposed Zoning Ordinance Amendments, a copy of which are attached hereto as Exhibit “A”, are in the public interest.

Section 3. The Planning Commission hereby recommends that the City Council adopt an ordinance approving the Zoning Ordinance Amendments as shown in Exhibit "A".

Section 4. The final report of the Planning Commission, a copy of which is attached hereto as Exhibit "B", is hereby approved and the Planning Director shall submit a final report recommending approval of the Zoning Ordinance Amendments to the City Council.

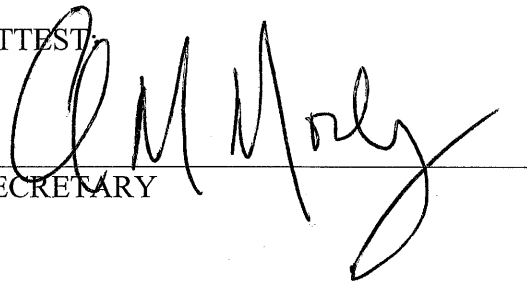
Section 5. This resolution is effective upon adoption.

ADOPTED AND APPROVED this the 28th day of September, 2021.



CHAIRMAN OF THE PLANNING
COMMISSION OF THE
CITY OF OPELIKA, ALABAMA

ATTEST:



SECRETARY

REPORT OF OPELIKA PLANNING COMMISSION

TEXT AMENDMENT—SIGN REGULATIONS

In the case of Reed v. Town of Gilbert (June 2015) the U.S. Supreme Court held that any regulation that distinguishes signs based on what they say is considered to be content-based, and content-based regulations are legally subject to strict scrutiny and thus are allowed if they are narrowly tailored to serve a compelling governmental interest and other avenues of communication are available for the use of the sign. Based on the Reed decision, the City of Opelika completely revised its sign regulations in 2016. The City's ordinance focused on regulating the time, place and manner of signage instead of use or content.

Since 2016, there have been additional legal challenges to what constitutes content-neutrality. Recently, in the case of City of Austin v. Reagan Nat'l Advertising of Texas, the U.S. Court of Appeals for the Fifth Circuit ruled that the City of Austin's distinction between on- and off-premise signs is an unconstitutional content-based regulation under Reed. The City of Austin appealed to the U.S. Supreme Court where the case is pending adjudication. The decision of the Supreme Court will be dispositive on this issue. After Reagan, many cities moved to remove the distinction of on- and off-premise signs. The proposed Zoning Ordinance Amendments will modify the City's Zoning Ordinance to remove this distinction.

The proposed Zoning Ordinance Amendments include removing "outdoor advertising" from the permitted use matrix table. It also removes specific sign standards for home occupations, adult uses, body art uses and fast food restaurants. The changes also centralize all sign standards into Section IX of the Zoning Ordinance from other sections of the Ordinance. The Zoning Ordinance Amendments also move certain definitions from Section IX to subsection 2.2 of the Zoning Ordinance. The regulations also add some images to provide more clarity to the text.

The proposed Zoning Ordinance Amendments will also move away from the term "group development to lots with two or more building units". The proposed sign regulations add a section on master sign plans that allow the Planning Commission to approve larger signs and additional signs for any development over 25 acres or 300,000 square feet on non-residential floor area.

The proposed Zoning Ordinance Amendments remove the interstate sign regulations that were enacted two years ago. Those regulations, if not tied to on-premise developments, would be open to extremely tall signs that could be used for any user on or off premise. Additionally, the proposed Zoning Ordinance Amendments remove the billboard reduction allowances. Since the City will no longer make a distinction between on- and off-premise signs, billboards are not regulated as a separate use.

The proposed Zoning Ordinance Amendments represent a significant rewriting of the signage regulations for the City of Opelika. However, the Planning Commission is of the opinion that these regulations will keep the City consistent with current trends and recent court rulings.

The Planning Commission recommends that the text amendments contained in the attached Ordinance be approved to allow signage to be controlled in an orderly manner and to comply with recent court rulings.

A handwritten signature in black ink, appearing to read "John A. Gray", is written over a horizontal line.

CHAIRMAN OF THE OPELIKA
PLANNING COMMISSION

The Zoning Ordinance (Ordinance No. 124-91) should be amended in the following respects:

Section II “Definitions” of the Zoning Ordinance shall be amended to in the following manner:

Adding or amending:

City. The City of Opelika.

City Council. The City Council of the City of Opelika, Alabama.

Code of Ordinances. The Code of Ordinances, City of Opelika, Alabama, also known as the Opelika City Code.

Fence. An artificially constructed barrier of any material or combination of materials erected to enclose or screen areas of land.

Parcel. Any quantity of land and water capable of being described with such definiteness that its location and boundaries may be established, which is designated by its owner or developer as land to be used or developed as a unit, or which has been used or developed as a unit. May also be referred to as “parcel of land.”

Parking Lot. An off-street, ground level area or plot of land used for the storage or parking of vehicles.

Person. Any person, individual, public or private corporation, firm, association, joint venture, partnership, municipality, governmental agency, political subdivision, public officer or any other entity whatsoever or any combination of such, jointly or severally.

Planning Commission. The City of Opelika Planning Commission.

Planning Director. The person appointed to direct the Planning Department of the City of Opelika, Alabama, or the planning director’s designee. May also be referred to as the “Director of Planning” or “Director” in this ordinance.

Right-of-Way. The area of a highway, road, street, way, parkway, electric transmission line, gas pipeline, water main, storm or sanitary sewer main, or other such strip of land reserved for public use, whether established by prescription, easement, dedication, gift, purchase, eminent domain or any other legal means.

Removing:

~~**Subdivision Identification Marker.** A structure marking an entrance to a subdivision, office park or industrial park, carrying no advertising other than the name of the owner or developer of the subdivision, office park or industrial park and the name of the development.~~

Section VI Establishment of Zoning Districts, shall be amended in the following manner:

SECTION 6.4 PURPOSE AND INTENT OF ZONING DISTRICTS

R/E Retail/Entertainment District

Remove:

E. On-premise/off-premise business and advertising signs, reader boards and banners are permitted throughout the R/E District and may include advertising material for any business or activity located within and without the R/E District so long as the same complies with applicable state and federal laws.

The remainder of this section shall be renumbered accordingly.

Section VII “District Regulations” of the Zoning Ordinance shall be amended to in the following manner:

SECTION 7.3 SPECIFIC DISTRICT REGULATIONS

C. Use Categories

Remove the following use:

Outdoor Advertising as a use from both Residential and Commercial headings including the related footnote.

SECTION 7.6 GATEWAY CORRIDOR OVERLAY DISTRICT

B. Administration.

Modify:

7. Special Development Standards
 - c. Fast food restaurant
 2. Drive-in displays, ordering areas, and parking canopies are permitted but shall not serve as the singularly dominant feature on the site. Order box and pick-up window shall not be oriented towards the designated corridor. Drive-through signs shall be regulated in accordance with Section IX.
-

SECTION 7.8 VILLAGE COMMERCIAL DISTRICT

Remove:

H. Signage.

One (1) sign per principal structure shall be permitted in the Village Commercial District. This sign may be a ground sign, projecting sign, or wall sign. The area of the sign on any one (1) side shall be two (2) square feet per thousand (1000) square feet of lot area, not to exceed thirty-two (32) square feet. Ground signs shall be no taller than eight (8) feet above the true finished grade (i.e. not on top of an earthen berm or other elevated location). Signs shall be illuminated only by shielded exterior lighting. The intent is to have commercial signage, which is compatible in scale, and character with nearby residential uses.

Section VIII GENERAL PROVISIONS shall be amended in the following manner:

SECTION 8.14 HOME OCCUPATION

Modify:

5. No outdoor display or storage of materials, goods, supplies, or equipment used in the operation of the business shall be permitted outside the dwelling unit. No alteration to any building shall indicate from the exterior that the building is being utilized for any purpose other than a residential unit. ~~One (1) non-illuminated sign having an area of not more than two (2) square feet may be placed flat on a door, wall, or window.~~ No flammable, caustic, or noxious material not commonly found in the home may be stored or kept on the premises.

SECTION 8.18.1 PLANNED RESIDENTIAL DEVELOPMENT (PRD)

Modify:

B. Permitted Uses.

Single, two (2) family and multiple-family residential dwellings or a combination thereof may be allowed with conditional use approval. However, at least seventy percent (70%) of the total number of dwelling units must be single-family detached residence and no single multi-family dwelling complex shall be designed to house more than four (4) households. Detached residential dwelling units may be required in lieu of attached multi-family units when determined to be in the interest of the neighborhood.

A PRD may include accessory commercial and office uses, as approved by the Planning Commission, provided such uses are of the size and capacity to meet the needs of the occupants of the development. The nonresidential use should be primarily for the service and convenience of the residents in the PRD. Each property owner of the PRD shall be notified by certified mail about Planning Commission review of a proposed nonresidential use. ~~A free-standing nonresidential structure must be designed to reflect the residential character of the PRD; one (1) identification sign no larger than four (4) square feet shall be permitted mounted on the exterior wall; freestanding signs are prohibited;~~ No building permit for an accessory commercial use will be issued until sixty percent (60%) of the PRD's dwelling units have been issued a certificate of occupancy.

Standards for retail and office use shall require the development to contain a minimum of fifty (50) dwelling units; the total floor area of all commercial and office uses in the development shall not exceed ten (10%) percent of the total floor area of all dwelling units, or fifteen thousand (15,000) square feet, whichever is smaller; the total floor area of any single establishment shall not exceed three thousand (3,000) square feet; and the land uses shall be limited to: offices, financial institutions, retail shops, personal service establishments, and restaurants without drive-thru windows.

N. Entrance Features.

~~One (1) ground-mounted (monument) sign (maximum 40 square feet) for each PRD or a ground-mounted sign for each arterial/collector entrances shall be installed. Signs shall be installed in a landscaped median~~

~~or on either side of the entrance road. Sign materials and design shall be approved by the Planning Commission. Entry landscaping shall meet the minimum requirements of one (1) canopy tree with the remaining area filled with shrubbery and complimentary ground cover. Plant sizes shall meet requirements stated in Section X Landscape Regulations.~~

SECTION 8.24 ADULT BUSINESS REGULATIONS

D. Adult Business Regulations.

Remove:

~~5. No adult business shall be operated in any manner that permits the display, advertisement, or observation of any material depicting, describing or relating to "specified sexual activities" or "specified anatomical areas" from any public way (street, sidewalk, etc.) or from any location outside the building or area of such establishment. This provision shall apply to any decoration, sign, show window, or opening into the business.~~

The remainder of this section shall be renumbered accordingly.

Remove Section 8.26 OUTDOOR ADVERTISING in its entirety, reserving the number to prevent renumbering.

SECTION 8.27 BODY ART (TATTOO & BODY PIERCING)

Remove:

B. Body Art Regulations.

~~4. No body art business shall be operated in any manner that permits the display, advertisement, or observation of any material depicting, describing or relating to "specified sexual activities" or "specified anatomical areas" from any public way (street, sidewalk, etc.) or from any location outside the building or area of such establishment. This provision shall apply to any decoration, sign, show window or opening into the business.~~

The remainder of this section shall be renumbered accordingly.

Current Section IX “Sign Regulations” of the Zoning Ordinance shall be deleted in its entirety and replaced with new Section IX “Sign Regulations”.

SECTION IX

SIGN REGULATIONS

Section 9.1. Purpose, Intent and Scope

It is the purpose of this section to promote the public health, safety, and general welfare of the public through reasonable, consistent, and non-discriminatory regulations for the erection, placement and maintenance of signs. The City does not intend to infringe on the rights of free speech as protected by the First Amendment to the United States Constitution and Section 4 of the Alabama Constitution. The sign regulations are especially intended to address the secondary effects that may adversely impact aesthetics and safety. The sign regulations are designed to serve substantial governmental interests and, in some cases, compelling governmental interests such as traffic safety and warning signs of threats to bodily injury or death.

This section regulates signs, as defined in this section, which are placed on private property or on public property (e.g., property owned by governmental agencies or rights-of-way) but is only intended to regulate signs over which the City of Opelika is empowered to regulate. This section is not intended to extend its regulatory regime to objects that are not traditionally considered signs for purpose of government regulation.

The City is a community that cherishes and preserves its rich heritage, while at the same time embracing all of the visions and opportunities for a bright future for its residents and businesses. In order to preserve and promote the city as a desirable community in which to live and do business, a pleasing, visually attractive environment is of foremost importance. The regulation of signs within the City is a highly contributive means by which to achieve this desired end.

These sign regulations have been prepared with the intent of enhancing the visual environment of the City and promoting its continued well-being, and are intended to:

- (1) Encourage the effective use of signs as a means of communication in the City;
- (2) Maintain and enhance the aesthetic environment and the City's ability to attract sources of economic development and growth;
- (3) Safeguard and promote the aesthetic quality of the City by establishment of reasonable standards for the number, size, height, spacing, placement and illumination of such signs in the interest of public safety and the general welfare;
- (4) Improve pedestrian and traffic safety;
- (5) Minimize the possible adverse effect of signs on nearby public and private property;
- (6) Foster the integration of signage with architectural and landscape designs;
- (7) Lessen the visual clutter that may otherwise be caused by the proliferation, improper placement, illumination, animation, excessive height, and excessive size (area) of signs which compete for the attention of pedestrian and vehicular traffic;

- (8) Allow signs that are compatible with their surroundings and aid orientation, while precluding the placement of signs that contribute to sign clutter or that conceal or obstruct adjacent land uses or signs;
- (9) Encourage and allow signs that are in context within the zoning district in which they are located based on sign type, height, size, illumination, setbacks, and overall scale;
- (10) Establish sign area in relationship to the scale of the lot and building on which the sign is to be placed;
- (11) Regulate signs in a manner so as to not interfere with, obstruct the vision of or distract motorists, bicyclists or pedestrians;
- (12) Except to the extent expressly preempted by state or federal law, ensure that signs are constructed, installed and maintained in a safe and satisfactory manner, and protect the public from unsafe signs;
- (13) Provide for the installation of electronic message signs with limitations for the purposes of aesthetics and minimizing distractions along streets;
- (14) Regulate the illumination and brightness of signage to minimize driver distractions and to minimize impacts on adjacent uses;
- (15) Allow for traffic control devices consistent with national and state standards and whose purpose is to promote highway safety and efficiency by providing for the orderly movement of road users on streets and highways, and that notify road users of regulations and provide warning and guidance needed for the safe, uniform and efficient operation of all elements of the traffic stream;
- (16) Regulate the appearance and design of signs in a manner that promotes and enhances the beautification of the City and that complements the natural surroundings in recognition of this City's reliance on its natural surroundings and beautification efforts in retaining economic advantage for its community, as well as for its major subdivisions, shopping centers and industrial parks;
- (17) Enable the fair and consistent enforcement of these sign regulations;
- (18) Provide standards regarding the non-communicative aspects of signs, which are consistent with city, county, state and federal law;
- (19) Provide flexibility and encourage variety in signage, and create an incentive to relate signage to the basic principles of good design; and
- (20) Assure that the benefits derived from the expenditure of public funds for the improvement and beautification of streets, sidewalks, public parks, public rights-of-way, and other public places and spaces, are protected by exercising reasonable controls over the physical characteristics and structural design of signs.

Section 9.2. Definitions

The words, phrases and terms used in this Section IX shall have the meanings herein ascribed to them. Words and phrases not defined in this Section IX but defined elsewhere in the

Zoning Ordinance shall be given the meanings therein ascribed to them. Any word, phrase or term not defined in this Zoning Ordinance shall have its commonly understood meaning.

Architectural Embellishment

Any projection, relief, change of material, window or door opening, exterior lighting, inlay, or other exterior building features not specifically classified as a sign or containing sign copy. The term includes, but is not limited to, relief or inlay features or patterns that distinguish window or door openings, exterior lighting that frames building features, and changes in façade materials to create an architectural effect.

Awning

Any secondary covering attached to the exterior wall of a building. It is typically composed of canvas woven of acrylic, metal, cotton or polyester yarn, or vinyl laminated to polyester fabric that is stretched tightly over a light structure of aluminum, iron or steel, or wood.

Building Unit

A stand-alone building or a building divided into separate units or spaces that are individually owned or leased by different enterprises, businesses, firms, or other nonresidential occupants, and which meets the following conditions:

- Where a building is divided into individual spaces, each space with its own exterior entry or access point directly into the space shall be consider a building unit.
- Where a building contains individual spaces that are all accessed from the interior through a joint entry, such building shall be considered one building unit.
- Where a lot contains multiple principal buildings, each building shall be considered a building unit.

“Building unit” shall not be used to define an apartment building or similar residential-only building that is divided into individual dwelling units. For a mixed-use building that contains nonresidential and residential uses within the same building, the number of building units on any given lot shall be determined by the number of nonresidential enterprises, businesses, firms, or other nonresidential occupants.

Canopy

An overhead roof or structure that is able to provide shade or shelter. It is typically ground supported or supported by metal frame.

Copy

See definition of “sign copy.”

Erect. To construct, build, raise, assemble, place, affix, attach, create, paint, draw, or in any way bring into being or establish: but it does not include any of the foregoing activities when performed as an incident to the change of message or customary maintenance or repair of a sign.

Façade

The exterior wall of a building exposed to public view or that wall viewed by persons not within the building.

Flag

A sign composed of cloth, canvas, plastic, fabric or similar lightweight, non-rigid material that can be mounted to flagpole or a building-mounted post or stanchion.

Flagpole

A pole on which to raise a flag.

Frontage, Building

The maximum width of a building measured in a straight line parallel with the abutting street, public parking lot, or pedestrian walkway.

Frontage, Lot

The horizontal distance between the side lot lines measured at the point where the side lot lines intersect the street right-of-way. All sides of a lot that abut a street shall be considered lot frontage.

Maintenance

In the context of this Section IX, means the repairing or repainting of a portion of a sign or sign structure, periodically changing changeable copy, or renewing copy, which has been made unusable by ordinary wear.

Marquee

Any permanent wall or roof-like structure projecting beyond a building or extending along and projecting beyond the wall of the building, generally designed and constructed as part of the principal structure to provide protection from the weather. A marquee is not an awning or canopy.

Pennant

Any lightweight plastic, fabric, or other material whether or not containing a message of any kind, suspended from a rope, wire, or string, usually in a series, which will flutter or swing in the wind.

Right-of-Way

The area of a highway, road, street, way, parkway, electric transmission line, gas pipeline, water main, storm or sanitary sewer main, or other such strip of land reserved for public use, whether established by prescription, easement, dedication, gift, purchase, eminent domain or any other legal means.

Sign

A structure, device, or surface that contains, supports, or displays sign copy.

Sign Area

The total area of a sign face as measured pursuant to [Section 9.5: General Provisions for Signs](#).

Sign Cabinet

A structure that contains all the text and/or logo symbols within a single enclosed cabinet and may or may not be illuminated.

Sign Copy

Letters, numerals, figures, symbols, logos, pictorial, or graphic elements comprising the content or message of a sign.

Sign Height

The height of a sign as measured pursuant to [Section 9.5: General Provisions for Signs](#).

Sign, A-Frame

A detached temporary sign that is ordinarily in the shape of an “A” or some variation thereof, which is readily moveable, and is not permanently attached to the ground or any structure.

Sign, Attached

Any sign attached to, on, or supported by any part of a building (e.g., walls, awning, windows, or canopy), which encloses or covers useable space.

Sign, Awning

Any sign that is a part of or printed, stamped, stitched or otherwise applied onto a protective awning, canopy, or other fabric, plastic, or structural protective cover over a door, entrance, window, or outdoor service area.

Sign, Banner

A temporary sign made of wind and weather resistant cloth or other lightweight material, intended to hang either with or without frames or in some other manner as not to be wind activated, and possessing characters, letters, illustrations, or ornamentations applied to paper, plastic or fabric of any kind. Flags shall not be considered banners for the purpose of this definition.

Sign, Blinking

A sign or any portion of a sign, whose illumination is characterized by a repetitive cycle that changes at a frequency of eight (8) seconds or less.

Sign, Canopy

A sign affixed to a canopy, awning, eave, cantilever story of extended roof of a building. See also Sign, Awning.

Sign, Changeable Copy

A sign with the capability of content change by means of manual or remote input, including the following types:

- Manually activated. Changeable sign whose message copy can be changed manually on a display surface. This includes signs that are typically called a “reader board.”
- Electronically activated. Changeable sign whose message copy or content can be changed by means of remote electrically energized on-off switching combinations of alphabetic or pictographic components arranged on a display surface. Illumination may be integral to the components, such as characterized by lamps or other light-emitting devices, or may be from an external light source designed to reflect off of the changeable component display. See also Sign, Electronic Message.

Sign, Door

A sign attached to, in contact with, placed upon, or painted on a door which is intended for viewing from the outside of such building. A door sign shall also include any permanent signs mounted inside the building, but not attached to the door, that is mounted in a way to be viewed from the outside of such building in the same manner as a sign attached to the door. This does not include merchandise located in the building.

Sign, Double-Faced

A sign which has two display surfaces backed against the same background, one face of which is designed to be seen from one direction and the other from the opposite direction, every point on which face being either in contact with the other face or in contact with the same background.

Sign, Drive-Through

Any signage allocated along a drive-through lane that is oriented toward the customer or user in the drive-through lane.

Sign, Driveway

A small permanent sign located near driveway access points or at the intersection of internal access drives.

Sign, Electronic Message

An electronically activated changeable copy sign whose variable message capability can be electronically programmed.

Sign, Feather

A sign extending in a sleeve-like fashion down a telescoping or fixed pole that is mounted in the ground or on a building or stand. A feather sign or flutter sign is usually shaped like a sail or feather, and attached to the pole support on one vertical side.

Sign, Fixed Aerial Advertising

An aerial sign medium tethered to, or controlled from, the ground.

Sign, Flashing

Any illuminated sign, on which the artificial source of light is not maintained stationary or constant in intensity and color at all times when such sign is illuminated; a sign that contains an intermittent flashing light source, or which includes the illusion of intermittent or flashing- light, or in which any part of the light source varies in intensity and/or hue, or in which a message constantly flashes on and off, or alternates with other copy. For the purposes of this definition, any moving illuminated sign affected by intermittent lighting shall be deemed a flashing sign. See also Sign, Blinking.

Sign, Flutter

See also Sign, Feather.

Sign, Freestanding

Any sign supported upon the ground by a monument, pedestal, pole, bracing, or other permanent measure and not attached to any building. A freestanding permanent sign may be a pole sign or a monument sign.

Sign, Holographic Display

A sign that creates a three-dimensional image through projection, OLED (organic light emitting diode), or any similar technology.

Sign, Illuminated

Any sign or portion thereof which is illuminated by artificial light, either from an interior or exterior source, including outline, reflective or phosphorescent light (including but not limited to plasma or laser), whether or not the source of light is directly affixed as part of the sign, and shall also include signs with reflectors that depend upon sunlight or automobile headlights for an image.

Sign, Indirectly illuminated

Any sign, the facing of which reflects light from a source intentionally directed upon it.

Sign, Inflatable or Balloon

A sign consisting of a flexible envelope of nonporous materials that gains its shape from inserted air or other gas.

Sign, Internally Illuminated

Any sign which has a source of light not visible to the eye and entirely enclosed within the sign.

Sign, Marquee

A sign affixed or inherent with the structure of metal, glass, canvas or other material projecting over and from points of ingress or egress of a building or other structure in nonresidential use. A marquee sign is not an awning or canopy sign and is calculated as part of the wall signage allowance.

Sign, Monument

A type of freestanding sign that is not supported by a pole structure and is placed upon the ground independent of support from the face of a building and that is constructed of a solid material such as wood, masonry or high-density urethane. A monument sign is not a pole sign.

Sign, Moving

Any sign in which the sign itself or any portion of it physically moves or revolves.

Sign, Multi-prism

A sign made with a series of multiple sections that rotate and stop, or index, to show multiple images or messages in the same area at different times.

Sign, Nonconforming

Any sign that was validly installed under laws or ordinances in effect prior to the effective date of the Zoning Ordinance or subsequent amendments, but which is in conflict with the provisions of the current Zoning Ordinance.

Sign, Permanent

Any sign which is intended to be and is so constructed as to be of lasting and enduring condition, remaining unchanged in character, condition (beyond normal wear and tear) and position and in a permanent manner affixed to the ground, wall or building. Unless otherwise provided for herein, a sign other than a temporary sign shall be deemed a permanent sign unless otherwise indicated elsewhere in the Zoning Ordinance.

Sign, Pole

A type of ground sign that is supported by one or more poles and otherwise separated from the ground by air. A pole sign is not a monument sign.

Sign, Portable

Any sign, banner, or poster that is not permanently attached to the ground or to a structure that is attached to the ground or a sign capable of being transported, including, but not limited to, signs designed to be transported by means of wheels or carried by a person. For purposes of this division, a cold air inflatable sign shall be considered to be a portable sign. The definition of a portable sign does not include "A-frame signs" or "T-frame signs".

Sign, Projecting

Any sign permanently affixed to a building or other structure, extending beyond said building or other structure more than twelve (12) inches beyond the surface of such building or wall and located not less than eight (8) feet above the ground or finished surface of a sidewalk, street, driveway, or alley beneath it.

Sign, Reader Board

A permanent type of a manual changeable copy sign in the form of a structure or framework on which copy is posted in the form of removable letters or posters.

Sign, Revolving

See Sign, Rotating.

Sign, Roof

Any sign which is mounted on the roof of a building or which extends above the top edge of the wall of a flat roofed building, the eave line of a building with a hip, gambrel, or gable roof.

Sign, Rotating

A sign that rotates, revolves or turns or has external sign elements that rotate, revolve or turn. Such sign may be power-driven or propelled by the force of wind or air.

Sign, Scrolling

A sign that by mechanical or electronic means displays a message that moves up, down or across a display screen or surface.

Sign, Street Address

Any sign denoting the street address of the premises on which it is attached or located.

Sign, Swinging

A sign which, because of its design, construction, suspension, or attachment, is free to swing or move noticeably because of the wind.

Sign, Temporary

A non-permanent sign that is neither permanently anchored to the ground, nor permanently affixed to a structure, nor mounted on a chassis.

Sign, T-Frame

A detached temporary sign that is ordinarily in the shape of an upside down "T" or some variation thereof, which is readily moveable, and is not permanently attached to the ground or any structure.

Sign, Traffic Control Device

Any government sign located within the right-of-way that is used as a traffic control device and that is described and identified in the Manual on Uniform Traffic Control Devices (MUTCD) and approved by the Federal Highway Administrator as the National Standard.

Sign, Tri-vision

A sign made with a series of triangular sections that rotate and stop, or index, to show multiple images or messages in the same area at different times.

Sign, Twirling

Any sign that is twirled or otherwise spun or whirled to attract attention from motorists or drivers of vehicles on public roads and highways.

Sign, Umbrella

A sign printed on umbrellas used for legal outdoor seating areas, which is made of a lightweight fabric or similar material.

Sign, Unsafe

A sign posing an immediate peril or reasonably foreseeable threat of injury or damage to persons or property.

Sign, Vehicle

A sign which is supported by or attached to, mounted, pasted, painted, or drawn on a motorized or drawn vehicle, and is parked and visible from the public right-of-way; unless said vehicle is used for transporting people or materials in the normal day to day operation of the business.

Sign, Wall

Any sign attached and parallel to but not painted directly on, a wall or similar architectural element that is an integral part of a building, and which extends not more than twelve (12) inches from the wall to which it is attached.

Sign, Wall Wrap

A sign composed of fabric, plastic, vinyl, Mylar or a similar pliable material that drapes or hangs over the side of a building, wall or window.

Residential Zoning Districts

Residential zoning districts are the **R-1, R-1A, R-2, R-3, R-4/M, R-5/M, VR-1, and VR-2 Districts.**

Nonresidential Zoning Districts

Nonresidential zoning districts are the **C-1, C-2, C-3, I-1, M-1, M-2, and VC Districts.**

Sign, Window

A sign attached to, in contact with, placed upon, or painted on a window which is intended for viewing from the outside of such building. A window sign shall also include any permanent signs mounted inside the building, but not attached to the window, that is mounted in a way to be viewed from the outside of such building in the same manner as a sign attached to the window. This does not include merchandise located in a window.

Section 9.3. Applicability

- (1) It shall hereafter be unlawful for any person to erect, place, relocate, expand, modify, maintain, or otherwise alter a sign in the City except in accordance with the provisions of this Section IX.
- (2) Unless explicitly exempted from permitting requirements in Section IX, no permanent sign shall be erected, altered, relocated, maintained or displayed until a sign permit is obtained from, and the appropriate fee paid to, the City. See [Section 9.10: Sign Permits](#). The sign permit is in addition to any building permit required to be obtained pursuant to the provisions of the building code of the City.
- (3) The following signs and activities are allowed by this Section IX but do not require a sign permit or fee. Additionally, any sign area for these signs do not count toward the sign area allowances specified in this Section IX for all other permitted signs. Permit-exempt signs may still be subject to building code or other applicable code requirements and may still be limited or restricted in number, size, height, setback placement, or duration of time under this Section IX.
 - a. Signs the erection and maintenance of which are beyond the City's regulatory control or authority; Any sign that deemed necessary by a governmental agency having jurisdiction, including the City of Opelika, for the protection of the health and safety of the public and avoiding hazards that could result in serious bodily injury or death, including traffic control signage and directional / street name signs the absence of which could present serious traffic safety hazards; A sign, other than that defined as a window sign or door sign, that is located entirely inside the premises of a building or enclosed space.
 - b. A vehicle sign other than those that are specifically prohibited in [Section 9.4: Prohibited Signs](#).
 - c. Signs that are located within a stadium, open-air theater, park, arena or other similar outdoor use that can only be viewed by persons within such stadium, open-air theater, park, arena or other similar outdoor use provided that any structure on which the sign is attached is permitted, as may be required by the City;
 - d. Any sign not visible from a public street, sidewalk, right-of-way, or from a navigable waterway or body of water; except that the foregoing does not exempt a sign for a nonresidential building that is visible from an abutting residential use;
 - e. Signs that are an integral part of the original construction of vending or similar machines, drive-through facilities, automated teller machines, or similar devices that are not of a size or design as to be legible from a street or by any person other than those using the machine or device;

- f. Sign face changes where the sign structure is designed with interchangeable panels and one of the panels is replaced without changing the structure, including any changes to the total sign face area, height or alteration of the sign cabinet;
- g. Changes of copy on signs with changeable copy, including electronic message signs and reader boards or other manual changeable copy signs;
- h. Certain temporary signs as established in [Section 9.7: Temporary Signs Allowed in Zoning Districts](#);
- i. Signs that are an integral part of the historic character of a structure that has been designated an official landmark or historic structure by any agency or body of the governments of the United States, State of Alabama, Lee County, or the City of Opelika, or that otherwise forms an original part of the structure and has only historic significance;
- j. Warning signs or traffic safety signs installed or erected by public utility or infrastructure providers and necessary to avoid life threatening conditions or circumstances; Hand-held signs not set on or affixed to the ground;
- k. One wall sign, mounted flush to the façade of an individual residential dwelling unit, that is not illuminated and does not exceed four square feet in area; and
- l. General maintenance, painting, repainting, cleaning and other normal maintenance and repair of a sign or any sign structure lawfully erected unless a structural change is made. This shall include the replacement of plastic or glass panels or panels of a similar material. Any structure changes shall require the issuance of a sign permit as established in this Section IX.

Section 9.4. Prohibited Signs

The signs and sign types listed below are prohibited within the city limits and shall not be erected, operated or placed on any property, except as may otherwise be provided in this Section IX. Any lawfully existing permanent sign structure or sign type that is among the prohibited signs and sign types listed below shall be deemed a nonconforming sign subject to the provisions of [Section 9.11: Nonconforming Signs](#).

- (1) Animated signs;
- (2) Flashing signs;
- (3) Moving signs;
- (4) Blinking signs;
- (5) Scrolling signs;
- (6) Twirling signs;
- (7) Swinging signs that swing or move to an extent that could pose injury to a person or damage to a structure;
- (8) Multi-prism signs;

- (9) Tri-vision signs;
- (10) Revolving signs;
- (11) Rotating signs;
- (12) Flutter signs;
- (13) Feather signs;
- (14) Wind-activated signs, such as streamers, pennants, and balloons, including wind-activated banners, cold air inflatables, and other fixed aerial advertising signs or signage;
- (15) Holographic display signs;
- (16) Floodlights and beacon lights used to display messages, except when required by the Federal Aviation Administration;
- (17) Signs attached to standpipes, gutters, or drains;
- (18) Signs that impair access to a roof;
- (19) Signs that interfere with any opening required for ventilation under the Building Code;
- (20) Signs that obstruct any fire escape, any required exit way, window, or door opening used or intended to be used as a means of egress, or obstruct any other means of egress required by the Building Code;
- (21) Any sign that is tacked, nailed, posted, pasted, glued, or otherwise attached to or placed on public property such as, but not limited to, a public utility pole, a public street sign, a public utility box, a public fire hydrant, or public street furniture without authorization for the agency controlling such components or not expressly allowed by this Section IX;
- (22) Signs in the right-of-way unless specifically authorized by this Zoning Ordinance (e.g., A-frame signs, T-frame signs, projecting signs, awning signs, etc.);
- (23) Signs nailed, fastened, affixed to, or painted on any tree or part thereof (living or dead), or other vegetation;
- (24) Signs that emit sound, vapor, smoke, odor, or gaseous matter;
- (25) Pavement markings unless specifically allowed by this Section IX or as may be required by law;
- (26) Signs within a sight visibility triangle obstructing a clear view of pedestrian or vehicular traffic as established in Section 8.8;
- (27) Portable signs, except for A-Frame and T-Frame signs as allowed in this Section;
- (28) Roof signs except that wall signs may be attached to mansard roofs as provided for in [Section 9.5: General Provisions for Signs](#), with a sign permit;
- (29) Attached signs that are taller than the wall of the building to which the sign is attached;

- (30) Any single attached sign that exceeds two hundred fifty (250) square feet in sign area;
- (31) Freestanding signs that have a height of more than thirty (30) feet;
- (32) Freestanding signs that exceed three hundred (400) square feet in sign area;
- (33) Signs that have either deteriorated or been damaged to such an extent that the cost of reconstruction or restoration of such sign is in excess of fifty percent (50 %) of its replacement value exclusive of its foundation;
- (34) Signs that obstruct, conceal, hide, or otherwise obscure from view any traffic control device sign or official traffic signal;
- (35) Signs that are not effectively shielded as to prevent beams or rays of light from being directed at any portion of the traveled public rights-of-way thereby creating a potential traffic or pedestrian hazard or a nuisance to inhabitants of an adjacent neighborhood. No sign shall be so illuminated that it interferes with the effectiveness of, or obscures an official traffic sign, device, or signal.
- (36) Wall signs or banner signs that are attached to a surface with adhesives;
- (37) Vehicle signs that are attached or mounted on a vehicle that is not operational or does not have a valid license;
- (38) Vehicles signs with a total sign area in excess of twenty (20) square feet on the entire vehicle and where:
 - a. The vehicle is visible from a street right-of-way within fifty (50) feet of the vehicle, and
 - b. The vehicle is parked for more than a twenty-four (24) hour period of time within fifty (50) feet of any street right-of-way;
- (39) Signs located on real property without the permission of the property owner; and
- (40) Any sign not specifically authorized by this Zoning Ordinance.

Section 9.5. General Provisions for Signs

The following general sign provisions shall apply to this section and to all lawful conforming and nonconforming signs, unless otherwise indicated.

(1) Measurement of Sign Area

The area of a sign is measured or calculated as follows:

- a. Background panel signs. Sign copy that is mounted, affixed, or painted on a background panel or area distinctively painted, textured or constructed as a background for the sign copy, is measured as that area contained within the sum of the smallest rectangles, squares, triangles, parallelograms, circles or ellipses, or combination thereof, that will enclose both the sign copy and the background. See [Figure A](#) and [Figure B](#).

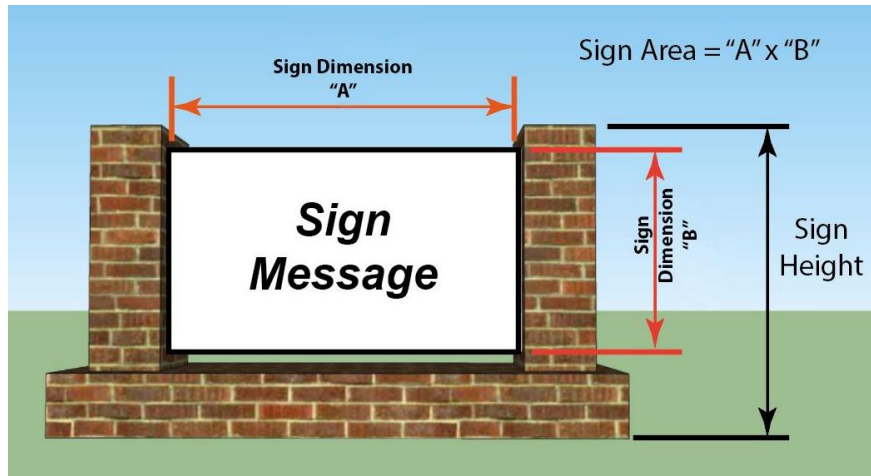


Figure A: Illustration of sign area calculation for a monument sign with copy on a distinct cabinet.



Figure B: Illustration of computing the sign area for wall signs with a background panel or cabinet.

- b. Background surface signs. The area of a sign consisting of copy mounted as individual letters or graphics against a wall, fascia, or parapet of a building surface or another surface, that has not been painted, textured, or otherwise altered to provide a distinctive background for the sign copy, is measured as the sum of the smallest rectangles, squares, triangles, parallelograms, circles or ellipses that will enclose each word, graphic or discrete visual element in the total sign. See [Figure C](#).

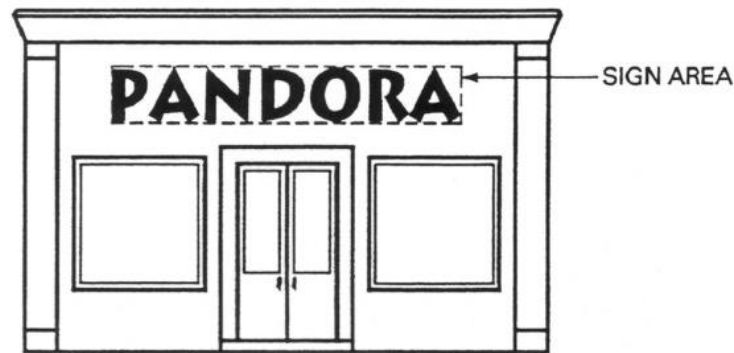


Figure C: Illustration of sign area calculation for a wall sign with individual letters.

- c. The area of a sign with copy mounted, affixed, or painted on an illuminated surface or illuminated element or a building or structure, is measured as the entire illuminated surface or illuminated element which contains sign copy.
- d. If a sign has two display faces, and the perimeter of both faces coincide, are parallel, and are not more than twenty-four (24) inches apart, then the sign area is measured by one sign face only. Otherwise, the sign faces are considered to be separate signs and sign faces and subject to any and all applicable restrictions.
- e. If a sign has three or more faces, then the sign area is equal to fifty percent (50%) percent of the aggregate area of all sign faces. The area of each face shall be determined according to Paragraphs [Section 9.5\(1\)a](#) and [Section 9.5\(1\)b](#), as applicable.
- f. When a sign is in the form of a three-dimensional object, the area shall be determined by drawing a square, rectangle, triangle, circle or combination thereof, which will encompass the projected image of the sign and multiplying that area by two (2). The “projected image” is that image created by tracing the largest possible two-dimensional outline of the sign.

(2) **Measurement of Sign Height**

- a. The height of a freestanding sign shall be measured as the vertical distance from the finished grade of the ground below the sign excluding any filling, berming, mounding or excavating solely for the purposes of increasing the height of the sign, to the top edge of the highest portion of the sign. The maximum height allowed for a freestanding sign, however, shall not include any architectural embellishment provided the embellishment does not contain any sign copy and does not exceed thirty-six (36) inches below the sign copy and eighteen (18) inches above the sign copy.
- b. The filling of a pre-existing hole or depression to create an average grade at the same level as that surrounding the hole or depression is permitted, provided such filling is allowed by other ordinances.

- c. In cases where the normal grade is below grade at street level, sign height shall be computed on the assumption that the elevation of the normal grade at the base of the sign is equal to the elevation of the nearest point of the crown of a public or private street. See Figure D.

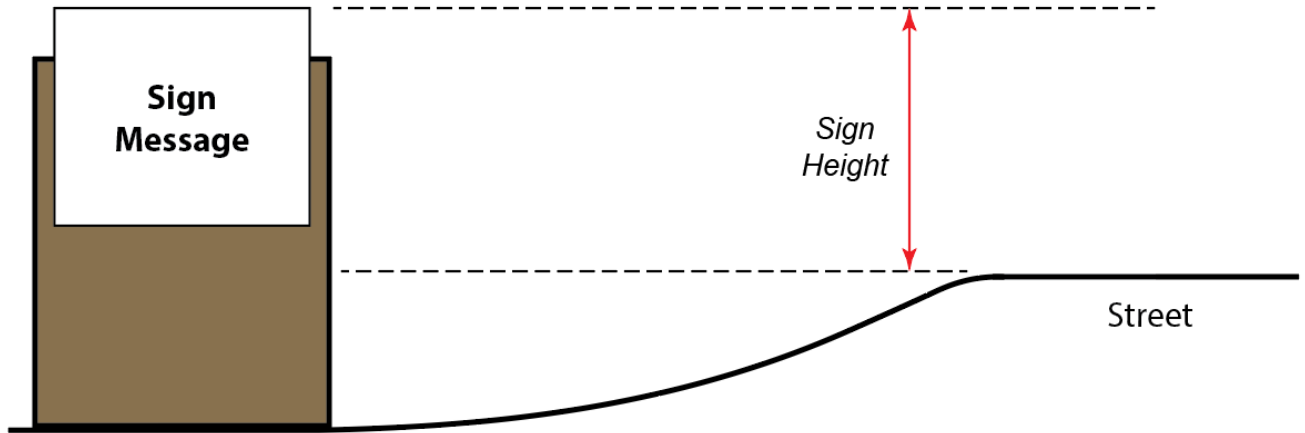


Figure D: Illustration of the measurement of sign height when the grade at the bottom of the sign is below the grade of the adjacent street.

- d. Where a distance is established for the clearance of a sign, such measurements shall be made from the normal grade of the ground, directly under the applicable sign or structure supporting the sign, and the bottom most point of the sign or the structure supporting the sign, whichever is closest.

(3) **Façade or Building Unit Measurements**

When calculating the permitted sign area based on the width of any façade, such calculation shall be based on viewing the façade from a 90-degree angle (i.e., straight on) from the adjacent street, regardless of façade insets, offsets or angles. See [Figure E](#).

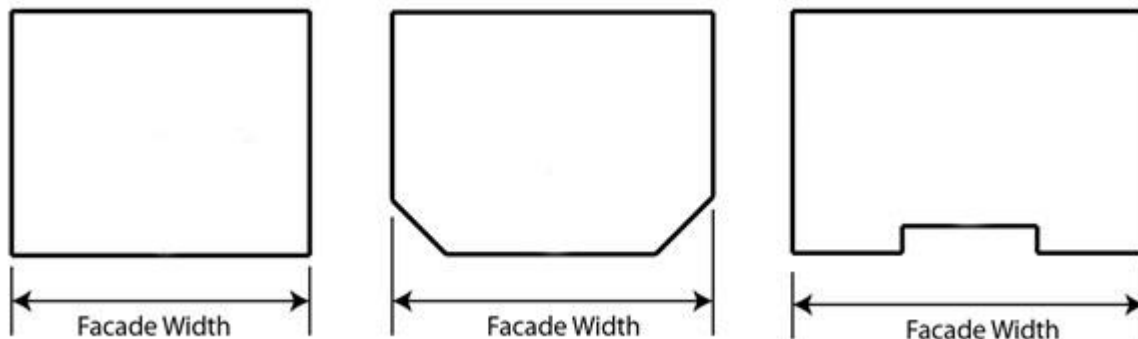


Figure E: Illustration of façade width measurement on varied façade shapes.

(4) **Signs in Overlay Districts**

Unless otherwise specified, where there is an overlay zoning district, the base zoning district shall control the signage allowed on any given parcel.

(5) **Sign Illumination for Temporary Signs and Permanent Signs**

- a. A permanent sign located on a parcel with a residential use in any zoning district may not be separately or specially illuminated, unless otherwise specified in this Section IX.
- b. A permanent sign on a parcel with a nonresidential use may only be illuminated by internal illumination, internal indirect (halo) illumination, or lit by external indirect illumination, unless otherwise specified in this section. However, a permanent sign may not be illuminated in a manner that leaves the illumination device exposed to public view except with the use of neon tubing as provided in [Section 9.5\(5\)i](#).
- c. Outdoor internally illuminated signs, including but not limited to awning signs, canopy signs, cabinet signs (whether freestanding or attached), or changeable copy signs, shall be constructed with an opaque background and translucent sign copy elements, or with a colored background and sign copy elements.
- d. Externally lit signs are permitted to be illuminated only with steady, stationary, down directed and shielded light sources directed solely onto the sign. Light bulbs or tubes (excluding neon), used for illuminating a sign, shall not be visible from the adjacent public rights-of-way or residential properties.
- e. No sign located within fifty (50) feet of a property with a single-family use or zoned for a single-family use shall be internally illuminated.
- f. Any portion of the sign face or sign structure that is illuminated shall count against the total square footage of sign area allowed.
- g. Artificial light used in conjunction with the lighting of any sign shall not be directed or reflected onto any structure or constitute a hazard to the safe and efficient operation of vehicles upon a street or highway.
- h. **Brightness Levels of Electronic Message Signs**
 - (i) Illumination levels shall be measured in foot-candles with a foot-candle meter sensor in a horizontal position at an approximate height of three feet above grade.
 - (ii) Illumination of electronic message signs shall not exceed 0.3 footcandles over ambient lighting conditions when measured at 50 feet in any direction from an electronic message sign.
 - (iii) Audio emissions from electronic message signs shall be prohibited.

- (iv) Electronic message signs shall be equipped with manual dimming or scheduled dimming controls, or photocell/light sensors that automatically dims the brightness of the sign as ambient conditions change.
- (v) Prior to issuance of a sign permit for any electronic message sign, the applicant shall provide a written certification from the sign company or sign manufacturer that brightness levels will not exceed the ambient light conditions specified herein.

i. **Use of Neon**

- (i) Exposed neon tube illumination is not permitted in residential zoning districts or for residential uses in any zoning district. It is allowed in all other places, unless otherwise specified.
- (ii) Neon illumination used as a sign copy projection, border, frame or other embellishment of sign copy shall not be included in the total size or area of the sign, provided the measured area of any such projection or detailed embellishment does not exceed twelve (12) square feet in area, or twenty-five percent (25%) of the sign area, whichever is greater. If neon embellishments exceed these limits, then the embellishments shall be included and counted as part of the permitted sign area for the use.
- (iii) Devices that illuminate a sign or signs shall be placed and shielded so that the direct light rays reflecting from such devices or from the sign itself shall not be cast into the eyes of any passing motorist.

(6) **Electronic Message Signs.**

Where allowed, the City reserves the right to amend the frequency of message changes and permitted brightness levels for electronic message signs for safety purposes. All electronic message signs shall be required to comply with the frequency and brightness standards for electronic message signs in this Section IX regardless of the frequency of message changes and brightness levels permitted at the time of approval of such sign.

(7) **Viewpoint And Speaker Neutrality.**

Notwithstanding anything in this section to the contrary, no sign or sign structure shall be subject to any limitation based upon the speaker or viewpoint of the message contained on such sign or displayed on such sign structure.

(8) **Consent of Legal Owner of Property.**

No sign may be displayed without the consent of all legal owners of the property on which the sign is mounted or displayed. For purposes of this standard, "owner(s)" means the holder(s) of the legal title to the property and any party and person holding a present legal right to possession, control, or use of the property including person or entity holding any easement, right-of-way, or other legal right to the subject property.

(9) **Signs on Public Property.**

Any sign installed or placed on public property, except in conformance with the requirements of this Section IX, shall be deemed illegal and shall be forfeited to the public and subject to confiscation. In addition to other remedies hereunder, the City shall have the right to recover from the owner or person placing such sign the cost of removal and disposal of such sign. The foregoing shall not apply to temporary A-Frame signs and T-Frame signs as allowed pursuant to the conditions and limitations set forth herein.

(10) **Signs Must Maintain Clearance.**

Signs shall maintain a minimum distance of:

- a. Six (6) feet horizontal clearance and twelve (12) feet overhead clearance from electrical conductors and from all communications equipment or lines.
- b. Signs and their supporting structures shall maintain clearance from and noninterference with all surface and underground facilities and conduits for water, sewage, electricity, or communications equipment or lines.
- c. Sign placement shall not interfere with surface or underground water or with natural or artificial drainage.
- d. Signs that are mounted to project over sidewalks, paths, or other pedestrian ways shall maintain a minimum vertical clearance of nine (9) from the surface of the sidewalk, path, or way to the bottom of the sign.
- e. Signs that are mounted to project over alleys or drive aisles shall maintain a minimum vertical clearance of sixteen (16) from the surface of the alley or drive aisle to the bottom of the sign.

(11) **Signs Declared a Nuisance and Repair; Signs Presenting Immediate Peril to Public Health or Safety.**

The chief building inspector of the building inspection division or his or her designee;

- a. May order the repair of signs which in his or her professional opinion determines to be a nuisance;
- b. Without notice, may cause any sign determined in his or her professional opinion to be structurally unsafe or structurally insecure, including any sign not securely affixed to the ground or otherwise affixed in a permanent manner to an approved supporting structure, to be immediately removed if in his or her professional opinion the sign presents an immediate peril to the public health or safety; and
- c. With notice, may order the removal of a sign which in his or her professional opinion has deteriorated or been damaged to such an extent that the cost of reconstruction or restoration of such sign is in excess of fifty percent (50 %) of its replacement value exclusive of any foundation.

(12) **Unsafe Signs:**

- a. If the building official determines any sign or sign structure to be in an unsafe condition, he/she shall immediately notify, in writing, the owner of such sign who shall correct such condition within forty-eight (48) hours.
- b. If the correction has not been made within forty-eight (48) hours, the building official may have the sign removed if it creates a danger to the public safety or have any necessary repairs or maintenance performed at the expense of the sign owner or owner or lessee of the property upon which the sign is located.

(13) **Street Address Signs.**

For each parcel and for each tenant space, one sign for the official street address shall be displayed for public safety and to serve as visible street address for delivery of mail and official governmental notification.

- a. For a parcel in residential use, the street address sign shall not exceed two (2) square feet in sign area.
- b. For a parcel in non-residential use, the street address sign shall not exceed four (4) square feet in sign area.
- c. The street address sign in a residential use may be externally illuminated and in a non-residential use may be externally or internally illuminated.
- d. Street address signs may be located on mailboxes, street pavement (where allowed by City ordinance) or as part of a permitted permanent sign type. Where included on a permanent sign, the area of such street address shall be included in the calculation of the sign area.

(14) **Driveway Signs.**

- a. For safety purposes and for traffic circulation purposes, permanent driveway signs are allowed where specified in [Section 9.8: Permanent Signs Allowed in Zoning Districts](#), provided the signs do not exceed four (4) square feet in sign area and do not exceed three (3) feet in height.
- b. Up to two driveway signs may be permitted per individual driveway or internal intersection.
- c. Driveway signs may be internally or externally illuminated, unless otherwise stated.
- d. Driveway signs shall not contain electronic message centers.
- e. Driveway signs may be mounted on a pole provided the entire structure does not exceed the maximum sign height established above.

(15) **Flagpoles and Flags; Flag Brackets, Flag Stanchions and Flags.**

- a. Flagpoles and Flags.

- (i) For each parcel in residential zoning district with one principal structure, one flagpole may be installed and up to two (2) flags may be displayed per flagpole. A flag in a residential zoning district displayed on a flagpole shall not exceed fifty (50) square feet in size.
- (ii) For each parcel that is over one-half (1/2) acre in size and is in a nonresidential zoning district, up to three flagpoles may be installed and up to two (2) flags may be displayed per flagpole. A flag in a nonresidential zoning district displayed on a flagpole shall not exceed one hundred fifty (150) square feet in size.
- (iii) For each parcel that is one-half acre or less in size within a nonresidential zoning district, up to one flagpole may be installed and up to two (2) flags may be displayed per flagpole. A flag in a nonresidential zoning district displayed on a flagpole shall not exceed one hundred fifty (150) square feet in size.

b. Flag Brackets, Flag Stanchions, and Flags.

For each principal structure on a parcel, up to two flag brackets or stanchions may be attached or placed on the building for the display of flags on posts. A flag displayed from a flag bracket or a flag stanchion shall not exceed twenty-four (24) square feet in size.

- c. For the purpose of determining the size of a flag, only one side of the flag shall be counted as the display surface.
- d. Flags on parcels in non-residential zoning districts may be externally illuminated. The lighting should be directed away from roadways, traffic areas and adjacent residential properties.
- e. In-ground flagpole requirements are as specified in Table 9.5(1):

Table 9.5(1): Flagpole and Flag Size Standards	
Maximum Height (Feet)	Maximum Size (Square Feet)
60-65	150
50-59	96
40-49	72
30-39	50
20-29	30
Under 20	15

(16) **Parking Space Signs.**

Parking space signs identifying parking spaces necessary for traffic safety, regulation, control and circulation. A parking space sign shall not exceed two (2) square feet of sign face per sign. Parking space signs shall be allowed on each parcel having multiple parking spaces onsite. One such sign shall be allowed for each parking space. The maximum height for a freestanding or an attached parking space sign shall be six (6) feet.

(17) **Freestanding Signs.**

A freestanding sign may be a pole sign or a monument sign, unless otherwise restricted and where allowed, and subject to the following:

a. **General Requirements.**

- (i) Pole signs and monument signs allowed under this Subsection may display two or more sign faces subject to the additional provisions set forth in this Section IX.
- (ii) In the event that a reader board (manual or electronic message sign) is attached to a freestanding sign, the reader board sign surface shall be no larger than fifty percent (50%) of the principal sign surface area. The principal sign surface area includes all signage on the freestanding sign except the reader board.
- (iii) Electronic message signs are prohibited in the C-1 District.

b. **Lots with One Building Unit in the C-1, C-2, C-3, M-1, M-2, 1-1, R/E, and GC Zoning Districts**

- (i) For lots that have one building unit, the maximum area of a freestanding sign shall not exceed one hundred (100) square feet.
- (ii) The maximum height of a freestanding sign shall be twenty (20) feet.
- (iii) Only one (1) freestanding sign is allowed per single-frontage lot; and up to two (2) freestanding signs are allowed for a corner lot or for double-frontage lots.
- (iv) No lot shall have more than two freestanding signs.
- (v) Notwithstanding the foregoing, freestanding signs are not allowed in the C-1 Zoning District for lots that have one building unit.

c. **Lots with Two or More Building Units in the C-1, C-2, C-3, M-1, M-2, 1-1, R/E, and GC Zoning Districts**

- (i) Only one (1) freestanding sign is allowed for each street frontage of a lot with two or more building units.
- (ii) Each freestanding sign shall not exceed the maximum sign area and sign height established in Table 9.5(2).

Table 9.5(2): Maximum Sign Area and Sign Height Regulations for Lots with Two or More Building Units		
Aggregate Floor Area of All Building Units on the Lot	Maximum Freestanding Sign Area	Maximum Freestanding Sign Height
Less than 30,000 square feet	120	20
30,000 to 64,999 square feet	200	20
65,000 square feet or more	300	30

(18) Subdivision or Development Entrance Signs

Permanent signs may be permitted at the entrance of a residential subdivision, multi-family development, commercial development, or industrial park in accordance with the following:

- a. Such signs may be permitted within a residential subdivision with more than 25 lots, a multi-family building with over 25 units, or for a nonresidential subdivision with more than 10 acres that includes more than five lots
- b. The placement and allocation of the permanent sign may be reviewed and decided upon during the subdivision platting process or as part of a site plan review, whichever is applicable or comes first where both are required. However, a sign permit will be required for the installation or any changes to the signs in accordance with this Section IX.
- c. The monument sign may be installed in the right-of-way if located in a landscaped boulevard and as authorized by the City Engineer.
- d. One (1) monument sign is permitted for each arterial/collector entrances. As an alternative, a maximum of two (2) wall signs may be installed if attached to entrance fences, gates, or architectural features. Where a monument sign is installed, wall signs shall not be permitted and where wall signs are installed, a monument sign shall not be permitted.
- e. The maximum sign area of any individual sign shall be forty (40) square feet.
- f. The maximum height of a monument sign shall be six (6) feet. Wall signs shall be mounted so as to not exceed the height of the fence, wall, or architectural feature.
- g. The signs shall be located within 150 feet of the established major entrance.
- h. Where a freestanding sign is permitted on a lot that is part of a subdivision (i.e., an industrial park), the subdivision or development entrance sign may be allowed on a lot in addition to the other permitted freestanding signs.
- i. The signs shall not be located in the right-of-way.
- j. The signs shall be located in a landscaped area.

k. **Special Provisions for the VC District**

One (1) sign per principal structure shall be permitted in the Village Commercial District. This sign may be a ground sign, projecting sign, or wall sign. The area of the sign on any one (1) side shall be two (2) square feet per thousand (1000) square feet of lot area, not to exceed thirty-two (32) square feet. Ground signs shall be no taller than eight (8) feet above the true finished grade (i.e., not on top of an earthen berm or other elevated location). Signs shall be illuminated only by shielded exterior lighting. The intent is to have commercial signage, which is compatible in scale, and character with nearby residential uses.

(19) **Wall Signs.**

- a. Wall signs shall not extend above the top of a building wall.
- b. Walls signs may be mounted on the building façade, in conformance with all other provisions of this Section. Walls signs may also be mounted on mansard roofs provided the sign is mounted to generally run parallel with the building façade and where the sign does not exceed the height of the roofline.
- c. Wall signs may be installed on one or more exterior walls. The total square footage of all wall signs installed must not exceed the maximum total wall sign area allowed.
- d. Wall signs are permitted on each primary façade which are facades that face a street, parking lot, or drive aisle or driveway as illustrated in Figure F.

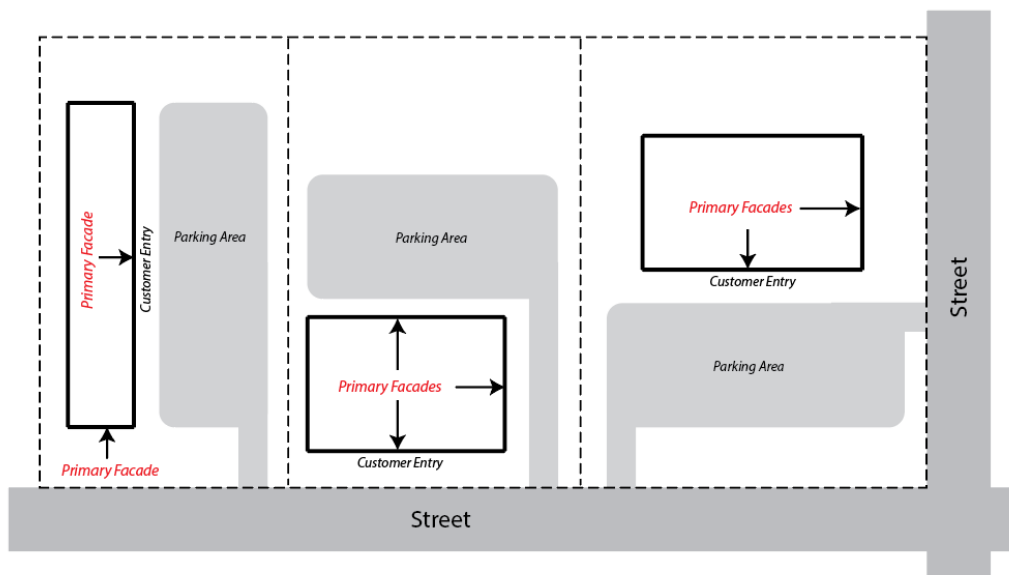


Figure F: Illustration of primary façade locations.

- e. The wall sign allowances below shall apply to each separate façade. The total area of wall signs allowed per façade shall not be used on other facades.

- f. For buildings that contain more than one building unit, the maximum total sign area allowed below shall be based on the portion of a building that is owned or leased by a single occupant or tenant. The building frontage for a building unit (tenant) space shall be measured from the centerline of the party walls defining the tenant space.
- g. The maximum total sign area for wall signs in the C-1, C-2, C-3, M-1, M-2, I-I, R/E, GC, and HOD Zoning Districts are as follows:
 - (i) On any single lot that contains one building unit with 30,000 square feet or less of floor area, the maximum total sign area for wall signs shall be the lesser of:
 - A. The sign area calculated at one and six-tenths (1.6) square feet of sign area for each lineal foot of exterior wall business frontage, or
 - B. 200 square feet.
 - (ii) On any single lot that contains one building unit with more than 30,000 square feet of floor area, the maximum total sign area for wall signs shall be the lesser of:
 - A. The sign area calculated at one and six-tenths (1.6) square feet of sign area for each lineal foot of exterior wall business frontage; or
 - B. 320 square feet.
 - (iii) For a lot with two or more building units with an aggregate floor area of 30,000 square feet or less, the maximum total sign area for each building unit for an exterior wall sign on the exterior wall business frontage shall be the lesser of:
 - A. The sign area calculated at one and six-tenths (1.6) square feet of sign area for each lineal foot of exterior wall business frontage; or
 - B. 200 square feet.
 - (iv) For a lot with two or more building units with an aggregate floor area of more than 30,000 square feet, the maximum total sign area for wall signs shall be the lesser of:
 - A. The sign area calculated at one and six-tenths (1.6) square feet of sign area for each lineal foot of exterior wall business frontage;
 - B. 320 square feet.

- h. Up to fifty percent (50%) of any single wall sign may consist of a changeable copy sign; provided, however, that the sign copy of the changeable copy sign shall not change more than once in any twenty-four (24) hour time period. The wall sign shall not project more than twelve (12) inches from the wall. If the wall sign projects more than two and one-half (2½) inches from the wall, the wall sign shall be mounted so that the bottom of the wall sign is at least nine (9) feet above ground at finished grade below the wall sign. The wall sign may be illuminated.

(20) **Drive-Through Signs.**

- a. For a drive-through establishment, one (1) sign is allowed for each drive-through lane provided that such sign does not exceed forty (40) square feet in size and does not exceed eight (8) feet in height. The additional display sign may be internally illuminated and may emit sound only as part of a business transaction.
- b. One (1) additional drive-through sign is permitted for each drive-through lane provided that it is completely screened from view from an adjacent residential use and from any street or public right-of-way.
- c. Such signs shall be in addition to any other signs allowed in Section IX.

(21) **Umbrella Signs**

For each table in a permitted outside seating area in a nonresidential zoning district, a maximum of one (1) umbrella sign is permitted per umbrella. An umbrella sign shall not exceed three (3) square feet in area and shall not exceed eight (8) feet in height. An umbrella having an umbrella sign shall be mounted on or in the table or in an umbrella holder adjacent to the table. A sign permit is not required for an umbrella sign.

(22) **Awning Signs**

For each awning, one sign is allowed. The awning sign shall not exceed an area greater than thirty (30) percent of the surface area of the awning. The total square footage of the awning sign shall count toward the maximum square footage of the wall sign area allowed for a parcel or a tenant. The sign copy area of an awning sign may be internally illuminated, otherwise the awning shall only be externally illuminated.

(23) **Canopy Signs**

For each canopy, one sign is allowed. A canopy sign shall not exceed an area greater than thirty (30) percent of the surface area of the canopy. The total square footage of the canopy sign shall count toward the maximum square footage of the wall sign area allowed for a parcel or a tenant. A canopy sign may be internally illuminated.

(24) Changeable Copy Signs.

- a. As part of a permitted on-premise freestanding sign or wall sign and notwithstanding [Section 9.4: Prohibited Signs](#), or any other provision of this Section IX to the contrary, an on-premise changeable copy sign, manual or electronic (LED), may be installed. The changeable copy sign shall not occupy more than fifty percent (50%) of the total sign area of the freestanding sign or wall sign.
- b. Notwithstanding [Section 9.4: Prohibited Signs](#), or any other provision of this Section IX to the contrary, the static display time for each message on an on-premise changeable copy sign shall be at least ten (10) seconds, and the time to change from one (1) message to another shall be no greater than two (2) seconds.
- c. In no event shall the message scroll in any direction.
- d. All changeable copy signs shall be subject to the illumination standards of [Section 9.5\(5\)](#).
- e. Changeable copy signs must include a default designed to freeze a display in one (1) position if a malfunction occurs.
- f. Electronic message signs must have a process for modifying displays and lighting levels where and if directed by the Alabama Department of Transportation or the City Engineer to assure safety of the motoring public.

(25) Projecting Signs.

- a. In all nonresidential zoning districts and for nonresidential uses in a PUD, one (1) projecting sign is allowed for each ground floor building unit with an external entrance. The projecting sign shall be attached to the building frontage on the street or driveway on which the sign is located.
- b. The maximum size of a projecting sign shall be the lesser of:
 - (i) Sixteen (16) square feet; or
 - (ii) One (1) square foot per linear foot of occupant or tenant building frontage on the street or private driveway on which it is located; however, the square footage of a projecting sign shall count toward the maximum square footage of wall signage allowed for the building.
- c. The maximum thickness of the sign face of a projecting sign shall not exceed twenty-four (24) inches when such sign is of solid construction.
- d. A projecting sign that extends over a sidewalk in the public right-of-way shall be limited to a projection distance not to exceed two-thirds (2/3) of the width of the sidewalk.
- e. In the C-1 District, a projecting sign shall only be externally illuminated. In all other districts, the projecting sign may be internally or externally illuminated.

(26) **Window Signs.**

Permanent window signs are permitted provided that the window sign may not cover more than thirty percent (30%) of the area of any window. Permanent window signs may be internally illuminated. A sign permit is not required for a permanent window sign.

(27) **Door Signs.**

Permanent door signs are permitted provided that the permanent door sign may not cover more than thirty percent (30%) of the area of any door. Permanent door signs shall not be illuminated. A sign permit is not required for a permanent door sign.

Section 9.6. Temporary and Permanent Signs Allowed in Zoning Districts

(1) The signage rights and responsibilities for temporary signs and permanent signs shall be determined by the provisions of [Section 9.5: General Provisions for Signs](#), and by the sign provisions for the zoning districts as set forth below in [Section 9.7: Temporary Signs Allowed in Zoning Districts](#), and [Section 9.8: Permanent Signs Allowed in Zoning Districts](#).

(2) However, in connection with residential uses in nonresidential zoning districts and nonresidential uses in residential zoning districts, the signage rights and responsibilities applicable to any particular use shall be determined as follows:

- a. In a residential zoning district where a nonresidential use is allowed, whether as a matter of right or by way of a conditional use permit or other process with stated criteria governing the allowance of the nonresidential use, the nonresidential use shall be allowed to have the same amount of signage as a nonresidential use in the C-2 District; and
- b. In a nonresidential zoning district where a residential use is allowed, the residential use shall be treated as if it was located in the residential zoning district where that type of use would be allowed as a matter of right.

(3) Within a Planned Unit Development Zoning District (PUD), and subject to any applicable provisions within [Error! Reference source not found. Section 9.5: General Provisions for Signs](#), the City shall allow permanent and temporary signs that meet the following criteria and limitations:

- a. For single-family residential uses within an approved PUD, the City shall allow the permanent and temporary signs that meet the criteria for residential uses in the R-2 District.
- b. For all other residential uses within an approved PUD, the City shall allow the permanent and temporary signs that meet the criteria for residential uses in the R-4 District.
- c. For non-residential uses within an approved PUD, the City shall allow the permanent and temporary signs that meet the criteria for nonresidential uses in the C-2 District.

- d. The criteria for permanent or temporary signs within an approved PUD may be revised by the City Council as necessary to meet the particular needs within a PUD development on a case-by-case basis.

(4) Master Sign Plan

- a. The master sign plan allowance established herein is to provide for a single review of permanent signage for large-scale developments when the plan will promote consistency among signs within a development and enhance the compatibility of signs with the architectural and site design features within a development, as well as with the surrounding neighborhood.
- b. A master sign plan may be submitted when a project contains over 25 acres or a minimum of 300,000 square feet of nonresidential floor area.
- c. The master sign plan may only be authorized as part of a site plan review or approval of a PUD or PRD.
- d. A master sign plan may include more than one freestanding sign per frontage and more than one attached sign per façade as is otherwise provided for in [Section 9.8: Permanent Signs Allowed in Zoning Districts](#).
- e. A master sign plan may include a freestanding sign with a maximum sign area of 400 square feet and up to ten percent (10%) more sign area, per sign, for all other sign types, as is otherwise provided for in [Section 9.8: Permanent Signs Allowed in Zoning Districts](#).
- f. An application for review of a master sign plan shall include:
 - (i) A master sign plan, drawn to scale, delineating the site proposed to be included within the master sign plan and the general locations of all permanent signs including freestanding and building signs and the property lines, buildings and roadways;
 - (ii) Drawings and/or sketches indicating the dimensions in square feet, location and sign area for all the permanent signs;
 - (iii) Drawings and/or sketches indicating the exterior surface details of all buildings on the site on which wall signs, awning signs, canopy signs, projecting signs, window signs or other building signs are proposed;
 - (iv) Samples or photos of colors and materials to be used for signs and the relationship to the building materials; and
 - (v) Information regarding the illumination of any signs.
- g. In order approval of a master sign plan, each of the following conditions must be met:
 - (i) That the plan's contribution to the design of the site and surrounding area will be superior to the quality that would result under the regulations and standards of this Section IX;
 - (ii) That the signs proposed as part of the master sign plan will create a uniform sign package for the site related to materials, lighting, design and other features of the individual signs; and

- (iii) That the proposed signs are compatible with the style or character of improvements and are well-related to each other in terms of location and spacing.
- h. Where a master sign plan is submitted as part of a PUD or PRD, the City Council shall make the final decision on the master sign plan and may impose reasonable conditions to the master sign plan to carry out the intent of Section IX.
- i. Where a master sign plan is submitted for a development outside of a PUD or PRD application, the Planning Commission shall review and make a decision on the approval of a master sign plan through the conditional use review process. The Planning Commission may impose reasonable conditions to a master sign plan necessary to carry out the intent of this Section IX.
- j. No building permits or other permits required for the construction of any sign shall be issued unless the sign is in compliance with the approved master sign plan.
- k. An approved master sign plan may only be amended or modified through the same review process required for its approval.

Section 9.7. Temporary Signs Allowed in Zoning Districts

- (1) The City shall allow temporary signs within each zoning district as specified below as well as subject to any applicable provisions with [Section 9.5: General Provisions for Signs](#).
- (2) If a sign required a building permit or electrical permit, it shall be considered a permanent sign and not a temporary sign.

(3) **Regulations for Temporary A-Frame and T-Frame Signs**

- a. The regulations of this subsection and Table 9.7(1) shall apply to all temporary A-frame and T-frame signs.

Table 9.7(1): Temporary A-Frame and T-Frame Signs Requirements	
Zoning Districts Where Permitted	C-1, C-2, C-3, VC, R/E Districts and for nonresidential uses in PUD Districts
Maximum Number of Signs	1 per Building Unit
Maximum Width	3 feet
Maximum Height	3-1/2 feet
Minimum Setback/Distance from Curb	1 foot
Maximum Width of Public Sidewalk that the Sign May Obstruct	No more than one third of width of public sidewalk
Maximum Distance of Sign from Main Entrance to Business Unit	10 feet
Duration Allowed	Only during hours while business is open
Allowed on Public Property and Right-of-Way	Yes
Allowed on Grass or Other Landscaped Areas	No
Allowed in a Sight Visibility Triangle	No
Illumination Allowed	No

- b. The A-frame or T-frame sign must be free-standing and shall not be affixed, chained, anchored, or otherwise secured to the ground or to any pole, parking meter, tree, tree grate, fire hydrant, railing, or other structure.
- c. The A-frame or T-frame sign must not obstruct access to parking meters, bicycle racks and other features legally in the right-of-way.
- d. The A-frame or T-frame sign must not interfere with the opening of car doors in legal spaces, or with the operation of wheelchair lifts and ramps, cab stands, loading zones or bus stops.
- e. The A-frame or T-frame sign shall not block any sidewalk or accessible path.
- f. The A-frame or T-frame sign shall be internally weighted so that it is stable and windproof.
- g. Where an A-frame or T-frame sign is to be placed upon a public sidewalk, each of the following shall apply:
- (i) The City of Opelika shall be held harmless from any liability resulting from accident or injury caused by the placement or maintenance of such sign; and

(ii) The right to place a sign upon the public sidewalk may be revoked or suspended by the Planning Director if the sign is being maintained contrary to the provisions of this section, or if the sign becomes a hazard to the public safety.

h. If the provisions of this section are amended or repealed, the signs allowed hereunder shall be removed or altered to conform to said action.

(4) Regulations for All Other Temporary Signs

a. Temporary signs shall not be mounted, attached, affixed, installed, or otherwise secured in a manner that will make the sign a permanent sign.

b. There shall be no direct illumination of any temporary sign.

c. No temporary sign shall be installed that requires a foundation, support, wiring, fittings, or elements that would traditionally require a building permit or electrical permit.

d. Temporary signs shall not require a sign permit but are subject to the provisions of this Section IX, as may be applicable. Banners signs may require a banner permit from the Building Inspection Division.

e. Temporary signs shall not contain any changeable copy.

f. All temporary signs shall be secured in such a manner as to prevent swinging or other significantly noticeable movement resulting from the wind that could pose a danger to people, vehicles, or structures.

g. Mobile signs on wheels, runners, casters, parked trailers, parked vehicles, or other temporary or movable signs shall not be permitted unless otherwise specifically stated in this Section IX.

h. Temporary signs shall be constructed of durable fabric, plastic, paper, or other light pliable material. Because of the nature of materials typically used to construct temporary signs and to avoid the unsightliness of deteriorating signs and all safety concerns which accompany such a condition, temporary signs shall be removed or replaced when such sign is a deteriorated sign.

i. Temporary signs shall be located outside the public right-of-way, which shall be presumed if the sign is located at least 10 feet from the back of curb or the edge of pavement if there is no curb.

j. No part of any temporary sign shall be erected closer than ten feet to any overhead electric, cable, telephone or other transmission line nor closer than five feet to any property line.

k. Temporary signs may be located in a required yard provided that they do not create a visibility obstruction or violate the visibility obstruction regulations established in Section 8.8.

- l. Flags located on flagpoles, flag brackets, or flag stanchions shall not be considered a temporary sign under this section but shall be regulated as established in [Section 9.5: General Provisions for Signs](#) and [Section 9.8: Permanent Signs Allowed in Zoning Districts](#).
- m. Temporary signs may have two faces but they must be mounted back-to-back with both faces being identical in size.
- n. Temporary signs are prohibited on public property and in the public right-of-way with the exception of an approved A-frame or T-frame sign as allowed in [0](#).
- o. A temporary sign displayed on a window surface must be displayed on the inside of the window surface and shall cover no more than thirty (30%) of the window surface.

Table 9.7(2): Signs Requirements for Other Permitted Types of Temporary Signs			
Zoning Districts	R-1, R1-A, R-2, R-3, R-4, R-4M, R-5, R-5M, VR, PRD, PUD	C-1, VC C-2, C-3, M-1, M-2, I-1	AP, PUD, R/E, FP, GC, HOD
Maximum Number of Temporary Signs Per Parcel [1]	8	4	4
Maximum Sign Area for a Temporary Sign	6 sf.	16 sf.	16 sf.
Maximum Sign Height for a Temporary Freestanding Sign	6 ft.	6 ft.	6 ft.
Maximum Sign Height for a Temporary Banner Sign or Window Sign	15 ft.	15 ft.	15 ft.
Minimum Sign Setback required to be maintained by a Temporary Ground Sign from any property line or from the edge of any paved street or road [2]	3 ft.	3 ft.	3 ft.
Minimum Spacing that is required to be maintained by a Temporary Ground Sign from any other Temporary Ground Sign	15 ft.	15 ft.	15 ft.
Maximum Aggregate Sign Area Allocated for All Temporary Signs on a Parcel [3]	48sf.	64 sf.	64 sf.
Table Notes: [1] No more than one sign may be a banner sign. Temporary banner signs may be displayed for a maximum duration of 30 days up to three times per calendar year. [2] The minimum sign setbacks do not apply to temporary wall signs, banner signs, or window signs. [3] There is no limit to the number of separate messages that may appear on the allowable surface(s) of any Temporary Sign. The maximum aggregate surface area allowed is subject to circumstances that may reduce the maximum aggregate surface area allowable on some parcels.			

Section 9.8. Permanent Signs Allowed in Zoning Districts

- (1) The City shall allow permanent signs within each zoning district as specified in Table 9.8(1) and subject to any applicable provisions within [Section 9.5: General Provisions for Signs](#)..
- (2) Unless otherwise provided herein or in [Section 9.3\(3\)](#), a permanent sign shall require a sign permit;
- (3) The foregoing shall have no impact on separate requirements established by state statute for building code permits or other code permits.
- (4) Permanent signs are accessory structures to other principal uses allowed by this Zoning Ordinance. No permanent signs are permitted on vacant lots unless specifically stated in this Section IX.
- (5) The following are the meanings behind the symbols in Table 9.8(1):
 - a. “P-E” shall mean the permanent sign type is permitted without a sign permit in the applicable zoning districts.
 - b. “P-SP” shall mean the permanent sign type is permitted with a sign permit in the applicable zoning districts.
 - c. “XX” shall mean the permanent sign type is explicitly prohibited in the applicable zoning districts.

Table 9.8(1): Permanent Signs Allowed in Zoning Districts						
	R-1, R-1A, R-2, R-3, and VR	R-4, R-4M, R-5, R-5M	C-1, C-2, C-3, VC, M-1, M-2, PRD, R/E, FP, GC, HOD	I-1 and AP	PRD	Signs Permitted in Accordance with:
Street Address Signs	P-E	P-E	P-E	P-E	P-E	Section 9.5(13)
Driveway Signs	P-E	P-E	P-E	P-E	P-E	Section 9.5(14)
Flagpoles and Flags	P-E	P-E	P-E	P-E	P-E	Section 9.5(15)
Flag Brackets and Stanchions	P-E	P-E	P-E	P-E	P-E	Section 9.5(15)
Parking Space Signs	XX	XX	P-E	P-E	P-E	0
Freestanding Signs	XX	P-SP	P-SP	P-SP	P-SP	Section 9.5(17)
Wall Signs	XX	XX	P-SP	P-SP	P-SP	Section 9.5(19)
Drive-Through Signs	XX	XX	P-SP	P-SP	P-SP	Section 9.5(20)
Umbrella Signs	XX	XX	P-E	P-E	P-E	Section 9.5(21)
Awning Signs	XX	XX	P-SP	P-SP	P-SP	Section 9.5(22)
Canopy Signs	XX	XX	P-SP	P-SP	P-SP	Section 9.5(23)
Changeable Copy Signs	XX	XX	P-SP	P-SP	P-SP	Section 9.5(24)
Projecting Signs	XX	XX	XX	P-SP	XX	Section 9.5(25)
Window Signs	XX	XX	P-E	P-E	P-E	Section 9.5(26)
Door Signs	XX	XX	P-E	P-E	P-E	Section 9.5(27)

Section 9.9. Building Permits

It shall be unlawful for any person, business, or the person in charge of the business to erect, construct, alter or maintain a sign structure, without first obtaining a building permit from the City in accordance with the provisions of the Building Code and applicable law, where a building permit is required. Permit fees for a building permit shall be paid in accordance with the applicable City fee schedules. The requirement of a building permit under the building code of the city is a separate and independent of the requirement for a sign permit under this section.

Section 9.10. Sign Permits

- (1) No sign permit shall be issued for the erection of a prohibited sign.

- (2) **Sign Permit Applications**

A sign permit required by this section shall be prepared and submitted on forms available at the Department of Planning. The sign permit application is in addition to any building permit application required by the Building Code of the City. The applicant shall furnish the following information on or with the sign permit application form:

- a. Name, address, telephone number, and e-mail address (if available) of the person making application for the permit. If the applicant is anyone other than the property owner, the applicant shall provide written authorization from the property owner permitting the installation of the sign.
- b. Name, address, telephone number, and e-mail address (if available) of the property owner. If the owner is an entity other than an individual, list the contact person's name.
- c. Name, address, telephone number, and e-mail address (if available) of the business tenant, if applicable. If the tenant is an entity other than an individual, list the contact person's name.
- d. Name, address, telephone, e-mail address (if available), and license number of the contractor, if applicable. If the contractor is an entity other than an individual, list the contact person's name.
- e. An address or legal description of the property upon which the sign is to be located. The legal address may be located on a certified boundary survey.
- f. Lot frontage on all streets and public rights-of-way.
- g. Indicate in feet and inches the location of the sign in relation to property lines, public rights-of-way, easements, overhead utility lines, other utility facilities and equipment, buildings and other signs on the property.
- h. An accurate and scaled drawing showing the location, dimensions, heights, and other relevant measurements, of all signs on the parcel. Freestanding signs, including monument signs,

- i. For all signs attached to the building, the facade elevation with dimensions, drawn to scale. Windows and doors and other openings shall be delineated.
- j. Sign dimensions and elevation, drawn to scale.
- k. Maximum and minimum height of the sign measured from finished grade.
- l. Dimensions of the supporting members of the sign.
- m. Sign illumination, specifying illumination type, placement, and intensity.
- n. Two (2) copies of the plans, specifications, calculations and details, signed and sealed as required by the building code of the city; and specifications documenting the applicable wind load and electrical specifications, if applicable, meeting the minimum requirements of the applicable Electric Code.
- o. Number, type, location and surface area of all existing signs on the same property.
- p. Landscape plan, as applicable.
- q. Signature of Property Owner or complete an "Authorization to Act as Applicant for Property Owner" form.

(3) Sign Construction Specifications

- a. The erection of signs shall be in accordance with the structural requirements set forth in the Building Code.
- b. Signs having electrical connections of any kind shall be wired in accordance with the National Electrical Code.
- c. Any sign having an electrical connection shall be permitted, inspected and approved by the electrical inspector prior to its completion. All sign structures shall be inspected and approved by the building official. The inspection point shall be selected by the building official. All excavations for concrete sign support bases shall be inspected and approved by the building official prior to the pouring of concrete.
- d. The supporting members of all signs shall be free of any external bracing such as guy wires or cables. All supporting columns shall be designed as integral or architectural features of the sign.
- e. Paper or cardboard signs and cloth or plastic fabric banners may only be used in for temporary signs as provided herein. However, paper or cardboard signs may be used for indoor window or door signs, when such signs are allowed.
- f. Construction standards. All signs shall be installed and constructed in a professional and workmanlike manner; and shall be maintained in good and safe structural condition and good physical appearance. All exposed structural components shall be painted, coated, or made of rust inhibitive material.

(4) **Design Requirements**

All signs and sign structures, except temporary signs and except for prohibited signs, shall be subject to the design requirements below.

- a. All tenant panels in a monument sign, including those added to an existing sign structure, shall be constructed of similar materials and illuminated by a similar method.
- b. All manufactured signs requiring a sign permit shall have a permanent and visible weatherproof identification plate affixed to the sign exterior. The plate shall identify:
 - (i) The name of the manufacturer;
 - (ii) The date of installation;
 - (iii) the sign permit number; and
 - (iv) The electric permit number (if any) with the input VA (Volt Amperes) at full load for electric.

(5) **Sign Permit Application Review**

- a. When required, an applicant shall submit a sign permit application to the Planning Director, or such other person or office as may be designated by the City. The sign permit application shall be reviewed for a determination of whether the proposed sign meets the applicable requirements of this section and any applicable provisions of the City's Zoning Ordinance and Code of Ordinances.
 - (i) The review of the sign permit application shall be completed within thirty (30) calendar days following receipt of a completed application, not counting the day of receipt
 - (ii) A sign permit shall either be approved, approved with any condition that is specifically described and set forth in the Zoning Ordinance or the Code of Ordinances, or disapproved, and the decision shall be reduced to writing. A disapproval shall include or be accompanied by a statement of the reason(s) for the disapproval.
 - (iii) In the event that no decision is rendered within thirty (30) calendar days following submission, not counting the day of receipt the application shall be deemed denied and the denial shall be a final decision of the City. In the event of a denial pursuant to this paragraph, the applicant may submit a written request via certified mail to the city and request a decision setting forth the reason that the application was not approved and the city shall promptly respond within ten (10) calendar days after receipt of the written request, not counting the day of receipt by providing a written explanation of the reason(s) for the non-approval of the application for the sign.
- b. An approval, an approval with conditions, or disapproval by the Planning Director shall be deemed the final decision of the City upon the application.

- c. All decisions shall be mailed, transmitted electronically, or hand delivered to the applicant. A record shall be kept of the date of mailing, electronic transmittal, or hand delivery. For the purposes of calculating compliance with the thirty (30) day deadline for a decision, the decision shall be deemed made when deposited in the mail, transmitted electronically, or hand delivered to the applicant.
 - d. Any person aggrieved by the decision of the Planning Director upon a sign permit application, or aggrieved by any failure by the Planning Director or by any other city official to act upon a sign permit application in accordance with the Zoning Ordinance, shall have the right to an appeal to the Board of Adjustment pursuant to Section 4.1.
 - e. If an application is deemed incomplete, the applicant may either take steps to submit a complete application or challenge the City's decision by seeking judicial review by or relief from the Circuit Court or by any other court of competent jurisdiction, filed in accordance with the requirements of law, seeking such appropriate remedy as may be available.
- (6) Before issuance of a sign permit, the Planning Director shall collect the necessary sign permit fees. The sign permit fees shall be as designated by resolution or ordinance of the City Council.
 - (7) The Planning Director may make or require any inspections to ascertain compliance with the provisions of this Section IX and the Zoning Ordinance.
 - (8) Revocation of sign permit. If the work under any sign permit is proceeding in violation of this Section IX, the Zoning Ordinance, or the Building Code, or should it be found that there has been any false statement or misrepresentation of a material fact in the application or plans on which the sign permit was based, the permit holder shall be notified of the violation. If the permit holder fails or refuses to make corrections within ten (10) calendar days, it shall be the duty of the Planning Director to revoke such sign permit and serve notice upon such permit holder. Such notice shall be in writing and signed by the Planning Director. It shall be unlawful for any person to proceed with any part of work after such notice is issued.

Section 9.11. Nonconforming Signs

All signs that are lawfully in existence or are lawfully erected and that do not conform to the provisions of this Section IX or the Zoning Ordinance are declared nonconforming signs. It is the intent of this section to recognize that the eventual elimination of nonconforming signs as expeditiously and fairly as possible is as much a subject of health, safety, and welfare as is the prohibition of new signs that would violate the provisions of this section. It is also the intent of this section that any elimination of nonconforming signs shall be effected so as to avoid any unreasonable invasion of established property rights.

(1) **Legal Nonconforming Signs:**

- a. A legal nonconforming sign is a sign that lawfully existed at the time of the enactment of this section that does not conform to the regulations as specified in this section.
- b. A legal nonconforming sign may continue to be utilized only in the manner and to the extent that it existed at the time of the adoption of this section or any amendment thereof.
- c. A legal nonconforming sign may continue in the manner and to the extent that it existed at the time of the adoption and shall not be altered in any manner not in conformance with this section. This does not apply to reasonable repair and maintenance of the sign or to a change of copy provided that by changing the copy structural alterations are not required.
- d. Legal nonconforming signs that are located on a parcel of property that is severed from a larger parcel of property and acquired by a public entity for public use by condemnation, purchase or dedication may be relocated on the remaining parcel without extinguishing the legal nonconforming status of that sign provided that the nonconforming sign:
 - (i) Is not increased in area or height to exceed the limits of the zoning district in which it is located;
 - (ii) Remains structurally unchanged except for reasonable repairs or alterations;
 - (iii) Is placed in the most similar position on the remaining property that it occupied prior to the relocation; and
 - (iv) Is relocated in a manner so as to comply with all applicable safety requirements.

After relocation pursuant to this subsection, the legal nonconforming sign shall be subject to all provisions of this section in its new location.
- e. A new sign shall not be installed on a lot where a nonconforming sign exists until all signs on the lot conforms to the provisions of the Zoning Ordinance.
- f. A nonconforming sign shall lose its legal nonconforming status and have to be removed entirely or replaced by a conforming sign if:
 - (i) If such sign is damaged to an amount exceeding 50 percent of the sign's replacement value;
 - (ii) The structure of the sign is altered in any form;
 - (iii) The sign is relocated unless as specifically authorized by this Section 9.11;
 - (iv) The sign is defined as a temporary sign and has been in use for more than one year following the effective date of this amendment; or

- (v) The nonconforming sign and its structure (including support and frame and panel) are determined by the building official, or their designee, to be unsafe or in violation of this code and are declared a nuisance.

- g. All existing portable signs still located in any zoning district shall be considered nonconforming and shall be removed unless permitted herein.

(2) **Illegal Signs**

Any sign that was not specifically allowed or that did not comply with any previous version of the Zoning Ordinance is illegal if the same was relocated, enlarged, structurally altered or extended prior to the effective date of this Section IX unless the same had been made to conform to all the provisions of the Zoning Code prior to the effective date of this Section IX or unless the same received any vested right through a settlement agreement.

(3) **Signs for a Legal Nonconforming Use:**

New or additional signs for a nonconforming use shall only be permitted if the proposed signs conform to the sign standards for the applicable district.

Section 9.12. Miscellaneous Provisions

For a sign requiring a sign permit, weeds and grass, all foliage shall be kept cut in front of, behind, underneath, and from around the base of the sign for a minimum distance of ten (10) feet from the sign base, and there shall be no rubbish or debris within ten (10) feet of the sign base or underneath the sign.

Section 9.13. Violations and Penalties

- (1) No person shall erect on any premises owned or controlled by that person any sign which does not comply with the provisions of this Section IX.
- (2) No person shall maintain or permit to be maintained on any premises owned or controlled by that person any sign which is in a dangerous or defective condition. Any such sign shall be removed or repaired by the owner of the sign or the owner of the premises, or as otherwise provided in this Section IX.
- (3) Each sign installed, created, erected or maintained in violation of this Section IX shall be considered a separate violation when applying the penalty portions herein.
- (4) Any violation of this Section IX is hereby declared to be a public nuisance.
- (5) Both the owners or other persons in charge or control of the sign and owners or other persons in charge or control of the property on which the sign is located are responsible for assuring compliance with Section IX. Any failure or refusal to comply with Section IX shall be in violation and punished as herein provided.
- (6) Any person, firm or corporation violating any of the provisions of this Section IX shall, upon conviction, shall be fined not more than \$200.00 plus costs of court. Each day that such a violation continues shall constitute a separate offense.

- (7) The City, as an additional or alternative remedy, may institute injunctive, mandamus, or other appropriate action or proceeding in a court of competent jurisdiction to prevent, remove, repair, abate or correct any violation of this Section IX.

Section 9.14. Removal of Unlawful and Dangerous Signs

- (1) Removal. The City may order the removal of any sign in violation of this ordinance by written notice to the property owner. If a permit has been issued, such notice shall operate to revoke the permit.
- (2) Procedure Following Removal Order. If the sign is not removed within fourteen (14) days after the order of removal, or fourteen (14) days after the date an appeal becomes final, the City shall remove or cause to be removed the sign and collect the cost thereof.
- (3) Removal Without Notice. The City shall remove or cause to be removed any sign in violation of this Section IX without giving notice to any party, if:
 - a. said sign is upon the public right-of-way or upon other public property; or
 - b. said sign imposes an immediate safety threat to the life or health of any members of the public.
- (4) Reclamation/Fees. The City may collect any costs incurred by the City in removal of any sign. Signs not claimed will be destroyed after fourteen (14) days.

Section 9.15. Severability

Generally. If any part, section, subsection, paragraph, subparagraph, sentence, phrase, clause, term, or word of this Section IX is declared unconstitutional by the valid judgment or decree of any court of competent jurisdiction, the declaration of such unconstitutionality shall not affect any other part, section, subsection, paragraph, subparagraph, sentence, phrase, clause, term, or word of this section.

RESOLUTION NO. _____

**RESOLUTION APPROVING A CONSTRUCTION AGREEMENT WITH ALABAMA
DEPARTMENT OF TRANSPORTATION FOR A BICYCLE/PEDESTRIAN
PATH ALONG WAVERLY PARKWAY**

WHEREAS, the State of Alabama, acting by and through The Alabama Department of Transportation (the “State”), and the City of Opelika, Alabama (the “City”) desire to cooperate in a construction program for a bicycle/pedestrian path along Waverly Parkway (the “Project”); and

WHEREAS, the Project will be administered by the State and the total estimated list of the Project is \$800,000 and the estimated cost of participation by the City is \$160,000.00; and

WHEREAS, the City desires to enter into a construction agreement with the State for said bicycle/pedestrian path project; and

WHEREAS, a proposed Construction Agreement (the “Agreement”) between the City and the State has been prepared and submitted to the City Council for approval, and the City Council has determined that it is now in the best interest of the City and its citizens to approve said Agreement.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Opelika, Alabama, as follows:

1. That the proposed Agreement for Construction between the State and the City, a copy of which is attached hereto and marked Exhibit “A”, is hereby approved, authorized, ratified and confirmed in the form substantially submitted to the City Council with such changes thereto (by addition, deletion or substitution) as the Mayor shall approve, which approval shall be conclusively evidenced by the execution and delivery of said agreement.

2. That the Mayor is hereby authorized to execute and deliver said Construction Agreement in the name and on behalf of the City and to carry out fully the transactions

contemplated therein on behalf of the City.

3. That the officers of the City and any person or persons designated and authorized by any officers of the City to act in the name and on behalf of the City, or any one or more of them, are authorized to do or cause to be done or performed in the name and on behalf of the City such other acts and to execute and deliver or cause to be executed and delivered in the name and on behalf of the City such other notices, certificates, assurances or other instruments or other communications under the seal of the City or otherwise, as they or any of them deem necessary or advisable or appropriate in order to carry into effect the intent of the provisions of this Resolution and the attached Preliminary Engineering and Construction Agreements.

4. That all costs incurred by the City under and pursuant to said agreements shall be paid from the Unassigned Fund Balance and the Controller is hereby authorized and directed to make all necessary and appropriate budget adjustments to implement this Resolution.

6. That the Purchasing-Revenue Manager is hereby authorized and directed to issue such appropriate purchase orders as may be necessary to carry out the provisions of this Resolution.

7. That this Resolution shall take effect upon its passage and adoption by the City Council.

ADOPTED AND APPROVED this the _____ day of _____, 2021.

PRESIDENT OF THE CITY COUNCIL
OF THE CITY OF OPELIKA

ATTEST:

CITY CLERK

**CONSTRUCTION
AGREEMENT
FOR A
TRANSPORTATION ALTERNATIVES PROGRAM
PROJECT**

**BETWEEN THE STATE OF ALABAMA
AND
CITY OF OPELIKA
Lee County**

**Bike/Ped Path
along Waverly Parkway**

**Project No. TAPAA-TA22(915)
CPMS Ref# 100074147**

PART ONE (1): INTRODUCTION

This Agreement is made and entered into by and between the State of Alabama (acting by and through the Alabama Department of Transportation), hereinafter referred to as the STATE; and the City of Opelika, Alabama, hereinafter referred to as the CITY.

WHEREAS, the STATE and the CITY desire to cooperate in the bike/ped path along Waverly Parkway from West Forest Intermediate School to White Road; Project# TAPAA-TA22(915); CPMS Ref# 100074147.

NOW, THEREFORE, it is mutually agreed between the STATE and the CITY as follows:

PART TWO (2): FUNDING PROVISIONS

- A. **Project Funding:** Funding for this Agreement is subject to availability of Federal Aid funds at the time of authorization. It is expressly understood that federal funds for this project will be provided from Transportation Alternatives Program (TAP) funds as authorized by the U.S. Congress and the STATE will not be liable for any funding. Cost for the project will be financed, when eligible for Federal participation, on the basis of 80 percent Federal funds and 20 percent CITY funds, based on the contract as let price plus CE&I or the estimated costs below, whichever is lower. Any deficiency in Federal Aid or overrun in costs will be borne by the CITY from CITY funds unless approved in writing by the STATE. In the event of an underrun in construction costs, the amount of Federal Aid funds will be the amount stated below, or 80% of eligible costs, whichever is less.
- B. The estimated cost and participation by the various parties is as follows:

FUNDING SOURCE	ESTIMATED COSTS
Federal TAP Funds	\$ 640,000.00
City Funds	\$ 160,000.00

TOTAL (Incl CE&I)	\$ 800,000.00

It is further understood that this is a cost reimbursement program and no federal funds will be provided to the CITY prior to accomplishment of the work for which it is requested. Furthermore, no federal funds will be reimbursed for work performed prior to project authorization.

Any cost incurred by the CITY relating to this project which is determined to be ineligible for reimbursement by the Federal Highway Administration (FHWA) or in excess of the limiting amounts previously stated will not be an eligible cost to the project and will be borne and paid by the CITY.

- C. **Time Limit:** This project will commence upon written authorization to proceed from the STATE directed to the CITY.

The approved allocation of funds for projects containing Industrial Access funds shall lapse if a contract has not been awarded for construction of the project within (12) months of the date of the funding approval by the Board and the approved allocation shall be returned to the IARB for re-allocation. A time extension may be approved by the IARB upon formal request by the applicant.

The approved allocation of funds for projects containing Federal Transportation Alternatives Set-Aside funds may lapse if a project has not been authorized by FHWA within (24) months of the date of the funding approval by the Governor and the approved allocation shall be returned to the STATE for re-allocation. A time extension may be approved by the STATE upon formal request by the applicant. Failure to meet other project milestones, as set forth in the TAP Guidelines, may result in an approved allocation being returned to the STATE.

PART THREE (3): PROJECT SERVICES

- A. The CITY will furnish all Right-of-Way for the project. Associated Right-of-Way acquisition costs will not be an eligible cost to the Project. The Right-of-Way acquisition phase is hereby defined as the appraisal fees, appraisal review fees and the cost of acquisition incurred.

All work accomplished under the provisions of this agreement will be accomplished on property owned by or which will be acquired by the CITY in accordance with applicable Federal and state laws, regulations, and procedures. Any exceptions to this requirement must be approved by the STATE in writing prior to incurring costs for which reimbursement is requested by the CITY. In cases where property is leased, or easements obtained, the terms of the lease or easement will not be less than the expected life of the improvements.

Acquisition of real property by the CITY as a part of this project will conform to and be in accordance with the provisions of the Federal Uniform Relocation Assistance & Real Property Acquisition Policies Act (49 CFR 24, Subpart B), all federal environmental laws, and all other applicable state and federal laws.

Any property acquired shall be in the name of the CITY with any condemnation or other legal proceedings being performed by the CITY.

The CITY shall follow all Federal regulations related to the Management, Leasing, and Disposal of Right-of-Way, uneconomic remnants and excess Right-of-Way as found in CFR 23 § 710 Subpart D. Proceeds for Leases and Disposals shall be credited to the Project or to the Title 23 Collector Account.

No change in use or ownership of real property acquired or improved with funds provided under the terms of this Agreement will be permitted without prior written approval from the STATE or FHWA. The STATE or FHWA will be credited on a prorata share, as provided in Part Two, Section B, any revenues received by the CITY from the sale or lease of property.

- B. The CITY will relocate any utilities in conflict with the project improvements in accordance with applicable Federal and State laws, regulations, and procedures. Associated Utility costs will be an eligible cost to the Project, as approved by the application.
- C. The CITY will make the Survey, perform the Design, complete the Plans and furnish all Preliminary Engineering for the Project with CITY forces or with a consultant approved by the STATE. Associated Survey, Design, Plan Preparation, and Preliminary Engineering costs will not be an eligible cost to the Project.

If any Associated Survey, Design, Plan Preparation, and Preliminary Engineering costs are an eligible cost to the project, the CITY will develop and submit to the STATE a project budget for approval. This budget will be in such form and detail as may be required by the STATE. At a minimum, all major work activities will be described, and an estimated cost and source of funds will be indicated for each activity. All cost for which the CITY seeks reimbursement must be included in a budget approved by the STATE in order to be considered for reimbursement. Budget adjustments may be necessary and may be allowed, subject to the approval of the STATE in writing, in order to successfully carry out the project. However, under no circumstances will the CITY be reimbursed for expenditures over and beyond the amount approved by the STATE.

The CITY will undertake the project in accordance with this Agreement, plans approved by the STATE and the requirements, and provisions, including the documents relating thereto, developed by the CITY and approved by the STATE. The plans, including the documents relating thereto, is of record in the Alabama Department of Transportation and is hereby incorporated in and made a part of this Agreement by reference. It is understood by the CITY that failure of the CITY to carry out the project in accordance with this Agreement and approved plans, including documents related thereto, may result in the loss of federal funding and the refund of any federal funds previously received on the project.

Projects containing Industrial Access funds or State funds, with no Federal funds involved, shall have completed original plans furnished to the STATE in accordance with the Guidelines for Operations for ***Procedures for Processing State and Industrial Access Funded County and City Projects***, and attached hereto as a part of this Agreement prior to the CITY letting the contract.

- D. The CITY will furnish all construction engineering for the Project with CITY forces or with a consultant approved by the STATE as part of the cost of the Project. Construction Engineering & Inspection cost are not to exceed 15%, without prior approval by the State. Associated Construction Engineering & Inspection costs will be an eligible cost to the Project.
- E. The STATE will furnish the necessary inspection and testing of materials when needed as part of the cost of the project. The CITY may request the use of an approved third-party materials inspection and testing provider, as approved by the STATE.

PART FOUR (4): CONTRACT PROVISIONS

- A. The CITY shall not proceed with any project work covered under the provisions of this Agreement until the STATE issues written authorization to the CITY to proceed.
- B. Associated Construction cost will be an eligible cost to the project.

For projects let to contract by the STATE, the STATE will be responsible for advertisement and receipt of bids, and the award of the Contract. Following the receipt of bids and prior to the award of the Contract, the STATE will invoice the CITY for its pro rata share of the estimated cost as reflected by the bid of the successful bidder plus Engineering & Inspection and Indirect Costs (if applicable). The CITY shall pay this amount to the STATE no later than 30 days after the date bids are opened. Failure to do so may lead to the rejection of the bid.

For projects let to contract by the CITY, the CITY shall comply with all Federal and State laws, rules, regulations and procedures applicable to the advertisement, receipt of bids, and the award of the contract. The CITY will, when authorized by the STATE, solicit bids and make awards for construction and/or services pursuant to this agreement. The CITY shall not solicit bids until the entire bid package (plans, specifications, estimates, etc.) has been reviewed and approved by the STATE. Following receipt of bids, the CITY will provide all bids to the STATE with a recommendation for award. The CITY shall not award the contract until it has received written approval from the STATE.

For projects with approval by the STATE to use CITY Forces, the Construction for the project will be performed by the CITY at actual costs for labor, materials, and equipment, as approved by the STATE.

The purchase of project equipment and/or services financed in whole or in part pursuant to this Agreement will be in accordance with applicable Federal and State laws, rules, regulations, and procedures, including state competitive bidding requirements applicable to counties and municipalities in the State of Alabama when the purchase is made by any such entity.

- C. If necessary, the CITY will file an Alabama Department of Environmental Management (ADEM) National Pollutant Discharge Elimination System (NPDES) Notice of Registration (NOR) (Code Chapter 335-6-12) for this project without cost to the State or this project. The CITY will be the permittee of record with ADEM for the permit. The CITY and the contractor will be responsible for compliance with the permit and the State will have no obligation regarding the permit. The CITY will furnish the State (Region) a copy of the permit prior to any work being performed by the contractor.

The CITY will secure all permits and licenses of every nature and description applicable to the project in any manner and will conform to and comply with the requirements of any such permit or license, and with each and every requirement of any and all agencies, and of any and all lawful authorities having jurisdiction or requirements applicable to the project or to the project activities.

- D. The CITY will comply with the Alabama Department of Transportation Standard Specifications for Highway Construction, Latest Edition, on this project and will ensure that work associated on this project meets the standards of the Alabama Department of Transportation and the project will be built in accordance with the approved plans.
- E. Subject to the limitations on damages applicable to municipal corporations under Ala. Code § 11-47-190 (1975), the CITY shall indemnify, and hold harmless the State of Alabama, the Alabama Department of Transportation, its officers, officials, agents, servants, and employees from and against (1) claims, damages, losses, and expenses, including but not limited to attorneys' fees arising out of, connected with, resulting from or related to the work performed by the CITY, or its officers, employees, contracts, agents or assigns (2) the provision of any services or expenditure of funds required, authorized, or undertaken by the CITY pursuant to the terms of this Agreement, or (3) any damage, loss, expense, bodily injury, or death, or injury or destruction of tangible property (other than the work itself), including loss of use therefrom, and including but not limited to attorneys' fees, caused by the negligent, careless or unskillful acts of the CITY its agents, servants, representatives or employees, or the misuse, misappropriation, misapplication, or misexpenditure of any source of funding, compensation or reimbursement by the CITY, its agents, servants, representatives or employees, or anyone for whose acts the CITY may be liable.
- F. The CITY will be obligated for the payment of damages occasioned to private property, public utilities or the general public, caused by the legal liability (in accordance with Alabama and/or Federal law) of the CITY, its agents, servants, employees or facilities.

- G. Upon completion and acceptance of this project by the State, the CITY will assume full ownership and responsibility for the project work and maintain the project in accordance with applicable State law and comply with the Department's Local Road Maintenance Certification Policy.

PART FIVE (5): ACCOUNTING PROVISIONS

- A. The CITY will, when appropriate, submit reimbursement invoices to the STATE for work performed in carrying out the terms of this Agreement. Requests for reimbursement will be made on forms provided by the STATE and will be submitted through the Region Engineer for payment. The CITY may invoice the STATE not more often than once per month for the funds due for work performed under this Agreement. Invoices for payment will be submitted in accordance with state law and will indicate that the payment is due, true, correct, unpaid, and the invoice will be notarized. Invoices for any work performed under the terms of this agreement will be submitted within twelve (12) months after the completion and acceptance by the STATE for the work. Any invoices submitted after this twelve-month period will not be eligible for payment.

- B. The CITY will not assign any portion of the work to be performed under this Agreement or execute any contract, amendment or change order thereto, or obligate itself in any manner with any third party with respect to its rights and responsibilities under this Agreement, without the prior written approval of the STATE.

- C. The CITY will establish and maintain a cost accounting system that must be adequate and acceptable to the STATE as determined by the auditor of the STATE.

All charges to the Project will be supported by properly executed invoices, contracts, or vouchers, as applicable, evidencing in proper detail the nature and propriety of the charges, in accordance with the requirements of the STATE. All checks, invoices, contracts, vouchers, orders or other accounting documents pertaining in whole or in part to the project will be clearly identified, readily accessible and to the maximum extent feasible, kept separate and apart from all other such documents.

The CITY will report to the STATE the progress of the project in such manner as the STATE may require. The CITY will also provide the STATE any information requested by the STATE regarding the project. The CITY will submit to the STATE financial statements, data, records, contracts and other documents and items of any respect related to the project as may be requested by the STATE.

The CITY will permit the STATE, the Comptroller General of the United States, and the Secretary of the USDOT, or either of them or their respective authorized representatives, to inspect, at any time, vehicles and equipment utilized or used in performance of the project; any and all data and records which in any way relate to the project or to the accomplishment of the project. The CITY will also permit the above noted persons to audit the books, records and accounts pertaining to the project at any and all times, and the CITY will give its full cooperation to those persons or their authorized representatives, as applicable.

The CITY will comply with all audit requirements set forth in the 2 CFR Part 200 requirements, or the most current version of those requirements under federal law.

- D. The CITY will retain all books, records, and other documents relative to this Agreement for a minimum of three (3) years after project termination, expiration of Federal interest, or close out, and the STATE, the Comptroller General of the United States, and the Secretary of the USDOT, or either of them or their respective authorized representatives, will have full access to, and right to examine any of said materials at all reasonable times during said period.
- E. Any user fee or charge to the public for access to any property or services provided through the funds made available under this agreement, if not prohibited by a Federal, State or local law, must be applied for the maintenance and long-term upkeep of the project authorized by this agreement.

- F. An audit report must be filed with the Department of Examiners of Public Accounts, upon receipt by the CITY, for any audit performed on this project in accordance with Act No. 94-414.

PART SIX (6): MISCELLANEOUS PROVISIONS

- A. By entering into this agreement, the CITY is not an agent of the STATE, its officers, employees, agents or assigns. The CITY is an independent entity from the STATE and nothing in this agreement creates an agency relationship between the parties.
- B. It is agreed that the terms and commitments contained in this agreement shall not be constituted as a debt of the State of Alabama in violation of Article 11, Section 213 of the Constitution of Alabama, 1901, as amended by Amendment 26. It is further agreed that if any provision of this agreement shall contravene any statute or Constitutional provision or amendment, either now in effect or which may, during the course of this agreement, be enacted, then the conflicting provision in this agreement shall be deemed null and void.
- C. By signing this contract, 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 contracting 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.
- D. No member, officer, or employee of the CITY during their tenure of employment, and for one year thereafter shall have any interest, direct or indirect, in this Agreement or the proceeds, profits, or benefits therefrom.
- E. The terms of this Agreement may be modified by revision of this Agreement duly executed by the parties hereto.
- F. This agreement may be terminated by either party upon the delivery of a thirty (30) day notice of termination.
- G. Nothing shall be construed under the terms of this Agreement that shall cause any conflict with Section 23-1-63, Code of Alabama, 1975.
- H. **Exhibits A, E, H, M, and N** are hereby attached to and made a part of this Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by those officers, officials and persons duly authorized to execute same, and the Agreement is deemed to be dated and to be effective on the date hereinafter stated as the date of its approval by the Governor of Alabama.

ATTEST:

City of Opelika, Alabama

By: _____

City Clerk (Signature)

By: _____

As Mayor (Signature)

Type Name of Clerk

(AFFIX SEAL)

Type Name of Mayor

This agreement has been legally reviewed and approved as to form and content.

By: _____

William F. Patty,

Chief Counsel

RECOMMENDED FOR APPROVAL:

Bradley B. Lindsey, P.E.

State Local Transportation Engineer

Edward N. Austin, P. E.

Chief Engineer

STATE OF ALABAMA, ACTING BY AND THROUGH
THE ALABAMA DEPARTMENT OF TRANSPORTATION

John R. Cooper, Transportation Director

THE WITHIN AND FOREGOING AGREEMENT IS HEREBY EXECUTED AND
SIGNED BY THE GOVERNOR ON THIS _____ DAY OF _____, 20_____.

KAY IVEY

GOVERNOR, STATE OF ALABAMA

RESOLUTION NUMBER_____

BE IT RESOLVED, by the City of Opelika as follows:

That the City enter into an agreement with the State of Alabama, acting by and through the Alabama Department of Transportation relating to a project for:

Bike/ped path along Waverly Parkway from West Forest Intermediate School to White Road; Project# TAPAA-TA22(915); CPMS Ref# 100074147

Which agreement is before this Council, and that the agreement be executed in the name of the City, by the Mayor for and on its behalf and that it be attested by the City Clerk and the official seal of the City be affixed thereto.

BE IT FURTHER RESOLVED, that upon the completion of the execution of the agreement by all parties, that a copy of such agreement be kept on file by the City.

I, the undersigned qualified and acting Clerk of the City of Opelika, Alabama, do hereby certify that the above and foregoing is a true copy of a resolution lawfully passed and adopted by the City named therein, at a regular meeting of such Council held on the _____day of _____, 20____, and that such resolution is on file in the City Clerk's Office.

ATTESTED:

City Clerk

Mayor

_____day of _____, 20_____, and that such resolution is of record in the Minute Book of the City.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of the City on this_____day of _____, 20_____.

City Clerk

(AFFIX SEAL)

EXHIBIT A

PARTICIPATION BY DISADVANTAGED BUSINESS ENTERPRISES IN FEDERAL-AID PROGRAM

Policy. It is the policy of the U.S. Department of Transportation that Disadvantaged Business Enterprises (DBE) as defined in 49 CFR Part 26 shall have the opportunity to participate in the performance of contracts financed in whole or in part with Federal funds under this AGREEMENT. Consequently, the DBE requirements of 49 CFR Part 26 apply to this AGREEMENT.

DBE Obligation. The recipient of funds under the terms of this AGREEMENT agrees to ensure that Disadvantaged Business Enterprises as defined in 49 CFR Part 26 have the maximum opportunity to participate in the performance of contracts and subcontracts financed in whole or in part with Federal funds provided under this agreement. The recipient shall take all necessary and reasonable steps in accordance with 49 CFR Part 26 to see that Disadvantaged Business Enterprises have the opportunity to compete for and perform contracts and shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of U.S. Department of Transportation assisted contracts.

Failure of the recipient of funds under the terms of this AGREEMENT, or failure of its subcontractor (if a subcontractor is authorized) to carry out the DBE requirements of this AGREEMENT shall constitute a breach of contract, and may result in termination of the contract by the STATE, or such other remedy may be undertaken by the STATE as it deems appropriate.

EXHIBIT E

TERMINATION OR ABANDONMENT

- a. The STATE has the right to abandon the work or to amend its project at any time, and such action on its part shall in no event be deemed a breach of contract.
- b. The STATE has the right to terminate this AGREEMENT at its sole discretion without cause and make settlement with the CITY upon an equitable basis. The value of the work performed by the CITY prior to the termination of this AGREEMENT shall be determined. In determining the value of the work performed, the STATE shall consider the following:
 1. The ratio of the amount of work performed by the CITY prior to the termination of the AGREEMENT to the total amount of work contemplated by this AGREEMENT less any payments previously made.
 2. The amount of the expense to which the CITY is put in performing the work to be terminated in proportion to the amount of expense to which the CITY would have been put had he been allowed to complete the total work contemplated by the AGREEMENT, less any payments previously made. In determining the value of the work performed by the CITY prior to the termination, no consideration will be given to profit, which the CITY might have made on the uncompleted portion of the work. If the termination is brought about as a result of unsatisfactory performance on the part of the CITY, the value of the work performed by the CITY prior to termination shall be fixed solely on the ratio of the amount of such work to the total amount of work contemplated by this AGREEMENT.

CONTROVERSY

In any controversy concerning contract terms, or on a question of fact in connection with the work covered by this project, including compensation for such work, the decision of the Transportation Director regarding the matter in issue or dispute shall be final and conclusive of all parties.

CONTRACT BINDING ON SUCCESSORS AND ASSIGNS

- a. This contract shall be binding upon the successors and assigns of the respective parties hereto.
- b. Should the AGREEMENT be terminated due to default by CITY, such termination shall be in accordance with applicable Federal Acquisition Regulations.

EXHIBIT H

Page 1

EQUAL RIGHTS PROVISIONS

During the performance of this contract, the CITY for itself, its assignees and successors in interest agrees as follows:

a. **Compliance with Regulations**

The CITY will comply with the Regulations of the Department of Transportation relative to nondiscrimination in federally-assigned programs of the Department of Transportation (Title 49, Code of Federal Regulations, Part 21, as amended by 23 CFR 710-405(b), hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this contract.

During the performance of this contract, the contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the "contractor") agrees to comply with the following non-discrimination statutes and authorities; including but not limited to:

Pertinent Non-Discrimination Authorities:

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d *et seq.*, 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin); and 49 CFR Part 21.
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Federal-Aid Highway Act of 1973, (23 U.S.C. § 324 *et seq.*), (prohibits discrimination on the basis of sex);
- Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 *et seq.*), as amended, (prohibits discrimination on the basis of disability); and 49 CFR Part 27;
- The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 *et seq.*), (prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982, (49 USC § 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms "programs or activities" to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
- Titles II and III of the Americans with Disabilities Act, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131-12189) as implemented by Department of Transportation regulations at 49 C.F.R. parts 37 and 38;

EXHIBIT H

Page 2

- The Federal Aviation Administration's Non-discrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures nondiscrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);
- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. 1681 et seq).

b. **Nondiscrimination**

In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, Section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, Section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12132, and Federal transit law at 49 U.S.C. § 5332, the CITY agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. The CITY will not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices where the contract covers a program set forth in Appendix B of the Regulations.

The CITY will comply with all provisions of Executive Order 11246 of September 24, 1965 as amended by Executive Order 11375, and of the rules, regulations (41 CFR, Part 60) and relevant orders of the Secretary of Labor.

c. **Solicitations**

In all solicitations either by competitive bidding or negotiation made by the CITY for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subcontractor, supplier or lessor shall be notified by the CITY of the CITY'S obligation under this contract and the Regulations relative to nondiscrimination on the ground of race, color, religion, sex or national origin.

d. **Information and Reports**

The CITY will provide all information and reports required by the Regulations, or orders and instructions issued pursuant thereto, and will permit access to its books,

EXHIBIT H

Page 3

records, accounts, other sources of information and its facilities as may be determined by the STATE or the Federal Highway Administration to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of a CITY is in the exclusive possession of another who fails or refuses to furnish this information, the CITY shall so certify to the STATE, or the Federal Highway Administration as appropriate, and shall set forth what efforts it has made to obtain the information.

e. **Sanctions for Noncompliance**

In the event of the CITY'S noncompliance with the nondiscrimination provisions provided for herein, the STATE shall impose such contract sanctions as it may determine to be appropriate, including but not limited to,

1. withholding of payments to the CITY under contract until the CITY complies, and/or
2. cancellation, termination or suspension of the contract, in whole or in part.

f. **Incorporation of Provisions**

The CITY will include the foregoing provisions a. through f. in every subcontract, including procurements of materials and leases of equipment, unless excepted by the Regulations, orders or instructions issued pursuant thereto. The CITY will take such action with respect to any subcontract, procurement, or lease as the STATE may direct as a means of enforcing such provisions, including sanctions for noncompliance; provided, however, that in the event a CITY becomes involved in, or is threatened with, litigation with subcontractors, suppliers, or lessor as a result of such direction, the CITY may request the STATE to enter into such litigation to protect the interest of the STATE.

g. **Equal Employment Opportunity** – The following equal employment opportunity requirements apply to the underlying contract:

1. **Race, Color, Creed, National Origin, Sex** – In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, and Federal Transit laws at 49 U.S.C. § 5332, the CITY agrees to comply with all applicable equal employment requirements of U.S. Department of Labor (U.S. DOL) regulations, “Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor,” 41 C.F.R. Parts 60 et seq., (which implement Executive Order No. 11246, “Equal Employment Opportunity,” as amended by Executive Order No. 11375, “Amending Executive Order 11246 Relating to Equal Employment Opportunity,” 42 U.S.C. § 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the Project.

EXHIBIT H

Page 4

The CITY agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age. Such action shall include, but not 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. In addition, the CITY agrees to comply with any implementing requirements FTA may issue.

2. Age – In accordance with Section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § 623 and Federal transit law at 49 U.S.C. § 5332, the CITY agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the CITY agrees to comply with any implementing requirements FTA may issue.
3. Disabilities – In accordance with Section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112, the CITY agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, “Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act,” 29 C.F.R. Part 1630, pertaining to employment of persons with disabilities. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

COST PRINCIPLES

The STATE'S cost principles for use in determining the allowability of any item of cost, both direct and indirect, in this AGREEMENT, shall be the applicable provisions of Volume I, Federal Acquisition Regulations, Parts 30 and 31. The CITY shall maintain costs and supporting documentation in accordance with the Federal Acquisition Regulations, Parts 30 and 31 and other Regulations referenced with these Parts where applicable. The CITY shall gain an understanding of these documents and regulations. The applicable provisions of the above referenced regulations documents are hereby incorporated by reference herein as if fully set forth.

EXECUTORY CLAUSE AND NON-MERIT SYSTEM STATUS

- a. The CITY specifically agrees that this AGREEMENT shall be deemed executory only to the extent of moneys available, and no liability shall be incurred by the STATE beyond the moneys available for this purpose.

EXHIBIT H

Page 5

- b. The CITY, in accordance with the status of CITY as an independent contractor, covenants and agrees that the conduct of CITY will be consistent with such status, that CITY will neither hold CITY out as, or claim to be, an officer or employee of the STATE by reason hereof, and that CITY will not, by reason hereof, make any claim, demand or application to or for any right or privilege applicable to an officer or employee of the STATE under the merit system or any other law of Alabama, including but not limited to workmen's compensation coverage, or retirement membership or credit or any Federal employment law. This paragraph also applies in like manner to the employees of CITY.

CITYS' CERTIFICATIONS

The CITY by acceptance of this contract certifies that the rates or composition of cost noted in Article IV - PAYMENTS are based on the current actual hourly rates paid to employees, estimated non- salary direct cost based on historical prices, the latest available audited indirect cost rate, and estimated cost of reimbursements to employees for travel (mileage, per diem, and meal allowance) based on the current policy of the CITY. The CITY agrees that mileage reimbursements for use of company vehicles is based on the lesser of the approved rate allowed by the General Services Administration of the United States Government or the reimbursement policies of the CITY at the time of execution of the AGREEMENT. The CITY agrees that no mileage reimbursement will be allowed for the purpose of commuting to and from work or for personal use of a vehicle. The CITY agrees that the per diem rate will be limited to the rate allowed by the STATE at the time of execution of the AGREEMENT. The CITY agrees that a meal allowance shall be limited to CITY employees while in travel status only and only when used in lieu of a per diem rate.

The CITY shall submit detailed certified labor rates as requested, and in a timely manner, to the External Audits Section of the Finance and Audits Bureau of The Alabama Department of Transportation. The CITY agrees that material differences between rates submitted with a proposal and rates provided as certified for the same proposal are subject to adjustment and reimbursement.

EXHIBIT M

CERTIFICATION FOR FEDERAL-AID CONTRACTS: LOBBYING

This certification is applicable to the instrument to which it is attached whether attached directly or indirectly with other attachments to such instrument.

The prospective participant/recipient, by causing the signing of and the submission of this Federal contract, grant, loan, cooperative AGREEMENT, or other instrument as might be applicable under Section 1352, Title 31, U. S. Code, and the person signing same for and on behalf of the prospective participant/recipient each respectively certify that to the best of the knowledge and belief of the prospective participant or recipient and of the person signing for and on behalf of the prospective participant/recipient, that:

- a. No Federal appropriated funds have been paid or will be paid, by or on behalf of the prospective participant/recipient or the person signing on behalf of the prospective participant/recipient as mentioned above, to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
- b. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, or other instrument as might be applicable under Section 1352, Title 31, U. S. Code, the prospective participant/recipient shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U. S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

The prospective participant/recipient also agrees by submitting this Federal contract, grant, loan, cooperative agreement or other instrument as might be applicable under Section 1352, Title 31, U.S. Code, that the prospective participant/recipient shall require that the language of this certification be included in all lower tier subcontracts, which exceed \$100,000 and that all such subrecipients shall certify and disclose accordingly.

EXHIBIT N

FUNDS SHALL NOT BE CONSTITUTED AS A DEBT

It is agreed that the terms and commitments contained herein shall not be constituted as a debt of the State of Alabama in violation of Article 11, Section 213 of the Constitution of Alabama, 1901, as amended by Amendment Number 26. It is further agreed that if any provision of this AGREEMENT shall contravene any statute or Constitutional provision of amendment, either now in effect or which may, during the course of this AGREEMENT, be enacted, then the conflicting provision in the AGREEMENT shall be deemed null and void.

When considering settlement of controversies arising from or related to the work covered by this AGREEMENT, the parties may agree to use appropriate forms of non-binding alternative dispute resolution.

TERMINATION DUE TO INSUFFICIENT FUNDS

- a. If the agreement term is to exceed more than one fiscal year, then said agreement is subject to termination in the event that funds should not be appropriated for the continued payment of the agreement in subsequent fiscal years.
- b. In the event of proration of the fund from which payment under this AGREEMENT is to be made, agreement will be subject to termination.

NO GOVERNMENT OBLIGATION TO THIRD PARTY CONTRACTORS

The STATE and CITY acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this contract and shall not be subject to any obligations of or liabilities to the STATE, CITY, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.

The CITY agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided to FHWA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

**STATE OF ALABAMA
DEPARTMENT OF TRANSPORTATION
GUIDELINES FOR OPERATION**

**SUBJECT: PROCEDURES FOR PROCESSING STATE AND INDUSTRIAL
ACCESS FUNDED COUNTY AND CITY PROJECTS**

No work can be performed and no contracts can be let prior to having a fully executed project agreement, submittal of project plans to Region and notification from the Region that advertisement for bids can be made, or, in the case of force account projects, work can begin.

A project agreement will be prepared and furnished to the County/City upon receipt of grant award letter signed by the Director or Governor. The Region will prepare and submit a F-7A Budget Allotment request upon receipt of a project funding agreement at the time it is submitted to the County/City for their execution.

The County/City will submit plans prepared and signed by a registered professional engineer showing work to be performed. Plans must match the project agreement description. It is not necessary for the Region to perform an in-depth review of plans. The County/City will submit a certification signed by a Registered Professional Engineer stating that the plans have been prepared so that all items included in the plans meet ALDOT specifications. The County/City will include a letter certifying that the County/City owns all right-of-way on which the project is to be constructed.

Upon receipt of the executed agreement, the executed F-7A, final plans from the County/City, and right-of-way certification, the Region may notify the County/City to proceed with advertising the project for letting or proceed with work in the case of a force account project.

In the case where a County/City is using an inplace annual bid, the County/City will furnish the Region a copy of their bid and this bid price will be used for reimbursement.

Where the County/City is letting a contract locally, the County/City will furnish to the Region the three lowest bids with their recommendation for award. The Region will review the bids, and, if in order, advise the County/City to proceed with award of the contract to the lowest responsible bidder. The County's/City's estimate for reimbursement will be based on the bid prices concurred in by the State and supported with documentation that the contractor has been paid for work performed (copy of cancelled check).

A certification will be submitted with County/City final estimate stating that the project was constructed in accordance with final plans submitted to the State and with the specifications, supplemental specifications, and special provisions which were shown on the plans or with the State's latest specifications which were applicable at the time of plan approval.

The County/City will notify the Region when the project is complete and the Region will perform a final ride-through to determine whether the project was completed in substantial compliance with original final plans. Final acceptance will be made by the Region with a copy of the letter furnished to the Bureau of Local Transportation.

All required test reports, weight tickets, material receipts and other project documentation required by the specifications, applicable supplemental specifications, and special provisions will be retained by the County/City for a period of three (3) years following receipt of final payment and made available for audit by the State upon request. If an audit is performed and proper documentation is not available to verify quantities and compliance with specifications, the County/City will refund the project cost to the State or do whatever is necessary to correct the project at their cost.

All County/City Industrial Access or State funded projects let to contract by the State will follow normal project procedures and comply with all current plan processing requirements.

RECOMMENDED FOR APPROVAL:


BUREAU CHIEF/REGION ENGINEER

APPROVAL:


CHIEF ENGINEER

APPROVAL:


TRANSPORTATION DIRECTOR

NOVEMBER 1, 2017

DATE

1-20

Rev. 10/2017