



**Vestavia Hills  
City Council Agenda  
February 26, 2024  
6:00 PM**

1. Call to Order
2. Roll Call
3. Invocation - Chaplain Don Richards
4. Pledge Of Allegiance
5. Approval Of The Agenda
6. Announcements, Candidates and Guest Recognition
7. City Manager's Report
8. Councilors' Reports
9. Financial Reports - Zachary Clifton, Deputy Finance Director
10. Approval Of Minutes - February 12, 2024, Regular meeting

**Old Business (Public Hearing)**

11. Public Hearing - Ordinance Number 3207 - An Ordinance to accept a proposal from Coca-Cola Bottling Company to become the concessions/vending provider for a period of three years at all Vestavia Hills Parks and Leisure Facilities. Acceptance will authorize the Mayor and City Manager to do all actions necessary to secure Coca-Cola as the vendor.

**New Business**

12. Resolution Number 5502 - A Resolution authorizing the City of Birmingham, Alabama, to annex certain property within overlapping police jurisdiction of Vestavia Hills, Alabama, pursuant to the provisions of Section 11-42-21(c), Code of Alabama, 1975

**New Business Requesting Unanimous Consent**

**First Reading (No Action To Be Taken At This Meeting)**

13. Public Hearing - Annexation - Overnight - A portion of 1051 Highwall Drive; Lot 1  
The Bray at Liberty Park First Addition; Liberty Park Joint Venture, Owners
14. Citizens Comments
15. Time Of Adjournment

## **PUBLIC HEARING PROCEDURES**

The following procedures shall be followed for every public hearing of the City Council:

- All comments shall be limited to **3 minutes**. A countdown clock will be provided on the video screens.
- Do not duplicate comments made by previous speakers. For example, if traffic is mentioned as an issue, do not readdress that issue.
- All comments shall be directed to the Mayor and/or presiding officer. Do not address the audience or the applicant.
- Each speaker shall identify himself, including full name and address.

## **SPECIAL NOTICE CONCERNING CITY COUNCIL MEETINGS**

If you prefer not to attend a City Council meeting or work session in person, you may participate remotely:

- **Videoconference:** To participate by videoconference, you may access the meeting via Zoom at <https://us02web.zoom.us/j/5539517181>. When the Zoom.us window opens in your browser, click "Allow" to be placed in a virtual "waiting room." The host will open the meeting and allow all participants to join the meeting at that time. All participants will be automatically muted upon entrance to the meeting. If you wish to speak during time(s) identified for public input, activate the "video" feature and unmute yourself by toggling the mute button. When the Mayor recognizes you and gives you the floor, state your name and address for the record and then you may address the Council. Some useful Zoom functions include: microphone Mute/Unmute; Start/Stop Video; and View Participants – opens a pop-out screen that includes the "Raise Hand" icon that you may use to raise a virtual hand.
- **Teleconference:** To participate by telephone, dial 312.626.6799 and enter the meeting ID: 5539517181. All participants will be automatically muted upon entrance to the meeting. If you wish to speak during time(s) identified for public input, unmute yourself by pressing \*6 on your keypad. Then state your name and wait for the Mayor to recognize you. When the Mayor recognizes you and gives you the floor, state your name and address for the record and then address the Council.

**Meetings may be recorded.** By participating in the meeting, you are consenting to be recorded.

**"Zoom-bombing."** Zoom-bombing is a cyber-crime and is punishable by law. In the event of an attendee intruding into any City of Vestavia Hills Zoom meeting, the online broadcast will be terminated immediately. Council and/or board members may be readmitted but online attendees will not. Although Zoom-bombing is not a frequent occurrence, those wishing to make public comment should attend the meeting in person.

Summary  
Financial Report  
January 2023-2024

**1.) Reconciled Cash Balance**

The overall reconciled cash balance for the month of January was \$51,534,553 which is comprised of the following funds:

General Funds	\$42,866,245
Restricted Funds	\$8,665,228
Petty Cash	\$3,080
<b>Total</b>	<b><u>\$51,534,553</u></b>

**2.) The "Financial Overview" for the month and YTD through January is as follows:**

Monthly Revenues	\$13,511,100	YTD Revenues	\$38,901,275
Monthly Expenses	<u>\$10,036,097</u>	YTD Expenses	<u>\$26,047,465</u>
Monthly Fund Balance	<u>\$3,475,003</u>	YTD Fund Balance	<u>\$12,853,810</u>

**3.) Comparative Fund Balances:**

	<u>YTD</u>	<u>Variance</u>
Actual - 2023-2024	\$12,853,810	
Budget - 2023-2024	\$8,708,338	\$4,145,472
Last Year - 2022-2023	\$12,100,056	\$753,754

**Note:**

The "Actual Fund Balance" is \$4,145,472 greater than the "Budgeted Fund Balance" and \$753,754 greater than "Last Year Fund Balance" .

Summary  
Financial Report  
January 2023-2024

MTD						YTD			Variance	
	Actual	Budget	Last Year	Actual	Budget	Last Year	Act vs. Bdgt	Act vs LY		
REVENUES	13,511,100	12,162,178	13,193,271	38,901,275	34,620,005	36,023,289	4,281,270	2,877,985		
EXPENSES	10,036,097	9,328,038	9,167,930	26,047,465	25,911,667	23,923,234	(135,798)	(2,124,231)		
FUND BALANCE	3,475,003	2,834,140	4,025,341	12,853,810	8,708,338	12,100,056	4,145,472	753,754		
Advalorem - Real	6,181,000	4,842,910	5,098,681	20,495,080	18,126,096	18,180,590	2,368,984	2,314,489		
Sales Tax	2,522,996	2,690,891	2,719,899	9,421,038	9,524,515	9,818,788	(103,477)	(397,749)		
Utility Franchise Fees	2,613,474	2,466,443	2,466,528	2,613,543	2,466,575	2,466,573	146,968	146,971		
Business License	1,392,709	1,506,732	2,119,711	1,569,066	1,722,819	2,393,255	(153,753)	(824,189)		
Advalorem - Personal	54,189	39,535	40,948	799,120	635,497	716,118	163,623	83,002		
October thru January 2024 (4 months)						2023-2024				
	Actual	Budget Total	Outstanding Bal	% Received	% Outstanding	Verification				
Advalorem - Real	20,495,080	17,311,511	3,183,569	118.39%	-18.39%	100.00%				
Sales Taxes	9,421,038	24,804,732	(15,383,694)	37.98%	62.02%	100.00%				
Utility Franchise Fees	2,613,543	2,353,277	260,266	111.06%	-11.06%	100.00%				
Business License	1,569,066	3,975,640	(2,406,574)	39.47%	60.53%	100.00%				
Advalorem - Personal	799,120	1,753,590	(954,470)	45.57%	54.43%	100.00%				
JANUARY						MTD				
			Variance	Last Year	Act vs LY					
Advalorem - Real	6,181,000	4,842,910	1,338,090	5,098,681	1,082,319					
Sales Taxes	2,522,996	2,690,891	(167,895)	2,719,899	(196,903)					
Utility Franchise Fees	2,613,474	2,466,443	147,031	2,466,528	146,946					
Business License	1,392,709	1,506,732	(114,023)	2,119,711	(727,002)					
Advalorem - Personal	54,189	39,535	14,654	40,948	13,240					

**CITY OF VESTAVIA HILLS  
MONTHLY CASH REPORT  
"RECONCILED BALANCES"**

		APR	January 2023	February 2023	March 2023	April 2023	May 2023	June 2023	July 2023	August 2023	September 2023	October 2023	November 2023	December 2023	January 2024
<b>General Funds</b>															
General / Operational Funds	Region Bank	5.05%	16,459,200.47	24,217,752.68	14,342,621.96	12,018,312.32	11,759,702.36	11,590,713.02	7,066,588.69	5,063,164.63	4,111,462.41	6,779,150.23	8,408,494.76	8,678,758.65	11,671,643.22
Enhanced Cash Strategy	Region Bank	4.99%	10,079,701.89	10,084,683.50	10,163,965.58	10,189,384.32	10,191,577.01	10,204,945.93	10,243,233.98	10,286,223.41	10,311,308.65	9,936,408.24	10,004,361.97	10,076,629.06	10,119,135.13
Payroll Fund	Region Bank	0.25%	720.93	720.93	720.93	720.93	5,648.68	5,648.68	5,648.68	6,082.04	6,082.04	6,159.15	0.00	0.00	0.00
Emergency Reserve Fund	Morgan Stanley/Region	4.99%	15,585,494.46	15,544,687.62	15,723,723.88	17,600,611.65	17,597,102.85	17,637,280.09	17,714,753.81	17,794,062.04	17,865,878.82	17,941,009.73	18,040,220.13	18,136,383.13	18,214,276.83
Court & Corrections Fund	Region Bank	0.25%	574,310.77	719,529.33	902,593.63	1,043,983.69	411,577.03	123,750.03	139,387.03	81,431.83	84,101.83	137,357.88	74,624.60	73,402.60	97,819.67
American Rescue Plan (COVID-19)	SouthPoint	4.40%	4,357,653.60	4,369,028.87	4,341,120.29	4,352,374.03	4,119,174.25	3,551,189.79	2,790,490.26	2,800,937.32	2,811,084.36	2,822,068.50	2,742,762.58	2,753,063.24	2,763,369.93
<b>Total - Balance</b>			<b>\$47,057,082.12</b>	<b>\$54,936,402.93</b>	<b>\$45,474,746.27</b>	<b>\$45,205,386.94</b>	<b>\$44,084,782.18</b>	<b>\$43,113,527.54</b>	<b>\$37,960,102.45</b>	<b>\$36,031,901.27</b>	<b>\$35,189,918.11</b>	<b>\$37,622,153.73</b>	<b>\$39,270,464.04</b>	<b>\$39,718,236.68</b>	<b>\$42,866,244.78</b>
<b>Restricted Funds</b>															
Court Cash Bonds	Regions Bank	0.25%	141,930.20	141,120.20	139,685.20	139,025.20	145,324.20	147,989.20	147,723.00	151,737.20	155,927.20	158,135.20	147,320.20	145,886.00	144,166.00
Contractors' Bonds & CDs on Hand	City Clerk's Office	n/a	6,247,607.06	6,247,607.06	6,247,607.06	6,247,607.06	4,258,644.42	6,314,702.42	6,314,702.42	4,474,038.42	4,474,038.42	4,474,038.42	4,474,038.42	4,474,038.42	4,474,038.42
Contractors' Cash Bonds	SouthPoint	0.25%	855,033.33	814,694.62	796,919.40	742,683.86	757,009.15	757,967.11	744,330.84	706,333.77	696,630.28	698,351.23	687,946.13	686,595.00	673,211.91
Confiscated Funds	SouthPoint	1.25%	287,081.94	287,357.22	287,662.29	287,957.83	288,263.54	288,559.70	288,866.05	289,172.72	289,469.82	289,777.13	290,074.85	290,382.81	290,690.25
Community Spaces	SouthPoint	1.65%	52.79	53.36	454.99	455.60	456.23	456.84	457.47	458.11	458.72	0.04	0.00	0.00	0.00
2013 GOW - QEBC Sinking Fund	Bank of New York	2.35%	1,701,396.09	1,701,396.09	1,701,396.09	1,891,162.76	1,891,162.76	1,891,162.76	1,891,162.76	1,891,162.76	1,891,162.76	1,911,964.89	1,911,964.89	1,911,964.89	1,911,964.89
Library Campaign Fund/Donations	Pinnacle	earnings offset fees	337,344.68	338,450.14	344,930.72	351,677.17	374,885.75	382,167.51	387,465.56	429,604.48	433,701.36	438,732.28	458,022.23	461,230.31	464,421.95
Lease Escrow Funds	Truist & Robertson	n/a	n/a	n/a	n/a	2,160,736.32	2,162,359.34	1,407,636.58	1,409,264.98	1,410,896.12	1,412,477.26	703,500.95	704,554.69	705,645.36	706,734.88
<b>Total Balance</b>			<b>\$9,570,446.09</b>	<b>\$9,530,678.69</b>	<b>\$9,518,655.75</b>	<b>\$11,821,305.80</b>	<b>\$9,878,105.39</b>	<b>\$11,190,642.12</b>	<b>\$11,183,973.08</b>	<b>\$9,353,403.58</b>	<b>\$9,353,865.82</b>	<b>\$8,674,500.14</b>	<b>\$8,673,921.41</b>	<b>\$8,675,742.79</b>	<b>\$8,665,228.30</b>
<b>Cash on Hand</b>															
Petty Cash - City Depts.			880.00	880.00	880.00	880.00	880.00	880.00	880.00	880.00	880.00	880.00	880.00	880.00	880.00
Petty Cash - Courts/Jail			500.00	500.00	500.00	500.00	500.00	500.00	500.00	500.00	500.00	500.00	500.00	500.00	600.00
Petty Cash - Library			600.00	600.00	600.00	600.00	600.00	600.00	600.00	600.00	600.00	600.00	600.00	600.00	600.00
Petty Cash - Vehicle Tags			1,000.00	1,000.00	1,000.00	1,000.00	1,000.00	1,000.00	1,000.00	1,000.00	1,000.00	1,000.00	1,000.00	1,000.00	1,000.00
<b>Total - Petty Cash</b>			<b>\$2,980.00</b>	<b>\$2,980.00</b>	<b>\$2,980.00</b>	<b>\$2,980.00</b>	<b>\$2,980.00</b>	<b>\$2,980.00</b>	<b>\$2,980.00</b>	<b>\$2,980.00</b>	<b>\$2,980.00</b>	<b>\$2,980.00</b>	<b>\$2,980.00</b>	<b>\$2,980.00</b>	<b>\$3,080.00</b>
<b>Grand Total - All Funds</b>			<b>\$56,630,508.21</b>	<b>\$64,470,061.62</b>	<b>\$54,996,382.02</b>	<b>\$57,029,672.74</b>	<b>\$53,965,867.57</b>	<b>\$54,307,149.66</b>	<b>\$49,147,055.53</b>	<b>\$45,388,284.85</b>	<b>\$44,546,763.93</b>	<b>\$46,299,633.87</b>	<b>\$47,947,365.45</b>	<b>\$48,396,959.47</b>	<b>\$51,534,553.08</b>
<b>Petty Cash Itemization</b>															
City Clerk Dept.	none														
Court Dept.	\$600.00														
Finance Dept. & Vehicle Tags	\$1,050.00	Tags & City Depts													
Fire Dept.	\$100.00	City Depts													
Inspection Dept.	\$30.00	City Depts													
Library	\$600.00														
Mayor's Office	\$200.00	City Depts													
Parks & Leisure Services	\$300.00	City Depts													
Police Dept.	\$200.00	City Depts													
Public Services	none														
<b>Total</b>	<b>\$3,080.00</b>														

FINANCIAL SUMMARY REPORT  
"JANUARY 2023-2024"

1	MONTH OF JANUARY 2024							YEAR-TO- DATE THROUGH JANUARY 2024						
	2	3	4	5	6	7	8	9	10	11	12	13	14	15
	2023-2024 Actual	2023-2024 Budget	2022-2023 Actual	Actual to Amount	Budget Percentage	Actual to Amount	Last Year Percentage	2023-2024 Actual	2023-2024 Budget	2022-2023 Actual	Actual to Amount	Budget Percentage	Actual to Amount	Last Year Percentage
<b>REVENUE SUMMARY</b>														
STATE REVENUE	26,817	9,691	8,579	17,126	176.72%	18,238	212.59%	71,188	61,497	52,030	9,691	15.76%	19,158	36.82%
COUNTY REVENUE	6,257,322	4,903,086	5,157,361	1,354,236	27.62%	1,099,961	21.33%	21,389,306	18,857,958	18,991,760	2,531,348	13.42%	2,397,546	12.62%
CITY REVENUE	7,127,389	7,182,962	7,930,635	(55,573)	-0.77%	(803,247)	-10.13%	17,063,329	15,487,593	16,672,690	1,575,736	10.17%	390,640	2.34%
PARK & RECREATION	99,572	66,439	96,695	33,133	49.87%	2,877	2.98%	377,451	212,957	306,810	164,494	77.24%	70,641	23.02%
<b>TOTAL REVENUE</b>	<b>13,511,100</b>	<b>12,162,178</b>	<b>13,193,271</b>	<b>1,348,922</b>		<b>317,829</b>		<b>38,901,275</b>	<b>34,620,005</b>	<b>36,023,289</b>	<b>4,281,270</b>		<b>2,877,986</b>	
<b>EXPENDITURE SUMMARY</b>														
NON DEPARTMENTAL	6,341,001	5,527,644	5,581,915	(813,357)	-14.71%	(759,087)	-13.60%	11,311,851	10,912,503	10,281,717	(399,348)	-3.66%	(1,030,134)	-10.02%
CITY COUNCIL	4,238	13,724	15,153	9,486	69.12%	10,916	72.03%	30,371	40,453	41,537	10,082	24.92%	11,166	26.88%
MAYOR & ADMINISTRATION	164,905	172,613	187,971	7,708	4.47%	23,065	12.27%	765,693	765,420	709,526	(273)	-0.04%	(56,167)	-7.92%
CITY CLERK	42,202	46,981	46,561	4,779	10.17%	4,359	9.36%	189,618	198,498	176,670	8,880	4.47%	(12,948)	-7.33%
MUNICIPAL COMPLEX	51,646	30,875	24,272	(20,771)	-67.27%	(27,374)	-112.78%	147,885	134,421	108,387	(13,464)	-10.02%	(39,498)	-36.44%
INFORMATION SERVICES	56,019	81,668	59,989	25,649	31.41%	3,970	6.62%	243,312	286,682	231,467	43,370	15.13%	(11,845)	-5.12%
POLICE	1,130,468	1,206,624	1,082,948	76,156	6.31%	(47,520)	-4.39%	4,493,452	4,732,380	4,080,938	238,928	5.05%	(412,514)	-10.11%
FIRE	1,111,988	1,085,336	988,516	(26,652)	-2.46%	(123,473)	-12.49%	4,322,241	4,386,707	3,986,592	64,466	1.47%	(335,649)	-8.42%
INSPECTION	68,377	66,722	52,195	(1,655)	-2.48%	(16,182)	-31.00%	280,602	269,190	204,165	(11,412)	-4.24%	(76,437)	-37.44%
PUBLIC SERVICES	445,714	476,882	510,490	31,168	6.54%	64,776	12.69%	1,800,663	1,892,526	1,908,775	91,863	4.85%	108,112	5.66%
PUBLIC LIBRARY	222,776	250,182	229,246	27,406	10.95%	6,471	2.82%	939,395	983,656	899,420	44,261	4.50%	(39,974)	-4.44%
PARKS & LEISURE SERVICES	396,762	368,787	388,673	(27,975)	-7.59%	(8,089)	-2.08%	1,522,383	1,309,231	1,294,039	(213,152)	-16.28%	(228,344)	-17.65%
<b>TOTAL EXPENDITURES</b>	<b>10,036,097</b>	<b>9,328,038</b>	<b>9,167,930</b>	<b>(708,059)</b>		<b>(868,168)</b>		<b>26,047,465</b>	<b>25,911,667</b>	<b>23,923,234</b>	<b>(135,798)</b>		<b>(2,124,232)</b>	
<b>SURPLUS / (DEFICIT)</b>	<b>3,475,003</b>	<b>2,834,140</b>	<b>4,025,341</b>	<b>640,863</b>		<b>(550,338)</b>		<b>12,853,810</b>	<b>8,708,338</b>	<b>12,100,056</b>	<b>4,145,472</b>		<b>753,754</b>	



**Vestavia Hills  
City Council Minutes  
February 12, 2024  
6:00 PM**

**1. Call to Order**

The City Council of Vestavia Hills met in regular session on this date at 6:00 PM, following publication and posting pursuant to Alabama law. A number of staff and members of the general public also attended virtually, via Zoom.com, following publication pursuant to Alabama law. The Mayor called the meeting to order and the City Clerk called the roll with the following:

**2. Roll Call**

Roll call was as follows:

**MEMBERS PRESENT:** Mayor Ashley Curry, Mayor Pro-Tem Rusty Weaver, City Councilor Kimberly Cook, City Councilor Paul Head, City Councilor George Pierce

**MEMBERS ABSENT:** None

**OTHER OFFICIALS PRESENT:** Jeff Downes, City Manager; Bent Owens, Acting City Attorney; Cinnamon McCulley, Asst. City Manager; Rebecca Leavings, City Clerk; Melvin Turner, Finance Director; Lori Beth Kearley, Public Works Director; Christopher Brady, City Engineer; Jamie Lee, Director of Parks and Leisure Services; Shane Ware, Police Chief; Marvin Green, Fire Chief; Daniel Tackett, Asst. Director Library in the Forest; Keith Blanton, Building Safety Official\*; Umang Patel, Court Director\*; Jack Wakefield, Planner/GIS\*

*\*participated via Zoom*

**3. Invocation - Chaplain David Phillips**

**4. Pledge Of Allegiance**

**5. Approval Of The Agenda**

The Mayor opened the floor to approve of the agenda as presented.

**MOTION:** Approve the agenda as presented. Motion By: Rusty Weaver. Seconded By:

George Pierce.

Roll call vote as follows: Yes: Ashley Curry, Rusty Weaver, Kimberly Cook, Paul Head, George Pierce. No: None. Abstain: None. Motion passed.

## **6. Announcements, Candidates and Guest Recognition**

- Mr. Pierce welcomed Scott Perry and Katherine McRee who were present representing the Chamber of Commerce.
- Mayor Curry announced an upcoming vacancy on the Vestavia Hills Planning and Zoning Commission. He explained that this is a 6-year appointment and anyone interested should submit application/resume to the Mayor's office either by email or USPS mail prior to March 4, 2024.
- Mr. Head announced that the Parks and Recreation Board will meet next Tuesday, February 20, 2024 beginning at 7:30 AM.
- Charlotte Meadows, candidate for District 3, Alabama State Board of Education, introduced herself and asked for support in the upcoming election.

## **7. Proclamation for Arbor Week 2024**

The Mayor presented a Proclamation designating February 19-25, 2024, as "Arbor Week." Mr. Downes read the Proclamation aloud and the Mayor presented it to Jamie Lee, Director of Parks and Leisure Services.

Mayor Curry stated that the City participates each year in Arbor Week and indicated that there are several Boy and Girl Scout troops that have assisted the City in planting trees through the years.

Mrs. Cook stated that Mr. Weaver is part of a Leadership Vestavia Hills group that led a project to replace trees in Cahaba Heights that were damaged by the April 27, 2011, tornado outbreak.

## **8. City Manager's Report**

- Mr. Downes announced that Fire Chief Marvin Green was awarded State Fire Chief of the Year. Chief Green was elected by his fellow chiefs throughout the State of Alabama. Chief Green was surprised by the award and to hear the Chief's listing of credentials was outstanding.
- Mr. Downes announced that the City obtained an AAA rating from Fitch, one of the hardest agencies from which to obtain this highest rating. The City of Vestavia Hills is one of only two cities in the State of Alabama to have this rating from any agency, the other being the City of Huntsville; however, Huntsville's second AAA rating is through S&P. He thanked the Council, the Finance Department as well as all the Department Heads for the way they work within the budget. Fitch's press release states the following: *"Fitch believes the city's superior level of budgetary flexibility combined with strong available general fund balance reserves provides the highest gap-closing capacity to manage through economic downturns. The city's conservative formal reserve policy requires a targeted goal of 24% of prior year spending as committed for emergency purposes. Fitch expects management will continue to budget conservatively and scrutinize future discretionary spending,*

*helping to mitigate declines in the city's unrestricted reserve fund balance and maintain its high level of financial resilience."*

- Mr. Downes announced 2 days of strategic planning on Thursday and Friday, February 15 and 16, 2024. He indicated it would also be shared by Zoom.

## **9. Councilors' Reports**

- Mrs. Cook encouraged everyone to Zoom in and pay attention to the strategic planning because it is a great way to understand the planning and priorities of the City Council.
- Mrs. Cook stated that she watches the legislative session every year. Currently, the legislature is in session and there are two bills that have caught her attention: HB 151 and HB 152. These two bills expand gambling in the state. It includes a casino location in the City of Birmingham and online and land-based sports betting.
- Mr. Pierce announced that he will be attending the Chamber of Commerce meeting tomorrow. The keynote speaker will be Steve Ammons, CEO of the Birmingham Business Alliance.
- Mr. Weaver stated that the Planning and Zoning Commission held their regular meeting last Thursday. They considered several plat approvals and voted to recommend one rezoning that will be coming to City Council soon.

## **10. Approval Of Minutes - January 22, 2024 Regular Meeting**

**MOTION:** Approve the regular meeting minutes of January 22, 2024 as presented. Motion By: Kimberly Cook. Seconded By: Rusty Weaver.

Roll call vote as follows: Yes: Ashley Curry, Rusty Weaver, Kimberly Cook, Paul Head, George Pierce. No: None. Abstain: None. Motion passed.

## **Old Business (Public Hearing)**

### **11. Public Hearing - Resolution Number 5462 - A Resolution authorizing the installation of a new support structure for a small cell facility to be located in the right-of-way adjacent to 1663/71 Crossgate Drive, 2581 Crossgate Place, and 1704 Crosswood Lane**

**MOTION:** Approve Resolution Number 5462 as presented. Motion by: Rusty Weaver. Seconded by: George Pierce.

Darryl Forester and Andy Rotenstreich, Crown Castle, were present in regard to this request.

The Mayor gave a brief background of this request and read the following statement:

*"At the outset and before commencing discussion, conducting a public hearing and asking for the question on Resolution Number 5462, I wish to make opening comments.*

**A. CAPSULE OF LAW REGARDING SMALL CELL FACILITIES:** 1. **Federal Law:** Federal law, in substance, provides that no municipality or county in any one of the 50 states may **PROHIBIT OR INHIBIT** the installation of small cell facilities on public rights-of-way. 2. **State Law:** (a) A city **may not deny** the installation of small cell facilities on a public right-of-way if the application meets the requirements of state and federal law.

**(b)** The city **shall approve** an application for the installation of small cell facilities on public rights-of-way if the application meets the requirements of federal and state law. **3. Municipal Law:** A city may not prohibit an act that is authorized by state law.

**B. LEGAL OPINION BY CITY ATTORNEY:** City Attorney Patrick H. Boone wrote us a legal opinion on June 7, 2023. My capsule of federal, state and municipal law came from that report.

**C. ATTORNEY GENERAL OPINION DATED DECEMBER 27, 2023:** On August 14, 2023, the City Council enacted Resolution Number 5474 to request a legal opinion from the Alabama Attorney General regarding the authority of a municipality to regulate the installation of small cell facilities on City rights-of-way. I will read the five questions and answers.

**1. Attorney General Opinion Issued December 27, 2023:**

**City Question 1:** Does the Act allow the City to reject small cell facilities from being placed in the City rights-of-way and what conditions are valid reasons for such denial? **Attorney General Opinion:** Section 37-17-2 of the Code of Alabama does not allow a city to deny a wireless provider the right to place Small Wireless Facilities in the city's rights-of-way if the wireless provider meets the city's permitting and fee requirements and any other requirements adopted by the city that are not in conflict with the state law or any final order of the FCC (Federal Communications Commission).

**City Question 2:** Does the Act allow the City of Vestavia Hills to determine the exact location for the installation of a new or replacement pole on a City right-of-way? **Attorney General Opinion:** The City may not determine the exact location for the installation or placement of a new or replacement pole.

**City Question 3:** Does the Act allow the wireless infrastructure provider or wireless provider or wireless service provider to determine the exact location for the installation of a new or replacement pole on a City right-of-way? **Attorney General Opinion:** The wireless infrastructure provider, the wireless provider, or the wireless service provider is allowed to determine the exact location for the installation of a new or replacement pole.

**City Question 4(a):** If a new pole is installed on the City right-of-way, then in such event does the Act allow the City to require that the pole be a decorative pole to fit aesthetically with the neighborhood? **Attorney General Opinion:** Act 2021-5 allows the City to require a pole to be decorative to fit aesthetically within the neighborhood if the requirement is reasonable, in writing, and adopted in advance.

**City Question 4(b):** If the answer is in the affirmative, does the Act further preclude pole placement if the neighborhood has underground utilities and the small cell facility cannot be placed underground due to technical limitations? **Attorney General Opinion:** The City may not require underground placement and thus preclude pole placement.

**V. SOME IDGLIGHTS OF VESTAVIA HILLS ORDINANCES REGARDING SMALL CELL FACILITIES.**

Although federal law allows municipal ordinances regarding installation of small cell facilities on public rights-of-way, City authority is very limited.

**A. ORDINANCE NUMBER 2814-A:** **1.** Applicant must obtain a permit from the City. **2.** The City Manager and staff handle the applications administratively. **3.** Factors to be considered by City Manager and staff: **(a)** Visual impact (Section 2B2). **(b)** Character of the area (Section 2B3). **(c)** Aesthetics (Section 2B4) **(d)** Unconsidered locations (Section 2B6) **(e)** Colocation required before new pole allowed (Section 2B2) **(f)** No taller than 5 feet above pole (Section 2B8) **(g)** Color (Section 2BI 0) **(h)** No illumination (Section 2BI I) **4.** Time for processing application: **(a)** 60 days (colocation) (Section 2Ca) **(b)** 90 days (new pole) (Section 2Cb) **5.** Appeal-Applicant can appeal the decision of the City Manager to the City Council within 21 days. **6.** Further appeal-Circuit Court. **7.** Applicant must provide insurance (\$1,000,000.00). **8.** City must be named additional insured. **9.** Applicant must indemnify City, officials and employees."

Mr. Owens concurred with the Mayor's statements and indicated that the City Council has limited authority in instances of small cell facility placement.

The Mayor opened the floor for a public hearing and explained the public hearing process.

Mike Fleigal, 1690 Crossgate Drive, stated that he has practiced law for many years and serves on the City's Planning and Zoning Commission. He understands the Council's limited control over this issue. His concerns are what happens when other neighborhoods have to deal with this? He stated his other concern is 6G, which will be coming in 2030, and what happens when this 5G technology is obsolete and these poles are no longer needed? Who will be responsible for their removal?

The Mayor stated that if this request comes up for any neighborhood it will be addressed in the same manner as it will be here tonight.

Jean Dillon, 1670 Crossgate Drive, stated she will be looking at the tower outside of her home. She stated that, at the last meeting, Crown Castle had promised to seek alternate locations for some of these poles and asked about the status of those relocations.

Mary Fleigal, 1690 Crossgate Drive, asked who is responsible to maintain these poles and who would enforce maintenance issues. She also asked if there's another option if another company will be coming into their neighborhood.

Mr. Downes explained the application process and said the City reacts to each application. He stated that maintenance issues should be reported through Vestavia Hills Connect so they can be monitored and tracked.

June Wikingstad, 1666 Crossgate Drive, stated that this company will not disclose who their clients are that will be utilizing these poles. She stated she believes she should know that information. She then asked when the next City elections will be held.

Mrs. Cook explained municipal elections will occur in 2025.

Ms. Wikingstad asked when their streets will be fixed and if the Council would like one of these in their yards.

The Mayor indicated he wouldn't mind one near him as it'd help with his cellular coverage.

Donald Harwell, 1357 Willoughby Road, asked if Crown Castle is working for the federal or state government. Can these towers infiltrate a typical WIFI system in the house?

Andy Rotenstreich and Darryl Forester were present representing Crown Castle. Mr. Rotenstreich explained that he is a Birmingham attorney representing Crown Castle. He stated that Crown Castle has the right to do what they are doing here, but that doesn't mean that they go at this without trying to make it as pleasing for the neighbors as possible. There are three locations in this subdivision with an established need: one in the front; one in the back and one in the middle of the neighborhood. After many conversations and working with all departments in the City, engineering studies were done and they were able to move the first node across the street at the request of a neighbor. The one in the back of the subdivision was adjusted per the owner request. The one in the middle couldn't be moved to the back of another street as requested because the location was necessary to establish

the required network. Therefore, of the three nodes, they adjusted two of them but could not do anything with the third as they are limited by the confines of technology and coverage requirements.

Mr. Forester stated that maintenance is the responsibility of the owner of the pole. He stated that they have agreements with each wireless carrier and, among all of the parties, they maintain the poles and equipment. If there is an issue, the carriers would be the first to contact Crown Castle as their antennae would not function correctly. The poles will be maintained by Crown Castle.

Mr. Rotenstreich stated that Crown Castle does not work for the government as they are a private business entity. They build the network to host the carriers.

Mr. Pierce asked what happens when the poles become obsolete.

Mr. Rotenstreich stated that 6G would be sixth generation technology. With the newer technology, the towers will still be used but the devices mounted on the poles will be different. He stated that the towers do not infiltrate the WIFI systems in the house because they handle cellular data.

Mrs. Fleigal, 1690 Crossgate Drive, asked where the poles are being relocated. Mr. Forester explained that the first pole, originally at the entrance to the subdivision, was relocated to the other side of the road. Mrs. Fleigal asked why it cannot be located outside of the subdivision on Columbiana Road.

Mr. Forester stated that is too far outside of the range and there are already existing small cell nodes on Columbiana Road.

Ms. Wikingstad, 1666 Crossgate Drive, thanked Mr. Rotenstreich for the additional information. She asked if the three poles would be just for their neighborhood and will there be more installed later?

Mr. Forester stated those 3 poles serve the neighborhood and no more will be needed. Discussion ensued.

Mrs. Dillon, 1670 Crossgate Drive, asked to meet with Crown Castle to discuss further where the pole will go.

Mr. Forester stated they can meet but the location in the middle of the neighborhood is needed.

Xu Qingmei, 1671 Crossgate Drive stated this has gone on for a long time and this is on the side of his yard.

Mrs. Cook thanked Crown Castle for their willingness to work with the City on this issue.

There being no one present to further address the Council on this issue, the Mayor closed the public hearing and called for the question.

**VOTE:** Roll call vote as follows: Yes: Ashley Curry, Rusty Weaver, Kimberly Cook, Paul Head, George Pierce. No: None. Abstain: None. Motion passed.

**12. Public Hearing - Vacation - Resolution Number 5498 - Sanitary Sewer Easements - 3345 Endeavor Lane; Lot 1, Bray Town Center, Phase II; Vacation of small stubouts for sanitary sewer purposes that are no longer needed for development**

**MOTION:** Approve Resolution Number 5498 as presented. Motion by: Kimberly Cook. Seconded by: Rusty Weaver.

Mr. Downes stated that this and the following Resolution are for vacation of small sewer "stub outs" that are no longer needed for the development of this property.

Mark Clark, Schoel Engineering, was present to represent Liberty Park Joint Venture on this request.

The Mayor opened the floor for a public hearing for both resolutions, Resolution Numbers 5498 and 5499. There being no one present to address the Council on this issue, the Mayor closed the public hearing and called for the question.

**VOTE:** Roll call vote as follows: Yes: Ashley Curry, Rusty Weaver, Kimberly Cook, George Pierce. No: None. Abstain: None. Motion passed.

**13. Public Hearing - Resolution Number 5499 - Vacation - Sanitary Sewer Easement - 3389 Endeavor Lane; Lot 2, Bray Town Center, Phase II; Vacation of small stubout for sanitary sewer purposes that is no longer needed for development**

**MOTION:** Approve Resolution Number 5499 as presented. Motion by: Rusty Weaver. Seconded by: Kimberly Cook.

The Mayor stated that this resolution vacates some sewer stub-outs like the previous request.

The Mayor stated that the public hearing was held previously. There being no one present to address the Council on this issue, the Mayor closed the public hearing and called for the question.

**VOTE:** Roll call vote as follows: Yes: Ashley Curry, Rusty Weaver, Kimberly Cook, Paul Head, George Pierce. No: None. Abstain: None. Motion passed.

**New Business**

**14. Resolution Number 5500 - Declaring Certain Personal Property As Surplus And Directing The City Manager To Sell And/Or Dispose Of Said Property**

**MOTION:** Approve Resolution Number 5500 as presented.. Motion by: Rusty Weaver. Seconded by: George Pierce.

Mr. Downes stated that this is a request to surplus some equipment and furniture from the Library that is no longer needed.

There being no further discussion, the Mayor called for the question.

**VOTE:** Roll call vote as follows: Yes: Ashley Curry, Rusty Weaver, Kimberly Cook, Paul Head, George Pierce. No: None. Abstain: None. Motion passed.

**New Business Requesting Unanimous Consent (Public Hearing)**

**First Reading (No Action To Be Taken At This Meeting)**

**15. Public Hearing - Ordinance Number 3207 - An Ordinance to accept a proposal from Coca-Cola Bottling Company to become the concessions/vending provider for a period of three years at all Vestavia Hills Parks and Leisure Facilities. Acceptance will authorize the Mayor and City Manager to do all actions necessary to secure Coca-Cola as the vendor.**

**16. Citizens Comments**

- None.

**17. Time Of Adjournment**

There being no further business, Mrs. Cook made a motion to adjourn. The Mayor adjourned the meeting at 7:05 PM.

Ashley C. Curry, Mayor

ATTESTED BY:

Rebecca Leavings, City Clerk



**CITY OF VESTAVIA HILLS  
PARKS & RECREATION  
INTER-DEPARTMENT MEMO**

**February 26, 2024**

**To:** Jeff Downes, City Manager

**Cc:**

**From:** Jamie Lee, Parks and Leisure Services Director

**RE:** Public Hearing - Ordinance Number 3207 - An Ordinance to accept a proposal from Coca-Cola Bottling Company to become the concessions/vending provider for a period of three years at all Vestavia Hills Parks and Leisure Facilities. Acceptance will authorize the Mayor and City Manager to do all actions necessary to secure Coca-Cola as the vendor.

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**Background:**

The ordinance would allow the Mayor and City Manager to sign a contract with Coca-Cola to be the beverage provider for concessions in all Parks and Leisure Services Facilities. All contract details were presented at the January 8th work session. This contract would be for a three-year period with the option to renew.

**Recommendation:**

This proposal was unanimously recommended by the Park Board.

**Fiscal Impact:**

See attached proposed contract

**Attachments:**

1. Ordinance 3207
2. Coca-Cola Agreement - 2024

**ORDINANCE NUMBER 3207**

**AN ORDINANCE TO ACCEPT A PROPOSAL FROM COCA-COLA BOTTLING COMPNAY TO BECOME THE CONCESSIONS/VENDING PROVIDER FOR A PERIOD OF THERE YEARS AT ALL VESTAVIA HILLS PARKS AND LEISURE FACILTIES AND AUTHORIZING THE MAYOR AND CITY MANAGER TO TAKE ALL ACTIONS, INCLUDING EXECUTING AN AGREEMENT TO SECURE SAID SERVICES.**

**WHEREAS**, the Parks and Leisure Services Department for the City of Vestavia Hills, Alabama, invited proposals for pouring concession/vendor services for all City parks and recreation facilities; and

**WHEREAS**, two proposals were received and reviewed by the Director and the Parks and Recreation Board; and

**WHEREAS**, the Parks and Recreation Board, at its regular meeting of January 16, 2024, voted to recommend approval of the proposal submitted by Coca-Cola Bottling Services along with an agreement as detailed in Exhibit A, attached to and incorporated into this Ordinance number 3207; and

**WHEREAS**, the Mayor and City Council feel it is in the best public interest to accept the Board's recommendation.

**BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF VESTAVIA HILLS, ALABAMA, AS FOLLOWS:**

1. The proposal by the Coca-Cola Bottling Company as presented shall be accepted by the City as the official concessions/vending provider for the City's Parks and Leisure Services facilities; and
2. The Mayor and City Manager are hereby authorized to execute and deliver said agreement as detailed in the attached Exhibit A and also to perform any other action as might be required in order to secure said services; and
3. This Ordinance Number 3207 shall become effective immediately upon adoption and approval following posting/publication as required by Alabama law.

**DONE, ORDERED, ADOPTED and APPROVED** this the 26<sup>th</sup> day of February, 2024.

Ashley C. Curry  
Mayor

ATTESTED BY:

Rebecca Leavings  
City Clerk

## BEVERAGE AGREEMENT

### Parties:

**BOTTLER:**

Coca-Cola Bottling Company United - Central, LLC  
d/b/a Birmingham Coca-Cola Bottling Company

**ACCOUNT:**

City of Vestavia Hills Parks and Leisure Services, on  
behalf of Vestavia Hills Parks and Recreation

The parties hereto are entering into this agreement (the “**Agreement**”) because Account wishes to grant to Bottler, and Bottler wishes to obtain, the exclusive rights set forth herein. Account represents and warrants that it has full right and authority to enter into this Agreement and to grant and convey to Bottler the rights set forth herein and that all requirements of the applicable public procurement laws are satisfied. In consideration of the premises and the mutual promises made herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. **Definitions.** All defined terms used in this Agreement and not otherwise defined will have the meanings set forth below:

- (a) “**Agreement Year**” means each twelve-month period during the Term beginning on the Effective Date (as defined in Section 2).
- (b) “**Beverages**” means all non-alcoholic beverages (i.e. anything consumed by drinking), whether or not such beverages (i) contain nutritive, food, or dairy ingredients, OR (ii) are in a frozen form. This definition applies without regard to the beverage's labeling or marketing. Powders, syrups, grounds (such as for coffee), herbs (such as for tea), concentrates, K-Cups® pods and all other beverage bases from which Beverages can be made, and brands and products of water purification and beverage making systems (e.g. Brita®, Soda Stream®, Keurig®) are deemed to be included in this definition. For the avoidance of doubt, “flavor enhancers”, “liquid water enhancers”, and non-alcoholic beverages sold as “shots” or “supplements” are considered Beverages.
- (c) “**Competitive Products**” means all Beverages which are not Products.
- (d) “**Concessionaire**” means any current or future third-party food or beverage service provider under agreement with Account at the Facility that directly or indirectly relate to the sale or service of Beverages.
- (e) “**Facility**” or “**Facilities**” means the entire premises of all locations owned or controlled by Vestavia Hills Parks and Recreation, as set forth in **Exhibit A**, including all currently existing and future buildings, and includes, without limitation, the grounds, parking lots, all vending and concession areas, sidelines, benches and locker rooms, branded and unbranded food service outlets and dining facilities.
- (f) “**Freestyle**” means a fountain dispenser that combines ingredients (microdosed beverage components, beverage mixes and flavors stored in cartridges and nutritive and non-nutritive sweeteners stored in bag-in-boxes and/or cartridges) to create a wide variety of branded fountain beverages.
- (g) “**Products**” means Beverages purchased, or available for purchase directly from Bottler or sold through vending machines owned and stocked exclusively by Bottler.
- (h) “**Snacks**” means all snacks and prepackaged foods made available at the Facility.
- (i) “**Unattended Retail Services**” the provision and sale of Beverages, fresh brewed beverage(s), prepackaged food, snacks, and/or sundries through self-service kiosks, which permit sales directly to the consumer at the Facility without person-to-person interaction.

2. **Term.** This Agreement shall be in effect for a period of three (3) year(s) beginning January 1, 2024 (the “**Effective Date**”) with the option to renew for up to three (3) successive three (3) year periods, (each a “**Renewal Term**”). As used herein, the capitalized word “**Term**” shall mean the time period beginning January 1, 2024 and ending December 31, 2035, including each Renewal Term, but in no event shall the Term extend beyond any limitation in any applicable public bid law. If the Effective Date referenced in the foregoing sentence is blank, such term shall mean the last signature date of this Agreement.

3. **Advertising Rights.**

- (a) Account hereby grants to Bottler the exclusive right to advertise Beverages and specifically Products (i) at the Facility and (ii) in connection with the Facility. No permanent or temporary advertising, signage or trademark visibility for Competitive Products will be displayed or permitted anywhere at the Facility.
- (b) Bottler will have the exclusive right to advertise the Products as the “official” or “exclusive” soft drink, sports drink, water, tea, energy drink and/or juice or juice drink, etc. of the Facility.
- (c) Account hereby grants to Bottler a royalty-free license, exclusive for Beverages, to use the trademarks, logos and other intellectual property of the Account and Facility (“**Account Marks**”) in connection with the promotion of Products. Such promotion may occur in advertising (TV, radio, print, social media and/or other electronic means), packaging, vessels, promotional materials, and point of sale materials for Products and may be in connection with the marks and logos of Bottler’s other accounts.
- (d) Account agrees that Bottler’s advertising shall be positioned at all times in such a manner that the advertising message is in no way obscured (electronically or otherwise) and is clearly visible to the general public. The Products shall be prominently listed on any menu boards located at the Facility and all equipment dispensing Products shall be prominently identified with the trademarks/logos corresponding to such Products.
- (e) Account further agrees that only Products will be dispensed in Bottler’s equipment and that no other trademarked Beverage-dispensing equipment, coolers or containers will be permitted at the Facilities.
- (f) Account will not enter into any agreement or relationship whereby any Competitive Products are associated in any manner with Account, the Facility, or any of the Account Marks in any advertising or promotional activity of any kind.

4. **Product Rights.**

- (a) Except only with respect to Concessionaires, Account hereby grants to Bottler the exclusive right to sell, serve, distribute or otherwise make available Beverages and Snacks at the Facility. Account and/or its Concessionaires shall purchase all Beverages (and cups, lids and carbon dioxide, if applicable) and Snacks directly from Bottler. Except as otherwise provided herein, no Competitive Products may be sold, dispensed, sampled, served, or otherwise made available anywhere at the Facility. Account agrees not to sell or distribute, directly or indirectly, any Products purchased hereunder outside of the Facility.
- (b) Account agrees to offer only 20oz packaged Products, 18.5oz Gold Peak Tea and 16oz Body Armor at all athletic venues, tournaments and any other events where concessions are sold, and to cause Products to be hawked in stands at all sporting events and during all events when any items of any make or description are hawked at the Facility.
- (c) Account hereby grants to Bottler the exclusive Beverage and Snack vending rights at the Facility and exclusive rights to provide Unattended Retail Services at the Facility.

- (d) **Permitted Exceptions.** On October 10, 2023, the City Council enacted Ordinance Number 3130 approving the terms, provisions, conditions and substance of the following six different form contracts (“Rental Agreements”) to be executed and delivered by individuals and other legal entities who rent facilities in the Civic Center and Park facilities for an event:

Description of Contract

- (a) Caterer Contract
- (b) Vendor Contract for Alcoholic Beverage Services
- (c) Rental Contract
- (d) Vestavia Hills Civic Center Rental Agreement (“Civic Center”)
- (e) Vestavia Hills Parks and Pavilion Rental Agreement (“Park”)
- (f) New Merkle House Facility Agreement

All of the above Rental Agreements allow the party renting the facility at the Civic Center and/or Park facility for an event to bring their own food and non-alcoholic beverages and consume that food and those non-alcoholic beverages and consume that food and those non-alcoholic beverages on and in the Civic Center or Park facility rented for and during that event.

Anything contained in this Beverage Agreement and Exhibits A, B, B and D to the contrary notwithstanding, the Bottler and Account expressly and mutually agree that should an individual or other legal entity enter into a rental agreement with the City as described and authorized by Ordinance Number 3130 and brings their/its own food and non-alcoholic beverages for the event described in the Rental Agreement, then in such event that individual and/or legal entity may do so as an exception to this Beverage Agreement and further that: (a) such Rental Agreements are not subject to this Beverage Agreement; (b) such Rental Agreements do not violate this Beverage Agreement in any respect whatsoever.

For the sake of clarity, this Permitted Exception for rentals, does not permit sale of any Competitive Beverages at an outdoor athletic facility with concessions.

- (e) **Private Consumption.** Nothing herein shall be construed to prevent the consumption of Competitive Products by (1) private individuals or (2) any visiting team or its players, coaches and staff participating in an event at the Facilities. However, such Competitive Products shall not be provided by Account or sold, sampled or dispensed to the general public.
- (f) **De minimis Distribution by Third Parties.** Isolated, de minimis instances of Competitive Products being served or distributed at the Facility by individuals not affiliated with Account will not be a violation of this Agreement, provided Account will not permit such distribution by a direct competitor of Bottler.

5. **Consideration.** In consideration of the rights and benefits granted to Bottler hereunder, Bottler agrees to provide Account with the specific items set forth in **Exhibit B** (collectively “**Consideration**”).

6. **Pricing.** Account shall be entitled to purchase bottle/can Products (and cups, lids and carbon dioxide, if applicable) in accordance with the then current trade prices. Thereafter, prices are subject to change each Agreement Year. Price increases generally occur automatically on January 1<sup>st</sup> of each Agreement Year. However, in the event of an increase in a component of Bottler’s cost of goods, manufacture or delivery, or increases in taxes, deposits or other government related fees, Bottler may further increase prices to cover such increased costs at other times during the Agreement

Year; in which case Bottler will provide thirty (30) days' written notice to Account prior to such price changes taking effect.

7. **Equipment.** During the Term, Bottler will loan to Account, subject to the terms of Bottler's Equipment Placement Addendum ("EPA") attached hereto as **Exhibit C**, at no cost, the Beverage dispensing equipment reasonably required and as mutually agreed upon to dispense Products at the Facility ("**Equipment**"). Account agrees that Bottler shall have the right to place a quantity of Beverage vending machines, coolers or other Equipment, determined by Bottler in its discretion, in mutually agreed upon locations at the Facility. Upon thirty (30) days' notice from Bottler, Bottler shall have the right to remove any Equipment, in its discretion, and Account shall provide immediate physical access to Bottler for the removal of such Equipment. The Equipment will not include Freestyle equipment. Account hereby agrees to the terms of the EPA set forth in **Exhibit C**.
8. **Concessionaire.** In the event Account employs a Concessionaire, Account will cause Concessionaire to purchase from Bottler all requirements for Beverages (and cups, lids and carbon dioxide, if applicable). Such purchases will be made at prices and on terms set forth in Bottler's existing agreement with Concessionaire, if any. If no agreement exists between Concessionaire and Bottler, such purchases will be made at prices and on terms set forth in this Agreement. Notwithstanding anything herein to the contrary, Bottler shall not pay to Account any Consideration for a purchase of Products by a Concessionaire to the extent that Bottler is required to pay the Concessionaire any funding duplicative of the Consideration for the same purchase of Products pursuant to an existing agreement between the Concessionaire and Bottler. In the event of a default in any of Concessionaire's obligations owing to Bottler, Account will use commercially reasonable efforts to cause Concessionaire to cure such default.
9. **Termination.** If any of the following events occur during the Term of this Agreement, Bottler may (in addition to any other remedies available) terminate this Agreement immediately upon notice to Account: (a) Account breaches any of its obligations set forth in this Agreement and fails to cure such breach within 30 days' written notice thereof; (b) any federal, state or local law, rule, regulation or order prohibits, restricts or in any manner interferes with the sale or advertising of Beverages; (c) Account files a petition under any bankruptcy law or becomes insolvent or makes any general assignment for benefit of creditors; or (d) Account's full right and authority to enter into this Agreement and to grant and convey to Bottler the rights set forth herein has expired or been revoked. In the event of any termination of this Agreement, Account shall (i) provide immediate physical access to Bottler for the removal of any Equipment and Scoreboards, (ii) pay to Bottler a pro rata portion of the costs of refurbishing and installing the Equipment, and (iii) pay to Bottler the unearned portion of any Consideration.
10. **Right to Off-Set and Withhold.** In the event Account fails to pay Bottler any invoice due for Products received, transshipment charges or upon any other basis, Bottler shall have the right to deduct the amount of such unpaid invoice, transshipment charge or other charge from any Consideration otherwise due from Bottler to Account. Bottler shall have the right to withhold and not pay further any amounts which may become payable to Account pursuant to this Agreement if: (i) Account has failed to perform its obligations hereunder, (ii) Bottler's rights hereunder have been lost, limited or restricted, or (iii) there exists a bona fide dispute between the parties. Nothing in this section shall operate to restrict any of Bottler's other remedies in the event of a material breach by Account.
11. **Adjustment.** If (i) any of the rights granted to Bottler herein are materially restricted or limited during the Term, including as a result of a Force Majeure Event (as defined in Section 14), or (ii) if any material component of the Facility is closed, or substantially closed, to customers for a period of thirty (30) consecutive days, or (iii) if the volume of Products sold to the Account decreases for any reason in any twelve month period by ten percent (10%) or more over the prior twelve month period, then in addition to any other remedies available to Bottler, Bottler may elect to adjust any Consideration to fairly reflect the decreased value of rights granted to Bottler hereunder (and Account will pay to

Bottler a refund of any prepaid amounts in excess of such reduced Consideration and a pro rata refund of the costs of refurbishing and installing the Equipment).

- 12. Notices.** Any notice or other communication under this Agreement must be in writing and must be sent by registered mail or by an overnight courier service (such as Federal Express) that provides a confirming receipt. Notice is considered duly given when it is properly addressed and deposited (postage prepaid) in the mail or delivered to the courier. Unless otherwise designated by the parties, notice must be sent to the following addresses:

**If to Bottler:**

Coca-Cola Bottling Company United – Central, LLC  
d/b/a Birmingham Coca-Cola Bottling Company  
4600 East Lake Boulevard  
Birmingham, AL 35217

**If to Account:**

City of Vestavia Hills Parks and Leisure Services, on  
behalf of Vestavia Hills Parks and Recreation  
1973 Merryvale Rd  
Vestavia Hills, AL 35216

**With a copy to:**

Coca-Cola Bottling Company United, Inc.  
4600 East Lake Boulevard  
Birmingham, AL 35217  
Attn: General Counsel

- 13. Force Majeure.** The failure of a party to comply with the terms and conditions hereof because of an act of God, strike, labor troubles, war, fire, earthquake, hurricane, tornado, epidemic, act of terror or public enemies, action of federal, state or local governmental authorities, or for any reason beyond the reasonable control of such party ("**Force Majeure Event**"), will not be deemed a breach of this Agreement. Such party will resume full performance of and compliance with the terms and conditions hereof promptly upon removal of any such Force Majeure Event.
- 14. Claims.** In no event will Bottler accept any audits of, or claims of discrepancies or errors in, pricing, rebates, commissions, funding, discounts, or other Consideration provided under this Agreement ("**Claims**") more than forty-five (45) days from the date of invoice, commission report, check or other applicable documentation. In order to submit a Claim, Account shall provide Bottler a detailed, written request specifying the particular price, commission, funding, product, amount in dispute and reason for dispute, along with a true copy of the original invoice, commission report, check or other applicable documentation. Bottler will review each Claim in good faith and provide responses to each Claim submitted in accordance with this Section. Bottler will work directly with the Account to resolve any Claims or audit issues but will not interact with third-party auditors or contractors. Any audits requested by Account shall take place during normal business hours and shall be conducted at Bottler's place of business.
- 15. Immigration.** By signing this Agreement, the contracting parties affirm, for the duration of the Agreement, that they will not violate federal immigration law or knowingly employ, hire for employment or continue to employ an unauthorized alien within the State of Alabama. Furthermore, a 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.
- 16. Compliance with Title 41-16-5, Code of Alabama, 1975, Boycott Limitations.** Act 2016-312 of the Alabama Legislature prohibits a governmental entity from entering into certain public contracts with a business entity unless the contract includes a representation that the business is not currently engaged in, and an agreement that the business entity will not engage in, the boycott of a person or an entity based upon the person or business doing business with a jurisdiction with which the state can enjoy open trade. The prohibition does not apply if a business offers to provide goods or services for at least 20 percent less than the lowest certifying business entity or to a contract with a value less than \$15,000.00. Coca-Cola Bottling Company United, Inc. represents and warrants that it is not currently engaged in, and

will not engage in, the boycott of a person or an entity based in or doing business with a jurisdiction with which this state can enjoy open trade.

**17. Miscellaneous.** This Agreement and any dispute arising out of or relating to this Agreement shall be governed by and construed in accordance with the laws of the State of Alabama, without reference to its conflict of law rules. Each of the parties hereto agrees that it will, in its performance of its obligations hereunder, fully comply with all applicable laws, regulations and ordinances of all relevant authorities and shall obtain all licenses, registrations or other approvals required in order to fully perform its obligations hereunder. If any portion of this Agreement is severed, that is, held indefinite, invalid, or otherwise unenforceable, the rest of this Agreement continues in full force. But if the severance of a provision affects a party's rights, the severance does not deprive that party of its available remedies, including the right to terminate this Agreement. Account shall not obtain, by this Agreement, any right, title or interest in the trademarks of The Coca-Cola Company or Bottler, nor shall this Agreement give Account the right to use, refer to, or incorporate in marketing or other materials the name, logos, trademarks or copyrights of Bottler or The Coca-Cola Company. During the Term, and for a one (1) year period thereafter, the parties shall keep the terms of this Agreement confidential, subject to applicable laws. **EACH PARTY, TO THE EXTENT PERMITTED BY LAW, KNOWINGLY, VOLUNTARILY, AND INTENTIONALLY WAIVES ITS RIGHTS TO A TRIAL BY JURY IN ANY ACTION OR OTHER LEGAL PROCEEDING ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT AND THE TRANSACTIONS IT CONTEMPLATES.** This waiver applies to any action or legal proceeding, whether arising in contract, tort or otherwise. This Agreement and its exhibits contain the entire agreement between the parties with respect to the subject matter hereof and supersede all prior agreements and understandings, both written and oral. In the event of a conflict between the provisions of this Agreement and a provision in any other document including any "click through" or other online terms and conditions referenced in any such documents or in a website (collectively, "**Supplemental Terms**"), the provisions of this Agreement shall control. No Supplemental Terms shall modify, amend or supplement the terms of this Agreement, even if such Supplemental Terms are accepted or acknowledged by a party after the execution of this Agreement. Account may not assign this Agreement without the prior written consent of the Bottler. All amendments to or waivers of this Agreement must be in writing signed by all the parties. Bottler's delay or failure to exercise any of its rights hereunder will not operate as a waiver thereof. This Agreement may be executed in multiple counterparts, each of which shall be deemed an original and all of which shall constitute one Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the Effective Date.

**BOTTLER**

By: \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

**ACCOUNT**

By: \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

**Exhibits Attached:**

- Exhibit A – Facility Locations
- Exhibit B – Consideration
- Exhibit C – Equipment Placement Addendum
- Exhibit D – Fundraiser Terms and Conditions

**EXHIBIT A**

FACILITY LOCATIONS

Cahaba Heights Park

Liberty Park Sports Complex

Miracle League Field

Sacred Hollow Athletic Complex

Wald Park

Vestavia Hills Civic Center

Aquatic Complex

Splash Pad

**EXHIBIT B**  
**CONSIDERATION**

1. **Annual Marketing Fees.** Bottler agrees to pay Account Ten Thousand Dollars (\$10,000) each Agreement Year of the Term (the “**Annual Marketing Fees**”). The first installment shall be payable within sixty (60) days after the date this Agreement is fully executed, and subsequent installments shall be due on or about the anniversary date of the Effective Date in each Agreement Year remaining in the Term. The Annual Marketing Fees shall be deemed earned pro rata on a daily basis over the Agreement Year for which they are paid.
2. **Commissions.** Bottler agrees to pay Account a monthly commission based on the commission rates and initial vend prices set forth below. All taxes, deposits, recycling fees, other handling fees, communication charges and credit and debit card fees, if any, may be deducted from funds collected before calculating commissions. Commissions shall not be payable on any sales from vending machines not filled and serviced exclusively by Bottler. Bottler may adjust the vend prices and/or commission rates to recover its costs, including cost of goods, to implement cash discounts, or as it otherwise deems necessary or desirable, in its sole discretion. Commissions will be paid each month following the month in which they are earned, with an accounting of all sales and monies in a form reasonably satisfactory to the Account and shall become immediate property of Account.

Product	Vend Rate	Commission
20oz Bottled Carbonated	\$2.25	25%
20oz Dasani Water	\$2.25	25%
12oz Cans	\$1.00	25%
20oz PowerAde	\$2.25	25%
10oz MM Juice	\$2.00	25%
20oz Vitamin Water	\$2.00	25%
Chips	\$1.50	15%
Crackers	\$1.00	15%
Candy	\$1.50	15%
Pastry	\$1.50	15%

3. **Rebates.** Bottler agrees to pay Account rebates in the amounts set forth below for each converted case of Product purchased and paid for by Account for sale at the Facility, including Coca-Cola Fundraisers (the “**Rebates**”). The Rebates shall be paid to each qualifying Facility location annually, in arrears, within sixty (60) days after the end of each applicable Agreement Year in which the Rebates were earned and will be based on Bottler’s case sales records. Rebates shall not be earned on sales of Products through Bottler’s full-service vending machines. As used herein, a “converted case” is measured by 24-count. Regardless of the case configurations in which Products are sold, they are translated to the converted case equivalent for purposes of calculating Rebates.

Product	Rebate Amount
20oz Bottles	\$2.00/converted case
18.5oz Gold Peak Tea	\$2.00/converted case
16oz Body Armor	\$2.00/converted case

4. **Scoreboard(s).** Bottler agrees to provide Account with scoreboard(s) or scoreboard funding on the terms and conditions set forth below:
  - (a) Bottler shall pay the cost of purchasing and installing thirty (30) scoreboard(s) (the “**Scoreboard(s)**”), up to Two Hundred Thousand Dollars (\$200,000) (“**Scoreboard Funding**”) in accordance with the schedule below:

Scoreboard(s)	Purchase and Installation
Seventeen (17) Baseball/Softball Scoreboards	Purchase in 2023 and install in 2024
Nine (9) Football/Soccer/Lacrosse Scoreboards	Purchase in 2023 and install in 2024
Four (4) Basketball Scoreboards	Purchase in 2023 and install in 2024

The Scoreboard(s) shall be installed at the Facility locations specified by Account in accordance with applicable building and electrical codes. **THE PROVISION OF THE SCOREBOARD(S) IS ON AN “AS IS” BASIS. BOTTLER HEREBY DISCLAIMS ANY AND ALL EXPRESS AND IMPLIED WARRANTIES, INCLUDING WITHOUT LIMITATION, THOSE OF MERCHANTABILITY AND FITNESS FOR INTENDED USE, AND BOTTLER SHALL NOT BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL OR INDIRECT DAMAGES.**

- (b) Bottler shall be entitled to premiere and exclusive Beverage advertising rights on the Scoreboard(s) and at the Facility, and Account will not grant advertising rights at the Facility with respect to any Competitive Products.
- (c) Bottler shall provide Scoreboard service and repair during the Term of this Agreement. Account shall operate the Scoreboard(s) in good condition and during the Term of this Agreement at Account’s expense and allow access by Bottler’s personnel to change the promotional message on the Scoreboard(s), such changes to be in Bottler’s sole discretion and at Bottler’s expense and subject to Account approval of content, not to be unreasonably withheld.
- (d) Account shall pay all costs of operating the Scoreboard(s) including, but not limited to, all utility charges.
- (e) Account shall maintain the following insurance:
  - (i) All risk property insurance in an amount equal to the replacement cost of the Scoreboard(s), and general liability insurance in the amount of \$2,000,000 per occurrence, including contractual liability for this Agreement and name the Bottler as additional insured, or the maximum insurance coverages for property damage and personal injury which are permitted by law. Certificates of Insurance confirming the existence of such coverages shall be provided to Bottler annually and Account will provide Bottler with thirty (30) days’ prior written notice of cancelation, non-renewal or material change of such insurance.
- (f) The Scoreboard(s) shall be the property of the Bottler. During the Term and upon expiration or termination of this Agreement, Bottler shall retain ownership of the Scoreboard(s).

**5. In-kind Marketing Support.** Each Agreement Year, Bottler agrees to make available to Account in-kind marketing support for mutually agreed marketing activities, such as menu boards, banners, trash barrels (when available) or other items, with an aggregate estimated retail value of up to Two Thousand Dollars (\$2,000), as determined in good faith by Bottler (“**In-kind Marketing Support**”). Account understands and acknowledges that it will not receive cash in lieu of In-kind Marketing Support.

**6. Complimentary Product.** Each Agreement Year, Bottler shall make available to Account standard physical cases of complimentary Products for tournaments consisting of 12oz cans and .5L Dasani with an aggregate estimated retail value of Two Thousand Dollars (\$2,000), as determined in good faith by Bottler. Such complimentary Products will be provided to Account upon reasonable advance request. Account must request all available complimentary Products during the course of each Agreement Year. If Account does not request all available complimentary Products by the end of each Agreement Year, then any complimentary Products remaining at the end of each Agreement Year shall be forfeited by Account and retained by Bottler with no further obligation. Complimentary Products are not to be resold.

7. **Fundraisers.** Account may participate in Coca-Cola truckload fundraiser sales each Agreement Year. Account's participation in any truckload fundraiser sales shall be subject to the terms and conditions set forth in **Exhibit D** hereto.

8. **Event Trailers.**

(a) In connection with this Agreement, Account may have the opportunity to use a trailer supplied by Bottler for concession sales of Products at Account events. ("**Event Trailer**"). Bottler shall not be liable to Account for any claims based on or arising out of injury to person or property in any way relating to Account's use of an Event Trailer, except such claims as might arise solely out of Bottler's gross negligence or willful misconduct. In no event and under no circumstances shall Bottler be liable to Account for any claims based upon or arising out of lost profits or prospective profits, loss of Product, or consequential, special or incidental damages in any way relating to Account's use of an Event Trailer.

**EXHIBIT C**  
**EQUIPMENT PLACEMENT ADDENDUM**

During the Term of the Agreement, Bottler may provide to Account Equipment (as defined below), subject to the terms of this Equipment Placement Addendum (“EPA”). The terms of this EPA shall apply to each piece of Equipment commencing on its date of installation at any Account Location (“Commencement Date”). THE TERMS OF THIS EPA WILL CONTINUE IN EFFECT WITH RESPECT TO EACH PIECE OF EQUIPMENT UNTIL THE EQUIPMENT HAS BEEN RETURNED TO BOTTLER AND WILL SURVIVE THE EXPIRATION OR TERMINATION OF ANY AGREEMENT INTO WHICH THIS EXHIBIT IS INCORPORATED. Any term capitalized, and not otherwise defined herein, shall have the meaning given in the Agreement.

1. Installation and Use Restrictions. Bottler may, from time to time, deliver and install **Equipment** (which term encompasses all equipment provided by Bottler at any time, including, without limitation, vending machines, coolers, fountain equipment, racks and/or any replacement parts, replacements, additions or accessories) reasonably required and as mutually agreed upon to dispense the Bottler’s Products. Account shall use the Equipment only at the particular location to which such Equipment is actually delivered unless otherwise agreed by Bottler. At all times during the term of this Agreement, Account shall maintain records of the location of all Equipment and promptly provide copies of such records to Bottler upon request. The Agreement and this EPA, in addition to any additional documents and/or records by and/or between the parties describing the Equipment and the location(s) where such Equipment is placed, shall be maintained by Bottler and shall constitute the official book of record pertaining to the Equipment. Account hereby agrees that: (i) no logo, trademark, advertisement, or other indication of Bottler’s ownership of the Equipment shall be obstructed, defaced, or removed, and no other logo, trademark, or advertisement shall be attached to the Equipment; (ii) the Equipment shall not be obstructed, moved, or removed without the prior written consent of Bottler; (iii) the Equipment shall not be sold, reassigned, loaned, leased, or rented to any other party except as authorized by Bottler; in which case, Account shall remain fully responsible for the Equipment as per the terms of this Agreement; (iv) no racks, merchandise, or any other objects shall be placed on top of or attached to the Equipment unless expressly authorized by Bottler; and (v) Account will not attach the Equipment, or allow the Equipment to be attached, in such a manner as to become part of the realty as a fixture or otherwise, and that the Equipment will be maintained so that it may be easily removed without damage to buildings or realty.
2. Operation. In consideration of the provision of the Equipment by the Bottler to Account pursuant to the Agreement, Account agrees to purchase from Bottler and store in, or sell through, the Equipment only products supplied by Bottler. In Bottler’s sole discretion, a review of Account’s product purchase volume and Equipment usage may justify ongoing Equipment placement or Equipment removal. Removal of any piece of Equipment will not affect the term of any agreement between the parties, and this EPA shall survive with respect to any Equipment remaining in Account’s possession.
  - a. If Bottler is providing full-service vending, Account agrees to permit Bottler to place the vending Equipment on Account’s premises. Bottler shall stock such vending Equipment and shall collect all vending proceeds from the sale of beverages. If Bottler has agreed to pay Account a commission on sales through the Equipment, all taxes, deposits, recycling fees, other handling fees, communication charges and credit and debit card fees, if any, may be deducted from funds collected before calculating any commissions due to Account.
  - b. Bottler hereby loans the Equipment to Account; however, during the term of this Agreement, Bottler reserves the right, upon prior notice to Account, to lease or rent the Equipment to the Account and, upon commencement of the lease or rental program, Account agrees to pay a monthly rental/lease amount. Bottler may change the rental/lease rate charged under this Agreement by sending notice of such change to Account at its present address. Account may terminate this Agreement as set forth herein if it objects to such change.
  - c. If the Equipment includes a fountain beverage dispenser, Account agrees to permit Bottler to install the fountain Equipment on Account’s premises. Account agrees such fountain Equipment will be used only for the purpose of dispensing fountain beverage products of The Coca-Cola Company (“**Company**”), such as Coca-Cola® classic (or Coke®), diet Coke® and Sprite®, and other fountain products distributed by Bottler with the understanding that no product of PepsiCo, Inc. or of an affiliate thereof may be dispensed. Account further agrees not to dispense any product whose pungency could affect the normal taste or quality of the Company’s fountain beverage products.
3. Ownership. Bottler is and, at all times, shall remain, the exclusive owner of the Equipment. Account shall protect Bottler’s title and keep the Equipment free from all claims, liens, and encumbrances arising from the actions or inactions of Account. Account’s obligation under this paragraph remains until such time as Bottler or Bottler’s designee picks up the Equipment. Account authorizes Bottler to execute and file any additional instruments in all jurisdictions where it deems it necessary to perfect and maintain Bottler’s interest in the Equipment. Bottler shall have the right, during Account’s regular business hours, to inspect the Equipment at Account’s premises or wherever the Equipment may be located and to review all records that reasonably relate to the Equipment upon reasonable notice to Account. Account shall promptly notify Bottler of all details arising out of any alleged encumbrances thereon or any accident allegedly resulting from the use or operation thereof.
4. Service and Repair. Account shall take reasonable care of the Equipment. Bottler agrees to provide reasonable service and repair for the Equipment during the term hereof. Account shall allow Bottler to enter its premises for the purpose of inspection or performance of such service and repair, or necessary replacement or return or removal of the Equipment. In the event additional service and repair is requested by Account or reasonably necessary as a result of Account’s negligence or willful misconduct, Bottler may bill Account its standard rate per service call. All service and repair calls must be exclusively handled or authorized by Bottler. Account’s sole recourse against Bottler with

respect to service and repair provided by Bottler or its agents to the Equipment is that Bottler will correct any defective workmanship at no additional charge to Account, provided that Bottler is given prompt notification of any defective workmanship. Account shall promptly notify Bottler of any Equipment malfunction and take reasonable steps to mitigate any risk of injury to person or property arising from such malfunction. For example, if a piece of Equipment is not cooling properly, Account will unplug that piece of Equipment until it is repaired or replaced by Bottler.

5. Disclaimer of Warranties; Liability and Costs. Account acknowledges that Bottler is not the manufacturer of the Equipment. BOTTLER MAKES NO REPRESENTATIONS OR WARRANTIES OF ANY KIND AND EXPRESSLY DISCLAIMS ANY IMPLIED WARRANTIES AS TO THE FITNESS FOR A PARTICULAR PURPOSE, MERCHANTABILITY, DESIGN, CONSTRUCTION, CONDITION, SPECIFICATIONS, OR PERFORMANCE OF THE EQUIPMENT. Account accepts no warranties and expressly waives any implied warranties as to the fitness for a particular purpose, merchantability, design, construction, condition, specification, or performance of the Equipment. Except to the extent attributable to the gross negligence or willful misconduct of Bottler, Account hereby assumes liability for any and all damage to (normal wear and tear excepted), or loss of, the Equipment from the time the Equipment is delivered to Account until returned to or removed and accepted by Bottler. Account assumes responsibility to report any damage to, or loss of, Equipment to Bottler immediately. To the extent any payment is due from Bottler to Account under the Agreement or otherwise, Bottler may deduct from such payment the cost of repair or replacement of Equipment due to damages for which Account is responsible hereunder. All taxes, licenses, charges, or other fees which may be imposed on Account's sales of products through the Equipment or in connection with this Agreement by any taxing authority, shall be borne by Account.
6. Exculpation. **CUSTOMER ACKNOWLEDGES THAT INSTALLATION, USE, OR OPERATION OF EQUIPMENT CARRIES INHERENT RISKS INCLUDING BUT NOT LIMITED TO FLOODING AND DAMAGE TO FIXTURES AND OTHER PROPERTY.** Bottler shall not be liable to Account for any claims based on or arising out of injury to person or property in any way relating to the installation, use, repair, or operation of the Equipment, except such claims as might arise solely out of Bottler's gross negligence or willful misconduct. In no event and under no circumstances shall Bottler be liable to Account for any claims based upon or arising out of lost profits or prospective profits, loss of product, or consequential, special or incidental damages in any way relating to the installation, use, repair, or operation of the Equipment. Account represents and warrants that plumbing and electrical service on the property is proper and adequate for the installation and use of the Equipment, and Account will not use extension cords or other electrical connections not expressly approved by Bottler.. Notwithstanding anything herein to the contrary, the provisions of this section will survive termination of the Agreement.
7. Termination or Expiration. Upon termination or expiration of the Agreement, Account shall promptly return all Equipment to Bottler.
8. Remedies. In the event of Account's breach of this EPA, Bottler shall have the immediate right to exercise any one or more of the following remedies: (w) to terminate the Agreement; (x) to declare the entire amount of any rent immediately due and payable, without notice to or demand of Account; (y) to take possession of any or all of the Equipment without demand or notice wherever the same may be located, without any court order or other process of law; or (z) to pursue any other remedy at law or in equity. If the Equipment is not made accessible by Account, then Account shall pay all costs and expenses relating to the removal of the Equipment, including reasonable attorneys' fees incurred by Bottler in enforcing its rights hereunder by litigation or otherwise. If this EPA is terminated with respect to any piece of Equipment for any reason prior to one year from the commencement date hereof, then Account shall pay Bottler all costs and expenses for installation, removal and refurbishment of the Equipment. All rights and remedies provided herein may be exercised exclusively, concurrently, or cumulatively with any other right or remedy hereunder, or as otherwise provided by law.
9. Casters (if applicable). If Account requests, at any time during the term of the Agreement, that Bottler provide the Equipment equipped with casters, the following provisions shall apply. Account represents and warrants that the Equipment is required by a governmental authority pursuant to applicable health, safety, sanitary or other applicable codes or ordinances, or the Account desires the Equipment to be equipped with casters to permit the efficient and thorough cleaning of the Equipment and surrounding areas. Account recognizes and acknowledges that the casters provided on the Equipment are not designed or intended to allow for the movement of the Equipment beyond the minimal distances required for cleaning of the immediate area and are not designed for movement from room to room or other similar distances. Account agrees that it shall not, and shall not permit its employees, agents, or subcontractors to use the casters to move the Equipment beyond the short distances necessary to adequately clean and maintain the Equipment and immediately surrounding areas. Account agrees not to otherwise move or displace the Equipment from the area in which it was placed by Bottler. Any violation of this section by Account shall constitute a breach of this EPA.
10. Miscellaneous. To the extent that any of the terms of this EPA conflict with the terms set forth in any other agreement between the parties (and the effect of such conflict diminishes the rights of Bottler under this EPA), the terms of this EPA will control; provided further that removal of any Equipment will not affect the terms of any other agreement between the parties.

**EXHIBIT D**  
**FUNDRAISER TERMS AND CONDITIONS**

During the Term of this Agreement, Account may have the opportunity to conduct truckload fundraiser sales (each, a “**Fundraiser**”) from time to time in which Account will promote the sale of Bottler’s Products to interested groups and individuals that may order Products for in-person delivery. The pricing and selection of Products, location, and date of each Fundraiser shall be mutually agreed upon by Account and Bottler. These terms and conditions shall apply to any and all Fundraisers conducted by Account.

All proceeds from Fundraiser sales shall be remitted to Bottler. Bottler shall apply the proceeds to satisfy in full all (i) Bottler’s costs for the Products delivered through the Fundraiser, (ii) applicable sales taxes, and (iii) Bottler’s administrative costs associated with the Fundraiser (collectively, “**Fundraiser Costs**”). In the event of any chargebacks, refunds, or cancellations, the amount of the reversed charge and any resulting payment network fees incurred by Bottler shall be deducted from the Fundraiser proceeds. If the Fundraiser proceeds collected are insufficient to satisfy the Fundraiser Costs, Account agrees to pay the deficiency amount to Bottler.

For each Fundraiser, Bottler’s administrative costs are generally estimated to include (a) 4% of gross proceeds for payment card and gateway fees (plus actual fee amounts for any cancelled orders), and (b) a flat fee of \$0.50 per order for use of the Fundraiser’s e-commerce website. Account may obtain the specific administrative cost estimates for its Fundraiser from Bottler.

After satisfying the Fundraiser Costs, Bottler will remit all remaining proceeds from the Fundraiser to Account via check (“**Proceeds Check**”). Should any chargebacks, refunds, or cancellations occur after Bottler has delivered the Proceeds Check to Account, Account agrees to pay Bottler the amount of the reversed charge and any resulting payment network fees incurred by Bottler.

Unless otherwise agreed in writing by both parties, Account authorizes and directs Bottler to make the Proceeds Check payable to the Account’s name set forth in the Agreement and to deliver the Proceeds Check to Account’s notice address set forth in the Agreement. Account releases and forever discharges the Indemnified Parties (defined below) from any and all claims arising from the Proceed Check recipient’s use, misuse, or possession of the Proceeds Check. Bottler shall not be liable to Account for any claims based upon or arising out of lost profits or prospective profits, loss of Products, or consequential, special, or incidental damages in any way relating to a Fundraiser.



**CITY OF VESTAVIA HILLS  
CITY CLERK  
INTER-DEPARTMENT MEMO**

**February 26, 2024**

**To:** Jeff Downes, City Manager

**Cc:**

**From:** Rebecca Leavings, City Clerk

**RE:** Resolution Number 5502 - A Resolution authorizing the City of Birmingham, Alabama, to annex certain property within overlapping police jurisdiction of Vestavia Hills, Alabama, pursuant to the provisions of Section 11-42-21(c), Code of Alabama, 1975

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**Background:**

Liberty Park Joint Venture is desirous of constructing an office building at 1051 Highfield Drive; Lot 1, The Bray at Liberty Park, First Addition. A 25' wide corridor located in the City of Birmingham traversed the center of said lot. This corridor was recently deannexed by the City of Birmingham in a corridor swap with Vestavia Hills. This resolution will allow Birmingham to annex a recently deannexed 25' wide corridor located to the west of said Lot 1 abutting the I-459 ROW and, with the adoption of a similar Resolution from Birmingham, allow Vestavia to annex the corridor traversing the center of the lot.

**Recommendation:**

Recommend approval in order to obtain a similar resolution from Birmingham for annexation of the central corridor.

**Fiscal Impact:**

na

**Attachments:**

1. Resolution 5502
2. Woodfin Letter requesting VH Assent to Annexation

## **RESOLUTION NO. 5502**

### **A RESOLUTION PURSUANT TO SECTION 11-42-21(c), CODE OF ALABAMA (1975) ASSENTING TO THE ANNEXATION BY THE CITY OF BIRMINGHAM OF TERRITORY LOCATED WITHIN THE OVERLAPPING POLICE JURISDICTIONS OF THE CITY OF BIRMINGHAM AND THE CITY OF VESTAVIA HILLS**

**WHEREAS**, the City Council of the City of Vestavia Hills, Alabama, has been notified that Liberty Park Joint Venture LLP, being the sole owner of all of the land within the territory herein described (hereinafter referred to as the “Property”), has filed a certain written petition signed by such owner with the City Clerk of the City of Birmingham requesting that the Property be annexed into the City of Birmingham; and,

**WHEREAS**, the Property, described in **Exhibit A** attached to this Resolution and incorporated herein by reference, is contiguous to the City of Birmingham and is located within the overlapping police jurisdictions of the City of Vestavia Hills and the City of Birmingham; and

**WHEREAS**, pursuant to Section 11-42-21(c), Code of Alabama (1975), the City of Birmingham, by written request of its Mayor attached hereto as **Exhibit B** and incorporated herein by reference, has requested that the City of Vestavia Hills adopt a resolution assenting to the annexation of the Property into the City of Birmingham, notwithstanding that the Property is located within such overlapping police jurisdictions of the City of Birmingham and the City of Vestavia Hills; and

**WHEREAS**, pursuant to Section 11-42-21(c), Code of Alabama (1975), the City of Vestavia Hills assents to the annexation of the Property into the City of Birmingham, notwithstanding that the Property is located within the overlapping police jurisdictions of the City of Birmingham and the City of Vestavia Hills.

### **NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF VESTAVIA HILLS AS FOLLOWS:**

Section 1. The City Council of the City of Vestavia Hills, Alabama, pursuant to the provisions of Section 11-42-21(c) of the Code of Alabama (1975), hereby assents to the annexation of the Property into the City of Birmingham, Alabama, pursuant to Sections 11-42-20 through 11-42-24, Code of Alabama (1975), as amended, notwithstanding that the Property is located within the overlapping police jurisdictions of the City of Birmingham and the City of Vestavia Hills.

Section 2. The City Clerk shall deliver a certified copy of this Resolution to the City Clerk of the City of Birmingham.

Ashley C. Curry  
Mayor

ATTESTED BY:

Rebecca Leavings  
City Clerk

**CERTIFICATION**

I, the undersigned qualified Clerk of the City of Vestavia Hills, Alabama, do hereby certify that the above and foregoing is a true copy of a Resolution lawfully passed and adopted by the City Council of the City named therein, at a regular meeting of such Council held on the 26<sup>th</sup> day of February, 2024, and that such Resolution is of record in the Minute Book of the City at page \_\_\_\_\_ thereof.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of the City on this the \_\_\_\_\_ day of \_\_\_\_\_, 2024.

Rebecca Leavings  
City Clerk

**LEGAL DESCRIPTION**  
**THE BRAY AT LIBERTY PARK FIRST ADDITION**  
**VESTAVIA HILLS DE-ANNEXATION PARCEL II**

A part of Lot 1, The Bray at Liberty Park First Addition as recorded in Map Book 260, Page 22 in the Probate Office of Jefferson County, Alabama, and acreage situated in the North 1/2 of the N.W. 1/4 of Section 13, Township 18 South, Range 2 West, Jefferson County, Alabama, being more particularly described as follows:

Commence at the Northwest corner of the N.E. 1/4 of the N.W. 1/4 of Section 13, Township 18 South, Range 2 West, Jefferson County, Alabama and run in a Westerly direction along the North line of the N.W. 1/4 of the N.W. 1/4 of said Section 13 a distance of 20.08 feet to the Point of Beginning of the property herein described: thence continue along the last described course in a Westerly direction a distance of 25.02 feet to a point on the Easterly right-of-way line of Interstate Highway I-459; thence 87°23'23" to the right in a Southwesterly direction along the Easterly right-of-way line of Interstate Highway I-459 a distance of 1167.62 feet to a point; thence 101°42'56" to the left in a Northeasterly direction a distance of 142.60 feet to a point; thence 82°31'24" to the left in a Northerly direction a distance of 25.21 feet to a point; thence 97°28'36" to the left in a Southwesterly direction a distance of 115.16 feet to a point; thence 101°42'56" to the right in a Northwesterly direction a distance of 1138.04 feet to the Point of Beginning.

Containing 32,043 square feet or 0.736 acre.





# CITY OF BIRMINGHAM

MAYOR RANDALL L. WOODFIN

PUTTING PEOPLE FIRST

February 20, 2024

Ms. Rebecca Leavings  
 City Clerk  
 City of Vestavia Hills  
 1032 Montgomery Highway |  
 Vestavia Hills, Alabama 35216

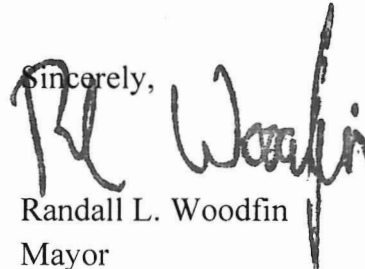
RE: Request by City of Birmingham for Assent of City of Vestavia Hills to  
 Annexation of Certain Territory into the City of Birmingham

Dear Ms. Leavings:

The City of Birmingham has received the attached petition of Liberty Park Joint Venture LLP, to annex the territory described therein into the City of Birmingham pursuant to Code of Alabama Sections 11-42-20 through 11-42-24. The territory is contiguous to the City of Birmingham, but is located within the overlapping police jurisdictions of the City of Vestavia Hills and the City of Birmingham. Under Code of Alabama Section 11-42-21(b), the City of Birmingham would be authorized to annex the territory only to a boundary which is equidistant from the corporate limits of the City of Vestavia Hills. Code of Alabama Section 11-42-21(c), however, provides for a waiver of this “equidistant rule” if the City of Vestavia Hills adopts a resolution assenting to Birmingham’s annexation of the entire territory.

Accordingly, I am writing on behalf of the City of Birmingham to request that the City of Vestavia Hills adopt a resolution pursuant to Code of Alabama Section 11-42-21(c) assenting to the City of Birmingham’s annexation of the entire territory.

Please contact Assistant City Attorney Jim Stanley if you have any questions or need any additional information.

Sincerely,  
  
 Randall L. Woodfin  
 Mayor

cc: Cedric Sparks, Chief of Staff  
 Chaz Mitchell, Chief of Operations  
 James C. Stanley, Assistant City Attorney



**CITY OF VESTAVIA HILLS  
CITY CLERK  
INTER-DEPARTMENT MEMO**

**February 26, 2024**

**To:** Jeff Downes, City Manager

**Cc:**

**From:** Rebecca Leavings, City Clerk

**RE:** Public Hearing - Ordinance Number 3312 - Annexation - Overnight  
- A portion of 1051 Highwall Drive; Lot 1 The Bray at Liberty Park  
First Addition; Liberty Park Joint Venture, Owners

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**Background:**

In 2023, the City of Birmingham de-annexed a corridor that traverses the center of Lot 1, The Bray at Liberty Park First Addition. In an effort to keep their corridor contiguous, Vestavia Hills de-annexed a portion of the same lot in an area abutting Interstate 459 right-of-way. This will annex the central corridor de-annexed by the City of Birmingham and allow them to annex a corridor along I-459 so that an office building can be constructed on Lot 1 in the city limits of Vestavia Hills.

**Recommendation:**

Approval is needed to complete the swap of corridors between municipalities.

**Fiscal Impact:**

na

**Attachments:**

1. Ordinance 3212

**ORDINANCE NUMBER 3212**

**AN ORDINANCE TO ALTER, REARRANGE, AND EXTEND THE CORPORATE LIMITS OF THE CITY OF VESTAVIA HILLS, ALABAMA, SO AS TO EMBRACE AND INCLUDE WITHIN THE CORPORATE AREA OF SAID CITY ALL TERRITORY NOW WITHIN SUCH CORPORATE LIMITS AND ALSO CERTAIN OTHER TERRITORY CONTIGUOUS TO SAID CITY.**

**WHEREAS**, a certain petition signed by Liberty Park Joint Venture dated 12, 2024, that the property therein described be annexed to the City of Vestavia Hills, Alabama, together with a map of said territory showing its relationship to the corporate limits of the City, has been filed with the City Clerk of the City of Vestavia Hills; and

**WHEREAS**, this Council has determined and found that the matters set forth and alleged in said petition are true and correct, and that it is in the public interest that said territory be annexed to the City of Vestavia Hills;

**NOW, THEREFORE, BE IT ORDAINED** by the Council of the City of Vestavia Hills, Alabama, as follows:

SECTION 1. That said Council hereby assents to the annexation of said territory to the City of Vestavia Hills, Alabama, the corporate limits of the City to be extended and rearranged pursuant to the provisions of Title 11, Chapter 42, Article 2, Code of Alabama, 1975 (Sections 11-42-20 through 11-42-23, as amended) so as to embrace and include said territory, in addition to the territory already within its present corporate limits. The new boundary line does not lie at any point more than half the distance between the old city boundary and the corporate boundary of any other municipality. Said territory is described as follows:

A portion of 1051 Highwall Drive  
See Attached Exhibit A for Legal Description  
Liberty Park Joint Venture

SECTION 2. That the City Clerk shall file a certified copy of this Ordinance containing an accurate description of said annexed territory with the Probate Judge of Jefferson County, Alabama, and also cause a copy of this Ordinance to be published/posted in accordance with Alabama law.

**APPROVED and ADOPTED** this the 11th day of March, 2024.

Ashley C. Curry  
Mayor

ATTESTED BY:

Rebecca Leavings  
City Clerk

**CERTIFICATION:**

I, Rebecca Leavings, as City Clerk of the City of Vestavia Hills, Alabama, hereby certify that the above and foregoing copy of 1 (one) Ordinance # 3212 is a true and correct copy of such Ordinance that was duly adopted by the City Council of the City of Vestavia Hills on the 11th day of March, 2024, as same appears in the official records of said City.

Posted at Vestavia Hills Municipal Center, Vestavia Hills Library in the Forest, Vestavia Hills New Merkle House and Vestavia Hills Recreational Center this the \_\_\_\_\_ day of \_\_\_\_\_, 2024.

Rebecca Leavings  
City Clerk



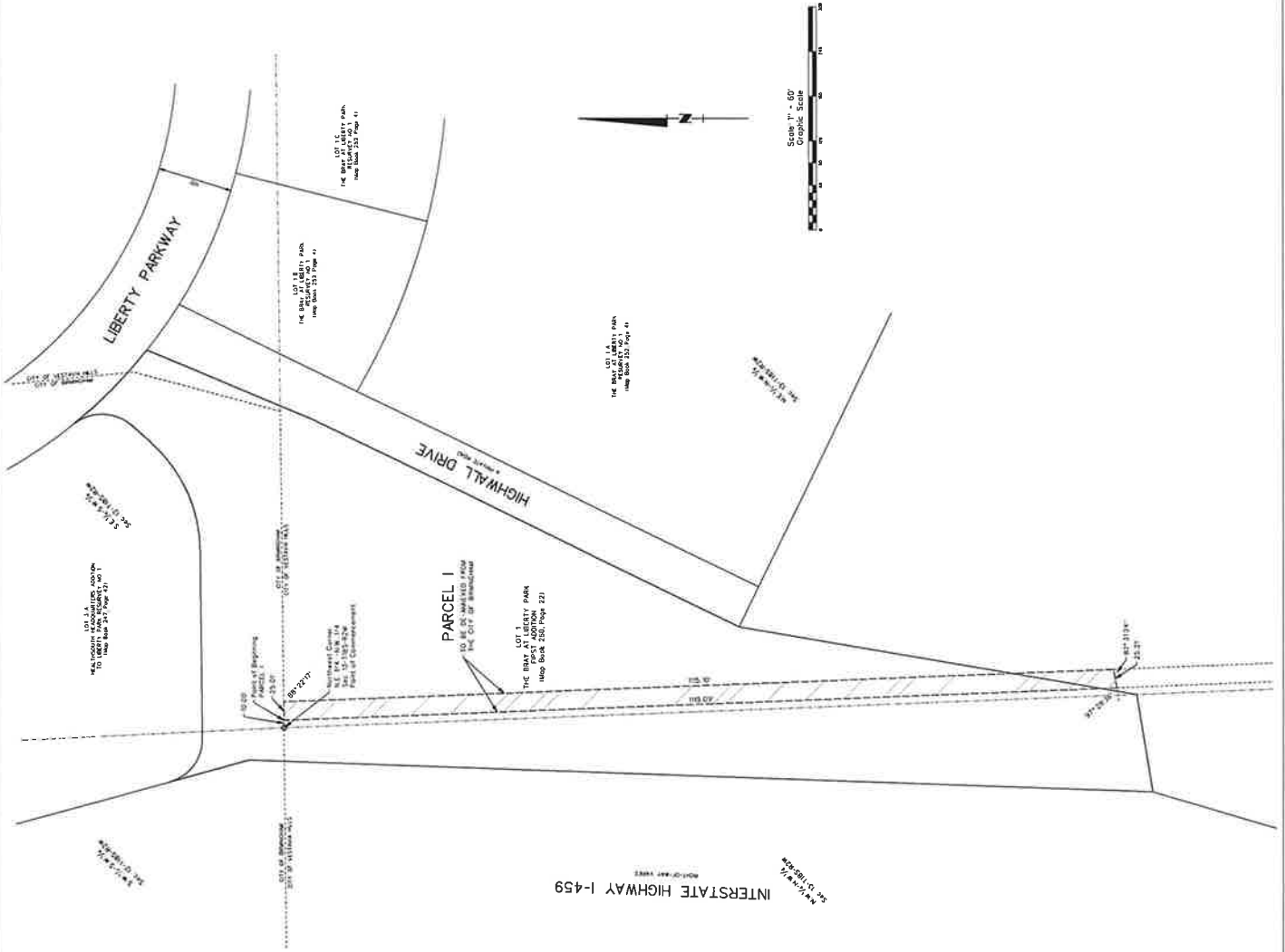
THE BRAY AT LIBERTY PARK-FIRST ADDITION  
 CITY OF BIRMINGHAM DE-ANNEXATION EXHIBIT

SITUATED IN THE NORTH 1/2 OF THE N. 1/4 OF SECTION 13, TOWNSHIP 18 SOUTH, RANGE 2 WEST  
 JEFFERSON COUNTY, ALABAMA

DE-ANNEXATION  
 EXHIBIT

DAL, JANUARY 2023  
 COUNCIL REPORT NO. 1  
 COUNCIL DISTRICT 10  
 CITY OF BIRMINGHAM  
 DE-ANNEXATION EXHIBIT

BHM1 - DA



**LEGAL DESCRIPTION**  
**THE BRAY AT LIBERTY PARK FIRST ADDITION**  
**BIRMINGHAM ANNEXATION PARCEL II**

A part of Lot 1, The Bray at Liberty Park First Addition as recorded in Map Book 260, Page 22 in the Probate Office of Jefferson County, Alabama, and acreage situated in the North 1/2 of the N.W. 1/4 of Section 13, Township 18 South, Range 2 West, Jefferson County, Alabama, being more particularly described as follows:

Commence at the Northwest corner of the N.E. 1/4 of the N.W. 1/4 of Section 13, Township 18 South, Range 2 West, Jefferson County, Alabama and run in a Westerly direction along the North line of the N.W. 1/4 of the N.W. 1/4 of said Section 13 a distance of 20.08 feet to the Point of Beginning of the property herein described: thence continue along the last described course in a Westerly direction a distance of 25.02 feet to a point on the Easterly right-of-way line of Interstate Highway I-459; thence  $87^{\circ}23'23''$  to the right in a Southwesterly direction along the Easterly right-of-way line of Interstate Highway I-459 a distance of 1167.62 feet to a point; thence  $101^{\circ}42'56''$  to the left in a Northeasterly direction a distance of 142.60 feet to a point; thence  $82^{\circ}31'24''$  to the left in a Northerly direction a distance of 25.21 feet to a point; thence  $97^{\circ}28'36''$  to the left in a Southwesterly direction a distance of 115.16 feet to a point; thence  $101^{\circ}42'56''$  to the right in a Northwesterly direction a distance of 1138.04 feet to the Point of Beginning.

Containing 32,043 square feet or 0.736 acre.



### ANX-24-2

Annexation Application  
Status: Active  
Submitted On: 2/12/2024

### Primary Location

1051 HIGHWALL DR  
VESTAVIA HILLS, AL 35242

### Owner

### Applicant

John Bonanno  
 770-367-9552  
jbonanno@danielcommunities.com  
 1000 Urban Center  
Ste 235  
Vestavia Hills, Alabama  
35342

## Owner Information

### Owner's Name\*

Liberty Park Joint Venture LLP

### Owner Mailing Address Inc. City, State, Zip\*

1000 Urban Center Ste 235 Vestavia Hills 35242

## Property Information

### Address of Property to be annexed?\*

1051 Highwall Drive (a portion of)

### Legal Description of Property to be Annexed\*

A portion of Lot 1, The Bray At LibertyPark First Addition

### County Location of Property:

Jefferson County

### Tax Parcel ID Number (if known)

28 00 13 2 000 001.007

### County Zoning Classification

VH PUD PB

### Is this annexation for redevelopment?\*

Yes

**Compatible City Zoning Classification**

na

**Desired Zoning Classification**

PUD

**☞ Is this a single-family residence with no additional development?\***

No

**If for redevelopment, please explain**

Corridor Exchange with City of Birmingham

**☞ If not, please explain**

Part of PUD development

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## Annexation Request Information

**Please Explain your reason for requesting annexation?\***

Relocating City of Birmingham Holding Zone strip to external boundary of Liberty Park/City of Vestavia Hills limits.

**Are you located in the Rocky Ridge Fire District?\***

No

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## Information on Children

**Name of Child**

**Age of Child**

**School Grade of Child**

**Plan to Enroll in Vestavia Hills School within 2 years?**

—

**Name of Child**

**Age of Child**



**CITY OF VESTAVIA HILLS**  
**INTER-DEPARTMENT MEMO**

**February 26, 2024**

**To:** Jeff Downes, City Manager

**Cc:**

**From:**

**RE:** Citizens Comments

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**Background:**

**Recommendation:**

**Fiscal Impact:**

**Attachments:**

None