

June 11, 2018

STATE OF ALABAMA,
LIMESTONE COUNTY,
CITY OF ATHENS.

The City Council of the City of Athens, Alabama met in regular session at the Athens Municipal Building, 200 Hobbs Street West in the said City on June 11, 2018, at 5:30 p.m. The meeting was called to order by Councilman Chris Seibert, President of the Council. Upon roll call, the following were found to be present: Councilmembers Frank Travis, Wayne Harper, Harold Wales, Joseph Cannon and Chris Seibert. Chris Seibert led the Pledge of Allegiance. Annette Barnes, City Clerk, was present and recorded the minutes of the meeting. Wayne Harper offered the invocation. The Chairperson stated that a quorum was present and that the meeting was open for transaction of business.

The Chairperson stated that the Minutes of the May 29, 2018 City Council Meeting had been submitted for approval. Councilman Cannon moved that the reading of the Minutes be suspended and that the Minutes be approved as recorded. The motion was seconded by Councilman Wales and was unanimously carried. The Chairperson stated that the Minutes of the May 29, 2018 City Council Work Session Meeting had been submitted for approval. Councilman Cannon moved that the reading of the Minutes be suspended and that the Minutes be approved as recorded. The motion was seconded by Councilman Wales and was unanimously carried.

President Seibert next opened a public hearing concerning the City's denial of a request for an alcohol license.

President Seibert announced that Jay Ramaji, Inc. applied for an off-premises alcoholic beverage license (beer and wine) for a convenience store at 210 W Elm Street, at the northeast corner of Jefferson Street and Elm Street. He advised that the request was denied by the Public Works Department because it said the location didn't satisfy the requirements of the City's alcohol ordinance.

President Seibert noted that the City's ordinances generally require that a business selling alcoholic beverages be located at least 500 feet from a church building (*i.e.*, the building with the church's worship sanctuary), and that the Public Works Department denied the license because it was about 100 feet from the House of Hope Ministries on Elm Street. He noted that it was also about 190 feet from the St. Luke Missionary Baptist Church. Seibert stated that there are a few exceptions to the 500 foot rule in the ordinance, but Public Works found that none of them applied.

President Seibert explained that the City's alcohol ordinance allows a business owner to appeal Public Work's decision to the City Council if it believes that Public Works' decision was incorrect. He noted that Jay Ramaji, Inc., owned by Mr. Patel, through John Totten, its lawyer, appealed.

President Seibert stated that the city council was therefore holding a public hearing so that Jay Ramaji, Inc. could address the council, present its reasons for the appeal, and present any evidence that it wants to present. Seibert explained that the City Council would hear the appeal and determine whether or not Public Works correctly applied the City's ordinances in this situation.

President Seibert then advised the council members if any of them needed to be excused, because there was any reason they could not make an impartial decision in this matter or based solely on the matters discussed at this hearing. Councilman Cannon then advised that he would recuse himself entirely from this matter.

President Seibert then gave the city council members a copy of the alcohol license application, with the denial on it, as well as a copy of the appeal. He also provided an excerpt of the City's alcohol ordinance dealing with the distance limitations and a church building. (Copies of these will be appended to the minutes of the meeting.)

President Seibert then stated that Jay Ramaji, Inc. would first address the council and present any evidence and argument it wants, and then council members could ask questions if they wished. Then, he stated that a representative from Public Works would similarly address the council and be available for questions. He also stated that if any member of the public would like to address the council on this issue when they are both done, that would also be allowed.

President Seibert also advised those in attendance that this was not a court hearing, and legal rules of evidence do not apply. He indicated that there would be no cross-examination. He also stated that the city council was sitting as a judicial panel to hear this appeal and to decide the issue. He stated that, if needed, he would use his discretion to limit or disallow certain testimony or evidence as appropriate, and that he might call on the City Attorney as needed throughout the process.

He finally advised that the City Council may go into an executive session in order to consider what action should be taken. Upon no one having any questions about the process, President Seibert asked Jay Ramaji, Inc. to address the City Council.

Attorney Jon Totten appeared before the council, along with Atulkumar B. Patel and Amitkumar M. Patel, on behalf of Jay Ramaji, Inc.

Jon Totten and the Patels advised the council that Jay Ramaji, Inc. requested an alcohol license for 210 West Elm Street and were denied due to the business' proximity to a church. They explained that it was very difficult for Jay Ramaji, Inc. to operate the business without alcohol sales. They stated that customers would enter the store and ask for beer and wine, and that the customers would be disappointed when they could not purchase it. They explained that it seemed unfair that a convenience store across Elm Street (the Ankr Food Mart) could sell alcoholic beverages when they could not. They acknowledged that their store was very close to House of Hope Ministries, but that its pastor and congregation had no objection to their sale of beer and wine.

President Seibert asked how long Jay Ramaji, Inc. had owned the store and whether the prior owner sold alcoholic beverages. The Patels replied that they purchased the store in November, 2017 from a prior owner, that the prior owner did not have alcoholic beverage sales, but that they thought they could obtain a license since the Ankr Food Mart sold alcoholic beverages.

Councilman Wales addressed Jay Ramaji, Inc. He stated that the distance limitations were meant to protect churches and schools, and that they were not meant to harm businesses.

President Seibert then asked that the Public Works Department address the council. James Rich appeared on behalf of Public Works.

Mr. Rich stated that 210 West Elm Street is located in a B-1 conventional zone, and that § 6-34(e) of the City's Alcohol Ordinance sets out the rule that no facility shall be authorized for alcoholic beverage sales where it is less than 500 feet from a church. He explained that Jay Ramaji's store is located about 106 feet from the House of Hope Ministries Church, and 190 feet from the St. Luke Missionary Baptist Church. Rich explained that there are exceptions to the 500 foot rule, such as where (i) located in a traditional zone, (ii) separated by a four lane highway, and others, but none of them applied to Jay Ramaji's store. He noted that the pastor's statement did not create an exception to the ordinance.

Mr. Rich also addressed the Ankr Food Mart, at 1517 N Jefferson Street, which is located on the SE corner of the intersection. He explained that when this store obtained its license in 2007, there was a four lane highway between it and the St. Luke Missionary Baptist church to the north, which reduced the distance requirement to 200 feet under the ordinance. Since there was more than 200 feet between the store and the church, the license was allowed. James noted that since then, one of the 4 lanes was changed to a turning lane, reducing it to 3 lanes, so that exception would not apply if the license was sought today.

Mr. Rich also noted that, since the adoption of the City's new zoning ordinance, Ankr Food Mart is now located in a traditional zone, and so it is subject to different distance rules where there must only be 50 feet between the church building and the licensed building.

Mr. Rich presented photographs of the area, which showed the distances between Jay Ramaji, Inc. and the churches, as well as photographs of the area in 2009 and 2013.

Mr. Totten asked President Seibert if he could ask Mr. Rich a question, which Seibert allowed. Totten asked Rich when the new zoning ordinance as adopted. Rich replied that it was adopted in or about May, 2017.

President Seibert asked if any citizen would like to comment on the proceedings. He recognized Ms. Mae Davis. Ms. Davis stated that Jay Ramaji, Inc.'s store was awful close to a church and that she didn't think that was appropriate.

There were no other comments.

President Seibert announced that the City Council would now deliberate this matter. Since the City Council was acting in a quasi-judicial capacity to decide the appeal, he asked if there was a motion for the council to go into executive session to discuss and deliberate the evidence and testimony that had been presented during this contested public hearing.

Councilman Travis moved that the council enter executive session for that purpose, and Councilman Harper seconded the motion. The City Clerk called roll, with Seibert, Wales, Harper, and Travis voting "yes" and Cannon abstaining from the vote. Mr. Seibert announced that he expected the executive session would last about 15 minutes, and that the council would then reconvene to continue the meeting. The City Council recessed to executive session at 6:05PM.

The City Council returned from executive session at 6:20PM. President Seibert closed the public hearing, and explained that, at his direction, the City Attorney was preparing the draft of a motion for the City Council to consider concerning the Jay Ramaji, Inc. appeal.

Councilman Wales introduced the following ordinance:

ORDINANCE NUMBER 2018-2049

**ORDINANCE GRANTING A FRANCHISE
TO BRIAN THOMAS (D/B/A SUNDOWN CARRIAGE) FOR
HORSE AND BUGGY SERVICE**

WHEREAS, pursuant to Section 220 of the *Constitution of Alabama*, no entity shall be authorized or permitted to use the streets of the city of Athens for the operation of any private enterprise, without first obtaining the consent of the City of Athens; and

WHEREAS, the City Council has determined to grant its consent to the use of its streets for the operation of a horse and buggy service by Brian Thomas (d/b/a Sundown Carriage) upon the terms of a franchise agreement as hereinafter provided.

NOW THEREFORE BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ATHENS, ALABAMA while in regular session on June 11, 2018 at 5:30 p.m., as follows:

Section 1. In consideration of the benefits to accrue to the City of Athens (the "City") and the inhabitants thereof, the City, pursuant to Section 220 of the *Constitution of Alabama* and other applicable law, extends the consent and franchise hereinafter set forth.

Section 2. Brian Thomas (d/b/a Sundown Carriage) (the "Franchisee") is hereby granted the City's non-exclusive consent and franchise to use the streets of the City in order to operate a horse and buggy service. As used herein, a "horse and buggy service" is an entertainment service offered to transport persons about the downtown area in a horse-drawn carriage in exchange for compensation.

Section 3. With respect to all of its activities within the City's corporate limits, the Franchisee, its employees and agents shall comply with all federal, state and local laws, as they now exist or are hereafter amended, expressly including but not limited to those concerning the use of the City's streets, as they now exist or may hereafter be amended.

Section 4. The Franchisee's exercise of this franchise shall be limited to (a) the Franchisee's travel on the public streets of the city in the four block radius of the courthouse square; and (b) the period from 6:00PM on Friday night through 9:00PM on Sunday night. The Franchisee does not extend to the use of a public street when that street has been closed for public travel. The Franchisee's horses, carriages, and vehicles shall at all times comply

with all state and local laws. The Franchisee shall ensure that no waste from the horse(s) is left on the City streets or other property, that a manure bag/horse diaper is used at all times, and that the manure be removed from the City.

Section 5. The Franchisee shall hold the City harmless from any liability or damages resulting from any actions taken by the Franchisee or its agents pursuant to this Ordinance, including but not limited to the negligence/misconduct of the Franchisee, its agents or employees, in the operation of its private enterprise. Such indemnification shall be for all damages, costs, and attorney fees. The City shall notify the Franchisee after the presentation to the City Clerk of any written claim for damages, either by suit or otherwise, made against the City on account of any actions of the Franchisee, its agents or employees. This section shall survive the termination of this franchise.

Section 6. The consent and franchise hereby granted may not be assigned without the written consent of the City.

Section 7. The Franchisee shall pay to the City a franchise fee of \$25.00 on or prior to the publication of this Ordinance.

Section 8. The Franchisee shall, throughout the term of this franchise, maintain a current business license with the City. **The Franchisee must also, as a condition to the grant of this franchise, present the City Clerk with evidence of commercial general liability insurance, as required for a horse-drawn carriage service pursuant to Section 18-307(d) of the Code of Ordinances of the City of Athens, Alabama.** Franchisee shall maintain on file with the City an accurate listing of every vehicle or carriage used by Franchisee in connection with this franchise.

Section 9. This Ordinance shall be published by the City Clerk in accordance with the applicable provision of Ala. Code § 11-45-8 (1975). The expense of such publication shall be paid by the Franchisee, according to law.

Section 10. The Franchisee shall file a written acceptance of the franchise with the City Clerk within 14 days after the date of this Ordinance. The acceptance shall state that the Franchisee agrees to be bound by and carry out the terms and conditions of this Ordinance. The franchise shall go into effect when the acceptance has been filed, and upon such filing, this Ordinance shall constitute a contract between the City and the Franchisee.

Section 11. If any part of this Ordinance shall be held invalid for any reason, such holding shall not invalidate or impair the remainder of it. Franchisee is an independent operator, and is not an agent, contractor, or employee of the City. Franchisee has no authority, express or implied, to act on behalf of or bind the City in any capacity. The City's waiver of any term or breach hereof shall not be considered to be a waiver of any other term or breach, nor of a subsequent breach of the one waived.

Section 12. This franchise shall continue in effect for three (3) years from the date it is accepted, or until termination; however, Franchisee may terminate this franchise at any time by written notice to City. No amendment hereto shall be made unless it is authorized by the City Council.

Section 13. The City reserves the right to suspend or terminate this franchise and all rights of Franchisee if (i) Franchisee violates any provisions of this Franchise, including the requirement that Franchisee abide by all laws and ordinances, (ii) Franchisee's agents and employees are convicted of any crime of moral turpitude, any DUI offense, or any offense relating to controlled substances, or (iii) whenever the continued operation by the Franchisee would constitute a danger to public health, safety, welfare or public morals. The City Clerk may terminate this franchise where Franchisee has failed to keep in full force any applicable licenses or permits required by federal, state or local law or regulation.

Section 14. This Ordinance shall become effective upon adoption, and upon the acceptance set forth in Section 10.

ADOPTED and APPROVED this, the 11th day of June, 2018.

/s/ Chris Seibert
PRESIDENT, CITY COUNCIL,

CITY OF ATHENS, ALABAMA

/s/ William R. Marks

MAYOR, CITY OF ATHENS, ALABAMA

ATTEST:

/s/ Annette Barnes

CITY CLERK, CITY OF ATHENS, ALABAMA

STATE OF ALABAMA)
LIMESTONE COUNTY)

I, Annette Barnes, City Clerk of the City of Athens, Alabama, do hereby certify that the above and foregoing is a true and correct copy of the Ordinance duly adopted by the City Council of the City of Athens, Alabama on the 11th day of June, 2018.

Witness my hand and seal of office this the 28th day of June, 2018.

/s/ Annette Barnes
City Clerk

Councilmember Harper moved that unanimous consent be given for immediate consideration of and action on said ordinance, which motion was seconded by Councilmember Cannon, and upon the said motion being put to vote the following vote was recorded: YEAS: Councilmembers Seibert, Wales, Travis, Cannon and Harper; NAYS: None. The President thereupon declared that the motion for unanimous consent for immediate consideration of and action on the said ordinance had been unanimously carried. Councilmember Wales thereupon moved that the ordinance be finally adopted, which motion was seconded by Councilmember Cannon and upon the said motion being put to vote the following vote was recorded: YEAS: Councilmembers Seibert, Wales, Travis, Cannon and Harper; NAYS: None. The President thereupon announced that the motion for the adoption of the said ordinance had been unanimously carried.

Councilman Cannon introduced the following resolution:

RESOLUTION

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF ATHENS, ALABAMA, to reappoint Jerry Threet to the Historic Preservation Commission for a three (3) year term that will expire June 22, 2021.

The motion was seconded by Councilman Wales and was unanimously carried.

Councilman Harper introduced the following resolution:

RESOLUTION

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF ATHENS, ALABAMA, to reappoint Greg Greene to the Zoning Board of Adjustments for a three (3) year term, expiring June 26, 2021.

The motion was seconded by Councilman Cannon and was unanimously carried.

Councilman Travis introduced the following resolution:

RESOLUTION

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF ATHENS, ALABAMA, to approve demolition costs, not to exceed \$6,500.00, from Strickland Dirt Works, LLC for 715 Plato Jones Street.

The motion was seconded by Councilman Cannon and was unanimously carried.

Councilman Wales introduced the following resolution:

RESOLUTION

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF ATHENS, ALABAMA, that the Sullair 185Q (Serial Number 004-107933) portable trailer mounted air compressor be declared as surplus property of the Water Services Division, City of Athens Utilities.

The motion was seconded by Councilman Harper and was unanimously carried.

Councilman Cannon introduced the following resolution:

RESOLUTION

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF ATHENS, ALABAMA, to authorize the Mayor to issue a task order to Reed Contracting under the Bituminous Asphalt Contract dated August 30th, 2017 to pave Houston Street from 12th Street to U.S. 72, Buckeye Street and Gayle Lane. This project shall be funded from the Capital Infrastructure Account.

The motion was seconded by Councilman Wales and was unanimously carried.

Councilman Travis introduced the following resolution:

RESOLUTION

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF ATHENS, ALABAMA, to approve travel expenses for the following Electric Department personnel:

Beth Clem	\$495.73
RCS – PCB Training – Destin, FL	

The motion was seconded by Councilman Harper and was unanimously carried.

Councilman Harper introduced the following resolution:

RESOLUTION NUMBER 2018-1581

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF ATHENS, ALABAMA, to approve and support the City of Athens Gas Department's updated Public Awareness Program, RP1162, and a copy of this Resolution be attached to and made a part hereof the Gas Department's Public Awareness Program and spread the same on the minutes.

Athens Utilities
Gas Department
Public Awareness Program

1. OBJECTIVES:

The objectives of this Public Awareness Program are:

- To educate our customers how to recognize the odor of natural gas and how to respond if they detect possible gas odor. Early recognition of a gas odor and proper response can save lives.
- To raise awareness of the affected public and key stakeholders of the presence of buried natural gas pipelines in the communities we serve. A more informed public will also understand that they have a role in helping to prevent third party damage accidents.
- To help excavators understand the steps that they can take to prevent third-party damage and respond properly if they cause damage to our pipelines.
- To educate the public on the symptoms of carbon monoxide poisoning and the appropriate treatment should CO poisoning be suspected.

- To educate the public about the protection of gas meters from damage by automobiles or other objects.

2. PUBLIC AWARENESS POLICY:

Our goal is to provide safe, reliable gas service to our customers and ensure the safety of those living and/or working near our gas pipelines. Public awareness is a critical component of our overall safety program. Every employee of Athens Utilities Gas Department is committed to fulfilling our public awareness responsibilities as described in this Public Awareness Program.

3. PREVENTION AND RESPONSE:

The City of Athens Gas Department's Public Awareness Program is intended to help the public understand the steps that the public can take to prevent and respond to pipeline emergencies. "Prevention" refers to the objective of reducing the occurrences of pipeline emergencies caused by third party damage (versus other causes under the control of the Gas Department) through awareness of safe excavation practices and the use of the National One Call System. "Response" refers to the objective of the City of Athens Gas Department to communicate to the public the appropriate steps to take into account in the event of a pipeline release or emergency.

4. MANAGEMENT SUPPORT:

The City of Athens Gas Department is a municipal owned system with the governing body made up of the Mayor and City Council. The governing body of the City of Athens, Alabama recognizes the objectives of the City of Athens Gas Department's Public Awareness Program (PROGRAM) and gives its full support including funding and resource requirements. A resolution to this effect was made and approved and adopted on May 29, 2007 of which a copy is attached hereto and made a part of this Program. An updated resolution will be made and approved anytime there are new City Council members elected or a new Mayor is elected.

ADOPTED and APPROVED this, the 11th day of June, 2018.

/s/ Chris Seibert

PRESIDENT, CITY COUNCIL,
CITY OF ATHENS, ALABAMA

/s/ William R. Marks

MAYOR, CITY OF ATHENS, ALABAMA

ATTEST:

/s/ Annette Barnes

CITY CLERK, CITY OF ATHENS, ALABAMA

The motion was seconded by Councilman Travis and was unanimously carried.

Councilman Wales introduced the following resolution:

RESOLUTION

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF ATHENS, ALABAMA, that the Public Works Department's denial of an alcoholic beverage license (sale of retail beer and wine for off-premises consumption) for a convenience store at 210 West Elm Street is upheld and affirmed, and that Jay Ramaji, Inc.'s appeal is denied. The City Council finds that the Public Works Department correctly applied the City's ordinances in this case.

The motion was seconded by Councilman Harper and upon the said motion being put to vote, the following vote was recorded: YEAS: Councilmen Seibert, Wales Harper and Travis with Councilman Cannon abstaining.

* * *

There being no further business to come before the meeting, Council President Seibert asked if there were any objections to adjourning the meeting. There being none, the meeting was duly and properly adjourned.

/s/ Chris Seibert

PRESIDENT, CITY COUNCIL

ATTEST:

/s/ Annette Barnes
CITY CLERK