

MINUTES OF A REGULAR MEETING OF
THE MAYOR AND CITY COUNCIL OF
THE CITY OF HAMILTON, ALABAMA

February 2, 2009

A regular meeting of the Mayor and City Council of Hamilton, Alabama was held on February 2, 2009 at 6:00 p.m. in the Auditorium of Hamilton City Hall. Mayor Holliday called the meeting to order and welcomed all guests. McDavid Franks led the Pledge of Allegiance and gave the invocation. Those present were:

Mayor:	Bobby Holliday
Council:	McDavid Franks Scotty Sanderson Paul Stidham April Steele
Absent:	Annette Sherrill
City Clerk:	Jan Williams
Guests:	Robyn Zills Scott Hunt Mike Williams Hytower Lewis John Berryhill Wade Williams Judy Mays David Hightower Kieran Jackson

The first order of business was a motion by McDavid Franks that the minutes from the last meeting be approved. April Steele seconded the motion which passed unanimously.

Scotty Sanderson made a motion to approve the Accounts Payable Bills. Paul Stidham seconded the motion. All voted in favor.

Scotty Sanderson stated the reason he could not vote on hiring an additional firefighter and purchasing new equipment was due to the condition of the current economy.

The next item on the agenda was a recommendation to hire Jason Hall as a full-time firefighter for the Fire Department at \$11.75 per hour with effective hire date February 6, 2009. McDavid Franks made a motion to approve the recommendation and Paul Stidham seconded the motion. Voting was as follows: Ayes: McDavid Franks, Paul Stidham and April Steele. Nays: Scotty Sanderson.

April Steele stated the Fire Department will be able to cut back from a 48 hour per week to a 42 hour per week with an additional firefighter. The cost to the City, with the reduction in hours and new employee, would be approximately \$7,000.00.

At this time a recommendation was made to approve Pro-Fire Equipment Company's low bid of \$304,870.00 for the purchase of a Pumper Truck for the Fire Department. McDavid Franks made a motion to approve the recommendation and April Steele seconded the motion. Voting was as follows: Ayes: McDavid Franks, Paul Stidham and April Steele. Nays: Scotty Sanderson.

Paul Stidham made a motion to approve \$970.00 to match LSTA grant of \$3,880.00 for the library. McDavid Franks seconded the motion which passed unanimously.

At this time Paul Stidham made a motion to purchase insurance for the Fulton Bridge Water Tank and Speculative Building. McDavid Franks seconded the motion. All voted "Yes".

The next item was a recommendation to purchase a Dodge Charger police car through the State of Alabama bid program for \$23,000.00. April Steele seconded the motion and voting was as follows: Ayes: McDavid Franks, Paul Stidham and April Steele. Nays: Scotty Sanderson.

McDavid Franks made a motion for immediate consideration of Ordinance #2009-1 requiring CenturyTel to pay 3% of the gross revenues derived from the telephone services provided within the city limits of Hamilton. Scotty Sanderson seconded the motion which passed unanimously. The following was presented:

ORDINANCE NO. 2009-1

WHEREAS, the City of Hamilton (hereinafter referred to as the "City") is empowered to enact ordinances in furtherance of its police powers, its duty to protect and to promote the general health and welfare of its citizens and is specifically empowered to regulate the use of the streets for the erection of telegraph, telephone, and all other systems of wires and conduits and generally to

control and regulate the use of the streets for any and all purposes.

WHEREAS, the governing body of the City does hereby find and declare that public convenience and necessity requires the granting of a franchise to use the streets for the erection of telegraph, telephone, and all other systems of wires and conduits.

WHEREAS, the governing body of the City does hereby find and declare that the privilege to use the streets, avenues, alleys, or public places of the City for the construction or operation of any public utility or private enterprise is a valuable privilege that should not be awarded without the levy of a franchise fee upon said privilege.

NOW, THEREFORE, for the foregoing purposes, and other legitimate purposes, **BE IT ORDAINED BY THE CITY OF HAMILTON, ALABAMA, THROUGH ITS DULY ELECTED COUNCIL,** as follows:

ARTICLE I. Franchise. In consideration of the benefits to accrue to the City and based upon a finding of public convenience and necessity, CenturyTel of Alabama, LLC, dba CenturyTel ("CenturyTel"), its successors, and assigns, is hereby given, granted, invested with the right, authority, privilege, consent and franchise to use the

streets, avenues, and public ways of the City for the purpose of engaging in the business of operating a telephone system including the right and privilege to construct, erect, operate and maintain, in, upon, along, across, above, over and under the streets, alleys, public ways and public places now laid out or dedicated and all extensions thereof, and additions thereto, in the City, poles, wires, cables, underground conduits, manholes, and other telephone conductors and fixtures necessary for the maintenance and operation of CenturyTel's business in the City.

ARTICLE II. Franchise Fee. During the Term of this Agreement, CenturyTel shall pay to City a fee equal to 3% of the Gross Revenues derived from the telephone services provided within the municipal boundaries of the City. This fee shall be paid quarterly and paid to the City within 45 days after the end of the preceeding quarter for which payment is made. CenturyTel may designate that portion of the subscriber's bill attributable to fees imposed pursuant to this Ordinance and recover from the subscriber as a separate line item of the bill.

ARTICLE III. Gross Revenues. The term Gross Revenues shall include the following: All revenue

collected by CenturyTel arising from or attributable to the provision of telephone service by CenturyTel within the City including, but not limited to: fees charged subscribers for any basic, optional, premium, and/or business service; installation and re-connection fees, maintenance fees, upgrade, downgrade or other fees.

ARTICLE IV. Non-exclusivity. The grant of the right, privilege and franchise herein to Centurytel, to use and otherwise occupy the streets, alleys and public ways and places for the purposes herein set forth shall be non exclusive and the City reserves the right to grant other franchises or rights in said streets, alleys, public ways or public places, to any other person, firm or corporation at any time. This franchise is not exclusive.

ARTICLE V. Duration/Term of Franchise. The duration and term of this franchise and all rights and authorities herein granted shall be for a maximum period of twenty (20) years from the date of the final adoption of this ordinance. This franchise may be terminated sooner in accordance with the provisions hereof.

This franchise and the rights, privileges and authority hereby granted shall take effect as the first day of the first month next following its final enactment and upon publication as herein stated. The operator shall,

within ten (10) days after the effective date, file with the City Clerk its unconditional acceptance of this franchise and promise to comply with and abide by all the provisions, terms and conditions. Such acceptance of promise shall be in writing duly executed and sworn to by or on behalf of the grantee before a notary public or other officer authorized by law to administer oaths. Should the operator fail to comply with the aforesaid, it shall acquire no rights, privileges or authority under this franchise whatever.

ARTICLE VI. Compliance with Applicable Laws. The grantee shall, at all times during the term of this franchise, be subject to and comply with all applicable laws, ordinances and regulations, including the lawful exercise of the police power by the City.

ARTICLE VII. Service Area. This franchise relates to the present territorial corporate limits of the City of Hamilton and to any area henceforth added thereto during the term of this franchise.

ARTICLE VIII. Police Power. It is expressly understood that, in granting this franchise the City of Hamilton does not waive or surrender any of its rights or police powers in exercising governmental control. The grantee shall

comply with all reasonable regulations and ordinances duly adopted pursuant to the police powers and governmental authority of the governing body of the City and the City, by entering into this franchise, does not subordinate any of its powers of governmental authority to the franchise herein being granted. Further, there is hereby reserved to the City every right and power which is required to be reserved by the provision of this ordinance or by any law of the City, and the operator, by its acceptance of any franchise, agrees to be bound thereby and to comply with any action or requirements of the City its exercise of such rights or powers heretofore or hereinafter enacted or established.

ARTICLE IX. Use of Streets.

(a) All transmission and distribution structures, lines, and equipment erected by the grantee within the City shall be so located as to cause minimum interference with the rights and reasonable convenience of property owners who adjoin any of the said streets.

(b) In case of a disturbance of any street, easement or paved area or other property the grantee shall, at its own cost and expense and in a manner approved by the City, replace and restore such street, easement or paved area or other property in as good a condition as before the work involved in such a disturbance was done.

(c) If at any time during the period of a franchise the City shall lawfully elect to alter or change the grade of any street, the grantee upon reasonable notice by the City, shall remove, relay and relocate its pole, wires, cables, underground conduits, manholes and other fixtures at its own expense.

(d) Any poles or other fixtures placed in or adjacent to any street by the grantee shall be placed in such manner as to comply with all requirements of the City.

(e) The grantee shall, at the request of any person holding a moving permit duly and lawfully issued by the City, temporarily raise or lower its wires to permit the moving of buildings. The expense of such temporary removal or raising or lowering of raising shall be made by the person requesting the same, and the grantee shall have the authority to require such payment in advance. The grantee shall be given not less than forty-eight (48) hours notice to arrange for such temporary wire changes.

ARTICLE X. Non-Assignment. The rights and privileges herein granted to the operator shall not be assigned, sublet or transferred without the prior written consent of the City Council, such consent being duly adopted by resolution as spread upon the minutes of the City Council.

ARTICLE XI. Reservation of Rights. The City shall have the right to inspect the books, records, maps, plans,

income tax returns and other materials of the grantee at any time during normal business hours.

ARTICLE XII. Severability. If any section, subsection, sentence, clause, phrase, portion of this ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions hereof.

ADOPTED and **ORDAINED** this the 2nd day of February, 2009.

Mayor

Attest:

City Clerk

I, Jan Williams, City Clerk of the City of Hamilton, certify that the foregoing Ordinance No. _____ is a true and correct copy of that certain Ordinance adopted by the City of Hamilton, on this the 2nd day of February, 2009.

WITNESS, my hand this _____ day of _____, 2009.

(SEAL)

(CITY CLERK)

April Steele made a motion that Ordinance #2009-1 be approved for passage. McDavid Franks seconded the motion. All voted "Yes".

April Steele made a motion for immediate consideration of Ordinance #2009-2 to regulate and prevent the running at large of dogs or other animals, to provide confinement of vicious dogs and to regulate and prevent cruelty and inhumane treatment to dogs and cats. McDavid Franks seconded the motion. All voted in favor. The following was presented:

ORDINANCE NO. 2009-2

WHEREAS, the City of Hamilton (hereinafter referred to as the "City") is empowered to enact ordinances to protect and to promote the general health and welfare of its citizens and is specifically empowered to regulate and prevent the running at large of dogs or other animals, to provide for the safe and proper confinement of vicious dogs and to regulate and prevent cruelty and inhumane treatment to dogs and cats; the City does hereby ascertain and declare the following ordinance is necessary and proper to preserve the health, promote the prosperity and improve

order, comfort and convenience of the inhabitants of the municipality; and,

WHEREAS, the governing body of the City of Hamilton does hereby find and declare that allowing dogs to run at large and not be confined to the premises of the person having charge over such dog and or the premises on which such dog or dogs are regularly kept; that allowing vicious dogs to run at large and not be securely confined indoors or in a securely enclosed and locked pen or structure; and that allowing cruel and harsh treatment to dogs and cats is a concern to the citizens of Hamilton and, due to the growth and development of the City, has become a nuisance and it is the desire of the governing body of the City to enact an ordinance to address and attempt to alleviate this concern; and,

WHEREAS, requiring that every person owning or having charge of any dog or dogs to, at all times, confine such dog or dogs to the limits of his/her own premises or the premises on which such dog or dogs is or are regularly kept; that requiring every person owning or having charge of a vicious dog to properly confine said dog and that regulating cruelty to dogs and cats is not an undue burden or hardship and will promote order and protect the general health and welfare of the citizens of Hamilton.

NOW, THEREFORE, for the foregoing purposes, and other legitimate purposes, BE IT ORDAINED BY THE CITY OF HAMILTON, ALABAMA, THROUGH ITS DULY ELECTED COUNCIL, as follows:

ARTICLE I: PROHIBITING ALL PERSONS HAVING CHARGE OF ANY DOG FROM ALLOWING OR PERMITTING SAID DOG TO RUN AT LARGE AND REQUIRING ALL SUCH DOGS TO THE LIMITS OF SUCH PERSONS OWN PREMISES OR THE PREMISES ON WHICH SUCH DOG OR DOGS IS OR ARE REGULARLY KEPT AND ESTABLISHING THE PENALTY OF VIOLATIONS OF THIS ARTICLE.

SECTION 1: Every person owning or having in charge any dog or dogs shall at all times confine such dog or dogs to the limits of his own premises or the premises on which such dog or dogs is or are regularly kept. Nothing in this section shall prevent the owner of any dog or dogs or other person or persons having such dog or dogs in his or their charge from allowing such dog or dogs to accompany such owner or other person or persons elsewhere than on the premises on which such dog or dogs is or are regularly kept, provided such person or persons owning or having charge over any dog or dogs shall, at all times, keep control over such dog or dogs through the use of a leash or harness or through other means sufficient to keep the dog or dogs within the premises of the person or persons owning or having charge over such dog or dogs.

SECTION 2: Nothing in this section shall be construed to limit or affect, in any manner, the use or keeping of guide dogs accompanying a blind person nor shall it affect or limit the use of official police dogs or search dogs.

SECTION 3: If any person has a claim pursuant to this Article, then that person shall file a formal written complaint with the Hamilton Municipal Court Clerk and/or the Hamilton Police Department.

SECTION 4: Any person, firm, corporation, partnership or other entity found to be in violation of any provision of this Article shall be guilty of a misdemeanor and shall, upon conviction, be punished by a fine of not less than ten (\$10.00) dollars and not more than fifty (\$50.00) dollars.

ARTICLE II: PROHIBITING ALL PERSONS HAVING CHARGE OF ANY VICIOUS DOG FROM ALLOWING OR PERMITTING SAID DOG TO RUN AT LARGE AND REQUIRING ALL SUCH DOGS TO BE CONFINED IN A SECURE MANNER AND ESTABLISHING THE PENALTY OF VIOLATIONS OF THIS ARTICLE.

SECTION 1: Definition of terms. As used in this Article:

a. "Owner" means any person, firm, corporation, organization or department possessing or harboring or having the care or custody of a dog.

b. "Vicious Dog" means:

1. Any dog with a known propensity, tendency or disposition to attack unprovoked, to cause injury to, or

otherwise threaten the safety of human beings or domestic animals; or

2. Any dog which because of its size, physical nature, or vicious propensity is capable of inflicting serious physical harm or death to humans and which would constitute a danger to human life or property if it were not kept in the manner required by this ordinance; or

3. Any dog which, without provocation, attacks or bites, or has attacked or bitten, a human being or domestic animal; or

4. Any dog owned or harbored primarily or in part for the purpose of dog fighting, or any dog trained for dog fighting.

c. A vicious dog is "unconfined" if the dog is not securely confined indoors or confined in a securely enclosed and locked pen or structure upon the premises of the owner of the dog. The pen or structure must have secure sides and a secure top attached to the sides. If the pen or structure has no bottom secured to the sides, the sides must be embedded into the ground no less than one foot. All such pens or structures must be adequately lighted and kept in a clean and sanitary condition.

SECTION 2: Confinement. The owner of a vicious dog shall not suffer or permit the dog to go unconfined.

SECTION 3: Leash and Muzzle. The owner of a vicious dog shall not suffer or permit the dog to go beyond the premises of the owner unless the dog is securely muzzled and restrained by a chain or leash, and under the physical restraint of a person. The muzzle shall be made in a manner that will not cause injury to the dog or interfere with its vision or respiration, but shall prevent it from biting any human or animal.

SECTION 4: Signs. The owner of a vicious dog shall display in a prominent place on his or her premises a clearly visible warning sign indicating that there is a vicious dog on the premises. A similar sign is required to be posted on the pen or kennel of the animal.

SECTION 5: Dog Fighting. No person, firm, corporation, organization or department shall possess or harbor or maintain care or custody of any dog for the purpose of dog fighting, or train torment, badger, bait or use any dog for the purpose of causing or encouraging the dog to attack human beings or domestic animals.

SECTION 6: Penalties. Whoever violates any provision of this ordinance shall be guilty of a gross misdemeanor and may be punished by a fine of not less than \$100.00 and not more than \$500.00, or imprisonment of not more than 90 days in jail, or by both fine and imprisonment.

ARTICLE III: PROHIBITING CRUEL TREATMENT OF DOGS AND CATS AND ESTABLISHING THE PENALTY OF VIOLATIONS OF THIS ARTICLE.

SECTION 1. Definition of Terms. As used in this Article:

a. The word "cruel" as used in this Article shall mean: Every act, omission, or neglect, including abandonment, where unnecessary or unjustifiable pain or suffering, including abandonment, is caused or where unnecessary pain or suffering is allowed to continue.

b. The words "dog or cat" as used in this Article shall mean any domesticated member of the dog or cat family.

SECTION 2. In a cruel manner, a person shall not overload, overdrive, deprive of necessary sustenance or shelter, unnecessarily or cruelly beat, injure, mutilate, or cause the same to be done, to a dog or cat.

SECTION 3. Upon an alleged violation of this Article, the City of Hamilton may appoint one or more trained agents to inspect the allegations of violations of this Article, to protect dogs or cats from any cruelty charged, and to prevent any cruelty to any dog or cat. Any appointment made pursuant to this section shall be made at a meeting of the local governing body duly called with notice.

SECTION 4. Any law enforcement officer and any agent of the municipality appointed pursuant to this Article, having reasonable belief, evidence of, or having found a dog or cat to be neglected or cruelly treated may perform either of the following:

a. Remove the dog or cat from its present location.

b. Order the owner of the dog or cat to provide certain care to the dog or cat at the owner's expense without the removal of the dog or cat from its present location.

Neither the City of Hamilton, nor any employee or agent of the City of Hamilton, acting in good faith, shall be liable for any actions taken under this section regardless of whether or not the dog or cat is returned to its owner after impoundment.

SECTION 5. The law enforcement officer or any agent of the City of Hamilton, without the requirement of any fee or charge for court costs, shall immediately petition the municipal court for a hearing to be set within 20 days of seizure of the dog or cat or issuance of the order to provide care. The hearing shall be held not more than 10 days after the setting of the date to determine whether the owner, if known, is able to provide adequately and protectively for the dog or cat and is fit to have custody of the dog or cat. The hearing shall be concluded and the

court order entered within 30 days after the date the hearing is commenced.

The owner, at least five days prior to holding such a hearing, shall be notified of the date of the hearing to determine if the owner is able to provide adequately and protectively for the dog or cat and is fit to have custody of the dog or cat.

SECTION 6. The law enforcement officer or agent of the City of Hamilton may provide for the dog or cat until either the dog or cat is returned to the owner by the court, or the court refuses to return the dog or cat to the owner and implements one of the procedures pursuant to this Article.

If the owner is adjudged by the court, with certification from a licensed veterinarian, to be able to provide adequately for and have custody of the dog or cat, the dog or cat shall be returned to the owner.

If the court determines that the owner of the dog or cat is unable, unwilling, or unfit to adequately provide for, protect, and have custody of the dog or cat, the court may implement the following by court order:

a. Upon the testimony of the person taking custody, a licensed veterinarian, or another qualified witness that the dog or cat requires destruction or other disposition for humane

reasons or is of no commercial value, order the dog or cat destroyed or remanded directly to the custody of the dog or cat control, humane shelter, or similar facility designated by the City of Hamilton or other appropriate person to be disposed of by the facility or person in a humane manner, whether it be by sale, adoption, destruction or other humane dispositions.

b. Upon proof of the costs incurred by the agent or agency having custody of the dog or cat, order that the owner pay any costs incurred for the care of the dog or cat and for any costs incurred in destroying the dog or cat. A separate hearing may be held by the judge of the municipal court on the assessment of costs, which assessment shall include all costs of notice and hearing. In the event the court finds the owner innocent of charges, the owner shall not be charged with costs of the care of the dog or cat in custody.

If the court determines that the owner is unable, unwilling, or unfit to adequately provide for and protect any other dog or cat in the custody of the owner that was not originally seized by the agency, agent, or other person when the dog or cat in custody was seized, the court may enjoin the owner of further possession or custody of the unseized dog or cat.

SECTION 7. This Article shall not apply to any of the following persons or institutions:

a. Academic and research enterprises that use dogs or cats for medical or pharmaceutical research or testing.

b. Any owner of a dog or cat who euthanizes the dog or cat for humane purposes.

c. Any person who kills a dog or cat found outside of the owned or rented property of the owner or custodian of the dog or cat when the dog or cat threatens immediate physical injury or is causing physical injury to any person, animal, bird, or silvicultural or agricultural industry.

d. Any person who shoots a dog or cat with a BB gun not capable of inflicting serious injury when the dog or cat is defecating or urinating on the person's property.

e. A person who uses a training device, anti-bark collar, or an invisible fence on his or her own dog or cat or with permission of the owner.

SECTION 8. This Article shall not be construed to repeal other criminal laws. Whenever conduct prescribed by any provision of this Article is also prescribed by any other provision of law, the provision which carries the more serious penalty shall be applied.

SECTION 9. Penalties. Whoever violates any provision of this ordinance shall be guilty of a gross misdemeanor and

may be punished by a fine of not less than \$100.00 and not more than \$1000.00, or imprisonment of not more than six months in jail, or by both fine and imprisonment.

ARTICLE IV. IF ANY ARTICLE, SECTION, SENTENCE, CLAUSE, PHRASE, OR PART OF THIS ORDINANCE IS FOR ANY REASON DECLARED TO BE UNCONSTITUTIONAL BY THE VALID JUDGMENT OR DECREE OF A COURT OF COMPETENT JURISDICTIONS, SUCH DECISION SHALL NOT AFFECT ANY REMAINING ARTICLES, SECTIONS, SENTENCES, CLAUSES, PHRASES, OR PARTS OF THIS ORDINANCE.

ARTICLE V. THIS ORDINANCE ADOPTS THE PRINCIPLES OF CRIMINAL LIABILITY AS EXPRESSED IN THE CODE OF ALABAMA, AND AS AMENDED FROM TIME TO TIME.

ARTICLE VI. THIS ORDINANCE SHALL BE IN FORCE AND EFFECT FROM AND AFTER ITS ADOPTION AND PUBLICATION.

ADOPTED and ORDAINED this the 2nd day of February, 2009.

Mayor

Attest:

City Clerk

I, Jan Williams, City Clerk of the City of Hamilton, certify that the foregoing Ordinance No. _____ is a true and correct copy of that certain Ordinance adopted by the City of Hamilton, on this the 2nd day of February, 2009.

WITNESS, my hand this _____ day of _____,
2009.

(SEAL)

(CITY CLERK)

Scotty Sanderson made a motion that Ordinance #2009-2 be approved for passage. McDavid Franks seconded the motion which passed unanimously.

At this time Hytower Lewis addressed the Council about preservation of historical landmarks in Marion County. He also talked about a previous watershed project for the Buttahatchee River that former Speaker of the House Rankin Fite had tried to get developed several years ago. He urged the Mayor and City Council to contact our local and United States legislators, and to work with the Marion County Commission on getting the Watershed developed.

John Berryhill also addressed the Council stating that the Watershed Project would protect the Indian Mounds, which are located next to the Buttahatchee River in the city limits of Hamilton. He said the Watershed would be a great opportunity to control the flow of the River.

There being no further business, McDavid Franks motioned that the meeting be adjourned. April Steele seconded the motion, following a unanimous vote in favor Mayor Holliday declared the meeting adjourned.

Mayor

City Clerk

Council:

