

ORDINANCE NO. 2023 – 02
TO AMEND CHAPTER 48, ARTICLE VII, SECTION 48 OF THE CITY OF CULLMAN CODE OF ORDINANCES

BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF CULLMAN, ALABAMA, AS FOLLOWS:

SECTION I. **Purpose.** In order to preserve and protect the rights guaranteed under the First Amendment of the United States and Alabama Constitutions and to provide for the safe and orderly use of public property, for both First Amendment activity and activity that is not protected by the First Amendment, this article is intended to establish reasonable time, place, and manner regulations for the use of public property characterized as traditional public forums. The regulations are designed to be content-neutral, narrowly tailored to serve significant governmental interests, and to leave open ample alternative channels for communications of information. The regulations are also intended to coordinate multiple uses of limited space; assure preservation of public facilities and improvements; prevent dangerous, unlawful, or impermissible uses of public property; protect the public safety; ensure that City resources are deployed efficiently and effectively; provide for fees and cost recovery; address secondary harms; and authorize and establish objective standards in the administration of this article.

SECTION II. Chapter 48, Article VII, Section 48 (“Parades, Processions and Public Assemblies”) of the *Code of Ordinances City of Cullman* is hereby deleted in its entirety, re-titled “Parades, Processions, Public Assemblies and Special Events,” and replaced by the following:

Sec. 48-191. - Definitions.

“*Appropriate and required City official*” means the representative, whether one or more, of the City in which the organizer must receive written approval from in the special event permit application.

“*Assembly*” means a gathering of individuals organized by an event organizer for a common purpose, which is intended to remain in the same general location.

“*Basic event*” means an organized event requiring a permit which:

- (a) Does not require or include for the conduct of the event the use of an enhancement;
- (b) Does not require approval, licensing, or permitting pursuant to other City laws, including the city's alcoholic beverage laws, technical and fire codes, and business license code, and laws administered by the health department;
- (c) Does not require City services in excess of the standard complement; and
- (d) Is not expected to have more than five-hundred (500) participants at any one time during the event.

“*Capacity limit*” means the capacity limit for the public space upon which an assembly is to be conducted, as follows:

- (a) The stated capacity of a given public space established by code, policy or practice;
- (b) If there is no stated capacity, then the capacity of the public space based on a formula of not less than nine (9) square feet per participant, which is arrived at by taking the square footage of the public area generally available for occupancy by participants and dividing the number by nine; or
- (c) An adjusted increase or decrease in the capacity limit mutually established by the Fire Chief or his/her designee at the time of permitting or during the event conduct, should the Fire Chief or his/her designee determine that such adjustment is warranted considering the public safety and event conduct.

“*City services*” means City services provided or required by the City of Cullman as a result of event conduct. City services are those services which are generally available services of the city, including labor and materials, which are provided by the City for an organized event, including public safety services such as safety, traffic and crowd control, public works services, and the use of public structures, instrumentalities, or equipment. The term does not include services provided under a contract with the City or an employee of the City on an extra-duty or off-duty status, including traffic control or security.

“*Conditional approval*” means an approval of an application for a special event permit that is complete in all respects except for required approval, licensing, or permitting pursuant to other City laws or laws administered by the health department, and is conditioned upon meeting the requirements stated.

“*Enhancements*” include facilities, structures, equipment, instrumentalities, or animals used in the conduct of an event that require permitting under the city's technical or fire codes or are reasonably likely to create a secondary harm, such as stages, fencing, generators, barricades, pyrotechnics, inflatables, motorized vehicles, utility poles, floats, booths, canopies, and tents. The term does not include small objects that can be accommodated within the public space used for the event without implicating the foregoing requirement or concern, such as coolers, signage, folding chairs or tables, small tents or canopies, accommodation for the handicap, or small portable equipment that does not require electricity.

Enhanced event means an organized event which:

- (a) Requires or includes the use of an enhancement;
- (b) Requires approval, licensing, or permitting pursuant to other City laws, including but not limited to the City's noise ordinance, alcoholic beverage laws, technical and fire codes, and business license code, and laws administered by the health department;
- (c) Requires City services in excess of the standard complement; or
- (d) Is expected to have more than five-hundred (500) participants at any one time during the event.

“*Event conduct or conduct of the event*” means the time, place, or manner in which an event is conducted by or for participants, including event set-up and take-down, and which has nothing to do with the content of protected forms of speech, or the conduct of non-participants including counter-protesters or hecklers.

“*Event venue*” means any contiguous or connected area of property located within the jurisdictional boundaries of the City of Cullman, including privately owned property, (improved or unimproved or both and including parcels separated by a street or other public way but coordinated as a whole for the event) under common or coordinated control and used for a special event. An event venue may consist of one (1) or more patron gathering spaces, in particular indoor and outdoor spaces but also other types of spaces with different occupancy limits.

“*Event organizer or organizer*” means a person organizing, sponsoring, initiating, coordinating, promoting, or holding an organized event. The term does not include a person who provides only incidental funds or support for an organized event and who does not otherwise have responsibility for the event.

“*Notice*” means the sending of any notice or notification required under this article to the appropriate address, by personal delivery, facsimile, electronic mail, first class mail, or certified mail return receipt requested; and the receipt thereof within the time specified in this article, which receipt shall be deemed to occur as follows: upon delivery in the case of personal delivery, upon confirmation of delivery in the case of facsimile and electronic mail, three days after mailing in the case of first class mail, and as indicated in the return receipt in the case of certified mail.

“*Organized Event*” means an assembly, event, parade, procession, demonstration or a combination thereof.

“*Parade*” means any march or procession of persons or vehicles organized for marching or moving on the public streets or sidewalks in an organized fashion or manner or any march or procession of persons or vehicles represented or advertised to the public as a parade.

“*Park*” means public park grounds and facilities under the control of the City which are dedicated, designed, or intended for specific uses, including recreation centers, senior citizen centers, park buildings, nature preserves, nature centers, sports facilities, model airplane fields, tot lots, lakes, and picnic shelters. This shall include the sidewalks within but not immediately adjacent to the park, unless expressly permitted otherwise.

“*Participants*” mean only those persons actually taking part in the event, including those organizing the event, those invited to attend, those paying to attend, or those for whom the event is organized including the general public.

“*Public facilities*” mean those municipal buildings, structures, facilities, or improvements dedicated, designed, or intended for specific uses which are not considered to be traditional public forums, including civic centers, sports facilities, park facilities, cemeteries, public garages, parking lots, museums, or other such municipal buildings, structures, facilities, or improvements.

“*Restoration and reimbursement costs*” mean those losses, damages, costs, or expenses that are incurred or suffered by the City as a result of event conduct for which the City is due to be reimbursed or compensated.

“*Secondary effect/harm*” means the effects, danger, damage, injury, or unreasonable inconvenience, interference, demand, or annoyance, to or on adjacent or nearby uses, the general public, public property, the use of public space, other organized events, City resources, or public safety, resulting or likely to result from event conduct.

“*Special event*” means any assembly of persons or an enhanced event which is required to obtain a permit which also meets one or more of the following seven criteria. Each of the first four criteria define a planned event. Each of the last three criteria define a “pop-up” event.

- (a) ATTENDANCE ANTICIPATED TO EXCEED VENUE CAPACITY (Planned event). It is reasonably anticipated that the number of persons who will attempt to attend the event at any point in time will exceed the number of persons permitted within the event venue. Event venue capacity shall be the aggregate of the capacity of all patron gathering spaces within the venue. The capacity of each gathering space shall be determined (i) by building, life safety code, State Fire Marshal regulations or other law applicable to that space, and (ii) for each other space at the rate of not less than one (1) person for every nine (9) square feet of horizontal space. Parking lots and driveways and pedestrian ingress and egress routes used as such during the event shall not be considered gathering spaces.
- (b) EVENT HELD WOULD VIOLATE A CITY ORDINANCE WITHOUT APPROVAL. (Planned Event). It is reasonably anticipated and foreseeable that the event would lead to the violation of a City ordinance which would require permitting and approval to otherwise not be subject to said violation.
- (c) VEHICLE PARKING ANTICIPATED TO EXCEED ON-SITE CAPACITY (Planned event). It is reasonably anticipated that the number of persons anticipated to attend the event by vehicle will exceed on-site event parking based upon an average factor of five (5) persons per vehicle.
- (d) CITY SERVICES ANTICIPATED TO BE REQUIRED (Planned event). The gathering is reasonably anticipated to require for its safe and successful execution the provision or coordination of City services by the City or by the event organizer to a material degree above that which the City routinely provides under ordinary, everyday circumstances. City services include, but are not limited to fire and police protection, crowd control, traffic control, parking control, street closure, emergency medical services, garbage or trash facilities or clean-up and sanitation facilities or other public works’ services.
- (e) ACTUAL ATTENDANCE EXCEEDS CAPACITY OF THE VENUE (Pop-up Event). The number of persons attending and attempting to attend an unpermitted assembly of persons exceeds at any point in time the number of persons permitted within the event venue or within any gathering space within the event venue.
- (f) ACTUAL VEHICLE CONGESTION (Pop-up Event). The number of vehicles actually parked and attempting to park to permit the occupants to join an unpermitted assembly exceeds at any point in time on-site parking available.
- (g) CITY SERVICES/RESOURCES ACTUALLY REQUIRED (Pop-up Event). The City services required for an unpermitted assembly exceed at any point in time the level of City services typically available from the City for that time and season after taking into consideration the similar, municipal-type services provided by the person or persons, if any, encouraging the assembly.

All special and enhanced events are divided into three (3) classes:

- (a) A “small event” being an event with an anticipated, maximum attendance at any point in time of five hundred (500) persons or less.
- (b) A “medium event” being an event with an anticipated, maximum attendance at any point in time of more than five hundred (500) but less than five thousand (5,000) persons.

- (c) A "large event" being an event with an anticipated, maximum attendance at any point in time exceeding five thousand (5,000) persons.

Any planned event to be held in/on any City owned property is presumed to be a special event unless the event organizer shows clear and convincing evidence to the contrary. This presumption can be rebutted only by the event organizer providing clear and convincing evidence that, based upon the nature, location, time and season of the event it is almost certain that the event will not draw a spontaneous crowd in excess one (1) person for not less than every nine (9) square feet of City owned property, and no enhancements will be used. Only then may the City classify the event as a basic event for purposes of this article.

"Special event permit or event permit" means a permit issued pursuant to this article.

"Sidewalk" means that portion of a public right-of-way under the control of the City that is generally between the curb line or lateral line of the street and the adjacent property line, or public easements located on private property, which portion is dedicated or intended for use by pedestrians.

"Street" means any public road, thoroughfare, avenue, boulevard, parkway, drive, or other public way dedicated or used primarily for purposes of vehicular traffic that is under the control of the City.

Sec. 48-192. – Permit required; purpose.

It shall be unlawful to promote, organize, stage or hold, or to assist in organizing or holding, or to take part or participate in, any event, parade, procession or other demonstration in the streets or other public ways of the City, or that is in violation of any City Ordinance, including but not limited to noise ordinances, pyrotechnic ordinances, etc., unless a permit therefor has been secured from the City Council. The purpose of this law is to ensure that special events do not endanger public health or safety and to permit the City to understand and prepare for known collateral and secondary effects and/or harms of special events in the community. The permitting process is not intended to control or regulate special events based on their content, the nature or type of speech involved, or any speaker's viewpoint.

Sec. 48-193. – Application; approval and issuance.

- (a) To secure such permit, written application shall be filed through the City Clerk's office to the governing body of the City pursuant to section 48-198 of this article.
- (b) The event organizer must first obtain the written approval of the appropriate and required City officials through his/her/their signature and/or any comments or conditional approval on the permit application pursuant to the requirements in section 48-198.
- (c) Upon approval by the appropriate and required City officials, the governing body of the City, at its next regularly scheduled meeting, shall grant a written permit for such assembly, event, parade, procession or other demonstration, prescribing the parks, streets, sidewalks, other public ways which may be used therefor, or the private property located within the City limits which through enhancements would otherwise be in violation of the laws, ordinances or regulations of the City, unless in its judgment the health, safety and general welfare of the public would be adversely affected.

Sec. 48-194. - Exception for funeral processions.

This article shall not apply to funeral processions.

Sec. 48-195. – Suspension of permit; remedy of excess.

- (a) Each plan included in the special event permit application, and any conditions imposed by the City pursuant to its ordinances and regulations, shall be continuously implemented during the special event, and any failure to do so shall result in the automatic suspension of the permit and suspension of the event until full implementation is made.
- (b) Should the actual attendance in the event venue or any gathering space within the event venue and including persons attempting to enter the event, or the actual number of vehicles or the City services actually required at a

permitted event exceed for a period of one (1) hour the number or level anticipated by the application and permit, it shall become the duty of all persons owning or able to control the event or the event venue to take reasonable, diligent, and constant measures to reduce the excess until achieved. The failure of any such person to immediately, after notice from the City, make a reasonable, diligent and constant effort to reduce the excess shall be a violation of this law punishable by civil penalties specified in this Article and criminal. The Chief of Police or his/her designee, and/or Fire Chief or his/her designee is authorized to approve actions to partially or slowly reduce the excess as compliance if he/ she finds (i) that such person is acting in good faith after notice of the excess, (ii) that full and immediate elimination of the excess will not be feasible and (iii) that it would be safer to taper down the event rather than to abruptly close the venue or stop the event.

(c) Conversely, should actual attendance fall below the permit estimates for a sustained period and appear likely to continue at reduced levels, the Chief of Police or his/her designee, and/or Fire Chief or his/her designee shall be authorized, but not required, to allow the applicant to reduce staffing to the minimums reasonably required.

Sec. 48-196. – Spontaneous unpermitted assembly (pop-up events).

The City has found and determined that some special events occur spontaneously, without a permit, especially if attendance is promoted through instantaneous, social media.

- (a) If an assembly develops into a special event spontaneously (and therefore without a permit) in either a commercial or non-commercial venue, it shall become the duty of all persons or entities owning or able to control the event venue or who is providing entertainment encouraging the assembly, to take reasonable, diligent and constant measures to reduce the activity or circumstances which caused the assembly to become a special event - that is for example but not limited to, reducing occupancy to the permitted capacity of the venue or providing transportation to eliminate off-site parking or vehicular or pedestrian congestion, or to provide the additional City type services needed to regulate event traffic, maintain the peace and protect the public health and safety. The failure of any such person or entity to immediately after notice from the City make a reasonable, diligent and constant effort to reduce the event below the applicable criteria threshold shall be a violation of this law punishable by civil penalties specified in this Article and criminal penalties. The Chief of Police or his/her designee is authorized to approve actions to partially or slowly reduce the event below the applicable criteria threshold as compliance if he or she finds (i) that such person is acting expeditiously and reasonably to employ feasibly available resources to address the issues after notice that the assembly has become a special event, (ii) that full reduction to the criteria threshold will not be feasible and (iii) that it would be safer to taper down the event rather than to abruptly close the venue or stop the event.
- (b) Whether a spontaneous assembly has developed into a special or basic event based upon attendance, vehicle congestion or a need for City services (as those services are defined in this Article), or any combination of those three (3), shall be determined by an objective and reasonable examination of the totality of the circumstances at hand, including but not limited to the following factors:
 1. With respect to attendance and attempted attendance:
 - i. The size of the venue.
 - ii. Whether the attendance is ticketed.
 - iii. Actual attendance at prior, similar events.
 - iv. The extent of commercial promotion and advertisement of the event, especially promotion outside of the City of Cullman, by traditional or digital means, but excluding spontaneous social media not initiated, encouraged or orchestrated by a commercial event producer or any person acting on behalf of the event producer or any person with a financial or other personal interest in the event ("spontaneous social media").
 - v. The extent of spontaneous social media encouraging attendance at the assembly.
 - vi. Whether the location and configuration of the venue, and the nature and presence (sight and sound) of the event, will be likely to draw attendees or observers from the public at large.

- vii. The number in attendance and attempting to attend (“Capacity Limit”) shall be determined by the Fire Chief or his/her designee based upon the criteria established by the State of Alabama Fire Code and Life Safety Code, per the Event Organizer’s submitted and approved site layout taking into account Enhancements to the site, if any.
2. With respect to City services actually required:
- i. Repeated pedestrian trespass.
 - ii. Repeated vehicular trespass.
 - iii. Illegal parking.
 - iv. Traffic congestion.
 - v. Apparent need for sanitation facilities as evidenced by public urination or other bodily functions.
 - vi. Repeated and flagrant instances of illegal activity.
 - vii. Repeated noise ordinance violations after notice, including differing offenders.
 - viii. Unusual amount of trash being abandoned with no apparent resources available to clean up after event.
 - ix. Unusual or repeated need for medical assistance.

Sec. 48-197. – Public conduct.

- (a) No person, including participants in another organized event, shall unreasonably hamper, obstruct, impede, or interfere with an organized event or with any person, vehicle, or animal participating or used in the event.
- (b) No driver of a vehicle shall drive between the event's units, participants, or vehicles that are in motion and conspicuously designated as being a part of the event, unless otherwise directed to do so by law enforcement personnel.
- (c) The Chief of Police or his/her designee shall have the authority, when reasonably necessary and after any needed consultation with other City departments, to prohibit or restrict the parking of vehicles along a street constituting a part of the route or location of an organized event. When necessary, the Chief of Police or his/her designee shall see that signs are posted to such effect, and it shall be unlawful for any person to park or leave unattended any vehicle in violation of such signs.
- (d) The Chief of Police or his/her designee shall have the right to remove any person or object that is found to be in violation of this article.

Sec. 48-198. – Application for permit.

Each application for a special event permit required by this Article shall contain the information described below and must be filed, and the permit fee paid, during normal business hours no less than the following number of days before the opening of the event to the public:

- (a) At least ninety (90) calendar days prior to the date of any large special event to be held.
- (b) At least thirty (30) calendar days prior to the date of any medium special event to be held.
- (c) At least fifteen (15) calendar days prior to the date of any small special or basic event to be held.

Notwithstanding the foregoing, the City shall accept a tardy application and if (i) City staff has the capacity to conduct an ordinary review of the application without causing material neglect of other staff duties or, (ii) the event promoter stands willing and able to pay and deposits a sum of money to cover any overtime for City staff to conduct an ordinary review of the application, and staff volunteers such overtime, then the City will use reasonable efforts to process a tardy application in time to allow the event to be held. Applications shall be reviewed in the order received and priority shall be given to timely filed applications.

- (d) All applications for a permit under this Article must contain the following (within or attached to):
 - 1. The name and address of the applicant and if not a natural person the names and addresses of all persons controlling or owning interest in the applicant or a parent company of the applicant.
 - 2. The dates, times and location of the event.

3. A list of the names and addresses of all vendors, independent contractors or other persons or firms which will be engaged by or associated with the applicant to offer goods or services during the special event, including a description of the goods and services offered by each and the name and address of the person who will have on-site responsibility, if different. The names and addresses of such persons shall be used only for the purposes of (i) identifying the source of good or services after the event, if necessary, (ii) allowing the City to collect all business license taxes due, and (iii) contacting such persons or firms as necessary in the normal course of City business. The information may not be used to grant or deny a permit. Should such a list not be available at the time application is made, applicant shall give a written statement to that effect and agreeing to furnish such a list no later than thirty-six (36) hours before the event and acknowledging that failure to timely provide such a list will result in termination of the special event permit.
 4. The names and addresses of all entertainers. This information shall be used for the sole purpose of the City, first, investigating whether sufficient adverse secondary effects/harms have accompanied the entertainer's performance(s) at past performances to raise an objective and reasonable concern that a performance at the event could require planning for and provision of extraordinary City services and precautions due to a special or enhanced danger to public health, safety or welfare, and then, second, to allow the City to contact such entertainers as necessary in the normal course of City business.
 5. Whether (i) patrons will be permitted to bring alcoholic beverages into the event, or (ii) patrons will not be permitted to bring alcoholic beverages into the event but patrons will be offered alcoholic beverages within the event, or (iii) alcoholic beverages will be prohibited within the event.
 6. An estimate of the largest number of persons anticipated to be in attendance in the event venue at any point in time, a statement as to how such attendance was estimated (i.e., such as historical events, ticket sales, etc.), and a plan for: (i) determining the actual number of persons in attendance at the event venue as the event progresses; (ii) keeping the City informed in real time of that number; and (iii) a plan to manage and control or disburse the persons desiring to enter the event after capacity is reached. The name, address, telephone number and a description of any prior experience in estimating attendance at previous events shall be included for all persons participating in the attendance estimation.
 7. A plan for sanitation facilities and sewage, garbage and litter collection and disposal (during and after the event) generated by the event or by its patrons (wherever such garbage or litter may be located), water supply and food service. A plan submitted under this section is presumptively a danger to public health and safety if it violates, any rules promulgated by the Health Department or other executive department, or similar laws.
 8. A plan for parking facilities and plans for transporting or conducting patrons from said facilities to the special event venue.
 9. A plan for the adequate provision of crowd control, security, on-site and off-site traffic control, communications, fire protection and emergency services, including ambulance service, and emergency vehicle access in and around the event venue, and the general background of the training and ability of the personnel to be used in implementing the plan.
 10. A plan for adequate medical and first aid equipment, infrastructure and services to be provided at the special event having five-hundred (500) or more participants.
- (e) The governing body of the City may approve a plan that does not meet these criteria if it is reasonably shown that public health and safety can be secured through alternative means or that such staffing is not reasonably required for the proposed event, or alternatively the governing body of the City may require additional staffing reasonably shown to be required to secure the public health and safety during the proposed event.
- (f) The foregoing presumption is intended to address an event presenting a moderate hazard. The staffing guidelines set forth above may be decreased or increased as may be reasonably required to secure the public health and safety during the event depending upon whether the event objectively presents a lower or higher hazard. By way of illustration, the staffing guidelines set forth above are intended for moderate

hazard events which include, but are not limited to, concerts, carnivals and fairs. Similarly, low hazard events include, but are not limited to, car shows, flea markets, local festivals, craft shows, local sporting events, and organized sporting tournaments. High hazard events include, but are not limited to, an event with stunts or having the potential for special danger to participants or spectators, or the potential for sustained exposure to extreme ambient temperatures. A low or moderate event may present a higher hazard due to extreme temperatures. Higher hazard events may be required to provide additional medical and first aid equipment, infrastructure and services with transport capability. Staffing shall be equipped with customary supplies necessary to treat injuries and illnesses commonly associated with outdoor activities or similar events.

1. A submitted and approved plan for assuring that all stages, booths, tents, scaffoldings or structures of any kind on, under or within which persons may congregate, will conform to applicable building and construction codes in effect within the City, and that any entertainment stage erected on City owned property in connection with a special event will be guarded by a certified law enforcement officer, a licensed security guard, or an in-house security professionally trained according to recognized standards and authorized and instructed to prevent unsafe, public use or activity on or about the stage twenty-four (24) hours a day, seven (7) days a week.
 2. A submitted and approved site plan showing the location and size of the event venue and all parking areas (including required handicap parking), and the location of all other features required by this section. The site plan shall show a cleared and adequate passage for emergency vehicles.
 3. A submitted and approved plan to provide and control safe pedestrian access between parking area(s) and the event venue which will minimize adverse impacts upon surrounding properties and businesses.
 4. A submitted and approved plan to enclose, restrict or control access to all parking at the event venue and to limit the number of persons within the event venue to the maximum number anticipated, and a contingency plan to deal with persons in excess of that number to minimize adverse impacts upon surrounding properties and businesses.
 5. For a large event out of doors, a submitted and approved plan to provide sufficient elevated viewing platforms to permit event security and, upon request, City police and fire to oversee the crowd and be able to identify and respond to a disturbance or unusual activity before it escalates.
 6. A submitted and approved plan of event evacuation and traffic.
 7. A submitted and approved plan addressing public safety regarding potential weather and non-weather-related events.
 8. A list of all live animals to be used in connection with the event and a plan for the care and safe keeping of such animals.
- (g) The plans required by this Article are designed to allow the City to evaluate and assure that the proposed event will not pose an unreasonable danger to public health and safety and will not excessively burden City resources without adequate planning so as to create such a danger.
- (h) Late applications received after the application deadlines noted above shall be accepted and processed by the City prior to the date of the event if reasonably practicable under the circumstances given the proposed conduct of the event.
- (i) Conditionally approved events may be submitted in order to meet the application deadline, subject to the obtaining and of the required approval, license, permit, and meeting any other noted requirements of the City at least five (5) business days prior to the start date of the event, evidenced in writing by the appropriate City official.
- (j) Completed or conditionally approved applications will be processed in order of receipt. An application shall not be considered complete until all required information is provided. Where the City cannot reasonably determine order of receipt, the City Clerk may conduct a random drawing to determine priority of use.
- (k) The City may waive any requirement herein if it is reasonably shown that public health and safety can be secured through alternative means or that such a plan is not reasonably required for the proposed event.

Sec. 48-199. – Fees.

(a) Fees for permits issued under this article shall be as provided in the City fee schedule. Any City resources requested and/or required for the event shall be given to the applicant on an itemized invoice for the actual amount of services (including equipment) and expenditures of City resources incurred by the City.

(b) If the applicant does not accept the type and extent of City services listed and the amount of the City services fee, the City shall nonetheless proceed in ordinary course to complete the application process and either deny the permit through the process contained in this article without consideration of the applicant's objection to the fee, or if the applicant is entitled to the permit then grant the permit upon the condition that the City services fee be paid before the permit becomes valid or effective. The applicant shall have the right to appeal to the governing body the type and extent of services required and the amount of the fee by letter filed with the City Clerk within three (3) business days after the City shall provide the applicant the itemization and amount of the fee which notice shall state that the applicant may appeal within three (3) business days. The governing body shall uphold or lessen the fee based upon information about the extent of services to be rendered by the City directly related to the event and the cost of those services as presented by the required City departments and the applicant in a de novo, quasi-judicial hearing held as soon as may be practicable. The governing body's decision, including its reasons therefore, shall be announced at the conclusion of the hearing and entered onto the record thereof which shall constitute the governing body's final order in any subsequent proceedings. The hearing may be continued from time to time in the sole discretion of the governing body. If the governing body is unable to timely conduct or conclude the hearing in time for the event to be held pursuant to an otherwise valid permit, the applicant may pay to the City the disputed fee under protest, and the permit shall become effective so that the event may be held, in which case the hearing shall be held and concluded after the event at a mutually convenient time. If the fee is upheld, it shall be accepted by the City; if it is reduced the reduction shall be refunded to the applicant.

Sec. 48-200. – Processing application; grounds for denial.

(a) The appropriate and required City officials whose required signatures are required on any permit application shall decide on a completed application consistent with this article and as expeditiously as possible given the scope of the conduct of the event. The appropriate and required City officials shall provide the organizer with notice of its decision, and if the appropriate and required City officials must deny the application, it shall state in the notice the basis for denial.

(b) The application for a permit for the special event shall be granted unless one or more of the following conditions are found to exist:

1. *Application requirements.* The application:
 - i. Is incomplete in a material respect;
 - ii. Has been fraudulently completed;
 - iii. Is for an organized event that is not regulated by this article; or
 - iv. Is for a special event the proposed conduct of which does not comply with applicable law, including this article or other City laws.
2. *Prior conduct of organizer or organized event.* The application is for an event organizer or organized event that:
 - i. Has on a prior occasion made a material misrepresentation in an application for a special event that has resulted in a significant secondary harm; or
 - ii. Has on prior occasions failed to restore the public space or restore or replace damaged public property, or pay to the City the restoration reimbursement costs or other costs or fees due the City under this article.
3. *Location limitations.* The proposed public space, or a portion of the space, cannot reasonably accommodate the proposed event due to:
 - i. Insufficient space or capacity;
 - ii. A prior use of some or all of the same public space or a public space in reasonably close proximity to the space; or
 - iii. Unavailability because of fire, casualty, acts of God, or public emergency.

4. *Non-curable secondary effects/harms.* The proposed conduct of the event would have secondary effects/harms that cannot reasonably be cured, including unreasonable hardship to adjacent or nearby uses due to repeated or prolonged street closure; unreasonable interference with the use of the public space by other persons or organized events; or unreasonable demands on the City's resources because of unusual, extraordinary, or burdensome costs or expenses.
 5. *Use of parks.* The likely detrimental impact of the proposed event on the use and physical integrity of the park and its facilities or amenities taking into account such factors as:
 - i. The ability of the park to accommodate the conduct of the event;
 - ii. The physical condition of the park;
 - iii. The existence of reasonably available alternatives;
 - iv. Conflicting uses of the park;
 - v. Secondary harms; or
 - vi. The number of prior uses already scheduled for the park and the ability of the park to accommodate repeated uses without suffering material damage.
 6. *Public safety.* The proposed conduct of the event will be likely to have an impermissible impact upon public safety because it will:
 - i. Substantially interrupt the safe and orderly movement of traffic in the area of its route or location and there are insufficient public safety services available at the time to mitigate the disruption;
 - ii. Require the diversion of so great a number of first responders of the City to properly protect and serve the area or route that will be occupied by the special event and contiguous areas so as to prevent normal police protection to the City;
 - iii. Require the diversion of so great a number of ambulances and fire rescue units as to prevent normal ambulance and rescue service to portions of the City other than those areas or routes that will be occupied by the special event and contiguous areas;
 - iv. Involve the concentration of persons, animals, floats, or vehicles at the assembly points of the event that will unduly interfere with proper fire and police protection of or ambulance service to areas contiguous to such assembly areas;
 - v. Interfere with the movement of firefighting equipment in route to a fire;
 - vi. Fail to provide proper sanitation services; or
 - vii. Otherwise pose an unreasonable risk to the public safety.
 7. *Major arterials.* The location requested is for a street that is a major arterial within the City limits, unless the magnitude of the event requires it and such an event cannot reasonably be accommodated elsewhere. This subsection (7) shall not apply to processions that merely cross a major arterial and that are not otherwise prohibited according to the terms of this article.
- (c) *Alternative to denial.* Should the appropriate and required City officials have to deny a permit pursuant to this section and there are reasonable alternatives to the conduct of the event that are available and that would eliminate the basis for denial, the appropriate and required City officials shall propose the alternatives to the organizer who must accept those alternatives by providing a notice of its acceptance by the next business day following the organizer's receipt of the appropriate and required City officials' decision notice, otherwise the denial shall stand.
- (d) *Conditional approval.*
1. In the case of completed or conditionally approved applications that have been filed within at least thirty (30) days in advance of the event, the appropriate and required City officials may issue conditional approval for the event if the event is due to be approved except for one or more of the following pending items:
 - i. Action being taken with regard to required approval, licensing, or permitting pursuant to other City laws or laws administered by the health department or other State agency;
 - ii. Confirmation of the availability of City services; or
 - iii. Confirmation that the public area requested for the event has not been scheduled for a state or city public building or works project, including improvement or infrastructure maintenance, repair, or construction.

2. Issuance of a conditional approval shall mean that, except for the pending items, there are no conditions that are known to exist that would constitute a ground for denying the permit.

Sec. 48-202. – Appeal of denial.

- (a) *Right of appeal.* An organizer denied a special event permit may ask for a review of the decision by filing a written notice of appeal, stating the reason the denial should be overturned, with the governing body of the City within five (5) business days following receipt of the appropriate and required City officials' decision notice denying the permit. The appeal shall be heard and decided by the governing body who shall schedule a hearing on the request at the next regularly scheduled meeting following receipt of the notice of appeal. The organizer shall be given at least twenty-four (24) hours' advanced notice of the hearing.
- (b) *Conduct of hearing.* The organizer, or a representative designated in writing by the organizer to act on the organizer's behalf, shall appear at the hearing in person, and may be represented by counsel. Failure of the organizer, or the organizer's designee, to appear at the hearing shall be deemed to be a withdrawal of the appeal. The appropriate and required City officials shall attend the hearing. The appropriate and required City officials and the organizer, or the organizer's designee, shall have the right to be heard on the matter and present evidence in support of their respective positions. The governing body shall uphold the decision of the appropriate and required City officials if a ground for denial exists and, where appropriate, offer an alternative option to denial. The decision may be made at the conclusion of the hearing stating orally the reasons for the decision, or, by written notice within two (2) business days following the close of the hearing and shall state the reasons for the decision. Failure of the governing body to render a decision by the close of the next business day following the close of the hearing shall operate as an automatic upholding of the denial.
- (c) *When review not available.* In no event will a review lie under the provisions of this section for the denial of any permitting or licensing that is not issued under the authority of this article, including alcoholic beverage licensing, business licensing, technical and fire code permitting, and fireworks permitting.
- (d) *Appeal to Circuit Court.* The organizer denied a permit may, within ten (10) days after the decision of the governing body of the City, appeal to the Circuit Court of Cullman County from any decision from the governing body by filing such appeal with the Court and causing a copy of such notice to be served on the other affected parties or officials. The governing body shall furnish the court with a certified transcript of proceedings which it had before with respect to the appeal and its decision in the matter. No bond shall be required for such an appeal and the cost of such appeal shall be taxed against the unsuccessful party or as the judge may direct. Review by the Court shall be without jury and be confined to the record and to a determination of the questions of law present. The governing body's findings of fact shall be final and conclusive. Appeal may be taken from the judgment of the Circuit Court as provided by law

Sec. 48-203. – Permit amendment.

- (a) A special event organizer who wishes to materially modify the conduct of the event as authorized by the special event permit shall file a permit amendment application with the City Clerk on a form provided by the City within a reasonable time. The permit amendment application shall describe the proposed change in the conduct of the event with the same detail required by section 48-198 for the initial permit application and shall otherwise comply with the provisions of this article. The City Clerk shall take action on the special event permit amendment application in accordance with the terms of this article and submit the amendment to the appropriate and required City officials. The notice of decision and hearing provisions set forth in this article also shall apply to applications for permit amendments.
- (b) A non-material change to the event conduct of permitted special event that complies with this article may be made at any time prior to the start of the event by notifying the City Clerk of the proposed change who shall then notify the appropriate and required City officials.

Sec. 48-204. – Additional information.

Before denying a permit or conditioning a permit upon things not included in the application or agreed to by the applicant, the responsible City department shall give the applicant written notice of the deficiencies in the

application or the need to add conditions to the permit and provide the applicant an opportunity to present additional written information addressing those deficiencies or needs. The responsible City department shall make a reasonable effort to facilitate the applicant's addressing the deficiencies in time to hold the event, but also taking into consideration the City's resources and other matters at hand. The City is expressly prohibited from denying any permit based upon the identity of any speaker or entertainer or the viewpoint, content, or type of speech or expression to be displayed so long as such speech or expression is lawful.

Sec. 48-205. –Vendor contacts provided to City Clerk’s office.

If the permit is granted, the applicant shall provide to the City Clerk (the name, mailing address and telephone number of each vendor, artist, or other person offering goods, services, or entertainment at the special event, including if different, the name, mailing address, email address and telephone number of the individual with on-site responsibility for the vendor, artist or other person. Such form shall be provided no later than fifteen (15) days prior to the permitted event. The applicant shall assist the City in collecting all license required by the City prior to the event.

Sec. 48-206. –Enforcement and penalties.

(a) The City finds that a violation of any section of this Article presents a serious threat to the public health, safety and welfare which is irreparable and irreversible and of an itinerant or transient nature.

(b) Each violation of this Article shall constitute a separate, civil infraction, punishable by a civil penalty in the amount specified below unless a different amount is specified in accordance with the laws of Alabama.

First violation of this Article: \$100.

Second violation of this Article: \$200.

Third and all subsequent violations of this Article: \$500.

Unless otherwise specified, a person who does not contest the citation for violation of this Article shall be subject to a civil penalty in the following amount:

First violation of this Article: \$50.

Second violation of this Article: \$100.

Third and all subsequent violations of this Article: \$250.

The penalty for uncontested civil citations may be paid directly to the City Clerk.

(c) This Article may be enforced by the issuance of a citation by a sworn police officer of the City who has reasonable cause to believe that a person has violated any section of this Article. All sworn police officers of the City shall be considered code enforcement officers for the purpose of enforcing every section of this Article. A citation issued under any section of this Article may be contested in the municipal court for the City of Cullman, Alabama. In addition to the penalties specified in this Article, a person voluntarily paying a citation or convicted of a citation shall be required to bear all costs and fees imposed by the Municipal Court of the City of Cullman.

(4) The civil penalties provided here are cumulative to any other civil or criminal penalties available for violation of this the City of Cullman Code of Ordinances or State law, including the criminal penalties set forth in City Code, Chapter 34.

(5) Each day (any 24 consecutive hour period) that a continuing violation of this Chapter occurs or continues shall constitute a separate, civil infraction punishable by a civil penalty in the cumulative amount specified above. Repeat violations by a single person or entity may relate to different requirements imposed by this law and in different circumstance and still constitute a repeat violation for the purpose of determining the civil penalty due.

Sec. 48-207. – Property and activities not covered.

- (a) *Property not covered.*
 - 1. Unless the organized event requires for its successful execution the provision of City services in accordance with subsection (d) of this section, this article is not intended to regulate organized public or private events that are conducted on private property located within the City that does not violate any law, Ordinance, rule or regulation and does not place a foreseeable and potential adverse impact on public safety, including but not limited to the following:
 - i. Private property in which the event does not violate the laws of the City or place a potential adverse impact on public safety;
 - ii. Property which is under the control or jurisdiction of the federal government or any agency or instrumentality of the federal government;
 - iii. Property which is under the control or jurisdiction of the state or any agency or instrumentality of the state unless the state has specifically authorized the City to control the use of such property for organized events; or
 - iv. Property which is under the control or jurisdiction of municipal boards or agencies.
 - 2. *Public facilities for City sanctioned events.* Unless the organized event requires for its successful execution the provision of City services in accordance with subsection (d) of this section, this article is not intended to regulate organized City sanctioned events which are conducted upon or within public facilities in which the event organizer is acting as an agent on behalf of the City.
- (b) *Activities not covered.*
 - 1. This article shall not apply to funeral processions, programmed activities provided or managed by the City such as recreational programs, military or other official convoys or motorcades, or other activities upon public property which are regulated or permitted by other provisions of this Code.
 - 2. This article is not intended to regulate or allow the use of public property solely for the conduct of a commercial enterprise including the sale, demonstration, advertisement, or promotion of products, goods, or services. Such uses of public property shall be regulated by applicable laws including zoning and franchising/licensing laws.
- (c) Exclusion from the terms of this article pursuant to this section does not relieve the person responsible for an event from the responsibility of obtaining permission or authorization from the appropriate person for the use of property or conduct of activities that are not covered by this article.
- (d) *City services.* Where special event otherwise excluded from the requirements of this article in accordance with subsection (a) of this section requires for its successful execution the provision of City services, the event organizer must make application for a special event permit in accordance with this article. The event organizer may be required to pay for the City services costs, including the standard complement, provided for the event.

Sec. 48-208. – Remedial purpose and severability.

- (a) This Article will promote the public good by establishing necessary standards to define special events in the digital age and creating incentives and mechanisms to promote the public welfare by fostering preparation for, and curbing the excesses of, those assemblies, and also to employ those same standards to require persons owning or controlling property upon which a spontaneous, unplanned event occurs to use their best efforts to immediately control the event if feasible and provide an incentive to better secure their property in the future. Therefore, even though this Article contains civil penalties, it is adopted for the remedial purposes set forth here and in the lengthy recitals to the adopting ordinance, and if challenged the Article should nonetheless be given an equitable construction in order to achieve the clear and remedial purposes determined by the governing body.
- (b) If any part or provision of this Article is held to be unenforceable for any reason, the remainder shall remain in full force and effect to the fullest extent possible under as liberal construction as may be needed to achieve its remedial purposes.

Sec. 48-209. – Indemnification.

The organizer of a special event shall, at the time of making application for a special event permit and on forms provided by the City, agree to indemnify and hold harmless the City, its officials, officers, employees, agents, contractors, and volunteers performing authorized City functions, from and against any and all claims, costs, losses, expenses through appeal (including reasonable attorneys' fees, and costs or expenses incidental to the investigation

of claims and lawsuits), demands, payments, suits, actions, recoveries, penalties, fines, liabilities, and judgments, of any nature and description, resulting from or arising out of the acts or omissions of the event organizer, its officers, servants, agents, contractors, or employees, or event participants, in connection with the conduct of the event.

SECTION III. Severability Clause. Each and every provision of this Ordinance is hereby declared to be an independent provision and that holding of any provision hereof to be void and invalid for any reason shall not affect any other provision hereof and it is hereby declared that the other provisions of this Ordinance would have been enacted regardless of any provision which might have been held invalid. This Ordinance repeals any prior Ordinance in conflict therewith.

SECTION IV. Effective Date. This ordinance shall be effective following its passage, approval and publication as required by law.

ADOPTED BY THE GOVERNING BODY this the 24th day of October, 2022.

President of the City Council

ATTEST:

City Clerk

APPROVED BY THE MAYOR this the 24th day of October, 2022.

Mayor