

An Ordinance to Amend Certain Sections of Chapter 5, Article II of the Pelham Code of Ordinances Increasing the Amount of Privilege or License Tax Levied Against Persons, Firms or Corporations Storing, Using or Otherwise Consuming or Engaging in the Business of Selling at Retail Tangible Personal Property or Conducting Places of Amusement in the City of Pelham, Alabama

WHEREAS the City of Pelham, Alabama desires to amend certain sections of Chapter 5, Article II of the Pelham Code of Ordinances to increase the amount of privilege or license tax to five percent (5%) levied Against Persons, Firms or Corporations Storing, Using or Otherwise Consuming or Engaging in the Business of Selling at Retail Tangible Personal Property or Conducting Places of Amusement in the City of Pelham, Alabama.

State Law reference— Authority to Levy, Code of Ala. 1975, § 11-51-200 et seq.

SECTION 1. BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF PELHAM, ALABAMA THAT THE PELHAM CODE OF ORDINANCES BE AMENDED OR OMITTED TO READ AS FOLLOWS:

Sec. 5-30. SALES TAX; LEVY AND AMOUNT

There is hereby levied, in addition to all other taxes of every kind now imposed by law, and shall be collected as herein provided, a privilege or license tax against the person on account of the business activities and in the amount to be determined by the application of rates against gross sales, or gross receipts as the case may be as follows:

(a) Upon every person, firm, or corporation (including the State of Alabama and its Alcoholic Beverage Control Board in the sale of alcoholic beverages of all kinds, the University of Alabama, Auburn University, and all other institutions of higher learning in the state, whether such institutions be denominational, state, county or municipal institutions, any association or other agency or instrumentality of the institutions) engaged or continuing within the City of Pelham, in the business of selling at retail any tangible personal property whatsoever, including merchandise and commodities of every kind and character, (not including, however, bonds or other evidences of debts or stocks, nor sales of material and supplies to any person for use in fulfilling a contract for the painting, repair, or reconditioning of vessels, barges, ships, other watercraft, and commercial fishing vessels of over five tons load displacement as registered with the U.S. Coast Guard and licensed by the State of Alabama Department of Conservation and Natural Resources), an amount equal to five percent (5%) of the gross proceeds of sales of the business except where a different amount is expressly provided herein. Provided, however, that any person engaging or continuing in business as a retailer and wholesaler or jobber shall pay the tax required on the gross proceeds of retail sales of the business at the rates specified, when his or her books are kept so as to show separately the gross proceeds of sales of each business, and when his or her books are not so kept he or she shall pay the tax as a retailer, on the gross sales of the business.

Where any used part including tires of an automotive vehicle or a truck trailer, semitrailer, or house trailer is taken in trade, or in a series of trades, as a credit or part payment on the sale of a new or rebuilt part or tire, the tax levied herein shall be paid on the net difference, that is, the price of the new or used part or tire sold less the credit for the used part or tire taken in trade, provided, however, this provision shall not be construed to include batteries.

(b) Upon every person, firm, or corporation engaged or continuing within the City of Pelham in the business of conducting or operating places of amusement or entertainment, billiard and pool rooms, bowling alleys, amusement devices, musical devices, theaters, opera houses, moving picture shows, vaudeville, amusement parks, athletic contests, including wrestling matches, prize fights, boxing and wrestling exhibitions, football and baseball games (including athletic contests, conducted by or under the auspices of any educational institution within this City, or any athletic association thereof, or other association whether the institution or association be a denominational, a state, or county, or a municipal institution, or association or a state, county, or city school, or other institution, association or school), skating rinks, race tracks, golf courses, or any other place at which any exhibition, display, amusement, or entertainment is offered to the public or place or

places where an admission fee is charged, including public bathing places, public dance halls of every kind and description within the City, an amount equal to five percent (5%) of the gross receipts of any such business. Provided, however, notwithstanding any language to the contrary in the prior portion of this subdivision, the tax provisions so specified shall not apply to any athletic event conducted by a public primary or secondary school or any football playoff conducted by or under the auspices of the Alabama High School Athletic Association. The tax amount which would have been collected pursuant to this subdivision shall continue to be collected by the public primary or secondary school but shall be retained by the school which collected it and shall be used by the school for school purposes.

(c) Upon every person, firm, or corporation engaged or continuing within the City of Pelham in the business of selling at retail machines used in mining, quarrying, compounding, processing, and manufacturing of tangible personal property an amount equal to five percent (5%) of the gross proceeds of the sale of the machines. The term "machine" as herein used, shall include machinery, which is used for mining, quarrying, compounding, processing, or manufacturing tangible personal property, and the parts of the machines, attachments, and replacements therefor, which are made or manufactured for use on or in the operation of the machines and which are necessary to the operation of the machines and are customarily so used.

(d) Upon every person, firm, or corporation engaged or continuing within the City of Pelham in the business of selling at retail any automotive vehicle or truck trailer, semitrailer, or house trailer, or mobile home set-up materials and supplies including but not limited to steps, blocks, anchoring, cable pipes, and any other materials pertaining thereto an amount equal to one percent (1%) of the gross proceeds of sale of the automotive vehicle or truck trailer, semitrailer, or house trailer, or mobile home set-up materials and supplies, provided, however, where a person subject to the tax provided for in this subsection withdraws from his or her stock in trade any automotive vehicle or truck trailer, semitrailer, or house trailer for use by him or her or by his or her employee or agent in the operation of the business, there shall be paid, in lieu of the tax levied herein, a fee of one dollar (\$1.00) per year or part thereof during which the automotive vehicle, truck trailer, semitrailer, or house trailer shall remain the property of the person. Each year or part thereof shall begin with the day or anniversary date as the case may be of such withdrawal and shall run for the twelve succeeding months or part thereof during which the automotive vehicle, truck trailer, semitrailer or house trailer shall remain the property of the person.

Where any used automotive vehicle or truck trailer, semitrailer, or house trailer is taken in trade or in a series of trades, as a credit or part payment on the sale of a new or used vehicle, the tax levied herein shall be paid on the net difference, that is, the price of the new or used vehicle sold less the credit for the used vehicle taken in trade.

(e) Upon every person, firm, or corporation engaged or continuing within the City of Pelham in the business of selling at retail any machine, machinery or equipment which is used in planting, cultivating and harvesting farm products, or used in connection with the production of agriculture produce or products, livestock or poultry on farms, and the parts of such machine, machinery or equipment, attachments and replacements therefor which are made or manufactured for use on or in the operation of such machine, machinery or equipment, and which are necessary to and customarily used in the operation of such machine, machinery or equipment, an amount equal to five percent (5%) of the gross proceeds of the sale thereof. Provided, that the five percent (5%) rate herein prescribed with respect to parts, attachments and replacements shall not apply to any automotive vehicle or trailer designed primarily for public highway use, except farm trailers used primarily in the production and harvesting of agriculture commodities.

Where any used machine, machinery or equipment which is used in planting, cultivating and harvesting farm products, or used in connection with the production of agricultural produce or products, livestock or poultry on farms is taken in trade or in a series of trades as a credit or part payment on a sale of a new or used machine, machinery or equipment, the tax levied herein shall be paid on the net difference, that is, the price of the new or used machine, machinery or equipment sold, less the credit for the used machine, machinery or equipment taken in trade.

(f) Upon every person, firm, or corporation engaged or continuing within the City of Pelham in the business of selling through coin-operated dispensing machines, food and food products for human consumption, not including beverages other than coffee, milk, milk products and substitutes therefor, there is levied a tax equal to five percent (5%) of the cost

of the food, food products, and beverages sold through the machines, which cost for the purpose of this subsection shall be the gross proceeds of sales of the business.

(g) Upon every person, firm, or corporation engaged or continuing within this state in the business of selling food there is a tax levied equal to four percent (4%) of the gross proceeds of the sale of food as defined in 7 U.S.C. § 2011, et seq.

State Law reference: Sales Tax, Code of Alabama, 1975, § 40-23-1 et seq.

Sec. 5-31. APPLICABILITY OF STATE SALES TAX STATUTES

The taxes levied by Section 5-30 of this ordinance shall be subject to all definitions, exceptions, exemptions, proceedings, requirements, rules, regulations, provisions, discounts, penalties, fines, punishments, and deductions that are applicable to the taxes levied by the State sales tax statutes, except where inapplicable or where herein otherwise provided, including all provisions of the State sales tax statutes for enforcement and collection of taxes.

State Law reference: Sales Tax, Code of Alabama, 1975, § 40-23-1 et seq.

Sec. 5-32 USE TAX; LEVY AND AMOUNT

(a) An excise tax is hereby imposed on the storage, use or other consumption in the City of Pelham of tangible personal property, not including, however, materials and supplies bought for use in fulfilling a contract for the painting, repairing or reconditioning of vessels, barges, ships, other watercraft and commercial fishing vessels of over five tons load displacement as registered with the U.S. Coast Guard and licensed by the State of Alabama Department of Conservation and Natural Resources, purchased at retail on or after October 1, 1965, for storage, use or other consumption in the City of Pelham at the rate of five percent (5%) of the sales price of such property, except as provided in subsections (b), (c) and (d) of this section.

(b) An excise tax is hereby imposed on the storage, use or other consumption in the City of Pelham of any machines used in mining, quarrying, compounding, processing, and manufacturing of tangible personal property, purchased at retail on or after the effective date of this ordinance, at the rate of five percent (5%) of the sales price of any such machine, provided, that the term "machine" as herein used, shall include machinery which is used for mining, quarrying, compounding, processing, or manufacturing tangible personal property, and the parts of such machines, attachments and replacements therefor, which are made or manufactured for use on or in the operation of such machines and which are necessary to the operation of such machines and are customarily so used.

(c) An excise tax is hereby imposed on the storage, use or other consumption in the City of Pelham of any automotive vehicle or truck trailer, semitrailer or house trailer, and mobile home set-up materials and supplies including but not limited to steps, blocks, anchoring, cable pipes and any other materials pertaining thereto, purchased at retail on or after the effective date of this ordinance, for storage, use or other consumption in the City of Pelham at the rate of one percent (1%) of the sales price of such automotive vehicle, truck trailer, semitrailer or house trailer, and mobile home set-up materials and supplies as specified above. Where any used automotive vehicle or truck trailer, semitrailer or house trailer is taken in trade, or in a series of trades, as a credit or part payment on the sale of a new or used vehicle, the tax levied herein shall be paid on the net difference, that is, the price of the new or used vehicle sold less the credit for the used vehicle taken in trade.

(d) An excise tax is hereby levied and imposed on the storage, use or other consumption in the City of Pelham of any machine, machinery or equipment which is used in planting, cultivating and harvesting farm products, or used in connection with the production of agriculture produce or products, livestock or poultry on farms, and the parts of such machines, machinery or equipment, attachments and replacements therefor which are made or manufactured for use on or in the operation of such machine, machinery or equipment, and which are necessary to and customarily used in the operation of such machine, machinery or equipment, which is purchased at retail after the effective date of this ordinance, for storage, use or other consumption in the City of Pelham, at the rate of five percent (5%) of the sales price of such property. Provided, that the five percent (5%) rate herein prescribed with respect to parts, attachments and replacements shall not apply to any

automotive vehicle or trailer designed primarily for public highway use, except farm trailers used primarily in the production and harvesting of agricultural commodities.

(e) Every person storing, using or otherwise consuming in the City of Pelham tangible personal property purchased at retail shall be liable for the tax imposed by this article, and the liability shall not be extinguished until the tax has been paid to the City of Pelham; provided, that a receipt from a retailer maintaining a place of business in this City or a retailer authorized by this City, under such rules and regulations prescribed by law, to collect the tax imposed hereby and who shall for the purpose of this article be regarded as a retailer maintaining a place of business in this City, given to the purchaser in accordance with the provisions of Section 40-23-67, Code of Alabama, 1975, shall be sufficient to relieve the purchaser from further liability for tax to which such receipt may refer.

(f) An excise tax is hereby imposed on the classes of tangible personal property, and at the rates imposed on such classes, specified in subsections (a), (b), (c) and (d) of this section, on the storage, use, or other consumption in the performance of a contract in this City of any such tangible personal property, new or used, the tax to be measured by the sales price or the fair and reasonable market value of such tangible personal property when put into use in this City, whichever is less; provided, that the tax imposed by this subsection shall not apply where the taxes imposed by subsection (a), (b), (c) or (d) of this section apply.

(g) Seller to collect tax; seller not to assume or absorb tax. Every such seller making sales of tangible personal property for storage, use or other consumption in the City of Pelham, not exempted under the provisions of Section 40-23-62, shall at the time of making such sales or, if the storage, use or other consumption of the tangible personal property is not then taxable hereunder, at the time such storage, use or other consumption becomes taxable hereunder, collect the tax imposed by this article from the purchaser, and give to the purchaser a receipt therefor in the manner and form prescribed by the City. The tax required to be collected by the seller from the purchaser shall be displayed separately from the list, advertised in the premises, marked or other price on the sales check or other proof of sales. It shall be unlawful for any such seller to advertise or hold out or state to the public or to any customer, directly or indirectly, that the tax or any part thereof imposed by this article will be assumed or absorbed by the seller or that it will not be added to the selling price of the property sold, or if added that it or any part thereof will be refunded. Any person violating any of the provisions of this section shall be guilty of a misdemeanor. The tax herein required to be collected by the seller shall constitute a debt owned by the seller to this City.

(h) Seller to file returns. There is hereby adopted by reference Section 40-23-68, Code of Alabama, 1975, as amended.

(i) An excise tax is hereby imposed on the storage, use, or other consumption in this state of food at the rate of four percent (4%) of the sales price of such food as defined in 7 U.S.C. § 2011, et seq.

State Law reference: Sales Tax, Code of Alabama, 1975, § 40-23-60 et seq.

Sec. 5-33. APPLICABILITY OF STATE USE TAX STATUTES

The taxes levied by Section 5-32 of this ordinance shall be subject to all definitions, exceptions, exemptions, proceedings, requirements, rules, regulations, provisions, discounts, penalties, fines, punishments, and deductions that are applicable to the taxes levied by the State use tax statutes, except where inapplicable or where herein otherwise provided, including all provisions of the State use tax statutes for enforcement and collection of taxes.

State Law reference: Use Tax, Code of Alabama, 1975, § 40-23-60 et seq.

Sec. 5-33.1. EXPENDITURE OF PROCEEDS

Excluding Section 5-30(d) and Section 5-32(c), one-fifth (20%) of the proceeds collected through the levy of the taxes imposed by this ordinance, less penalties and interest accrued or assessed per Section 5-34.1 and Section 5-34.2, less refunds and rebates, shall be expended to support public education for the residents of Pelham and for any other expenses deemed necessary for the support of the public schools located within the city limits of Pelham, as directed and appropriated by the Pelham City Council.

SECTION 2. ORDINANCE CUMULATIVE

This Ordinance shall not be construed to repeal any provisions of the general license code or any other ordinance of the City of Pelham under which a privilege or license tax is levied, but shall be held to be cumulative, and the amounts of the taxes herein levied shall be in addition to the amounts of all other license fees and taxes imposed by the City of Pelham.

SECTION 3. SEVERABILITY

Each section and provision of this ordinance is hereby declared to be an independent section or provision. If any section or provision shall be declared void, invalid, or unconstitutional, the remaining sections or provisions shall not be affected but shall remain in full force and effect.

SECTION 4. EFFECTIVE DATE


This ordinance shall become effective upon its passage on November 1, 2023.

THEREUPON Chad Leverett, a councilmember moved and Rick Wash, a councilmember seconded the motion that **Ordinance No. 324-06** be given vote. The roll call vote on said motion was as follows:

Maurice Mercer, Council President	Yes _____
David Coram, Council Member	No _____
Chad Leverett, Council Member	Yes _____
Rick Wash, Council Member	Yes _____
Mildred Lanier-Reed, Council Member	No _____

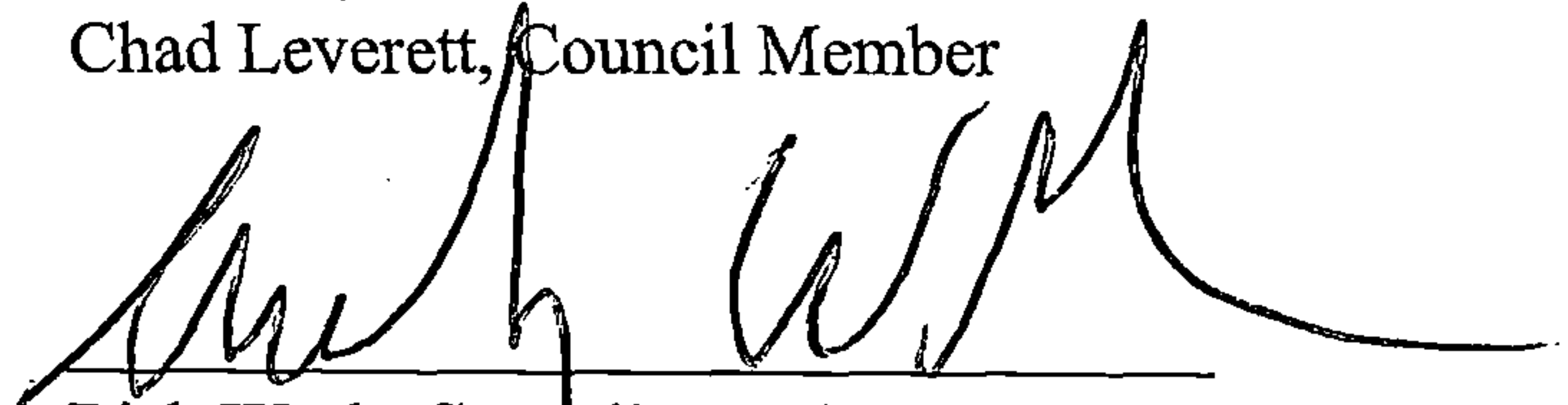
Ordinance No. 324-06 passed by majority vote of the Council and the Council President declared the same passed.

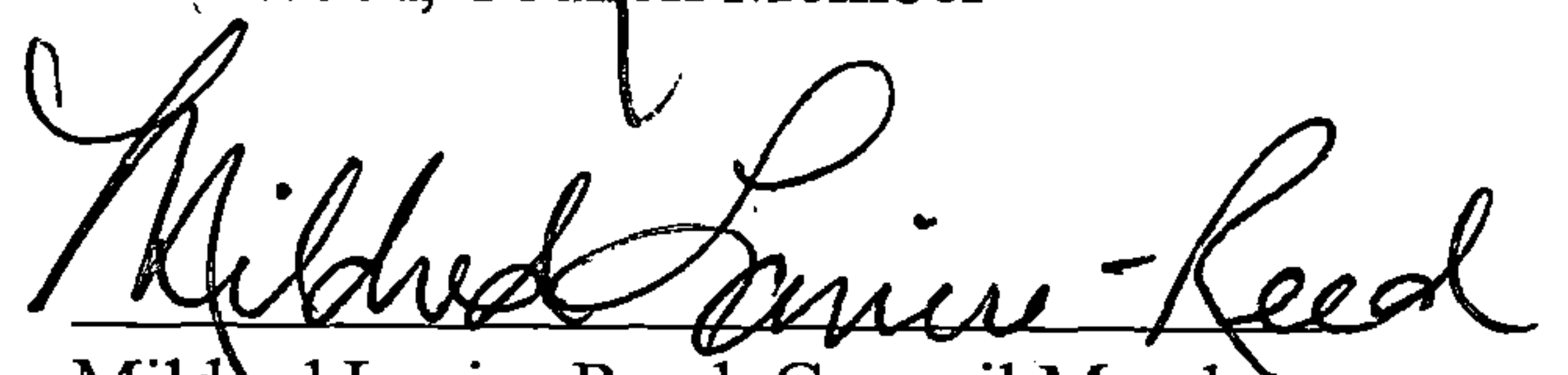
ADOPTED this 21st day of August 2023.

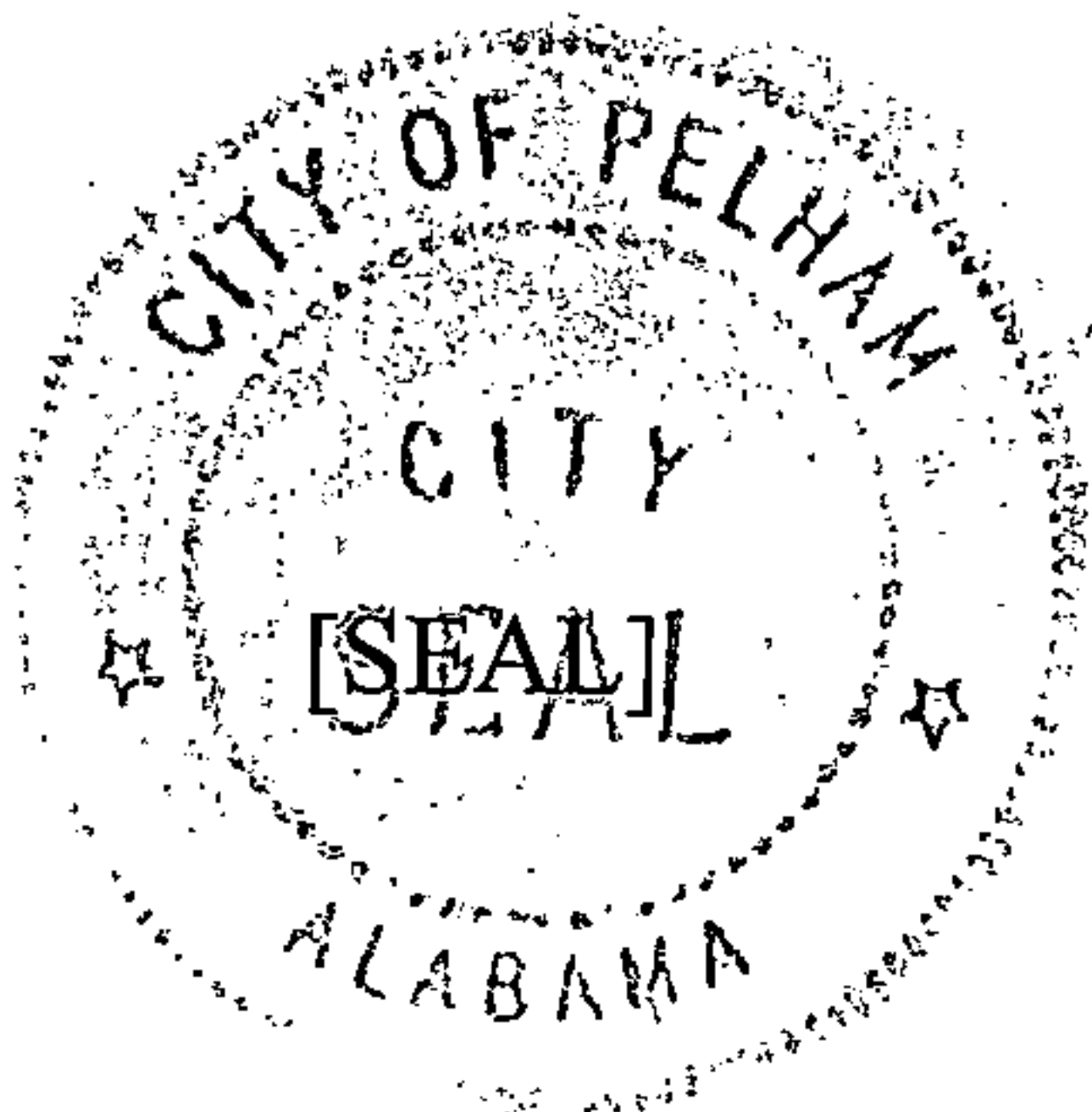
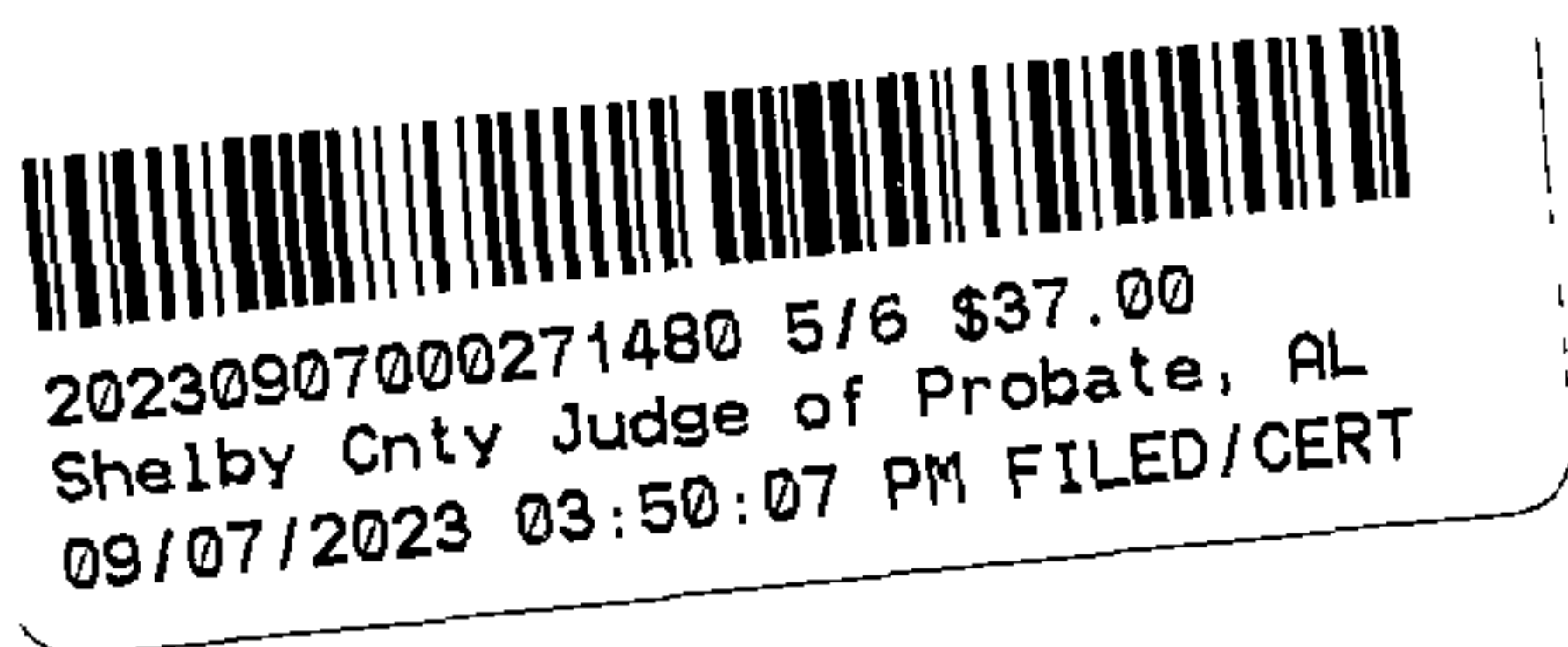

Maurice Mercer, Council President


David Coram, Council Member


Chad Leverett, Council Member


Rick Wash, Council Member

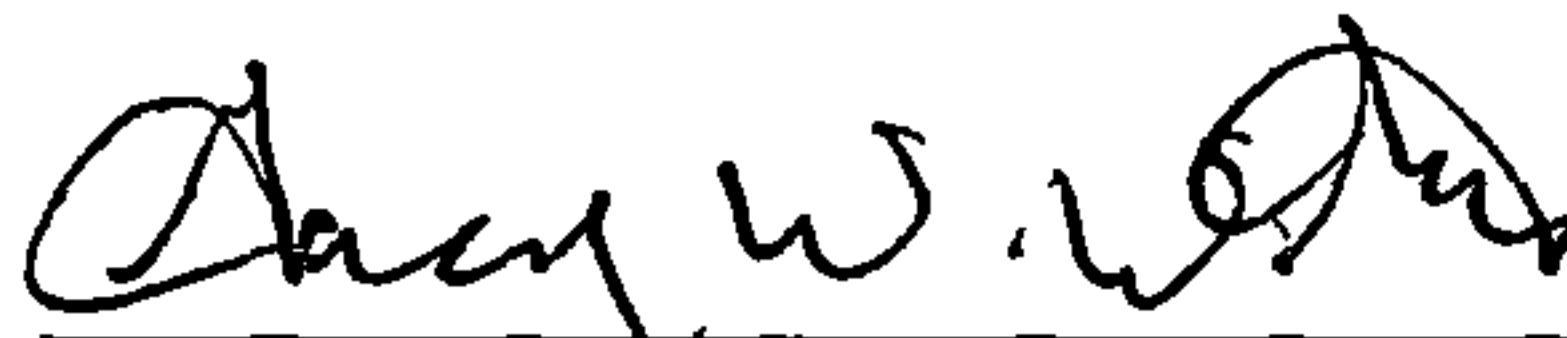

Mildred Lanier-Reed, Council Member



ATTEST

APPROVED:

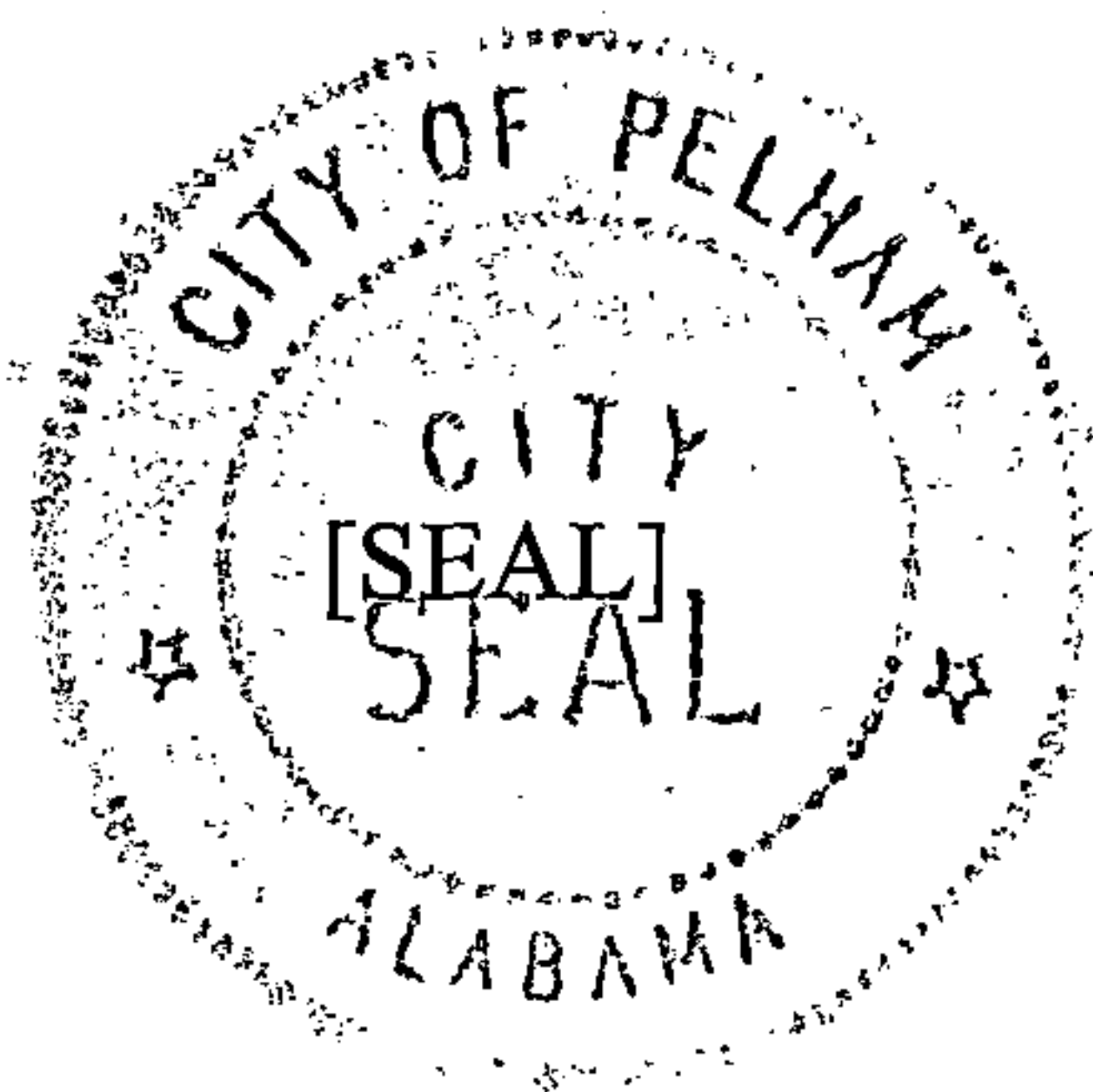

Tom Seale, MMC, City Clerk/Treasurer

 8/21/2023
Gary Waters, Mayor Date

POSTING AFFIDAVIT

I, the undersigned qualified City Clerk/Treasurer of the City of Pelham, Alabama, do hereby certify that the above and foregoing ORDINANCE No. 324-06 was duly ordained, adopted, and passed by the City Council of the City of Pelham, Alabama at a regular called meeting of such Council held on the 21st day of August 2023 and duly published by posting an exact copy thereof on the 22nd day of August 2023 at four public places within the City of Pelham, including Pelham City Hall, Pelham Recreation Center, Pelham Public Library, Pelham Water Works Building and online at www.pelhamalabama.gov. I further certify that said Ordinance is on file in the office of the City Clerk/Treasurer and a copy of the full Ordinance may be obtained from the office of the City Clerk/Treasurer during normal business hours.


Tom Seale, MMC, City Clerk/Treasurer



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Shelby Cnty Judge of Probate, AL
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