

ORDINANCE NO. 969

AN ORDINANCE TO PROVIDE FOR THE ISSUANCE OF \$200,000 PRINCIPAL AMOUNT OF
GENERAL OBLIGATION REFUNDING SANITARY SEWER WARRANTS, SERIES 1963A

BE IT ORDAINED by the City Council of the City of Prichard,
Alabama, as follows:

Section 1. Definitions and Use of Phrases.

(a) Definitions. The following words and phrases, in the
absence of clear implication herein otherwise, shall be given the following
respective interpretations where used in this Ordinance:

"Additional Parity securities" means any securities which the
City may at the time of issuance be authorized to issue and for the
payment of the principal of and interest on which the gross receipts tax
may be pledged under the reserved right so to do contained in Section 12
of the open end Ordinance.

"Callable warrants" means those of the refunding warrants having
stated maturities in 1969 and thereafter.

"City" means the municipal corporation of Prichard in the State

of Alabama and includes its successors and divisions and any municipal corporation resulting from or surviving any consolidation or merger to which it or its successors may be a party.

"Council" means the governing body of the city as from time to time constituted.

"Coupons" means those coupons issued pursuant hereto and evidencing the semiannual installments of interest on the refunding warrants.

"Financial Journal" means a journal printed in the English language and devoted primarily to news of financial matters.

"Fiscal year" means a fiscal year of the city beginning on any October 1 and ending on the next ensuing September 30.

"Gross receipts tax" means the special privilege or license tax of the city referred to in Section 6 hereof insofar as the same is levied with respect to businesses conducted within the corporate limits of the city.

"Holder" when used in conjunction with any of the refunding warrants while the same is assigned in blank means the person who is in possession and the apparent owner of the designated item.

"Interest payment date" means any February 1 or August 1.

"Month" means a calendar month.

"Newspaper" means a journal or newspaper printed in the English language and customarily published not less than five days during each calendar week.

"Outstanding warrant" means the General Obligation Sanitary Sewer Warrant of the city dated August 1, 1961, referred to in Section 2 hereof as being outstanding and which is herein authorized to be refunded.

"Open end ordinance" means Ordinance No. 904 of the city adopted by the council and approved on July 17, 1961.

"Paying agency bank" means each bank at which the refunding warrants may at any time be payable.

"Pledged tax revenues" means the proceeds derived from the gross receipts tax which are pledged for the benefit of the refunding warrants.

"Resolution" means a resolution duly adopted by the Council.

"Refunding warrants" means the General Obligation Refunding Sanitary Sewer Warrants, Series 1963A, authorized in Section 5 of this ordinance.

"Secular day" means any day on which business is normally transacted and does not include any Sunday or legal holiday.

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in Section 14 hereof and created in Section 14 of the 5th and Ordinance.

(b) Use of Phrases. The following words and phrases where used in this ordinance shall be given the following respective interpretations:

"Herein", "hereof", "hereunder", and other equivalent words refer to this ordinance and not solely to any particular portion hereof in which any such word is used.

The definitions set forth in Section 1 (a) hereof shall be deemed applicable whether the words defined are herein used in the singular or plural.

Wherever used herein any pronoun or pronouns shall be deemed to include both singular and plural and to cover all genders.

Section 2. Findings Respecting the Desirability of Refunding the Outstanding Warrants. The council has caused an investigation to be made of the obligations of the city now outstanding and, as a result of such investigation, has ascertained and found and does hereby declare that there is now outstanding and unpaid: one General Obligation Sanitary Sewer Warrant of the city in the principal amount of \$207,000, dated August 1, 1961, which was issued under the authority contained in Ordinance No. 915 adopted by the council and approved by the mayor on February 12, 1962. The outstanding warrant was issued by the city to raise funds (a) to acquire, provide and construct sanitary sewers in the city, and (b) to refund a note of the city at the time outstanding that evidenced a loan made by the city the proceeds of which were used to retire an obligation incurred in acquiring, providing and constructing sanitary sewers in the city. The outstanding warrant was signed in the name of and behalf of the city and the corporate seal of the city was affixed thereto and attested in the manner provided by the laws of Alabama and by the said Ordinance No. 915 under which it was issued, and represents a valid general obligation indebtedness of the city against which there are no offsets or counterclaims. The action of the council in adopting the said Ordinance No. 915 at the said meeting held on February 12, 1962, and the action of the mayor in approving the said resolution, and the actions of the mayor in executing and causing the official seal of the city to be affixed to the outstanding warrant, and the action of the city clerk in attesting the same, and the action of the city treasurer in delivering the outstanding warrant in evidence of the borrowing provided for in said ordinance, are all hereby ratified and approved.

Section 3. Findings Respecting the Need for Additional Borrowing and Issuance of the Authorized warrants. The council has caused an investigation to be made of the financial affairs of the city and, as a result of such investigation and on the basis of the facts disclosed thereby, has ascertained and found and does hereby declare that the following statements are true: The outstanding warrant referred to in Section 2 hereof bears interest at the rate of 4 1/2% per annum, payable semi-annually, and is subject to redemption by the city at any time at its option at its face value plus accrued interest thereon to the date of such redemption. The city has funds available with which to pay \$7,000 principal amount of the outstanding warrant. In view of improved conditions in the money market existing at the present time, the city is able to refund the remaining \$200,000 principal amount of the outstanding

warrant at a substantially lower interest cost to the city that will result in a net saving to the city of approximately \$12,000 after payment of the costs of such refunding. In order to effect redemption of the outstanding warrant, it will be necessary, and also advantageous to the city, for the city to issue the refunding warrants provided for in Section 5 hereof.

Section 4. Findings Respecting the Gross Receipts Tax and the Special Fund. Under the provisions of the open end ordinance the city authorized the issuance of, and did thereafter issue, certain securities of the city that are now outstanding. By Ordinance No. 880 of the city adopted by the council and approved on October 3, 1960, the city levied a special privilege and license tax measured by the gross proceeds of sales or gross receipts of the businesses with respect to which the levy was made. In the open end ordinance the city pledged the gross receipts tax, to the extent to which the same was levied within the corporate limits of the city, for the benefit of certain securities that were issued under the open end ordinance. In Section 12 of the open end ordinance the city reserved the power of pledging the gross receipts tax for the benefit of additional securities of the city upon compliance with the requirements set out in said Section 12. The proceeds of the gross receipts tax have been sufficient to enable the city to issue the authorized warrants and to make the parity pledge hereinafter made for the benefit thereof under the said reserved power so to do contained in said Section 12 of the open end ordinance.

Section 5. Authorization of the Refunding Warrants. Pursuant to the applicable provisions of the constitution and laws of the State of Alabama, including particularly the authority contained in Section 253 of Title 37 of the Code of Alabama of 1940 in order to raise the sum of \$200,000 for the purpose of refunding a like principal amount of the outstanding warrant, there are hereby authorized to be issued by the city two hundred General Obligation Refunding Sanitary Sewer Warrants, Series 1963A, of the city in the aggregate principal amount of \$200,000, to be numbered from 1 to 40, inclusive, to be in the principal amount of \$5,000 each, to be dated August 1, 1963, and to mature on August 1 as follows:

<u>Warrant Numbers</u> <u>(both inclusive)</u>	<u>Year of Maturity</u>	<u>Aggregate Principal</u> <u>Amount Maturing</u>
1 to 5	1965	\$ 25,000
6 to 10	1966	25,000
11 to 15	1967	25,000
16 to 20	1968	25,000
21 to 25	1969	25,000
26 to 30	1970	25,000
31 to 35	1971	25,000
36 to 40	1972	25,000

The refunding warrants shall bear interest from their date until their respective maturities at the following per annum rates: 3 1/8% on those maturing in the years from 1965 to 1966, inclusive; 3.30% on those maturing in the years from 1967 to 1970, inclusive; and 3% on those maturing in 1971 and 1972. Such interest shall be payable on February 1, 1964 and thereafter semiannually on August 1 and February 1 of each year until and at the respective maturities of the refunding warrants, and shall

be evidenced by separate interest coupons attached thereto. The refunding warrants and the coupons applicable thereto shall bear interest at the rate of 6% per annum after their respective maturities until paid, and shall be payable in lawful money of the United States of America at the principal office of The Merchants National Bank of Mobile, in the City of Mobile in the State of Alabama.

Section 6. Execution of the Refunding Warrants.

The refunding warrants shall be executed in behalf of the city by the mayor, whose signature shall be manually subscribed thereon. A facsimile of the official seal of the city shall be printed or otherwise reproduced on the refunding warrants and the said seal and the said execution by the mayor shall be attested by a facsimile of the signature of the city clerk printed or otherwise reproduced on the refunding warrants. The coupons applicable to the refunding warrants shall be executed with a facsimile of the signature of the mayor printed or otherwise reproduced thereon, and shall be attested with a facsimile of the signature of the city clerk likewise printed or otherwise reproduced thereon. The refunding warrants and the coupons applicable thereto shall be registered by the city treasurer, in the records maintained by her, as a claim against the city and the gross receipts tax hereinafter referred to, which registration shall be made simultaneously with respect to all the refunding warrants and the coupons applicable thereto. Said officers are hereby directed so to execute, attest and register the refunding warrants and the coupons applicable thereto.

Section 7. Pledge of the Faith and Credit of the City.

The indebtedness evidenced and ordered paid by the refunding warrants is and shall be a general obligation of the city for the payment of the principal of and interest on which the full faith and credit of the city are hereby irrevocably pledged.

Section 8. Pledge of the Gross Receipts Tax. As additional security for payment of the principal of and interest on the refunding warrants, and as a part of the contract whereunder the obligation evidenced by the refunding warrants is created, there is hereby specially and irrevocably pledged, to the extent necessary to pay the principal of and interest on the refunding warrants at the respective maturities of said principal and interest, that certain special privilege and license tax of the city (together with the proceeds thereof) which was levied by Ordinance No. 88 of the city with respect to certain business activities, to the extent to which the said activities are conducted within the corporate limits of the city: provided, however, that so long as no default shall exist in the payment of the principal of or interest on the refunding warrants and any other securities of the city which at the time may be secured by a pledge of the gross receipts tax on a parity with the pledge thereof made for the benefit of the refunding warrants, the balance of the said proceeds remaining in each fiscal year not needed for said purpose may be used by the city for any lawful purpose. To whatever extent, if any, the proceeds of the gross receipts tax available for said purpose may not be sufficient to pay at their respective maturities the principal of and interest on the refunding warrants at the respective maturities of said principal and interest, the city agrees to use for said purpose so much of the general revenues of the city derived from other sources and available for said purpose as may be necessary to pay said principal and interest at their respective maturities. The city represents and agrees that the agreements and pledge respecting the gross

receipts tax and its proceeds made in the open end ordinance and herein shall be and remain prior and superior to any and all pledges and agreements respecting the gross receipts tax that may hereafter be made by the city other than any parity pledge thereof which may be made for the benefit of additional parity securities that may be issued under the authority of Section 12 of the open end ordinance. The city hereby specifically declares that the refunding warrants constitute additional securities of the city for the benefit of which the city reserved in Section 12 of the open end ordinance the right to pledge the gross receipts tax on a parity with the pledge made in the open end ordinance for the benefit of the securities issued thereunder, and that the pledge of the gross receipts tax made in this section is so made in the exercise of the reserved power so to do contained in said Section 12 of the open end ordinance.

Section 9. Reservation of Right to Issue Additional Parity Securities. The city reserves the right to issue at any time and from time to time additional parity securities (whether in the form of bonds, warrants, certificates, or notes) which the city may at the time of such issuance be lawfully authorized to issue, and to pledge for payment of the principal thereof and interest thereon pro rata and on a parity with the pledge of the gross receipts tax made in Section 11 of the open end ordinance and in Section 9 of this ordinance, and pro rata and on a parity with the like pledge that may be made for the benefit of each series of the additional parity securities, so much of the gross receipts tax and the proceeds therefrom as may be necessary to pay the principal of and interest on the additional parity securities at the respective maturities of said principal and interest; provided, that no such parity pledge may be made unless the conditions set out in subsections (a), (b), and (c) of Section 12 of the open end ordinance are complied with.

Section 10. Maintenance of the Gross Receipts Tax. The city agrees that so long as any of the principal of or interest on the refunding warrants remains unpaid, or until provision shall have been made for full payment of said principal and interest, the city will continue the levy of and will collect the gross receipts tax at the rates thereof not less than the rates presently in effect and without reduction in the aggregate annual amount of the proceeds thereof. In addition thereto, as such action should become necessary to pay at their respective maturities the principal of and interest on the refunding warrants and all other securities of the city that might at any time be entitled to share in the proceeds of the gross receipts tax on a parity with the refunding warrants, the city agrees that it will levy and collect the gross receipts tax at such rate or rates as shall make available proceeds which, when added to the revenues of the city from other sources available for such purposes, will be sufficient to pay the reasonable expenses of carrying on the necessary governmental functions of the city and to pay at their respective maturities the principal of and interest on the refunding warrants and all other securities of the city that might at any time be entitled to share in the proceeds of the gross receipts tax on a parity with the refunding warrants.

Section 11. Maintenance of Gross Receipts Tax Fund. The special fund called the gross receipts tax fund created in Section 14 of the open end ordinance shall be continued and maintained until both the principal of and interest on the refunding warrants shall have been paid in full, and the city will make payments into the special fund, during

each successive calendar month, of all payments required to be made therein under the provisions of said Section 14 of the open end ordinance. All provisions respecting the special fund, the depositories therefor, the trust nature thereof, and security therefor, which are contained respectively in Section 14, 15 and 17 of the open end ordinance, are hereby adopted by reference as a part of this ordinance to the extent to which they are herein applicable.

Section 12. Priority of the Pledged Tax Revenues.

The pledge herein made of the gross receipts tax is for the benefit of all of the refunding warrants, pro rata and without preference of one over another or any other securities of the city at any time entitled to share in the proceeds of the gross receipts tax on a parity of lien with the refunding warrants. While no default exists in the payment of the principal of or interest on the refunding warrants or on any other securities of the city at any time entitled to share in the proceeds thereof on a parity with the refunding warrants, any part of the gross receipts tax that may not be needed to pay at their respective maturities the principal of and interest on the refunding warrants and all other securities at any time outstanding entitled to share in the gross receipts tax on a parity with the refunding warrants may be used by the city for any lawful purpose.

Section 13. Form of the Refunding Warrants. The refunding warrants and the coupons applicable thereto and the provisions for the assignment thereof shall be in substantially the following forms, with appropriate insertions and variations therein to conform to the provisions hereof:

(Form of Warrants)

No. _____

\$5,000

UNITED STATES OF AMERICA

STATE OF ALABAMA

CITY OF PRICHARD

GENERAL OBLIGATION REFUNDING SANITARY SEWER WARRANT

SERIES 1963A

The City Treasurer of the City of Prichard ("the city"), a municipal corporation in the State of Alabama, is hereby ordered and directed to pay to Walter Jacobs, or assigns, the principal sum of

FIVE THOUSAND DOLLARS

on the 1st day of August, 19____, upon surrender hereof on or after said date, with interest thereon from the date hereof until the maturity hereof at the rate of ____% per annum, payable semiannually on February 1 and August 1 of each year upon surrender of the appropriate interest coupons hereto attached as the same respectively become due. This warrant and the interest coupons applicable hereto shall bear interest at the rate of 6% per annum after their respective maturities and shall be payable in lawful money of the United States of America at the principal office of

The Merchants National Bank of Mobile, in the City of Mobile in the State of Alabama.

This warrant is one of an issue of warrants ("the warrants") in the authorized principal amount of \$200,000 consisting of warrants numbered from 1 to 40, inclusive, and has been issued pursuant to the applicable provisions to the constitution and laws of Alabama, including particularly Section 253 of Title 37 of the Code of Alabama of 1940, for the purpose of refunding an outstanding warrant of the city evidencing indebtedness incurred to acquire, provide and construct sanitary sewers in the city.

By the execution of this warrant the city acknowledges that it is indebted to the payee hereof in the principal amount hereof and that at the respective maturities of the interest coupons attached hereto it will become indebted to the holders thereof in accordance with the terms thereof.

The indebtedness evidenced and ordered paid by this warrant is a general obligation of the city for the payment of the principal of and interest on which the full faith and credit of the city have been irrevocably pledged. In addition thereto, in the proceedings under which the warrants were issued there was irrevocably pledged for payment of said principal and interest at their respective maturities so much as may be necessary for said purpose of the special privilege and license tax of the city levied by Ordinance No. 880 of the city, together with the proceeds therefrom, to the extent that the said tax is levied with respect to businesses conducted within the corporate limits of the city, which pledge is on a parity with pledges of said tax and the proceeds thereof for the benefit of certain other bonds and warrants of the city. In said proceedings the city reserved the privilege of issuing additional securities and, upon the existence of certain events, of pledging for the benefit of said additional securities the said special tax, to the extent aforesaid, on a parity with the aforesaid pledge thereof for the warrants and the said other bonds and warrants.

It is hereby certified and recited that the indebtedness evidenced and ordered paid by this warrant is lawfully due without condition, abatement or offset of any description; that this warrant has been registered in the manner provided by law; that all conditions, actions and things required by the constitution and laws of the State of Alabama to exist, be performed or happen precedent to and in the issuance of this warrant do exist, have been performed, and have happened; and that the indebtedness evidenced and ordered paid by this warrant, together with all other indebtedness of the city, was at the time the same was created and is now within every debt and other limit prescribed by the constitution and laws of the State of Alabama.

This warrant is nonnegotiable but is transferable by assignment. Each taker, owner, purchaser or holder hereof, by receiving or accepting this warrant or any interest coupon applicable hereto shall consent and agree and shall be estopped to deny: (1) that title to the coupons hereunto appertaining may be transferred by delivery without the necessity of a written assignment, and any person making such delivery shall be deemed to have transferred to the person to whom such delivery is made all of his equities or rights in the coupons so delivered; (2) that any person in possession of any such coupon, regardless of the manner in which he shall have acquired possession, is authorized to represent himself as the

absolute owner thereof and has the power and authority to transfer absolute title thereto by delivery thereof to a bona fide purchaser for value (present or antecedent) without notice of prior defenses or equities or claims of ownership enforceable against his transferor or any person in the chain of title and before the maturity thereof; and (3) that whenever and so long as this warrant may be assigned in blank by written assignment by the original payee hereof or by any subsequent assignee hereof in the chain of title to whom written assignment is made, the city may treat any person in possession of this warrant, regardless of how such possession may have been acquired and regardless of the genuineness or effectiveness of any assignment, as the absolute owner hereof for all purposes, and payment to any such person shall discharge all obligations hereunder.

IN WITNESS WHEREOF, the city has caused this warrant to be executed by its mayor who has hereunto manually subscribed his signature, has caused a facsimile of its official seal to be printed or otherwise reproduced hereon, has caused the said execution and seal to be attested by a facsimile of the signature of its city clerk printed or otherwise reproduced hereunder, has caused the annexed coupons to be executed and attested with facsimiles of the signatures of said officials printed or otherwise reproduced thereon, and has caused this warrant to be dated August 1, 1963.

CITY OF PRICHARD

By _____
Its Mayor

Attest:

City Clerk

(Form of Coupon)

Coupon
No. _____

\$ _____

On the 1st day of _____, 19____, the City Treasurer of the City of Prichard, in the State of Alabama, is ordered and directed to pay to the bearer hereof the sum of _____ Dollars, upon surrender of this coupon at the principal office of The Merchants National Bank of Mobile, in the City of Mobile in the State of Alabama, being six months' interest then due on the General Obligation Refunding Sanitary Sewer Warrant, Series 1963A, of the City of Prichard, Alabama, dated August 1, 1963, numbered _____.

CITY OF PRICHARD

By _____
Its Mayor

Attest:

City Clerk

(Form of Assignment)

For value received, this warrant and the indebtedness evidenced and ordered paid thereby are assigned, without recourse or warranties, to _____.

Section 14. Payments at Par. Each bank at which the refunding warrants and the coupons shall at any time be payable, by acceptance of its duties as paying agent therefor, shall be construed to have agreed thereby with the holders of the refunding warrants and the coupons that all payments made by it of the refunding warrants and the coupons shall be made in bankable funds at par without deduction for exchange, fees or expenses. The city agrees with the holders of the refunding warrants and the coupons that it will pay all charges for exchange, fees or expenses which may be made by any such bank in paying in bankable funds any of the refunding warrants and the coupons.

Section 15. Provisions Hereof Constitute Contract. The provisions of this ordinance shall constitute a contract between the city and each holder of the refunding warrants and the coupons issued hereunder. Whenever all of the refunding warrants and the coupons and the interest thereon shall have been paid in full then the obligations of the city hereunder shall thereupon cease.

Section 16. Provisions Hereof Severable. The various provisions of this ordinance are hereby declared to be severable. In the event any provision hereof shall be held invalid by a court of competent jurisdiction, such invalidity shall not affect any other portion of this ordinance.

Section 17. Sale of the Refunding Warrants and Use of Proceeds Therefrom. The offer of The First National Bank of Memphis for the purchase of the refunding warrants from the city at a purchase price equal to \$200,002.25 plus accrued interest on the refunding warrants to the date of delivery thereof, is hereby accepted and the refunding warrants are hereby sold to the said bank. The refunding warrants shall be issued in the name of Walter Jacobs, the nominee of the said bank designated by it for that purpose. The city treasurer is hereby authorized and directed to deliver the refunding warrants to the said bank upon payment to the city of the said purchase price. The proceeds from the sale of the refunding warrants shall be applied as follows: (a) that part of the proceeds which represents accrued interest on the refunding warrants from their date to the date of payment therefor, together with the premium in excess of the face amount thereof included in the said purchase price, shall be deposited into the special fund in accordance with the requirements of Section 14 (a) of the open end ordinance, and shall be applied for payment of the interest which will accrue on the refunding warrants on the next interest payment date; and (b) the principal proceeds shall be used to refund and retire \$200,000 principal amount of the outstanding warrant. Simultaneously with the delivery of the outstanding warrant the city shall apply moneys derived from other sources sufficient to pay the remaining \$7,000 principal amount of the outstanding warrant not so refunded together with all interest that shall have then accrued on the outstanding warrant,

Adopted this 16th day of December, 1963.

W. Maulsby
President of the City Council

City Clerk

Mayor