

**AN ORDINANCE TO IMPLEMENT ALABAMA CODE
§11-43C-38(c) REGARDING COUNCIL LEGAL COUNSEL;
TO DESIGNATE THE City Clerk AND THE MAYOR AS AGENTS
FOR SERVICE OF PROCESS; AND TO REQUIRE NOTICE TO
THE CITY COUNCIL FOR ACTIONS AND CLAIMS ASSERTED
AGAINST THE CITY**

BE IT ORDAINED BY THE CITY Council OF THE CITY OF
PRICHARD ALABAMA AS FOLLOWS:

Section 1. Findings.

- (a) The City of Prichard is an Alabama Class 5 municipal corporation governed by the Mayor-Council form of government established in Chapter 43C of Title 11, Code of Alabama 1975 (the Enabling Law).
- (b) Under the Mayor-Council form of government, all legislative powers of the city are vested in the Council, which exercises its authority by enacting ordinances, adopting budgets, and determining municipal policy. *Ala. Code §11-43C-11.*
- (c) All executive powers of the city are vested in the Mayor, who is the head of the executive and administrative branches of the city government responsible for the enforcement of all laws and ordinances and for the proper administration of all municipal affairs, *Ala. Code §11-43C-37.*
- (d) Within the framework of the Enabling Law, *Ala. Code §11-43C-38(b)* authorizes the Mayor to appoint a city attorney, who serves at the pleasure of the Mayor and is compensated in the manner and at a rate approved by the Mayor. In addition, the Mayor may, from time to time and in the Mayor's sole discretion,

obtain additional legal counsel outside the city merit system to advise and defend the Mayor in the Mayor's capacity as Mayor and in the pursuit of the operation of government.

- (e) The Enabling Law, *Ala. Code* § 11-43C-38(c), provides that, upon approval by a majority of those present and voting, the Council may, when it deems necessary and reasonable, obtain legal counsel outside the city merit system to advise and defend Council members in their respective capacities as Council members and in the pursuit of the operation of government.
- (f) Rule 1.13 of the Alabama Rules of Professional Conduct provides that when a lawyer is employed or retained by an organization, the lawyer represents the organization acting through its duly authorized constituents. In the case of a municipality, the municipal corporation is the client, not individual officers, offices, or legislators.
- (g) Because the city attorney and any legal counsel engaged by the Council represent the same client—the municipal corporation—effective governance requires these attorneys to cooperate in good faith, share information consistent with law, and coordinate their efforts to protect the City's overall legal interests, even when they are representing different branches or boards in particular matters.
- (h) Given the dual roles allowed by the Enabling Law for legal counsel engaged by both the Mayor and the Council, it is important to prevent confusion when litigation or other claims are commenced by designating the City Clerk and the Mayor as agents for service of process and by requiring prompt notice to the Council of actions challenging Council decisions.
- (i) Designating a clear agent for service of process, and requiring timely notice to the Council of litigation challenging Council actions, promotes orderly administration of justice, ensures that the municipal corporation can respond promptly to claims and lawsuits, and allows the Council to determine, under *Ala. Code* §

11-43C-38(c), whether separate legal counsel is necessary and reasonable in particular matters.

Section 2. Purpose.

The purpose of this ordinance is to implement the provisions of *Ala. Code* §11-43C-38 by:

- (a) clarifying that attorneys engaged by either the Mayor or the Council serve as legal advisors to the municipal corporation, and not to any individual appointing authority or official;
- (b) ensuring that the Council and its appointed boards have access, where necessary, to independent legal representation in the conduct of municipal government;
- (c) designating the City Clerk as the agent to accept service of process on behalf of the City in civil actions and proceedings, and requiring timely notice to the Council when litigation is filed challenging any ordinance, resolution, or other action of the Council so that the Council may determine whether to obtain separate legal counsel pursuant to § 11-43C-38(c).
- (d) requiring notice to the Council of litigation involving Council actions;

Section 3. Engagement of Legislative Council; Special counsel.

- (a) *Legislative Counsel.* The City Council may, when it deems necessary and reasonable, obtain “Legislative Counsel.” For the purposes of this ordinance, “Legislative Counsel” means the attorney or law firm engaged by the Council to provide ongoing legislative legal services (including meetings, agendas, drafting and related advice and counsel) to the municipal corporation acting through the Council in its official law-making capacity. Any attorney retained by the Council under this section is not employed as personal counsel for, nor to advance the private interests of, any individual Council member.
- (b) *Special Counsel.* The Council may, from time to time and by separate resolution, approve one or more professional-services

agreements with attorneys or law firms (collectively, "Special Counsel") to provide representation in in specific cases, including zoning and land-use litigation, or to assist with the review and analysis of complex economic development agreements and other specialized matters that are or may come before the Council.

Section 4. Compensation and funding.

Compensation and expenses for Legislative Counsel and Special Counsel shall be paid from funds appropriated for that purpose in the City's annual budget or by budget amendment, in accordance with applicable budget and auditing provisions. Each resolution engaging legal counsel shall identify the fund or account from which payment is to be made.

Section 5. Service of Process; Duty to Forward Legal Papers.

- (a) *Service of Process.* The City Clerk is designated as agent for service of process in any lawsuit, claim, or other legal action against the City. Upon receipt of such process, the City Clerk shall promptly, and in no event later than the next working day, forward a copy to the Mayor, the City Attorney, and the Legislative Counsel.
- (b) *Duty to Forward Legal Papers.* Any City officer or employee who is handed, mailed, or otherwise receives what reasonably appears to be legal process, a subpoena, or other legal notice directed to the City, the Mayor, the City Council, or any board or commission in connection with City business shall promptly deliver it to the City Clerk, the Mayor, the City Attorney and Legislative Council no later than the next working day.
- (c) *Notice to Council of Litigation Involving Council Actions.* The City Clerk, the Mayor, and the City Attorney shall each have an independent duty to provide written notice to the Council President and all Council members when any lawsuit or other judicial proceeding is filed that:

- 1) challenges the validity, legality, or enforcement of any ordinance, resolution, or other legislative act of the Council; or
- 2) seeks judicial review of any quasi-judicial decision of the Council, the Board of Adjustment, the Planning Commission, or any other board or commission whose members are appointed by the Council.

Such notice shall be provided as soon as practicable and, in any event, before the earlier of (i) the expiration of the time to answer or otherwise respond to the pleading, or (ii) any scheduled hearing on temporary or preliminary relief. Upon receipt of notice under this subsection, the Council shall determine, at the earliest practicable meeting, whether to obtain separate legal counsel for the matter.

Section 6. Relationship to city attorney and legal department.

- (a) Nothing in this ordinance shall be construed to limit or impair the Mayor's authority under § 11-43C-38(b) to appoint a city attorney, determine the compensation of the city attorney, or obtain additional legal counsel outside the city merit system to advise and defend the Mayor in his or her capacity as such.
- (b) Nothing in this ordinance shall be construed to alter the status of the city attorney as the chief legal officer of the City for purposes of advising the Mayor and administrative departments, outside counsel appointed by the Mayor, and representing the City in matters related to the administration.
- (c) In any matter in which both the city attorney and counsel engaged under § 11-43C-38(c) are involved, each shall owe professional duties to the municipal corporation and shall coordinate in good faith, consistent with applicable rules of professional conduct and the respective directions of their authorizing constituents.

- (d) In matters before the Mobile County Personnel Board, the city attorney shall represent the city in cases involving appointments made by the Mayor, and the Council attorney shall represent the city in cases involving appointments made by the Council.

Section 7. Compensation and funding.

- (a) Compensation and expenses for legal counsel engaged by the Council under this ordinance shall be paid from funds appropriated by the Council for that purpose in the City's annual budget or by budget amendment, in accordance with applicable budget and auditing provisions.
- (b) Each resolution engaging legal counsel for a particular matter shall identify the fund or account from which payment is to be made.

Section 8. Records of Representation; Turnover to Successor.

All files, pleadings, correspondence, work product, and other records created or maintained by the City Attorney, Legislative Counsel, or Special Counsel in the course of representing the municipal corporation are and shall remain the property of the City. Upon the conclusion of an engagement or the termination or expiration of any appointment, such attorney or law firm shall promptly deliver to the City Clerk or City Attorney, as appropriate, all original files and records relating to City matters, and shall reasonably cooperate in the orderly transition of pending matters to any successor counsel designated by the City.

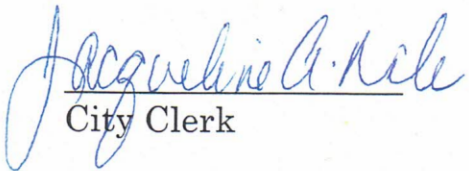
Section 9. Severability.

If any section, subsection, sentence, clause, or phrase of this ordinance is, for any reason, held to be invalid, such decision shall not affect the validity of the remaining portions of this ordinance.

Section 10. Effective date.

This ordinance shall take effect following its adoption and publication as required by law.

ADOPTED this 22nd day of January, 2026, to be effective upon publication as required by law.


City Clerk

MAYOR
CARLETTA DAVIS



CITY CLERK
JACQUELINE A. NILES, CMC

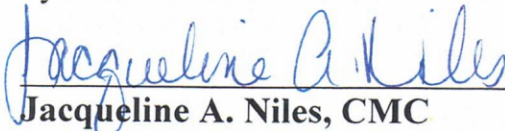
TRANSMITTAL OF ORDINANCE

DATE: January 23, 2026

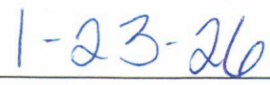
Mayor Davis,

This letter serves as notice of transmittal of an **ordinance**/resolution in accordance with **Section 11-45-3 of the Code of Alabama**. At the January 22, 2026, City Council meeting, the City Council unanimously adopted **Ordinance #2147** which is attached.

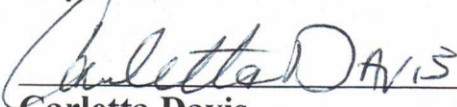
Please review and sign this transmittal so the ordinance/resolution may be published as required by law.



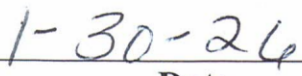
Jacqueline A. Niles, CMC
City Clerk



Date



Carletta Davis
Mayor



Date