

# ORDINANCE No. 418-01

## AN ORDINANCE TO AMEND CHAPTER 11, ARTICLE VIII BY ADDING A SECTION 11-164 TO THE CODE OF ORDINANCES OF THE CITY OF PELHAM – ESTABLISHING AN ARTS AND ENTERTAINMENT DISTRICT

**WHEREAS**, the City of Pelham has determined that it is in the best interest of the City to amend Chapter 11, Article VIII by adding a section to be numbered 11-164.

**NOW, THEREFORE BE IT ORDAINED** by the Council of the City of Pelham, Alabama, that Chapter 11, Article VIII be amended to add Section 11-164 to the Code of Ordinances of the City of Pelham, Alabama establishing an “Arts and Entertainment District” as follows:

### I. ARTICLE VIII. ALCOHOL

#### **Section 11-164. - Arts and Entertainment District.**

**Authority.** Pursuant to Code of Ala. 1975, § 45-37A-243, the city may establish by ordinance no more than one (1) entertainment district permitting the consumption of alcoholic beverages purchased from on-premise alcoholic beverage licensees to be consumed by purchasers anywhere within an applicable entertainment district. Once a district is created, the ABC Board may issue an entertainment district designation for retail alcoholic beverage licenses within a district that will allow the patrons, guests or members of the licensee to exit the licensed premises with open containers of alcoholic beverages, and to consume those beverages anywhere within the confines of a district with the exception of excluded places, as defined herein.

**Definitions.** The following words, terms, and phrases, when used in this section, shall have the meanings ascribed to them in this subsection (a), except where the context clearly indicates a different meaning:

**ABC Board** shall mean the Alabama Alcoholic Beverage Control Board.

**Alcoholic beverage** shall mean any beverage regulated by the ABC Board.

**Approved container** shall mean a container that is not a can, bottle, or glass container, that does not exceed sixteen (16) fluid ounces in volume, and that is provided to a patron, guest or member by a licensee who is located within the boundaries of the district in which the alcoholic beverage is being served. The approved container shall bear the commercially printed name and/or logo of the district or the commercially printed name and/or logo of the district licensee or any combination thereof.

**Arts and entertainment district** or **district** mean the district established hereinafter in subsection (b) of this section, as such district may be from time to time amended.

**Arts and entertainment district area** or **area** mean public places within the art and entertainment district, except for an excluded public place.

**Arts and entertainment district event** mean a special event that meets each of the following criteria:

(1) The event is open to the general public and may or may not include an admission fee for entrance into the event.

(2) The purpose of the event is to promote local arts, culture, or entertainment, through a venue that is consistent with the purpose of the arts and entertainment district.

**Arts and entertainment district permittee** or **permittee** means an on-premise retail city licensee permitted by the city in accordance with subsection (f) of this section.

**Entertainment event** shall mean any concert, sports event, show, performance, presentation, or production for the purpose of amusement, pleasure, leisure, recreation, relaxation, fun, enjoyment, or interest and governed by Article XII. of this Code.

***Excluded public place*** means a public place within the arts and entertainment district that is not included within the arts and entertainment district are as follows:

- (1) A public building, facility, garage, or parking lot that is posted with signage at each entrance or in conspicuous places that no open containers of alcoholic beverages are allowed on the premises;
- (2) Property privately owned or controlled that is posted with signage at each entrance or in conspicuous places that no open containers of alcoholic beverages are allowed on the premises;
- (3) An area being used for an Article XII entertainment event that is posted with signage at each entrance or in conspicuous places occupied by the event that no open containers of alcoholic beverages are allowed on the premises;
- (4) An area being used for an Article XII entertainment event that is licensed to sell alcoholic beverages; or
- (5) The premises of a city licensee.

***Licensee*** shall mean any person or business within a district that holds a valid license issued by the ABC Board to sell alcoholic beverages for consumption on the licensed premises.

***Special temporary event*** shall mean a special temporary event within the district authorized by the city under Article XII of the zoning ordinance.

***Purpose.***

***Purpose of section.*** The purpose of this section is:

- a. To establish districts authorized by Code of Ala. 1975, § 28-3A-17.1, within which certain conduct that is otherwise prohibited by this article is permitted, specifically, regulations against possessing an open container and drinking in a public place under Section 11-161, regulations against removal of open containers under Section 11-162, regulations against allowing an open container or consumption of alcoholic beverages on the parking lot area of a city licensee under Section 11-163; and
- b. To establish regulations governing the district.

***Purpose of arts and entertainment districts.*** In addition to the foregoing, the purpose of establishing an arts and entertainment district is to enhance the public enjoyment of the district and to promote local arts, culture, and entertainment, while, at the same time, protecting existing uses and preserving the quiet enjoyment of the district.

***Pelham Arts and Entertainment District established.***

Subject to subsections (2) and (3) of this subsection (c), there is hereby established the following named and generally described district, the Pelham Arts and Entertainment District, which is also shown on the appended map (see Appendix A) and incorporated herein by reference, which district shall constitute an entertainment district pursuant to Code of Ala. 1975, § 28-3A-17.1:

Notwithstanding anything in this section to the contrary, at any time and from time to time, the arts and entertainment districts established in this section may be enlarged, reduced, modified, or eliminated, in whole or part, and the regulations set forth in this section are subject to amendment at any time and from time to time. No vested rights shall be acquired by or be conferred upon any person as a result of the establishment of an arts and entertainment district or permitting under this section.

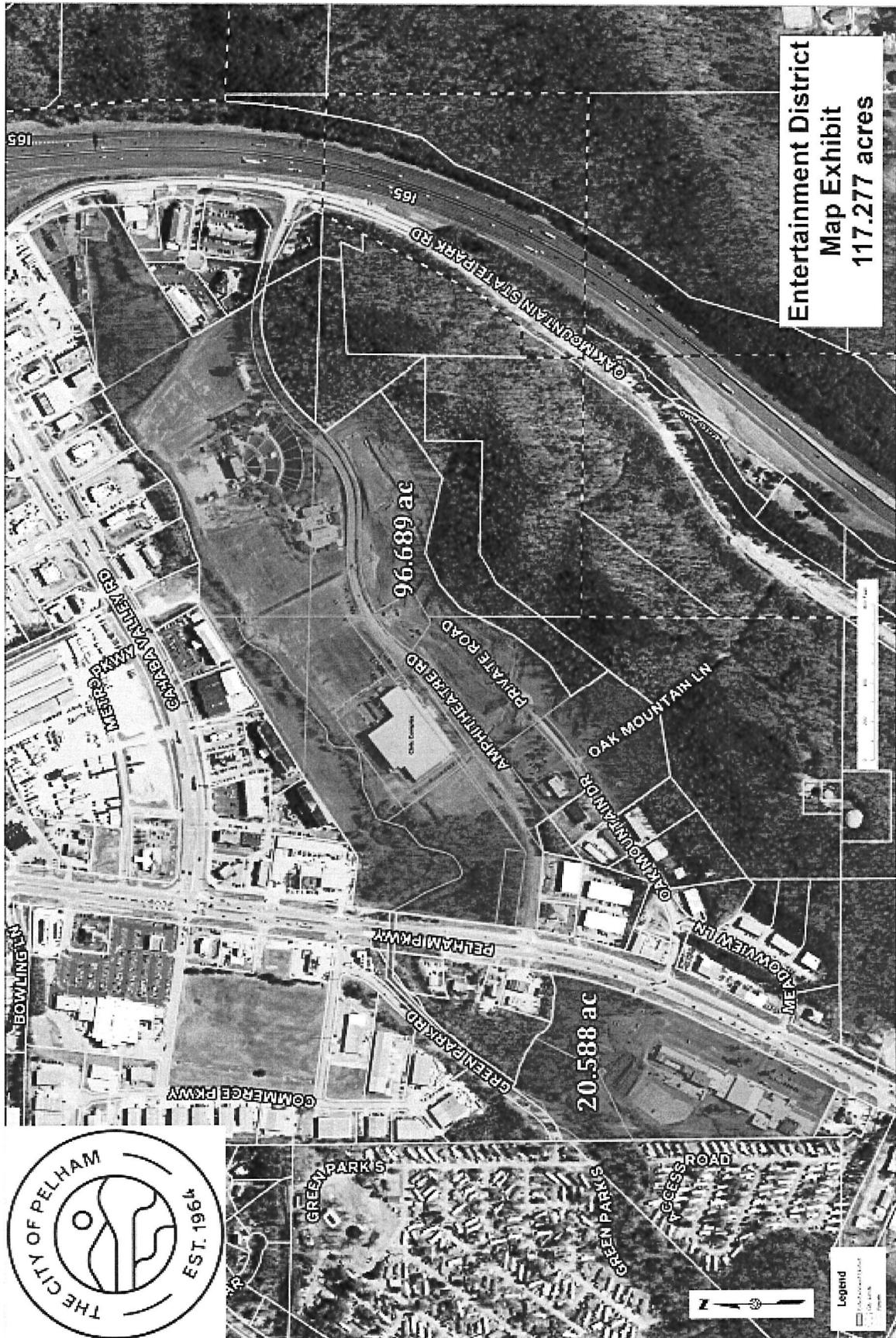
In the event the arts and entertainment district established by this section falls below the number of alcoholic beverage licensees required for the establishment of the district according to the Code of Ala. 1975, § 28-3A-17.1, then the city may amend this section to either eliminate the arts and entertainment district or modify the district so as

to remain in compliance with Code of Ala. 1975, § 28-3A-17.1, unless applicable state alcoholic beverage control laws allow for the continuance of a once-established district regardless of the number of alcoholic beverage licensees remaining.

Where this section provides for the opening of a portion of the arts and entertainment district, that portion that is opened shall not have fewer than the required number of alcoholic beverage licensees.

Reserved.

The boundaries of the Pelham Arts & Entertainment District are shown outlined in red on the following map:



***Rules and regulations.***

The following rules and regulations shall be followed in any entertainment district created by the city pursuant to this article.

(1) *Alcohol within an entertainment district.* Any licensee within a district who receives an entertainment district designation for its on-premises retail license from the ABC Board or who otherwise holds a valid license from the ABC Board to sell alcoholic beverages for consumption on the licensed premises shall comply with all laws, rules, and regulations which govern its license type. Patrons, guests or members of that licensee may exit that licensed premises with an open container of an alcoholic beverage and consume alcoholic beverages anywhere within the confines of a district (except for excluded places as defined herein), but may not enter another licensed premises with open containers or closed containers of alcoholic beverages acquired elsewhere. Nothing in this article shall be construed to allow the sale of alcohol to minors.

No licensee within a district shall be required to allow the removal of alcoholic beverages for consumption outside of its licensed premises. Any licensee that does not desire to allow the removal of alcoholic beverages from its licensed premises shall clearly post a notice that no open containers of alcoholic beverages may be removed from the licensed premises. Such notice shall be posted, at a minimum, at all exits of the licensed premises and where beverages are dispensed within the licensed premises.

This article shall not be construed to prohibit the sale of alcoholic beverages in their original, unopened containers for off-premises consumption by any establishment authorized by the ABC Board to make such sales. However, the consumption of alcoholic beverages sold in original, unopened containers for off-premises consumption shall not be allowed in any public area of a district.

The following rules shall apply within a district:

- a. A person shall not enter a licensed premises within a district with an alcoholic beverage(s) acquired at another licensed premises.
- b. A person shall not exist, nor shall a licensee allow a person to exit such licensed premises with an alcoholic beverage in any container other than an approved container. Alcoholic beverages sold for removal from a licensed premises within a district shall be dispensed only in an approved container. No beverage shall be removed from a licensed premises in a can, bottle, or glass container, except that cans, bottles, or glass containers shall be allowed in a licensee's outdoor seated dining areas. No person shall possess on the streets, sidewalks, rights-of-way, or outdoor public areas located within a district any open alcoholic beverage container which exceeds sixteen (16) fluid ounces in size.
- c. A person shall not enter into a designated entertainment district with alcoholic beverages purchased outside of the district, except as otherwise permitted by the ABC Board and in compliance with all applicable laws, ordinances, rules and regulations governing the sale, possession or consumption of alcoholic beverages.
- d. A person shall not remove an alcoholic beverage purchased for on-premises consumption from the premises from which they were sold for consumption or remove the container in which the alcoholic beverage was sold for on-premises consumption, except from the premises of those licensees who receive an entertainment district designation in a district.
- e. A person shall not refill an approved container from a licensed premises with an alcoholic beverage not purchased at a licensed premises within the district.
- f. A person shall not exit a district with an alcoholic beverage(s) purchased in an open container for consumption within that district.

g. A person shall not have and/or consume an alcoholic beverage(s) (i) in any parking lot or parking facility within a district or (ii) in a motor vehicle parked or in motion within a district, with the exception of a common carrier vehicle licensed by the ABC Board to serve alcoholic beverages.

h. A licensee shall not to allow a patron, guest or member to exit its licensed premises with more than one (1) open container of an alcoholic beverage, and it shall be unlawful for any person to exit such licensed premises with more than one (1) such open container.

i. A person shall not possess on the streets, sidewalks, rights-of-way, or any other public area located within a district any open alcoholic beverage which was not purchased from an on-premises retail alcohol beverage licensee lawfully doing business within a district and who has met all requirements of the ABC Board and the City of Pelham.

j. The consumption of an alcoholic beverage and/or possession of an open alcoholic beverage container shall not be allowed in any excluded place within a district that is posted with signage stating that alcoholic beverages may not be present or consumed on the premises.

***Hours of the district.***

*Regular hours and days of district.* The regular hours of operation for the arts and entertainment district shall be from the daily opening time of the first district licensee to open until the daily closing time of the last district licensee to close during which time a patron, guest, or member of a licensee may exit the licensed premises with an open container of an alcoholic beverage and consume such alcoholic beverage anywhere within the confines of the district subject to the provisions of this article.

***Arts and entertainment district event.***

A Business that is the organizer of an entertainment event that is an *arts and entertainment district* event, including an organized event on private property that requires city event services in accordance with Article XII, may request, with the organizer's application for an entertainment event permit and on forms provided by the city, that the arts and entertainment district, or a portion thereof specified in the request, be opened during the event.

The request shall be processed with the application for an entertainment event permit and the event organizer, as that term is defined in Article XII, Sec. 5-241, shall be responsible for all costs incurred by the city as a result of the opening of the district during the special event, including safety, traffic and crowd control; clean-up costs; and the use of city equipment. City services necessitated by the conduct of the entertainment event independent of the opening of the arts and entertainment district shall be governed by Article XII. - Entertainment Events.

***City-sponsored opening of the district.*** At any time and from time to time, the City, through the Mayor or his/her designee, may elect to sponsor the opening of all or a portion of the arts and entertainment district.

***Conduct in the entertainment district.***

The regulations of Article VIII of this Code, concerning the possession of an open container or drinking an alcoholic beverage in a public place, shall not apply in the case of the possession or consumption of alcoholic beverages in an approved container within the confines of the arts and entertainment district area during the hours of operation of the arts and entertainment district. Otherwise, the regulations of Article VIII of this Code shall apply.

The regulations of Article VIII., concerning removal of an open container from an authorized licensed premises, shall not apply in the case of the removal of an approved container of alcoholic beverages from the premises of the arts and entertainment district permittee providing the same, during the hours of operation of the arts and entertainment district. Otherwise the regulations of subsections Article VIII of this Code shall apply.

It shall be unlawful for any person to re-use or to knowingly allow the re-use of an approved container for an alcoholic beverage and nothing in this section shall be construed to authorize the same.

Nothing in this section shall be construed to authorize any person to violate the state's open container law found at Code of Ala. 1975, § 32-5A-330.

Nothing in this section shall be construed to authorize any person to violate the state and city's laws against under-age drinking.

***Signage required.***

Businesses that wish to participate in the district privileges must display participation signage near the entrance to such establishment. Signs shall display the district name, establishment name, and the hours of district operation. The signage shall be unified in a district with regard to content, size, color, material, and method of attachment to the building. The signage shall be fixed to the building and no more than five (5) feet from the door at each public entrance.

Each boundary to a district shall be clearly marked at all district entrances and exits with fixed signage showing a boundary map. Signs for pedestrians entering a district shall display the district name and the hours of district operation, shall clearly mark the boundary of the district, and shall indicate the prohibition against bringing an alcoholic beverage purchased outside of the district into such district. Signs for pedestrians leaving the district area shall clearly mark the boundary of the district and shall indicate the prohibition concerning the removal of alcoholic beverages from the district area. The signage shall be unified in a district with regard to content, size, color, material, and method of attachment.

The requestor/developer of a district within the city shall be responsible for all signage required hereunder and shall be responsible for the cost of obtaining and installing such signage.

***Permitting.***

***Qualifications.*** In order to qualify for an arts and entertainment district permit, an applicant shall meet each of the following:

The applicant shall be a city business licensee that is authorized by the city to sell alcoholic beverages at retail for on-premises consumption; and

The applicant agrees to make any modification to the licensed premises as required to become a permittee such as but not limited to the posting of district maps, instructional signage, public safety, server training; and

No adverse criminal, quasi-criminal, or administrative action shall be pending or shall have been taken in the immediately preceding 12-month period against the city licensee or its owner related to the retail license or the operation of the city-licensed premises.

***Application process; permit duration.*** A city business licensee that meets the qualification of subsection (f)(1) above:

(1) may apply with the city clerk's office to become an entertainment district permittee by filling out a form provided by the city. A permit shall be valid for a license year, at the end of which a renewal application must be made. The city clerk-treasurer may deny a permit if the applicant does not meet the qualifications stated in subsection (1) above. If denied and after making the

necessary corrections in order to meet the qualifications stated in subsection (1), the applicant may reapply to become an entertainment district permittee by refilling the application with the city clerk-treasurer within 45 days after the denial.

**Action against permit.** A permit may be revoked, suspended, or not renewed by the city clerk-treasurer if the permittee or applicant for renewal no longer meets the qualifications stated in subsection (1) above.

**Entertainment District Permit Fees.** The entertainment district permit fee schedule for the city is as follows:

Permittee annual license fee: \$50.00

Issue fee for permit: \$15.00

**Security.**

**Temporary closure of district.** At any time and from time to time, the Chief of Police shall have the authority to temporarily close the arts and entertainment district, or portions of the district, which includes the authority to require persons to disperse from the area, should he, in his sole discretion, determine it is appropriate to do so in order to protect the public health, safety, or general welfare. The arts and entertainment district shall remain closed until the Chief of Police allows the district to be re-opened. The city shall not be responsible for any costs incurred by any person because of the closing and the city shall still be entitled to reimbursement for city services provided in connection with the opening of the district for an arts and entertainment district event.

II. The provisions of this Ordinance are severable. If any part of this Ordinance is declared invalid or unconstitutional, that declaration shall not affect the part which remains.

III. This ordinance shall go into effect upon the passage and adoption by the City Council of the City of Pelham, Alabama and posting as required by law.

**THEREUPON** David Coram, a councilmember moved and Chad Leverett a councilmember seconded the motion that Ordinance No. 418-01 be given vote. The roll call vote on said motion was as follows:

Maurice Mercer Council President	<u>Yes</u>
David Coram Council Member	<u>Yes</u>
Chad Leverett Council Member	<u>Yes</u>
Rick Wash Council Member	<u>Yes</u>
Mildred Lanier-Reed Council Member	<u>Yes</u>

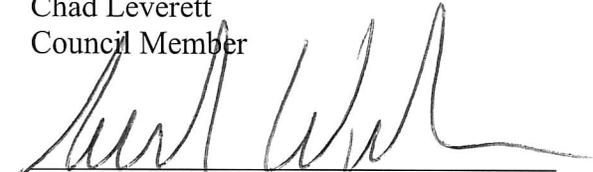
Ordinance No. 418-01 passed by majority vote of the Council and the Council President declared the same passed.

**ADOPTED** this 5th day of September 2023.

  
\_\_\_\_\_  
Maurice Mercer  
Council Member

  
David Coram  
Council Member

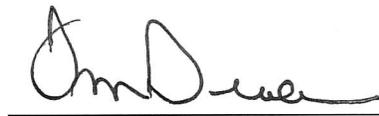
  
Chad Leverett  
Council Member

  
Rick Wash  
Council Member

  
Mildred Lanier-Reed  
Council Member



ATTEST

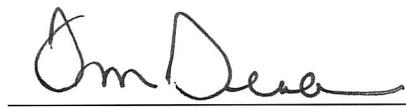
  
Tom Seale, MMC, City Clerk/Treasurer

APPROVED:

 9/5/2023  
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. 418-01** was duly ordained, adopted, and passed by the City Council of the City of Pelham, Alabama at a regular meeting of such Council held on the 5th day of September 2023 and duly published by posting an exact copy thereof on the 6th day of September 2023 at four public places within the City of Pelham, including the Mayor's Office at City Hall, Parks and Recreation Center, Pelham Library, Pelham Water Department and [www.pelhamalabama.gov](http://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

