Introduced 10/24/2013

ORDINANCE NO. 13- 845

THEREFORE, BE IT ORDAINED by the City Council of the City of Huntsville, Alabama, Chapter 16, Municipal Court of the Code of Ordinances, City of Huntsville, Alabama, as adopted and approved on the 24th day of April, 2003, be and the same is hereby amended by the creation of Section 16-15 as follows:

Section 1. Section 16-15 is hereby adopted to read as follows:

Section 16-15. **Establishing a Pretrial Diversion Program.**

(a) Pursuant to authority granted by the state legislature, a Pretrial Diversion Program is hereby established whereby certain offenses may be dismissed upon a defendant's successful completion of program requirements including, but not limited to, payment of applicable fees and costs, treatment, and community service work. Eligibility for the program shall be determined by the Office of the City Attorney and shall be subject to the City of Huntsville Pretrial Diversion Guidelines and Procedures as approved by the City of Huntsville's Governing Body. Eligibility further requires an admission of guilt and a waiver of the right to appeal by defendants entering the program. Any defendant who fails to comply with the requirements of the Pretrial Diversion Program may face sanctions (including incarceration, extension of time of supervision, or further orders of the court), or termination from the program.

(b) The Office of the City Attorney is hereby authorized to establish guidelines regarding eligibility for participation in the Pretrial Diversion Program pursuant to enabling legislation enacted by the Legislature of the State of Alabama and as approved by the City of Huntsville's Governing Body. The City Attorney's guidelines are attached hereto.

(c) The following application fees assessed for admittance and evaluation for the pretrial diversion program shall be based on the underlying criminal offense charged and shall be charged as follows:

(1) DUI: $500;
(2) Theft of Property in the third degree: $300;
(3) Domestic Violence offenses (excludes offense involving a minor child as victim): $500;
(4) Other misdemeanor offenses: $300; and
(5) Other violations: $300.

The application fee shall be nonrefundable upon approval for participation in the pretrial diversion program. The application fee shall be collected by the City of Huntsville Municipal Court Clerk and allocated to the City's general fund, except that a minimum of 25% shall be directed to the City of Huntsville's Advanced Technical Data Fund and a minimum of 25% shall be directed to the City of Huntsville Indigent Treatment Fund as established by the City of Huntsville.

(d) The following monitoring, supervision and testing fees for participation in the pretrial diversion program shall be assessed as follows:

(1) Compliance monitoring fee: $30, per appointment;
(2) Drug/alcohol testing fee: $25, per test; and
(3) Rescheduling fee: $15, per reschedule.

Each offender shall also be responsible for payment of the cost of any treatment program made a part the offender's pretrial diversion program. Such programs may include: drug and alcohol treatment programs, other addiction treatment programs, behavior modification treatment programs or other therapy programs as may be required on a case by case basis.

In addition to all fees required for participation in the pretrial diversion program, an offender shall also be liable for all court costs and fees, restitution, victims' compensation fund assessment, and any and all other fees and assessments, in the same manner as if the offender had not applied for entry into the program and has been found guilty of the offense or offenses involved. No costs, fees, restitution, or assessments shall be waived or remitted, absent an express agreement to that effect between the city judge and the offender, without a finding by the city judge that the offender does not have the reasonable ability to pay the same within the reasonably foreseeable future.

With the exception of the evaluation fee, as previously provided, all other pretrial diversion program fees, assessments and treatment program costs, as well as, all court costs, court fees and court assessments shall be collected by the City of Huntsville Municipal Court Clerk and shall be distributed as provided by state law. The Municipal Court Clerk shall also collect fees as required by Ala. Code § 12-17-226.17 (1975), as that section may be amended.

(d) The City of Huntsville Department of Probation shall be charged with reporting information to the Office of Prosecution Services as required by Ala. Code § 12-17-226.17 (1975), as that section may be amended.

Section 2. This ordinance shall become effective thirty (30) days from and after the date of its adoption.

ADOPTED on this the _____ day of _____, 2013.

_____
President of the City Council of
the City of Huntsville, Alabama

APPROVED on this the _____ day of _____, 2013.

_____
Mayor of the City of Huntsville,
Alabama

City of Huntsville Pretrial Diversion Program Guidelines and Procedures

Section 1. Admittance into the pretrial diversion program is in the sole discretion of the city attorney. An offender deemed by the city attorney to be a threat to the safety or well-being of the community shall not be eligible for the program. An offender charged with any of the following types of offenses shall be ineligible for admittance:

1. Any offense involving violence or aggression resulting in injury to a law enforcement officer;
2. Any offense involving eluding or attempting to elude a law enforcement officer;
3. Any offense involving violence where weapons are used or where children are victims;
4. Any driving under the influence charge where serious physical injuries, as defined by Section 13A-1-2(14) of the Code of Alabama (1975), are involved;
5. Any offense wherein the offender is a public official and the charge is related to the capacity of the offender as a public official;
6. Any offense involving an offender who holds a commercial driver license (CDL) issued in any state, any United States possession or territory, or any United States insular area, or an offender who has no conviction for which a commercial driver license was required;
7. Any offender charged with driving under the influence when the evidence shows that the offender had a blood alcohol level of .12% or greater;
9. Any offender charged with driving under the influence who refused to submit to the Draeger Alcotest or any other City approved test pursuant to the state implied consent law;
9. Any offender charged with driving under the influence while driving a school bus or day care vehicle;
10. Any offender, who is 21 years of age or older, charged with driving under the influence when a child age 14 years or younger, was present in the vehicle at the time of the offense charged;
11. Any offense wherein the offender has any previous criminal conviction other than a minor traffic conviction; and
12. Any offense wherein the offender has previously completed a pre-trial diversion program in any jurisdiction.

Section 2. Admittance into the pretrial diversion program will be considered on a case by case basis based on the following considerations:

1. There is a probability justice will be served if the offender is placed in the program;
2. It is determined the needs of the state, city and the offender can be met through the program;
3. The offender appears to pose no substantial threat to the safety and well-being of the community;
4. It appears the offender is not likely to be involved in further criminal activity if the offender complies with all conditions imposed pursuant to the program;

5. The offender will likely respond to rehabilitative treatment or counseling;
6. The need for restitution for the victim from the offender outweighs the interest of the state and city for incarceration of the offender; and
7. The city attorney may waive any of the aforementioned standards if justice or special circumstances dictate.

Section 3. Application for admittance into the pretrial diversion program shall include a one time application fee and evaluation by the City of Huntsville Department of Probation which shall require the offender to furnish information concerning past criminal history, education history, work record, family history, medical or psychiatric treatment or care prescribed or received, psychological tests taken, and any other information concerning the offender which the probation officer believes has a bearing on the decision whether or not the offender should be admitted into the program.

The probation officer may require the offender to submit to any type of test or evaluation process or interview the probation officer deems appropriate in evaluating the offender for admittance into the program. The costs of any test or evaluation shall be paid by the offender or as otherwise agreed to or provided in this policy. The offender shall provide the city attorney written consent to allow the city attorney to receive any educational, work, medical, psychiatric, psychological, or other records deemed necessary by the probation officer for the evaluation process. Should the probation officer determine, at any point during the evaluation process, that the offender suffers from, or potentially suffers from, an Axis I mental illness, the pretrial diversion evaluation may be suspended and the offender referred to the City of Huntsville Mental Health Court Pre-trial Intervention Program. All fees and assessments as provided in this policy shall be applicable to the Mental Health Court Pre-trial Intervention Program. If the offender is not accepted into the Mental Health Court Pre-trial Intervention Program, the Department of Probation may restart the Pretrial Diversion Program evaluation and assessment.

The application fee assessed pursuant to this section shall be as follows:

1. DUI: $500;
2. Theft of Property in the third degree: $300;
3. Domestic Violence offenses (excludes offense involving a minor child as victim): $500;
4. Other misdemeanor offenses: $300; and
5. Other violations: $300.

The application fee shall be nonrefundable upon approval for participation in the pretrial diversion program.

Section 4. Following the decision to admit an offender into the pretrial diversion program, but prior to entry, the offender shall enter into a written agreement stating the conditions of the participation of the offender in the program. The agreement shall include, but not be limited to, all of the following:

1. A voluntary waiver of the right of the offender to a speedy trial;

2. An agreement to the tolling, while in the program, of periods of limitations established by statutes or rules of court;
3. An agreement to the conditions of the program established by the city attorney;
4. If there is a victim of the charged crime, an agreement to the restitution repayment within a specified period of time and in an amount to be determined by the city attorney taking into account circumstances of the offender and the victim;
5. A waiver in writing of the right of the offender to a jury trial;
6. A truthful and complete statement by the offender as to the involvement of the offender in the offense charged, which statement shall be admissible in any criminal trial; and
7. Submission of a written plea of guilty to the offense or offenses charged or agreed upon included offenses, together with an agreement as to whether the case is to be dismissed upon successful completion of the program, and an agreement, if there be any, as to the recommended sentence should a sentence be imposed.

The written agreement, determined on a case by case basis, may also require the offender to agree to any of the following terms or conditions:

1. To participate in substance abuse treatment;
2. To participate in an education setting to include, but not limited to, K-12, college, job training, trade school, GED classes, or basic education courses;
3. If appropriate, to attempt to learn to read and write the English language;
4. To financially support his or her children or pay any court ordered child support;
5. To refrain from the use of drugs or alcohol or frequenting places where drugs or alcohol are sold or used;
6. To not commit any criminal offense;
7. To refrain from contact with certain named persons or premises;
8. To maintain or seek employment;
9. To not leave this state without prior written consent of the probation officer or supervising agency or personnel;
10. To maintain a residence approved by the probation officer or supervising agency or personnel;
11. To attend individual, group, financial, chemical addition, family, mental health, sex offender, or anger management counseling;
12. To pay all court costs, fees, fines, and worthless checks, and obey any other lawful court order associated with the offense or offenses for which the offender has entered the program, or any other case;
13. To refrain from the possession or use of any deadly weapon or dangerous instrument as defined in Section 13A-1-2, Code of Alabama (1975);
14. To pay supervision fees and application fees pursuant to this act;
15. To observe curfews or home detention or travel constraints as set out in agreement signed by the offender;
16. To have restitution, court costs, fees, child support, and any other moneys withheld or garnished from the wages or salary of the offender or withheld from any Alabama income tax due the offender, or from any available insurance policy,

or forfeited from any other real or personal property of the offender, and applied to the above;

17. To be admitted to a drug or alcohol treatment program on an inpatient or outpatient basis or receive other treatment alternatives for substance abuse;
18. To submit to periodic or random drug testing as part of the program and other terms and conditions related to substance abuse as the city attorney may direct;
19. To waive in writing the right of the offender to a probation hearing in the event of termination or withdrawal from the program;
21. To any other terms or conditions as the city attorney and the offender may agree to in the above-stated agreement;
22. To be required to pay supervision fees for monitoring and verifying the compliance of the offender with the terms of the program set forth by the city attorney.

Section 5. Monitoring, supervision and testing fees shall be assessed as follows:

1. Compliance monitoring fee: $30, per appointment;
2. Drug/alcohol testing fee: $25, per test; and
3. Rescheduling fee: $15, per reschedule.

In addition, each offender shall also be responsible for payment of the cost of any treatment program made a part the offender's pretrial diversion program. Such programs may include: drug and alcohol treatment programs, other addiction treatment programs, behavior modification treatment programs or other therapy programs as may be required on a case by case basis.

Section 6. An applicant offender my not be denied access into the pretrial diversion program based solely on the inability of the offender to pay the application fee. Application fees may be waived or reduced for just cause, including indigency of the offender, at the discretion of the city attorney. Any determination of the indigency of the offender for purposes of the application fee mitigation shall be made by the city attorney, but any mitigation shall be done only upon the determination by the city attorney that there is no reasonable likelihood within the reasonably foreseeable future that the offender will have the ability to pay the application fee.

Section 7. Upon acceptance of an offender into the pretrial diversion program by the city attorney, the city attorney and the offender shall submit the written application of the offender together with the statement of facts of the offender, the acceptance of the offender by the city attorney, and the agreement between the city attorney and the offender to the court presiding over the affected case of the offender for the approval of the court. The offender shall also enter a plea of guilty to the charge or charges involved. If the court rejects the agreement and guilty pleas, any money paid by the offender in satisfaction of the application fee shall be refunded to the offender. The offender shall still be liable for any actual expenses already incurred by the city attorney or any agency or service provider in furtherance of the application and evaluation process and the same will be deducted from any money so refunded to the offender.

In the event the offender is terminated from the program for non-compliance, the court shall impose appropriate punishment in the same manner as with any plea of guilty or finding of guilt and shall not be bound by the terms of the pretrial diversion written agreement.

Upon successful completion of the program by the offender, the city attorney shall notify the court in writing of that fact together with a request that the court enter an order of disposition of the case pursuant to the agreement between the offender and the city attorney.

Regardless of whether the offender successfully completes the program or withdraws from or is terminated from the program, the offender shall be liable for and required to pay all court costs and fees, restitution, victim's compensation fund assessment, and any and all other fees and assessments, in the same manner as if the offender had not applied for entry into the program and has been found guilty of the offense or offenses involved. No costs, fees, restitution, or assessments shall be waived or remitted, absent an express agreement to that effect between the city judge and the offender, without a finding by the city judge that the offender does not have the reasonable ability to pay the same within the reasonably foreseeable future.

Section 8. In the event an offender fails to comply with any term or condition of the agreed upon pretrial diversion program, a Court Referral Officer assigned to the Department of Probation shall make a recommendation to the city attorney recommending the city attorney do any of the following:

1. Continue the agreement with or without modification;
2. Terminate the offender from the pretrial diversion program;
3. Require the offender to adopt a new agreement as a condition of continued participation; or
4. The city attorney may waive a violation for good cause shown why the offender should stay in the program.

After receipt of the court referral officer's recommendation, the city attorney may accept the recommendation or modify the recommendation in the interests of justice and so notify the city court.

CITY COUNCIL AGENDA ITEM COVER MEMO

Agenda Item Number_____

Meeting Type: Regular

Meeting Date: 10/24/2013

Action Requested By:
Municipal Court

Agenda Item Type
Ordinance

Subject Matter:
Establishment of a Pretrial Diversion Program.

Exact Wording for the Agenda:
Introduction of an ordinance to amend Section 16-15 of the Code of Ordinances by establishing a pretrial diversion program.

Note: If amendment, please state title and number of the original

Item to be considered for: Introduction Unanimous Consent Required: No

Briefly state why the action is required; why it is recommended; what Council action will provide, allow
and accomplish and; any other information that might be helpful.
The pretrial diversion program will allow certain offenses to be dismissed upon a defendant's successful completion of program requirements.

Associated Cost: N/A

Budgeted Item: Not applicable

MAYOR RECOMMENDS OR CONCURS: Yes

Department Head: _____

Date: 10/16/2013

revised 3/12/2012

ROUTING SLIP
CONTRACTS AND AGREEMENTS

Originating Department: **Municipal Court** Council Meeting Date: **10/24/2013**

Department Contact: **Michelle Beck** Phone # **256-427-7803**

Contract or Agreement: **Pretrial Diversion Program**

Document Name: **Pretrial Diversion**

City Obligation Amount: **NA**

Total Project Budget: **NA**

Uncommitted Account Balance: **NA**

Account Number: **NA**

Procurement Agreements

Not Applicable	**Not Applicable**

Grant-Funded Agreements

Not Applicable	**Grant Name:**

Department	Signature	Date
1) Originating		10/15/13
2) Legal		10-16-13
3) Finance		10/17
4) Originating		
5) Copy Distribution		
a. Mayor's office (1 copies)		
b. Clerk-Treasurer (Original & 2 copies)		

Revised 04/15/2011