

Sponsor: Mayor Betterton and Morgan

ORDINANCE NO. \_\_\_\_\_

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF FLORENCE, ALABAMA, as follows:

**Section 1.** The City of Florence, Alabama, Inclement Weather and Emergency Closure Policy attached to this ordinance as Exhibit A and incorporated herein by reference (“Policy”) is hereby approved.

**Section 2.** The salaries paid to non-exempt employees during Official Closures as described in the Policy will be a regular part of such employees’ compensation.

**Section 3.** The cost of the employee compensation authorized by the Policy must be included in the annual City budgets and approved before the beginning of each fiscal year as required by Alabama Attorney General Opinion 2025-032, which is attached hereto as Exhibit B and incorporated herein by reference.

**Section 4.** The City Clerk-Treasurer is hereby authorized and directed to publish this Ordinance in the *TimesDaily*.

ADOPTED this \_\_\_\_\_ day of \_\_\_\_\_, 2025.

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\_\_\_\_\_  
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CITY COUNCIL

APPROVED this \_\_\_\_\_ day of \_\_\_\_\_, 2025.

\_\_\_\_\_  
MAYOR

ADOPTED & APPROVED this \_\_\_\_\_ day of \_\_\_\_\_, 2025.

\_\_\_\_\_  
CITY CLERK - TREASURER

# EXHIBIT (A)

## CITY OF FLORENCE, ALABAMA INCLEMENT WEATHER AND EMERGENCY CLOSURE POLICY

The safety of municipal employees and the continued delivery of essential public services are top priorities during inclement weather or emergency situations. This policy outlines procedures for employee attendance and operations during adverse weather conditions, natural disasters, or other emergencies. Additionally, this policy only applies to employees who are deemed non-exempt under the Fair Labor Standards Act.

### I. Authority to Close or Delay Operations

The Mayor has the authority to close municipal offices or delay start times due to inclement weather or other emergencies (“Official Closure”). Decisions will be communicated through official channels, including, but not limited to:

- Municipal website
- Local news stations
- Electronic mail
- Text message
- Telephone

### II. Essential vs. Non-Essential Employees

1. Essential Employees: Employees who work in roles critical to public safety and essential operations are expected to report to work or remain on duty during Official Closures unless otherwise directed by their supervisor. Essential Employees are identified at the time of hire based on their job description

2. Non-Essential Employees: Employees in administrative or other non-emergency roles are not required to report to work during an Official Closure.

### III. Attendance During Non-Closure Events

Regardless of weather or other conditions, if the Mayor does not declare an Official Closure, then:

- All employees are expected to make reasonable efforts to report to work on time.
- Employees who are unable to safely commute must notify their supervisor as soon as possible and may use available accrued annual leave for the excused absence.

### IV. Pay and Leave Use

#### 1. Non-Essential Employees

- (a) Official Closure: Regular Non-Essential Employees will be paid for their regularly

scheduled hours during the Official Closure without the use of leave time.

(b) Official Closure for less than a full workday: Regular Non-Essential Employees will be paid for the period of Official Closure; if a Non-Essential Employee elects not to report during any portion of the workday that is not subject to the Official Closure, accrued annual leave must be used.

## 2. Essential Employees

(a) Official Closure: Regular Essential Employees will be required to report to or remain at work and shall receive \$5.00 per hour above their regular rate of pay for the time during which the normal operating hours of City Hall were officially closed to the public. Regular Essential Employees who are authorized by their Department Head or designee to work in excess of the established standard workweek shall be compensated according to the Fair Labor Standards Act, not receiving any differential pay for hours worked outside the established workweek.

Essential employees who are unable to report to work during an official closure will be paid for their regularly scheduled hours during the Official Closure without the use of leave time.

(b) Official Closure for less than a full workday: NA

Notwithstanding the foregoing, Non-Essential and Essential Employees are eligible for a maximum of three 8-hour "Official Closure" days described herein for each fiscal year. Official Closure days will not be "banked" from year to year. All exempt employees will be paid in accordance with the guidelines outlined in the Manual for Supervisors and Employees and the Fair Labor Standards Act.

## V. Communication and Updates

Employees are responsible for staying informed through the designated municipal communication channels. Updates will be issued as conditions change.



2025-032

STATE OF ALABAMA  
OFFICE OF THE ATTORNEY GENERAL

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ATTORNEY GENERAL

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April 18, 2025

Honorable William T. Musgrove III  
City Attorney  
City of Florence  
Post Office Box 98  
Florence, Alabama 35631-0098

Employees, Employers, Employment  
– Weather – Compensation –  
Municipalities – Lauderdale County

If the Mayor of the City of Florence (“City”) closes City departments due to severe weather or anticipated severe weather, the City may pay non-essential hourly employees who do not work during the closure. In addition, the City may pay essential hourly employees who must work during such a closure at a rate higher than their normal rate of pay. Payments must be treated as a regular part of an employee’s compensation, made pursuant to a written and specified personnel policy, and adopted by the City prior to the beginning of a fiscal year through the passage of an ordinance.

Dear Mr. Musgrove:

This opinion of the Attorney General is issued in response to your request on behalf of the City.

### QUESTIONS

1. If the Mayor closes City departments due to severe weather or anticipated severe weather, may the City pay non-essential hourly employees who do not work during the closure without violating section 94 or section 68 of the Alabama Constitution?

2. May the City pay essential hourly employees who must work during such a closure at a rate higher than their normal rate of pay?

### FACTS AND ANALYSIS

A municipality, through its city or town council, has broad discretion to set the amount and manner of compensation for its employees. Section 11-43-7 of the Code of Alabama provides, in pertinent part, that “[a]ll employees of any city or town whose compensation is not fixed by law shall receive such salary or fees for their services as the council may by ordinance from time to time prescribe.” ALA. CODE § 11-43-7 (2008). This Office has observed that “[t]he employment of a particular individual and the duties and salary paid to that individual, absent a civil service or merit system, is a matter resting within the discretion of the city governing body.” Opinion to Honorable Michael B. Thompson, Mayor, Town of Section, dated June 25, 1984, A.G. No. 84-00332 at 2. Section 11-43-7 of the Code has been interpreted by this Office to authorize a broad variety of means by which a municipality may compensate its employees. *See* Opinion to Honorable Frank Alfano, Attorney, City of Bessemer, July 27, 2004, A.G. No. 2004-188 (compensating employees through discounted use of the civic center); Opinion to Honorable James E. Turnbach, Attorney, City of Rainbow City, dated May 14, 2014, A.G. No. 2014-057 (a tuition assistance program); and Opinion to Honorable Robert J. Burns, Mayor, City of Tarrant, dated Mar. 24, 1997, A.G. No. 97-00147 (a safety incentive program).

The above opinions demonstrate that municipalities have the statutory authority to structure payments to employees in a variety of situations, which may well include payments for weather-related closures as part of their overall compensation plan. Nonetheless, such payment

plans must comply with sections 94 and 68 of the Alabama Constitution. Section 94 prevents the Legislature from “authoriz[ing] any county, city, town, or other subdivision of this state to lend its credit, or to grant public money or thing of value in aid of, or to any individual, association, or corporation whatsoever” and section 68 precludes counties and municipalities from “grant[ing] any extra compensation, fee, or allowance to any public officer, servant, or employee, agent or contractor, after service shall have been rendered or contract made.” ALA. CONST. art. IV, § 94 (amend. 112, amend. 558); ALA. CONST. art. IV, § 68.

In its Opinion to Honorable Rachel Laurie Riddle, Chief Examiner, Department of Examiners of Public Accounts, dated Oct. 22, 2021, A.G. No. 2022-002 at 8-11, this Office addressed the question of whether the authority of counties and municipalities was limited by sections 94 and 68 of the Alabama Constitution when determining how to expend COVID-19 relief funds granted by the federal government under the American Rescue Plan Act (“ARPA”). This Office held that, although section 94 generally precluded a municipality from granting public money or a thing of value to private individuals, such grants could be made if done so for a public purpose as evidenced by the governmental body’s statutory authority. *Id.* at 8 (citing Opinion to Honorable Robert S. Presto, Escambia County Attorney, dated Aug. 24, 1995, A.G. No. 95-00299). Accordingly, payments to compensate a City employee performing a statutorily authorized function during weather-related closures would not violate section 94—regardless as to whether such payments are to compensate a non-essential employee who does not work during such a closure or to compensate an essential employee for work performed during such closure at more than his or her regular rate of pay.

In *Riddle* at 10-11, this Office also held that municipalities were authorized to grant ARPA funds to employees as “hazard pay” without violating section 68 if the payment plan is implemented *prospectively*. This holding is consistent with the Supreme Court of Alabama’s determination in *Kohen v. Bd. of Sch. Comm’rs of Mobile Cnty.*, 510 So. 2d 216, 218 (Ala. 1987), that, although “Section 68 prohibits additional payment for services already rendered,” it does not prohibit “the granting of additional compensation in exchange for additional consideration given by the officer, servant, or employee.” *Kohen* upheld the adoption by the Board of School Commissioners of Mobile County of a sick leave incentive plan but found that its “retroactivity provision” violated section 68. *Id.* at 218.

This Office has previously offered guidance on how municipalities may offer incentive plans to their employees without violating section 68. In its Opinion to Honorable Palmer Norris, City Attorney, dated Mar. 30, 1989, A.G. No. 89-00225 at 3, this Office held that a municipality may expend funds to pay its employees retirement bonuses "if they are treated as a regular part of an employee's compensation and are made pursuant to a written, specified personnel policy adopted by the municipality." Furthermore, this Office held in *Burns* at 3, that, to withstand section 68 scrutiny, any incentive pay plan "must set forth a quantitative amount which an employee can earn and the plan must be established prior to the beginning of a fiscal, or salary, year." *See also* Opinion to Honorable G. William Noble, Mayor, City of Gardendale, dated Feb. 19, 1981, A.G. No. 81-00255 at 2 ("Section 68 would not prohibit a salary schedule which included longevity pay so long as the pay was for prospective services to be rendered."). Finally, such incentive pay plans must be adopted by the city council through the passage of an ordinance. *See* Opinion to Honorable Milton C. Davis, Attorney for the City of Tuskegee, dated May 2, 2001, A.G. No. 2001-171 at 1 (citing ALA. CODE § 11-43-7 (1989)) (emphasis added) ("If compensation has not been fixed by statute, the city council has the authority to set the compensation of all city employees *by ordinance*").

#### CONCLUSION

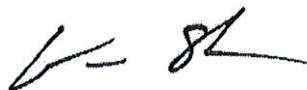
If the Mayor of the City of Florence closes City departments due to severe weather or anticipated severe weather, the City may pay non-essential hourly employees who do not work during the closure. In addition, the City may pay essential hourly employees who must work during such a closure at a rate higher than their normal rate of pay. Payments must be treated as a regular part of an employee's compensation, made pursuant to a written and specified personnel policy, and adopted by the City prior to the beginning of a fiscal year through the passage of an ordinance.

Honorable William T. Musgrove III  
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I hope this opinion answers your questions. If this Office can be of further assistance, please contact John Porter of my staff.

Sincerely,

STEVE MARSHALL  
Attorney General  
By:

A handwritten signature in black ink, appearing to read "R. W. Shaw". The signature is stylized with a large initial "R" and a long horizontal stroke.

RYAN W. SHAW  
Chief, Opinions Division

SM/JMP/lbh  
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