

ORDINANCE NO. 1060-08



**AN ORDINANCE AMENDING AND RESTATING ORDINANCE NO. 1039-08
REGARDING THE ESTABLISHMENT OF THE FOLEY HISTORICAL
COMMISSION AND OTHER PROCEDURES FOR THE PROTECTION AND
ENHANCEMENT OF HISTORIC PROPERTIES AND HISTORIC DISTRICTS**

WHEREAS, in accordance with the Code of Alabama, Sections 11-68-1 *et seq.*, on April 21, 2008, the City Council of Foley, Alabama (the "City Council") passed Ordinance No. 1039-08 and thereby established the Foley Historical Commission and certain procedures for the protection and enhancement of historic properties and historic districts within the City of Foley, Alabama (the "City"); and

WHEREAS, the City Council has determined that it is necessary provide a procedure for relief from the requirements of Ordinance 1039-08 where its application would otherwise impose a substantial economic hardship upon an owner of property within a historic district; and

WHEREAS, the City Council has determined that it is necessary to amend Ordinance 1039-08 with regard to the public notice required for the meetings of the Foley Historical Commission; and

WHEREAS, the City Council has determined that it is in the best interest of the public welfare of the City to amend and restate Ordinance No. 1039-08 as fully set forth herein.

BE IT ORDAINED BY the City Council of Foley, Alabama, while in session on August 18, 2008, hereby amends and restates Ordinance 1039-08 as follows:

Section 1. Article IV entitled "Historic Preservation" is added to Chapter 4 entitled "Buildings, Construction and Related Activities" of the Code of Ordinances of Foley, Alabama; and

Section 2. Section 4-79 entitled "Definitions", Section 4-80 entitled "Purposes; Creation of the Historical Commission", Section 4-81 entitled "Recommendation and Creation of Historic Districts and Historic Properties", Section 4-82 entitled "Notification of Historic Designation; Recording", Section 4-83 entitled "Certificate of Appropriateness Prerequisite to Changes in Historic Property and Historic District; Submission and Consideration of Application for Certificate; Rules, Regulations and Standards; Records", Section 4-84 entitled "Failure to Provide Maintenance and Repair", Section 4-85 entitled "Architectural Review Board", Section 4-86 entitled "Affirmation of Existing Building and Zoning Codes", and Section 4-87 entitled "Penalties and Remedies" are added as Article IV entitled "Historic Preservation" of Chapter 4 entitled "Buildings, Construction and Related Activities" of the Code of Ordinances of Foley, Alabama, which Sections are as follows:

Sec. 4-79. Definitions. The following definitions shall apply in the interpretation of this article:

Alteration - Any act or process that changes one or more of the exterior architectural features of a structure, including, but not limited to, the erection, construction, expansion, rehabilitation, reconstruction, relocation, or removal of any structure.

Building - Any structure having a roof supported by columns or walls designed or built for the support, enclosure, shelter, or protection of persons, animals, chattels, or property of any kind.

Certificate of Appropriateness - A document evidencing approval by the commission of an application to make a material change to a historic property or any building, structure or site within a historic district.

City – The City of Foley, an Alabama municipal corporation.

Commission – The Foley Historical Commission established pursuant to this article.

Conflict of Interest – A conflict on the part of a commission member between his or her private interest and the responsibilities imposed by this article. A conflict of interest involves any action, inaction, or decision by a member in the discharge of his or her duties which would materially affect his or her financial interest or those of his or her family members or any business with which the person is associated in a manner different from the manner it affects the other members.

Contributing Property – Any property or resource within a historic district that is fifty (50) years old or older that retains its primary historical/physical character and integrity and thus “contributes” to the historical significance or character of the district.

Design Guidelines - A document describing design features and examples of appropriate treatment to preserve the historic and architectural character of a property or district.

Exterior Architectural Features - The architectural style, general design and general arrangement of the exterior of a building or other structure, including but not limited to, the kind or texture of the building material and the type and style of all windows, doors, signs and other appurtenant architectural fixtures, features, details or elements relative to the foregoing.

Family Members – The spouse, a dependent, an adult child and his or her spouse, a parent, a spouse’s parents, a sibling and his or her spouse, of the member.

Material Change in Appearance - A change of appearance that will affect the exterior architectural or environmental features of a historic property or any building, structure, site, object, landscape feature or work of art within a historic district, including, but not limited to:

1. A reconstruction or alteration of the size, shape or facade of a historic property, including relocation of any doors or windows or removal or alteration of architectural features, details or elements;
2. Demolition or relocation of a historic structure;
3. Commencement of excavation for construction purposes;
4. A change in the location or advertising visible from the public right of way;
5. The erection, alteration, restoration or removal of any building or other structure within a historic property or district, including walls, fences, steps and pavements or other appurtenant features; or
6. Any exterior work that must be permitted by the city’s building department.

Member or Members – A person or persons appointed to serve as members of the city’s historical commission.

National Register of Historic Places - The official federal list of districts, sites, buildings, structures, and objects significant in American history, architecture, archaeology, engineering, and culture to prehistory or history of their community, state, or the nation.

Non-contributing Historic Property – Any resource within a historic district that is less than fifty (50) years old or any resource that is more than fifty (50) years old that no longer retains its primary historical characteristics or physical character and thus *does not* “contribute” to the historical significance of the district.

Object - A material thing of functional, aesthetic, cultural, historic or scientific value that may be, by nature or design, movable yet related to a specific setting or environment.

Original Members – The persons appointed to serve as members of the city’s historical commission as of the effective date of this article.

Owner – The holder of the fee simple title as revealed on the property tax rolls of Baldwin County, Alabama, and any person (natural, legal, or corporate) or groups of persons, companies, associations, corporations, or partnerships who, alone or jointly or severally with others:

1. Shall have legal title to any property, with or without an accompanying right of possession; or
2. Shall have charge, care or control of any property as owner, executor, executrix, administrator, trustee, guardian of the estate owner, mortgagee or vendee in possession, or assignee of rents, lessee, or other person, firm or corporation in control of a property.

Site - The location of a significant event, a prehistoric or historic occupation or activity or a building or structure, whether standing, ruined or vanished, where the location itself maintains historical, cultural or archaeological value regardless of the monetary value of the site or any structure thereon.

Structure - Anything constructed or erected, the use of which requires permanent or temporary location on or in the ground, including but not limited to buildings, fences, gazebos, signs, billboards, backstops for tennis courts, swimming pools and radio and television antennae, including supporting towers.

Sec. 4-80. Purposes; Creation of the Historical Commission.

A. *Purposes.* The purposes of the commission shall be to:

1. Promote the educational, cultural, economic and general welfare of the city through the preservation and protection of buildings, sites, structures, areas and districts of historic significance and interest;
2. Stimulate and promote business by revitalizing the business districts and historic neighborhoods and by protecting and enhancing local historical and aesthetic attractions to tourists and visitors;
3. Enhance the opportunities for federal or state tax benefits under relevant provisions of federal or state law; and
4. Provide for the designation, protection, preservation and rehabilitation of historic properties and historic districts and to participate in federal or state programs to do the same.

B. *Creation of the Commission.*

1. There is hereby created a commission whose title shall be the Foley Historical Commission. The commission is created pursuant to and shall have the authority granted in the Code of Alabama Sections 11-68-1 et seq., as amended. The commission shall constitute a nonprofit governmental agency whose funds shall be used exclusively for public purposes as provided.

2. The commission shall have tax-exempt status and the properties of the commission and the income therefrom, together with all leases, agreements, and contracts made by it, shall be forever exempt from any and all taxation by the state and any political subdivision thereof, including, but not limited to, sales and use tax, gross receipts tax, income, admission, amusement, excise, and ad valorem taxes.

C. *Commission Members; Number, Appointment, Terms, Compensation and Rules and Standards.*

1. The commission shall consist of seven (7) members nominated by the mayor and appointed by the city council. Nomination and appointment of members of the commission shall be made to ensure that the commission will be composed of persons with as much of the training and experience as specified in subsection 2 of this section as is possible.

2. All members shall be residents of the city and shall be persons who have demonstrated training or experience in history, architecture, architectural history, urban development, archaeology, law, or who shall be residents of a historic district. Not more than one fifth (1/5) of the members of the commission shall be public officials.

3. Except for the original members of the commission, members shall serve three year terms and shall be appointed in such a manner as to serve overlapping terms. Members may be reappointed. The original members of the commission shall be appointed as follows: two (2) members for one (1) year; two (2) members for two (2) years; and three (3) members for three (3) years.

4. Members shall serve without compensation, although they may be reimbursed for expenses incurred on behalf of the commission in accordance with the rules and regulations for reimbursement of expenses adopted by the commission.

5. Members of the commission may be removed for cause by the city council.

6. Vacancies on the commission shall be filled by persons nominated by the mayor and appointed by the city council. Such appointments shall be for the unexpired term of the member replaced.

7. Members of the commission shall elect a chairperson and a vice chairperson and such other officer as the members deem necessary. The commission shall adopt rules of procedure and bylaws to govern its operations and shall communicate those rules of procedure and bylaws to the city council. The rules of procedure and bylaws of the commission shall specify what number of members of the commission constitutes a quorum.

D. *Commission Meetings, Minutes and Public Participation.*

1. All meetings of the commission shall be open to the public and all votes taken by the commission shall be taken in public. The commission shall hold at least one (1) regular meeting in each calendar month. The commission shall keep minutes of the business

brought before it as well as its resolutions, transactions, findings, determinations, and recommendations, all of which shall be made available for public inspection. Notice of all commission meetings shall be posted, at least seven (7) calendar days prior to the date set for the meeting, on a bulletin board at a place convenient to the public in city hall. Notice also shall be published in the principal newspaper of local circulation not less than seven (7) calendar days prior to the date set for the meeting.

2. The rules of procedure and bylaws adopted by the commission must be available for public inspection.

E. *Statement of the Commission's Powers and Duties.* The commission shall have the following powers and duties and shall be authorized to:

1. Preserve and protect buildings, structures and sites of historic and architectural value in the historic districts designated pursuant to this article.

2. Prepare a survey of and maintain an inventory of all historic and architecturally significant property in the city.

3. Recommend to the mayor and city council specific buildings, structures, sites and districts for designation as historic properties or districts.

4. Restore and preserve any historic properties acquired by the city or the commission.

5. Promote acquisition of facade and conservation easements by the city or by the commission.

6. Develop and conduct educational programs on historic projects, properties and districts.

7. Make such investigations and studies of matters relating to historic preservation as the city or the commission deems necessary and appropriate for the purposes of this article.

8. Apply for funds to carry out the purposes and responsibilities of the commission from municipal, county, state, federal and private agencies and sources.

9. With the approval of the city council, purchase, sell, contract to purchase, contract to sell, own, encumber, lease, mortgage and insure real and personal property in carrying out the purposes and responsibilities of the commission.

10. Investigate, survey and process nominations of properties to the National Register of Historic Places.

11. Investigate, survey and process applications for certification of historic properties for tax credits for preservation expenditures.

12. Contract with other municipal, county, state, federal and private agencies and organizations to perform historic preservation related functions.

13. Approve design guidelines based on the secretary of the interior's standards for rehabilitation; and

14. Exercise such further powers as the commission may deem reasonably necessary and proper to carry out the purposes, responsibilities and powers of the commission.

F. *Annual Reports of the Commission's Activities.* The commission shall prepare and file with the city council and with the Alabama Historical Commission, an annual report of its activities as required by the city council and the Alabama Historical Commission. The annual report shall cover the period from October 1st to September 30th and shall be submitted in October of each year. The report shall include information the commission deems appropriate, including but not limited to such items as the number of cases reviewed, historic district and property designations made, revised resumes of commission members/staff, appointments to the commission, attendance records and all minutes relating to the review of National Register nominations. The report shall document attendance at the orientation/training session as specified in Section 4-80 H.

G. *Conflict of Interest.* At any time the commission reviews a project in which a member has a conflict of interest, that member will be forbidden from presenting, voting or discussing the project, other than answering a direct question.

H. *Liaison Between the Commission and the State Historic Preservation Office (Alabama Historical Commission).* The mayor shall designate one or more employees of the city to act as professional staff for the commission. Such employee(s) shall serve as a source of technical, administrative, and professional assistance to be responsible for the operations of the commission, and to insure that the certification requirements for participation in the certified local government program are met. At least one (1) member of the commission and/or the person serving as the commission's technical staff, and/or a representative appointed by the mayor who has an ongoing relationship with the commission, will attend the Alabama Certified Local Government orientation/training session sponsored by the Alabama Historical Commission each year.

Sec. 4-81. Recommendation and Designation of Historic Districts and Historic Properties.

A. *Historic District Defined.* A historic district is a geographically definable area, shown on the city's official zoning map, which contains buildings, structure, sites, objects, landscape features and works of art or a combination thereof, which:

1. Represents one or more periods, styles or types of architecture typical of one or more eras in the history of the city, county, state or region;
2. Represents a significant aspect of the cultural, political, economic, military or social history of the city, county, state or region;
3. Has had a significant relationship with the life of a historic person or event, representing a major aspect of the history of the city, region, state or nation;
4. Is a part of the historic, architectural, archaeological or aesthetic heritage of the city, region, state or nation; or
5. Contains vernacular structures which contribute to an overall character and a sense of place which is representative of the city.

B. *Classification of Properties in Historic Districts.* An individual property within a historic district shall be classified as either a contributing property or a non-contributing property.

C. *Historic Property Defined.* A historic property is a building, structure, site, object, or work of art, including the adjacent area necessary for the proper appreciation or use thereof,

deemed worthy of preservation by reason of value to the city for one (1) of the following reasons:

1. It is an outstanding example of a structure representative of its era;
2. It is one of the few remaining examples of past architectural style;
3. It is a place or structure associated with an event of persons of historic or cultural significance to the city, state or region;
4. It is a site of natural or aesthetic interest that is continuing to contribute to the cultural or historical development and heritage of the city, county, state or region; or
5. The building or structure is an example of an architectural style, or combination of architectural style, which is representative of the city or which is unique to the city.

D. Recommendation of Designation. The commission shall recommend to the city council property the commission deems suitable for designation as a historic district or a historic property. The recommendation shall be in the form of an ordinance. The commission shall not recommend designation of a historic district or historic property unless such recommendation is based on a finding of a survey of such district conducted by or for the commission in accordance with the rules of the Alabama Historical Commission and this section.

E. Required Public Hearings to Recommend Designation.

1. Prior to making its recommendation to the city council, the commission shall hold a public hearing on the proposed recommendation of historic designation. Notice of the public hearing shall be posted, at least seven (7) calendar days prior to the date set for the hearing, on a bulletin board at a place convenient to the public in city hall. Notice also shall be published in the principal newspaper of local circulation not less than seven (7) calendar days prior to the date set for the hearing.

2. In addition to the notice required in subsection 1 above, the commission shall send written notice via U.S. Mail to all owners of property recommended for historic designation as such owners are identified in the Baldwin County property tax rolls if such owners can be found on reasonable inquiry, and to the occupant at the address of each property recommended for historic designation. All such notices shall be mailed not less than seven (7) calendar days prior to the date set for the public hearing.

F. City Council Action on Commission Recommendation. Following receipt of the commission's recommendation, the city council may adopt the ordinance as proposed, may adopt the ordinance with any amendments it deems necessary, or reject the ordinance.

Sec. 4-82. Notification of Historic Designation. Upon adoption of the ordinance for designation by the city council, the commission shall give written notification of the designation in writing to all agencies of the city and to all owners of the property included within the historic designation. The notice shall apprise said owners of the necessity of obtaining a certificate of appropriateness prior to undertaking any material change in appearance of the historic property or historic district designated. A notice sent via the U.S. Mail to the owner of the property as shown on the Baldwin County property tax rolls, if such owner can be found on reasonable inquiry, shall constitute legal notification to the owner under this article.

Sec. 4-83. Certificate of Appropriateness Prerequisite to Changes in Historic Property and Historic District; Submission and Consideration of Application for Certificate; Rules, Regulations and Standards; Records.

A. *Certificate of Appropriateness Required.* No change in the exterior appearance of a historic property or any building, structure or site within a historic district may be made, and no historic property may be demolished, and no building or structure in a historic district may be erected or demolished unless and until a certificate of appropriateness for such change, erection, or demolition is approved by the commission. No permit for changing, building or demolishing a historic property or any building, structure or site within a historic district may be issued by the chief building official of the city until a certificate of appropriateness has been approved by the commission.

1. The requirement of a certificate of appropriateness shall apply to public property which has been designated as a historic property or which is contained in a historic district, and shall apply to all actions by public authorities which involve historic properties and properties within historic districts.

2. Signs shall be considered as structures and no sign on a historic property or in a historic district shall be changed, erected or demolished unless and until a certificate of appropriateness is approved by the commission. A mural shall be considered as a sign.

3. The commission shall review paint color and placement. Paint colors must be consistent with the pre-approved palette of colors set forth in the applicable design guidelines approved by the commission. Any person using these pre-approved paint colors shall be deemed to have the approval of the commission to do so without having to appear before the commission. Changes to historic properties or buildings within historic districts other than painting with such pre-approved colors must be approved by the commission as otherwise provided in this article. Persons wishing to use colors not part of the pre-approved selection may apply to the commission for approval following its regular procedures, and if such color is approved the commission may add it to the section of approved paint colors. The painting of originally unpainted surfaces shall require a certificate of appropriateness.

4. Landscaping shall constitute a change for which a certificate of appropriateness is necessary. Landscaping includes without limitation grading, paving, construction of walkways, driveways, pools, and all other surface additions and improvements, but does not include the mere planting or removal of plant materials, other than the removal of trees larger than twelve (12) inches in diameter at ground level, whose removal will nevertheless be permitted except where, all aspects of the removal having been considered, removal would, in the judgment of the commission, have a net material adverse impact on the character and appearance of the historic property or historic district.

5. In its review of applications for certificates of appropriateness, the commission shall not consider interior arrangement or use having no effect on exterior architectural features; however, the commission may require a floor plan to aid understanding the exterior design scheme.

B. *Design Guidelines.* In addition to the guidelines set forth in this article, the commission shall adopt design guidelines which shall apply in considering the granting and denial of certificates of appropriateness. Design guidelines shall be in compliance with the secretary of the interior's "standards for historic preservation projects" including the secretary's "standards for rehabilitation," taking into account local characteristics and goals.

C. *Procedures for Granting or Denying Applications for Certificates of Appropriateness.*

1. An application shall be submitted to the commission to begin the application process for a certificate of appropriateness. Each application shall be accompanied by plans for the proposed work, including drawings, photographs, plans or other documentation

sufficient to show the appearance of the architectural design of the building or work contemplated, all as may be required by the commission. With each set of plans there shall be submitted a detailed set of specifications sufficient to show the site layouts or features such as the general exterior appearance, accessory structures, signs, lights and other appurtenances. Applications involving demolition or relocation shall be accompanied by post-demolition or relocation plans for the site.

2. Except for applications considered under the commission's procedures for expedited review, all applications for certificates of appropriateness shall be considered by the commission after a public hearing. At least seven (7) calendar days prior to the hearing, the commission shall notify the applicant of the time and place of the hearing and shall provide the applicant with a copy of any reports pertaining to the application. A notice shall be posted on the property indicating that an application is pending. The commission may take such further action as may be reasonably required to inform the owner of any property likely to be affected by reason of the application.

3. Any applicant may appear in person before the commission in his own behalf and may present evidence.

4. The commission may adopt an expedited procedure for approval of routine maintenance to historic properties, or to buildings or structures in a historic district. Such expedited procedure may waive the requirements of submission of an application for certificate of appropriateness and for consideration at a public hearing.

5. The commission shall keep a record of applications for certificates of appropriateness and all its proceedings.

6. In addition to the procedures set forth in this article, the commission shall adopt additional rules and regulations setting forth the procedure for submission and consideration of applications for certificates of appropriateness.

D. Standard of Review; Issuance of Certificate; Reasons for Rejection; Application for Reconsideration; Effect of Rejection on Issuance of Building Permit.

1. The commission shall approve the application and issue a certificate of appropriateness if it finds the proposed material change(s) in the appearance would not have a substantial adverse effect on the aesthetic, historic or architectural significance and value of the historic property or the historic district. In making this determination, the commission shall consider, in addition to any other pertinent factors, the historical and architectural value and significance, architectural style, general design arrangement, texture and material of the architectural features involved and the relationship thereof to the exterior architectural style and pertinent features of the other structures in the immediate neighborhood.

2. The commission shall approve or reject an application for a certificate of appropriateness within forty-five (45) days after the filing of a complete application by the owner of a historic property, or of a historic structure, site, object or work of art located within a historic district. The commission shall submit its decision in the form of a written order to the chief building official. In addition, notice of the issuance or denial of a certificate of appropriateness shall be sent by U.S. Mail to the applicant and all other persons who have requested such notice in writing filed with the commission.

3. Failure of the commission to act within said forty-five (45) days shall constitute approval and no other evidence of approval shall be needed, and upon request the commission shall notify the building official that a permit may issue for the work specified.

4. In the event the commission rejects an application, it shall state its reasons for doing so, and shall transmit a record of such actions and reasons, in writing, to the applicant. The commission may suggest alternative courses of action it thinks proper if it disapproves of the application submitted. The applicant, if he or she desires, may make modifications to the plans and may resubmit the application at any time.

5. In cases where the application covers a material change in the appearance of a structure which would require the issuance of a building permit, the rejection of application for a certificate of appropriateness by the commission shall be binding upon the building inspector or other administrative officer charged with issuing building permits and, in such cases, no building permit shall be issued.

6. A certificate of appropriateness shall become void unless construction is commenced within one (1) year from the date of issuance. Certificates of appropriateness are renewable.

7. All work performed pursuant to a certificate of appropriateness shall strictly comply with the conditions of such certificate.

E. *Certificate of Economic Hardship.*

1. If the commission denies an application for a certificate of appropriateness, a property owner may apply for a certificate of economic hardship. The purpose of the certificate of economic hardship is to provide relief where the application of this article would otherwise impose a substantial economic hardship.

2. The burden of proof rests on the applicant to show that the denial of the certificate of appropriateness will result in a substantial economic hardship.

3. The applicant shall provide such information as may reasonably be required by the commission to establish the owner's claim of substantial economic hardship. The data provided by the applicant must be substantiated by either professionals in an applicable field or by thorough documentation of how the information was obtained. The commission may request additional information from the applicant as necessary to make informed decisions. Certificates of economic hardship are granted only to the applicant and are not transferable.

4. In making its determination, the commission may consider, but is not limited to, the following described factors, evidence, and testimony:

a. Date the subject property was acquired and status of the property under this ordinance at the time of acquisition, e.g. whether property was protected by this article, condition, etc.

b. The structural soundness of the building, or any structures on the property and their suitability for rehabilitation.

c. The current level of economic return on the property.

d. The economic feasibility of rehabilitation or reuse of the existing property.

e. The marketability of the property for sale or lease, considered in relation to any listing of the property for sale or lease, and the price asked and offers received, if any, within the previous two (2) years. This determination can include testimony and relevant documents regarding: (1) any real estate broker or firm engaged to sell or lease the property; (2)

reasonableness of the price or rent sought by the applicant; and (3) any advertisements placed for the sale or rent of the property by the owner or applicant.

f. Comments and/or reports from any community organizations, preservation groups, other associations and private citizens that wish to comment on a submission made under the financial hardware provision; and

g. The extent to which the owner is responsible for his or her own economic hardship, if any, such as the owners's failure to: (1) perform normal maintenance and repairs; (2) the failure to diligently solicit and retain tenants; (3) the failure to prescribe a rental amount which is reasonable; (4) the failure to provide normal tenant improvements; and (5) the owner's purchase of the subject property after the enactment of the relevant provisions of this article without making said purchase contingent upon the owner's first obtaining the approvals required by this article.

5. The commission shall hold a public hearing as soon as practical but not longer than forty-five (45) days of receipt of a completed application for a certificate of economic hardship. Notice shall be provided in the same manner the commission uses for hearings on certificates of appropriateness. At the hearing, the commission shall take testimony presented by the owner and any other interested parties on the standards set forth above. The commission shall issue its decision within forty-five (45) days of the hearing.

6. If the commission fails to timely hold a public hearing, or having conducted a hearing fails to render a decision within forty-five (45) days, the applications for a certificate of economic hardship shall be deemed granted.

7. If the commission determines to deny the application for a certificate of economic hardship, the applicant shall be notified in writing and shall be provided a copy of the commission's final order.

8. A certificate of economic hardship may be subject to conditions, including design guidelines, for subsequent construction not inconsistent with the standards set forth in this article and the design guidelines.

F. *Appeals.* Any person having a request for a certificate of appropriateness denied by the commission may appeal such denial to the circuit court of Baldwin County, Alabama.

Section 4-84. Failure to Provide Ordinary Maintenance or Repair. Owners of historic properties or properties within historic districts shall not allow their buildings to deteriorate by failing to provide ordinary maintenance or repair. It shall be a violation of this article for an owner to fail to maintain any structure to prevent the deterioration of any exterior appurtenance or architectural features.

Sec. 4-85. Architectural Review Board. The city council may elect to create an Architectural Review Board to perform the duties and responsibilities of the commission in accepting, considering and approving or rejecting applications for certificates of appropriateness.

Sec. 4-86. Affirmation of Existing Building and Zoning Codes. Nothing in this article shall be construed as to exempt property owners of occupied buildings from complying with existing city building and zoning codes, nor to prevent any property owner from making any use of his property not prohibited by other statutes, ordinances and regulations. Nothing herein shall limit, modify, supersede or restrict any other existing law or regulation governing buildings, the issuance of building permits, the inspection of buildings, or any other law or regulation.

Sec. 4-87. Penalties and Remedies.

A. *Criminal Penalties.* Any owner who is found to have violated the terms of this article, after having received ninety (90) days written notice from the building inspector to correct or abate same, shall be punished by a fine of not less than one dollar (\$1.00) nor more than five hundred dollars (\$500.00), or by imprisonment for a period not to exceed six (6) months, or by both such fine and imprisonment all as set forth in the Code of Alabama Section 11-45-9 (1975) and by Section 1-8 of this Code. Each day such owner shall allow a violation to continue after having received ninety (90) days written notice shall constitute a separate offense.

B. *Remedying Unlawful Condition by the City.* Should the owner of a historic property or property located within a historic district fail to correct or abate such violation after having received ninety (90) days written notice from the building inspector to correct or abate same, the city is authorized to do such work at the expense of such owner, the cost thereof to be a lien upon the property and to be collected as any other debts are collected or liens enforced.

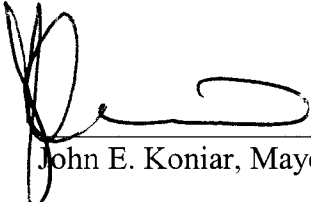
C. *Other Remedies.* The commission and the city may institute any appropriate action or proceeding in a court of competent jurisdiction to prevent any material change to historic property, any portion of which is contained in a historic district, except in compliance with the provision of this article, or to prevent any illegal act or conduct with respect to such historic property or historic district, and to recover any damages which may have been caused by the violation of this article.

Section 3. In the event that any section, subsection, sentence, clause or phrase of this Ordinance shall be declared or adjudged invalid or unconstitutional, such adjudication shall in no manner affect the other sections, sentences, clauses or phrases of this Ordinance, which shall remain in full force and effect, as if the section, subsection, sentence, clause or phrase so declared or adjudged invalid or unconstitutional were not originally a part thereof.

Section 4. This Ordinance shall become effective immediately upon its adoption and publication.

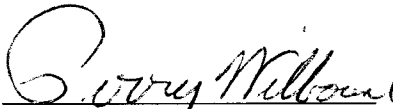
Section 5. The City Administrator/Clerk is hereby directed to cause a copy of this Ordinance to be published in the Foley Onlooker, a newspaper published in and of general circulation in the City.

PASSED, ADOPTED AND APPROVED THIS 18th day of August, 2008.



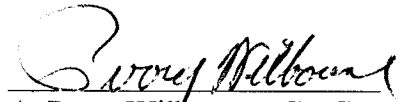
John E. Koniar, Mayor

ATTEST:



A. Perry Wilbourne, CMC
City Clerk/Administrator

I certify that the foregoing Ordinance was published in the Foley Onlooker, a newspaper of general circulation in the City of Foley, in its issue of **Saturday, August 30, 2008**".



A. Perry Wilbourne, CMC
City Clerk/Administrator

ORDINANCE NO. 1039-08



**ORDINANCE TO ESTABLISH THE FOLEY HISTORICAL COMMISSION AND
OTHER PROCEDURES FOR THE PROTECTION AND ENHANCEMENT OF
HISTORIC PROPERTIES AND HISTORIC DISTRICTS**

BE IT ORDAINED BY the City Council of Foley, Alabama, while in session on April 21, 2008, as follows:

Section 1. Article IV entitled "Historic Preservation" is added to Chapter 4 entitled "Buildings, Construction and Related Activities" of the Code of Ordinances of Foley, Alabama; and

Section 2. Section 4-79 entitled "Definitions", Section 4-80 entitled "Purposes; Creation of the Historical Commission", Section 4-81 entitled "Recommendation and Creation of Historic Districts and Historic Properties", Section 4-82 entitled "Notification of Historic Designation; Recording", Section 4-83 entitled "Certificate of Appropriateness Prerequisite to Changes in Historic Property and Historic District; Submission and Consideration of Application for Certificate; Rules, Regulations and Standards; Records", Section 4-84 entitled "Failure to Provide Maintenance and Repair", Section 4-85 entitled "Architectural Review Board", Section 4-86 entitled "Affirmation of Existing Building and Zoning Codes", and Section 4-87 entitled "Penalties and Remedies" are added as Article IV entitled "Historic Preservation" of Chapter 4 entitled "Buildings, Construction and Related Activities" of the Code of Ordinances of Foley, Alabama, which Sections are as follows:

Sec. 4-79. Definitions. The following definitions shall apply in the interpretation of this article:

Alteration - Any act or process that changes one or more of the exterior architectural features of a structure, including, but not limited to, the erection, construction, expansion, rehabilitation, reconstruction, relocation, or removal of any structure.

Building - Any structure having a roof supported by columns or walls designed or built for the support, enclosure, shelter, or protection of persons, animals, chattels, or property of any kind.

Certificate of Appropriateness - A document evidencing approval by the commission of an application to make a material change to a historic property or any building, structure or site within a historic district.

City - The City of Foley, an Alabama municipal corporation.

Commission - The Foley Historical Commission established pursuant to this article.

Conflict of Interest - A conflict on the part of a commission member between his or her private interest and the responsibilities imposed by this article. A conflict of interest involves any action, inaction, or decision by a member in the discharge of his or her duties which would materially affect his or her financial interest or those of his or her family members or any business with which the person is associated in a manner different from the manner it affects the other members.

Contributing Property - Any property or resource within a historic district that is fifty (50) years old or older that retains its primary historical/physical character and integrity and thus "contributes" to the historical significance or character of the district.

Design Guidelines - A document describing design features and examples of appropriate treatment to preserve the historic and architectural character of a property or district.

Exterior Architectural Features - The architectural style, general design and general

arrangement of the exterior of a building or other structure, including but not limited to, the kind or texture of the building material and the type and style of all windows, doors, signs and other appurtenant architectural fixtures, features, details or elements relative to the foregoing.

Family Members – The spouse, a dependent, an adult child and his or her spouse, a parent, a spouse’s parents, a sibling and his or her spouse, of the member.

Material Change in Appearance - A change of appearance that will affect the exterior architectural or environmental features of a historic property or any building, structure, site, object, landscape feature or work of art within a historic district, including, but not limited to:

1. A reconstruction or alteration of the size, shape or facade of a historic property, including relocation of any doors or windows or removal or alteration of architectural features, details or elements;
2. Demolition or relocation of a historic structure;
3. Commencement of excavation for construction purposes;
4. A change in the location or advertising visible from the public right of way;
5. The erection, alteration, restoration or removal of any building or other structure within a historic property or district, including walls, fences, steps and pavements or other appurtenant features; or
6. Any exterior work that must be permitted by the city’s building department.

Member or Members – A person or persons appointed to serve as members of the city’s historical commission.

National Register of Historic Places - The official federal list of districts, sites, buildings, structures, and objects significant in American history, architecture, archaeology, engineering, and culture to prehistory or history of their community, state, or the nation.

Non-contributing Historic Property – Any resource within a historic district that is less than fifty (50) years old or any resource that is more than fifty (50) years old that no longer retains its primary historical characteristics or physical character and thus *does not* “contribute” to the historical significance of the district.

Object - A material thing of functional, aesthetic, cultural, historic or scientific value that may be, by nature or design, movable yet related to a specific setting or environment.

Original Members – The persons appointed to serve as members of the city’s historical commission as of the effective date of this article.

Owner – The holder of the fee simple title as revealed on the property tax rolls of Baldwin County, Alabama, and any person (natural, legal, or corporate) or groups of persons, companies, associations, corporations, or partnerships who, alone or jointly or severally with others:

1. Shall have legal title to any property, with or without an accompanying right of possession; or
2. Shall have charge, care or control of any property as owner, executor, executrix, administrator, trustee, guardian of the estate owner, mortgagee or vendee in possession, or assignee of rents, lessee, or other person, firm or corporation in control of a property.

Site - The location of a significant event, a prehistoric or historic occupation or activity or a

building or structure, whether standing, ruined or vanished, where the location itself maintains historical, cultural or archaeological value regardless of the monetary value of the site or any structure thereon.

Structure - Anything constructed or erected, the use of which requires permanent or temporary location on or in the ground, including but not limited to buildings, fences, gazebos, signs, billboards, backstops for tennis courts, swimming pools and radio and television antennae, including supporting towers.

Sec. 4-80. Purposes; Creation of the Historical Commission.

A. *Purposes.* The purposes of the commission shall be to:

1. Promote the educational, cultural, economic and general welfare of the city through the preservation and protection of buildings, sites, structures, areas and districts of historic significance and interest;
2. Stimulate and promote business by revitalizing the business districts and historic neighborhoods and by protecting and enhancing local historical and aesthetic attractions to tourists and visitors;
3. Enhance the opportunities for federal or state tax benefits under relevant provisions of federal or state law; and
4. Provide for the designation, protection, preservation and rehabilitation of historic properties and historic districts and to participate in federal or state programs to do the same.

B. *Creation of the Commission.*

1. There is hereby created a commission whose title shall be the Foley Historical Commission. The commission is created pursuant to and shall have the authority granted in the Code of Alabama Sections 11-68-1 et seq., as amended. The commission shall constitute a nonprofit governmental agency whose funds shall be used exclusively for public purposes as provided.
2. The commission shall have tax-exempt status and the properties of the commission and the income therefrom, together with all leases, agreements, and contracts made by it, shall be forever exempt from any and all taxation by the state and any political subdivision thereof, including, but not limited to, sales and use tax, gross receipts tax, income, admission, amusement, excise, and ad valorem taxes.

C. *Commission Members; Number, Appointment, Terms, Compensation and Rules and Standards.*

1. The commission shall consist of seven (7) members nominated by the mayor and appointed by the city council. Nomination and appointment of members of the commission shall be made to ensure that the commission will be composed of persons with as much of the training and experience as specified in subsection 2 of this section as is possible.
2. All members shall be residents of the city and shall be persons who have demonstrated training or experience in history, architecture, architectural history, urban development, archaeology, law, or who shall be residents of a historic district. Not more than one fifth (1/5) of the members of the commission shall be public officials.
3. Except for the original members of the commission, members shall serve three year terms and shall be appointed in such a manner as to serve overlapping terms. Members

may be reappointed. The original members of the commission shall be appointed as follows: two (2) members for one (1) year; two (2) members for two (2) years; and three (3) members for three (3) years.

4. Members shall serve without compensation, although they may be reimbursed for expenses incurred on behalf of the commission in accordance with the rules and regulations for reimbursement of expenses adopted by the commission.

5. Members of the commission may be removed for cause by the city council.

6. Vacancies on the commission shall be filled by persons nominated by the mayor and appointed by the city council. Such appointments shall be for the unexpired term of the member replaced.

7. Members of the commission shall elect a chairperson and a vice chairperson and such other officer as the members deem necessary. The commission shall adopt rules of procedure and bylaws to govern its operations and shall communicate those rules of procedure and bylaws to the city council. The rules of procedure and bylaws of the commission shall specify what number of members of the commission constitutes a quorum.

D. *Commission Meetings, Minutes and Public Participation.*

1. All meetings of the commission shall be open to the public and all votes taken by the commission shall be taken in public. The commission shall hold at least one (1) regular meeting in each calendar month. The commission shall keep minutes of the business brought before it as well as its resolutions, transactions, findings, determinations, and recommendations, all of which shall be made available for public inspection. Notice of all commission meetings shall be published once a week in at least two (2) consecutive issues in the principal newspaper of local circulation not less than ten (10) and no more than twenty (20) days prior to the date set for the meeting.

2. The rules of procedure and bylaws adopted by the commission must be available for public inspection.

E. *Statement of the Commission's Powers and Duties.* The commission shall have the following powers and duties and shall be authorized to:

1. Preserve and protect buildings, structures and sites of historic and architectural value in the historic districts designated pursuant to this article.

2. Prepare a survey of and maintain an inventory of all historic and architecturally significant property in the city.

3. Recommend to the mayor and city council specific buildings, structures, sites and districts for designation as historic properties or districts.

4. Restore and preserve any historic properties acquired by the city or the commission.

5. Promote acquisition of facade and conservation easements by the city or by the commission.

6. Develop and conduct educational programs on historic projects, properties and districts.

7. Make such investigations and studies of matters relating to historic preservation as the city or the commission deems necessary and appropriate for the purposes of this article.

8. Apply for funds to carry out the purposes and responsibilities of the commission from municipal, county, state, federal and private agencies and sources.

9. With the approval of the city council, purchase, sell, contract to purchase, contract to sell, own, encumber, lease, mortgage and insure real and personal property in carrying out the purposes and responsibilities of the commission.

10. Investigate, survey and process nominations of properties to the National Register of Historic Places.

11. Investigate, survey and process applications for certification of historic properties for tax credits for preservation expenditures.

12. Contract with other municipal, county, state, federal and private agencies and organizations to perform historic preservation related functions.

13. Approve design guidelines based on the secretary of the interior's standards for rehabilitation; and

14. Exercise such further powers as the commission may deem reasonably necessary and proper to carry out the purposes, responsibilities and powers of the commission.

F. *Annual Reports of the Commission's Activities.* The commission shall prepare and file with the city council and with the Alabama Historical Commission, an annual report of its activities as required by the city council and the Alabama Historical Commission. The annual report shall cover the period from October 1st to September 30th and shall be submitted in October of each year. The report shall include information the commission deems appropriate, including but not limited to such items as the number of cases reviewed, historic district and property designations made, revised resumes of commission members/staff, appointments to the commission, attendance records and all minutes relating to the review of National Register nominations. The report shall document attendance at the orientation/training session as specified in Section 4-80 H.

G. *Conflict of Interest.* At any time the commission reviews a project in which a member has a conflict of interest, that member will be forbidden from presenting, voting or discussing the project, other than answering a direct question.

H. *Liaison Between the Commission and the State Historic Preservation Office (Alabama Historical Commission).* The mayor shall designate one or more employees of the city to act as professional staff for the commission. Such employee(s) shall serve as a source of technical, administrative, and professional assistance to be responsible for the operations of the commission, and to insure that the certification requirements for participation in the certified local government program are met. At least one (1) member of the commission and/or the person serving as the commission's technical staff, and/or a representative appointed by the mayor who has an ongoing relationship with the commission, will attend the Alabama Certified Local Government orientation/training session sponsored by the Alabama Historical Commission each year.

Sec. 4-81. Recommendation and Designation of Historic Districts and Historic Properties.

A. *Historic District Defined.* A historic district is a geographically definable area, shown on the city's official zoning map, which contains buildings, structure, sites, objects, landscape features and works of art or a combination thereof, which:

1. Represents one or more periods, styles or types of architecture typical of one or more eras in the history of the city, county, state or region;
2. Represents a significant aspect of the cultural, political, economic, military or social history of the city, county, state or region;
3. Has had a significant relationship with the life of a historic person or event, representing a major aspect of the history of the city, region, state or nation;
4. Is a part of the historic, architectural, archaeological or aesthetic heritage of the city, region, state or nation; or
5. Contains vernacular structures which contribute to an overall character and a sense of place which is representative of the city.

B. *Classification of Properties in Historic Districts.* An individual property within a historic district shall be classified as either a contributing property or a non-contributing property.

C. *Historic Property Defined.* A historic property is a building, structure, site, object, or work of art, including the adjacent area necessary for the proper appreciation or use thereof, deemed worthy of preservation by reason of value to the city for one (1) of the following reasons:

1. It is an outstanding example of a structure representative of its era;
2. It is one of the few remaining examples of past architectural style;
3. It is a place or structure associated with an event of persons of historic or cultural significance to the city, state or region;
4. It is a site of natural or aesthetic interest that is continuing to contribute to the cultural or historical development and heritage of the city, county, state or region; or
5. The building or structure is an example of an architectural style, or combination of architectural style, which is representative of the city or which is unique to the city.

D. *Recommendation of Designation.* The commission shall recommend to the city council property the commission deems suitable for designation as a historic district or a historic property. The recommendation shall be in the form of an ordinance. The commission shall not recommend designation of a historic district or historic property unless such recommendation is based on a finding of a survey of such district conducted by or for the commission in accordance with the rules of the Alabama Historical Commission and this section.

E. *Required Public Hearings to Recommend Designation.*

1. Prior to making its recommendation to the city council, the commission shall hold a public hearing on the proposed recommendation of historic designation. Notice of the hearing shall be published once a week in at least two (2) consecutive issues in the principal newspaper of the local circulation not less than (10) or more than twenty (20) days prior to the date set for the public hearing.

2. In addition to the notice required in subsection 1 above, the commission shall send written notice via U.S. Mail to all owners of property recommended for historic designation as such owners are identified in the Baldwin County property tax rolls if such owners can be found on reasonable inquiry, and to the occupant at the address of each property recommended for historic designation. All such notices shall be mailed not less than ten (10) or more than twenty (20) days prior to the date set for the public hearing.

F. *City Council Action on Commission Recommendation.* Following receipt of the commission's recommendation, the city council may adopt the ordinance as proposed, may adopt the ordinance with any amendments it deems necessary, or reject the ordinance.

Sec. 4-82. Notification of Historic Designation. Upon adoption of the ordinance for designation by the city council, the commission shall give written notification of the designation in writing to all agencies of the city and to all owners of the property included within the historic designation. The notice shall apprise said owners of the necessity of obtaining a certificate of appropriateness prior to undertaking any material change in appearance of the historic property or historic district designated. A notice sent via the U.S. Mail to the owner of the property as shown on the Baldwin County property tax rolls, if such owner can be found on reasonable inquiry, shall constitute legal notification to the owner under this article.

Sec. 4-83. Certificate of Appropriateness Prerequisite to Changes in Historic Property and Historic District; Submission and Consideration of Application for Certificate; Rules, Regulations and Standards; Records.

A. *Certificate of Appropriateness Required.* No change in the exterior appearance of a historic property or any building, structure or site within a historic district may be made, and no historic property may be demolished, and no building or structure in a historic district may be erected or demolished unless and until a certificate of appropriateness for such change, erection, or demolition is approved by the commission. No permit for changing, building or demolishing a historic property or any building, structure or site within a historic district may be issued by the chief building official of the city until a certificate of appropriateness has been approved by the commission.

1. The requirement of a certificate of appropriateness shall apply to public property which has been designated as a historic property or which is contained in a historic district, and shall apply to all actions by public authorities which involve historic properties and properties within historic districts.

2. Signs shall be considered as structures and no sign on a historic property or in a historic district shall be changed, erected or demolished unless and until a certificate of appropriateness is approved by the commission. A mural shall be considered as a sign.

3. The commission shall review paint color and placement. Paint colors must be consistent with the pre-approved palette of colors set forth in the applicable design guidelines approved by the commission. Any person using these pre-approved paint colors shall be deemed to have the approval of the commission to do so without having to appear before the commission. Changes to historic properties or buildings within historic districts other than painting with such pre-approved colors must be approved by the commission as otherwise provided in this article. Persons wishing to use colors not part of the pre-approved selection may apply to the commission for approval following its regular procedures, and if such color is approved the commission may add it to the section of approved paint colors. The painting of originally unpainted surfaces shall require a certificate of appropriateness.

4. Landscaping shall constitute a change for which a certificate of appropriateness is necessary. Landscaping includes without limitation grading, paving, construction of walkways, driveways, pools, and all other surface additions and improvements, but does not include the mere planting or removal of plant materials, other than the removal of trees larger than twelve (12) inches in diameter at ground level, whose removal will nevertheless be permitted except where, all aspects of the removal having been considered, removal would, in the judgment of the commission, have a net material adverse impact on the character and appearance of the historic property or historic district.

5. In its review of applications for certificates of appropriateness, the

commission shall not consider interior arrangement or use having no effect on exterior architectural features; however, the commission may require a floor plan to aid understanding the exterior design scheme.

B. *Design Guidelines.* In addition to the guidelines set forth in this article, the commission shall adopt design guidelines which shall apply in considering the granting and denial of certificates of appropriateness. Design guidelines shall be in compliance with the secretary of the interior's "standards for historic preservation projects" including the secretary's "standards for rehabilitation," taking into account local characteristics and goals.

C. *Procedures for Granting or Denying Applications for Certificates of Appropriateness.*

1. An application shall be submitted to the commission to begin the application process for a certificate of appropriateness. Each application shall be accompanied by plans for the proposed work, including drawings, photographs, plans or other documentation sufficient to show the appearance of the architectural design of the building or work contemplated, all as may be required by the commission. With each set of plans there shall be submitted a detailed set of specifications sufficient to show the site layouts or features such as the general exterior appearance, accessory structures, signs, lights and other appurtenances. Applications involving demolition or relocation shall be accompanied by post-demolition or relocation plans for the site.

2. Except for applications considered under the commission's procedures for expedited review, all applications for certificates of appropriateness shall be considered by the commission after a public hearing. At least seven (7) days prior to the hearing, the commission shall notify the applicant of the time and place of the hearing and shall provide the applicant with a copy of any reports pertaining to the application. A notice shall be posted on the property indicating that an application is pending. The commission may take such further action as may be reasonably required to inform the owner of any property likely to be affected by reason of the application.

3. Any applicant may appear in person before the commission in his own behalf and may present evidence.

4. The commission may adopt an expedited procedure for approval of routine maintenance to historic properties, or to buildings or structures in a historic district. Such expedited procedure may waive the requirements of submission of an application for certificate of appropriateness and for consideration at a public hearing.

5. The commission shall keep a record of applications for certificates of appropriateness and all its proceedings.

6. In addition to the procedures set forth in this article, the commission shall adopt additional rules and regulations setting forth the procedure for submission and consideration of applications for certificates of appropriateness.

D. *Standard of Review; Issuance of Certificate; Reasons for Rejection; Application for Reconsideration; Effect of Rejection on Issuance of Building Permit.*

1. The commission shall approve the application and issue a certificate of appropriateness if it finds the proposed material change(s) in the appearance would not have a substantial adverse effect on the aesthetic, historic or architectural significance and value of the historic property or the historic district. In making this determination, the commission shall consider, in addition to any other pertinent factors, the historical and architectural value and significance, architectural style, general design arrangement, texture and material of the architectural features involved and the relationship thereof to the exterior architectural style and

pertinent features of the other structures in the immediate neighborhood.

2. The commission shall approve or reject an application for a certificate of appropriateness within forty-five (45) days after the filing of a complete application by the owner of a historic property, or of a historic structure, site, object or work of art located within a historic district. The commission shall submit its decision in the form of a written order to the chief building official. In addition, notice of the issuance or denial of a certificate of appropriateness shall be sent by U.S. Mail to the applicant and all other persons who have requested such notice in writing filed with the commission.

3. Failure of the commission to act within said forty-five (45) days shall constitute approval and no other evidence of approval shall be needed, and upon request the commission shall notify the building official that a permit may issue for the work specified.

4. In the event the commission rejects an application, it shall state its reasons for doing so, and shall transmit a record of such actions and reasons, in writing, to the applicant. The commission may suggest alternative courses of action it thinks proper if it disapproves of the application submitted. The applicant, if he or she desires, may make modifications to the plans and may resubmit the application at any time.

5. In cases where the application covers a material change in the appearance of a structure which would require the issuance of a building permit, the rejection of application for a certificate of appropriateness by the commission shall be binding upon the building inspector or other administrative officer charged with issuing building permits and, in such cases, no building permit shall be issued.

6. A certificate of appropriateness shall become void unless construction is commenced within one (1) year from the date of issuance. Certificates of appropriateness are renewable.

7. All work performed pursuant to a certificate of appropriateness shall strictly comply with the conditions of such certificate.

E. *Appeals.* Any person having a request for a certificate of appropriateness denied by the commission may appeal such denial to the circuit court of Baldwin County, Alabama.

Section 4-84. Failure to Provide Ordinary Maintenance or Repair. Owners of historic properties or properties within historic districts shall not allow their buildings to deteriorate by failing to provide ordinary maintenance or repair. It shall be a violation of this article for an owner to fail to maintain any structure to prevent the deterioration of any exterior appurtenance or architectural features.

Sec. 4-85. Architectural Review Board. The city council may elect to create an Architectural Review Board to perform the duties and responsibilities of the commission in accepting, considering and approving or rejecting applications for certificates of appropriateness.

Sec. 4-86. Affirmation of Existing Building and Zoning Codes. Nothing in this article shall be construed as to exempt property owners of occupied buildings from complying with existing city building and zoning codes, nor to prevent any property owner from making any use of his property not prohibited by other statutes, ordinances and regulations. Nothing herein shall limit, modify, supersede or restrict any other existing law or regulation governing buildings, the issuance of building permits, the inspection of buildings, or any other law or regulation.

Sec. 4-87. Penalties and Remedies.

A. *Criminal Penalties.* Any owner who is found to have violated the terms of this article, after having received ninety (90) days written notice from the building inspector to correct

or abate same, shall be punished by a fine of not less than one dollar (\$1.00) nor more than five hundred dollars (\$500.00), or by imprisonment for a period not to exceed six (6) months, or by both such fine and imprisonment all as set forth in the Code of Alabama Section 11-45-9 (1975) and by Section 1-8 of this Code. Each day such owner shall allow a violation to continue after having received ninety (90) days written notice shall constitute a separate offense.

B. *Remedying Unlawful Condition by the City.* Should the owner of a historic property or property located within a historic district fail to correct or abate such violation after having received ninety (90) days written notice from the building inspector to correct or abate same, the city is authorized to do such work at the expense of such owner, the cost thereof to be a lien upon the property and to be collected as any other debts are collected or liens enforced.

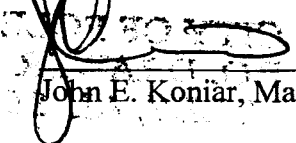
C. *Other Remedies.* The commission and the city may institute any appropriate action or proceeding in a court of competent jurisdiction to prevent any material change to historic property, any portion of which is contained in a historic district, except in compliance with the provision of this article, or to prevent any illegal act or conduct with respect to such historic property or historic district, and to recover any damages which may have been caused by the violation of this article.

Section 3. In the event that any section, subsection, sentence, clause or phrase of this Ordinance shall be declared or adjudged invalid or unconstitutional, such adjudication shall in no manner affect the other sections, sentences, clauses or phrases of this Ordinance, which shall remain in full force and effect, as if the section, subsection, sentence, clause or phrase so declared or adjudged invalid or unconstitutional were not originally a part thereof.

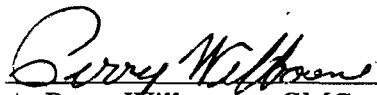
Section 4. This Ordinance shall become effective immediately upon its adoption and publication.

Section 5. The City Administrator/Clerk is hereby directed to cause a copy of this Ordinance to be published in the Foley Onlooker, a newspaper published in and of general circulation in the City.

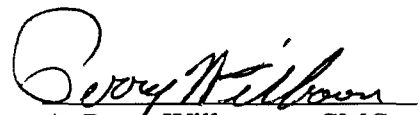
PASSED, ADOPTED AND APPROVED THIS 21st day of April, 2008.


John E. Koniar, Mayor

ATTEST:


A. Perry Wilbourne, CMC
City Clerk/Administrator

I certify that the foregoing Ordinance was published in the Foley Onlooker, a newspaper of general circulation in the City of Foley, in its issue of SATURDAY, APRIL 26, 2008".


A. Perry Wilbourne, CMC
City Clerk/Administrator



AGENDA REQUEST FORM

DATE OF WORK SESSION: 8/18/08

DATE OF COUNCIL MEETING: 8/18/08

DEPARTMENT AND PERSON REQUESTING ITEM TO BE PLACED ON AGENDA:
General Government: Jessica Middleton

DESCRIPTION OF TOPIC:

Amending Ordinance 1039-08 to change advertising deadlines.

IS DOCUMENTATION ATTACHED (See attached list): Yes No

SOURCE OF FUNDING:

Is this a budgeted item? Yes No

If budgeted, is this a capital purchase, capital project, special fund or in the Capital Purchase Reserve? _____

Please provide the budgeted amount: \$ _____ Account No. _____

Please provide the amount requested: _____

_____ Do Not Write Below This Line _____

Verified by the Finance Department:

Approved by: _____ Date: _____

Clerk's Office: Approved by: _____ Date: _____ Time: _____

If this is a capital purchase or capital reserve purchase, attach the required forms approved by Finance. (See back.)

Vickey Southern

From: Ashley B. Bonner [ABB@ajlaw.com]
Sent: Monday, August 11, 2008 5:04 PM
To: Vickey Southern
Cc: Jessica Middleton; Cathy M. Cason
Subject: RE: Revised Ordinance amending and restating Ordinance No. 1039-08
Attachments: 1st Amendment to Ordinance Creating Comm - Final (00526447).DOC

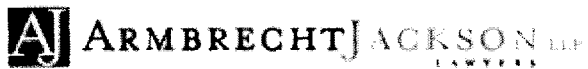
Hello Vickey:

Attached is an amended and restated ordinance pursuant to Jessica Middleton's request. Please include this on the council's next work session agenda.

This ordinance amends ordinance 1039-08 passed by the Council on April 21, 2008 which created the Foley Historical Commission. The attached ordinance revises the public notice provisions for meetings of the commission that were originally recommended by the City's consultant. It also outlines a procedure that a property owner may follow to apply for relief from the requirements of ordinance 1039-08 in the event of economic hardship. All other items remain the same.

Please let me know if there are any other questions.

Thanks,
Ashley



Ashley Brackin Bonner
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