

AMENDING THE CITY OF FOLEY ZONING ORDINANCE

WHEREAS, the City of Foley, Alabama, adopted Ordinance No. 387-87 on June 15, 1987, ordaining a new Zoning Ordinance and Zoning Map for the City of Foley which has subsequently been amended, and

WHEREAS, the City of Foley Planning Commission has recommended changes within the current Zoning Ordinance, and the City Council of the City of Foley deems it necessary, for the purpose of promoting the health, safety, morals and general welfare of the City to amend said Ordinance, and

WHEREAS, all requirements to the laws of the State of Alabama, with regard to the preparation of the report of the Foley Planning Commission and subsequent action of the City Council have been met,

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF FOLEY, ALABAMA while in regular session accepted the following changes:

2.1 DEFINITIONS APPLICABLE TO THIS ORDINANCE

DEFINITION OF "FAMILY"- AMENDED VERSION

The definition of "Family" in Section 2.1 of Article II of the City of Foley Zoning Ordinance is hereby amended to read as follows:

Family: One or more persons occupying a dwelling unit and living as a single or traditional housekeeping unit who are related by blood, legal adoption, marriage, foster children, plus no more than (1) additional unrelated person; or, up to a maximum of three (3) unrelated persons living together in a dwelling unit. The Maximum occupancy is determined by the Fire Department and a minimum of seventy (70) square feet of bedroom gross floor area per resident. For the purpose of this definition, a bedroom is defined as a room designed or designated for sleeping and not bathrooms, hallways, closets, utility or storage rooms or areas or rooms which primary use is for eating, cooking or general congregating.

DEFINITION OF "GROUP HOME/FAMILY CARE HOME" - AMENDED VERSION

The definition of "Group Home/Family Care Home" in Section 2.1 of Article II of the City of Foley Zoning Ordinance is hereby amended to read as follows:

Group Home/Family Care Home: Group home means a dwelling unit, operated by an affiliate of a national, regional, state or county organization with a philanthropic mission, shared by four or fewer persons, excluding resident staff, who live together as a single housekeeping unit and in a long term, family-like environment in which staff persons provide care, education and participation in community activities, under a structured and scheduled plan that must be provided to the city, for the residents with the primary goal of enabling the residents to live as independently as possible in order to reach their maximum

potential under the direction and guidance of a designated managing caregiver, designated as such by the affiliate organization, who must be a resident of the group home and available by telephone on a 24-hour basis in case of complaints. A copy of the home rules shall be provided to the City. This use cannot be located within one-thousand (1,000) feet of the same use. This is a Use Permitted on Appeal and requires a city license to operate.

The term "group home" shall not include a halfway house, a treatment center for alcoholism or drug abuse, a work release facility for convicts or ex-convicts, a home for the detention and/or rehabilitation of juveniles adjudged delinquent or unruly and placed in the custody of the state, or other housing facilities serving as an alternative to incarceration. The term "group home" shall also not allow the use of a dwelling as an apartment or duplex. A group home shall not allow use of the dwelling as a home for individuals on parole, probation, or convicted and released from incarceration, for any crimes including child molestation, aggravated child molestation, or child sexual abuse, as defined in Alabama Code § 13A-6-60 to § 13A-6-71 or individuals required to register as sex offenders pursuant to Alabama Code 15-20A-1 to § 15-20A-48. A group home may include a home for the disabled. As used in this subsection, the term "disabled" shall mean:

- a) Having a physical or mental impairment that substantially limits one or more of such person's major life activities;
- b) Having a record of having such an impairment; or
- c) Being regarded as having such an impairment.

However, "disabled" shall not include persons who currently use illegal controlled substances, persons who have been convicted of the illegal manufacture or distribution of controlled substances, sex offenders, and juvenile offenders or persons with or without disabilities who present a direct threat to the persons or property of others.

DEFINITION OF "COMMUNAL LIVING FACILITIES" - AMENDED VERSION

The definition of "Communal Living Facilities" is hereby added to Section 2.1 of Article II of the City of Foley Zoning Ordinance to read as follows:

Communal Living Facilities: Communal Living Facilities are facilities in which 3 or more unrelated individuals live in group living arrangements. Communal Living Facilities include Group Home/Family Care Home; Bed and Breakfast; Transitional Home.

DEFINITION OF "BED AND BREAKFAST" - AMENDED VERSION

The definition of "Bed and Breakfast" in Section 2.1 of Article II of the City of Foley Zoning Ordinance is hereby amended to read as follows:

Boarding House / Bed and Breakfast: A building or structure which is capable of and used for providing lodging or lodging and meals for up to three (3) guest rooms. This use cannot be located within one-thousand (1,000) feet of the same

use. The owner of the Bed and Breakfast must reside on site. This is a Use Permitted on Appeal and requires a city license to operate.

DEFINITION OF “CHILD/ADULT CARE” - AMENDED VERSION

The definition of “Child/Adult Care” is hereby added to Section 2.1 of Article II of the City of Foley Zoning Ordinance to read as follows:

Child/Adult Care: The provision of care for individuals, who are not related to the primary caregiver. A child care facility which is the family home in which the operator resides and which receives not more than six (6) children, and is licensed as a Family Day / Night Care Home by DHR. A child care facility which is the family home in which the operator resides and which receives not more than twelve (12) children, and is licensed as a Family Group Day / Night Care Home by DHR. This use cannot be located within one-thousand (1,000) feet of the same use. This is a Use Permitted on Appeal and requires licensing from DHR and a city license to operate.

DEFINITION OF “MENTALLY RETARDED OR MENTALLY ILL LIVING FACILITIES” – AMENDED VERSION

The definition of “Mentally Retarded or Mentally Ill Living Facilities” is hereby added to Section 2.1 of Article II of the City of Foley Zoning Ordinance to read as follows:

Mentally Retarded or Mentally Ill Living Facilities: The classification of “multi-family” shall not exclude a group home in which 10 or less unrelated persons who are mentally retarded or mentally ill may reside, and said home may, in addition thereto, include two additional persons who need not be related by blood or marriage to each other or to any of the mentally retarded or mentally ill persons living in the home. These are allowed in Multi-Family zone.

DEFINITION OF “TRANSITIONAL HOME” - AMENDED VERSION

The definition of “Transitional Home” is hereby added to Section 2.1 of Article II of the City of Foley Zoning Ordinance to read as follows:

Transitional Home: A dwelling shared by four (4) or less mentally handicapped individuals who live for a short period while receiving social, psychological or similar therapy or counseling excluding jails, prisons, and other correctional institutions, which may in addition, also include up to two (2) resident staff who need not be related by blood or marriage to each other or to any of the persons living within, who live together as a single housekeeping unit in which staff persons provide care. This use cannot be located within one-thousand (1,000) feet of the same use. This is a Use Permitted on Appeal and requires a city license to operate.

“USES/STRUCTURES PERMITTED ON APPEAL” PROVISION - AMENDED VERSION

The “Uses/Structures Permitted on Appeal” provision is hereby added to Section 13.1.2 of Article XIII of the City of Foley Zoning Ordinance to read as follows:

Unless specifically prohibited in a particular zoning district, the following uses and structures are permitted on appeal in all districts.

- a) Public Utilities such as electric and gas substations and water / wastewater pumping stations;
- b) Public buildings of a proprietary nature;
- c) General hospitals for humans (including nursing homes and assisted living facilities);
- d) Institutional uses;
- e) Semi-public buildings and uses, including private schools, churches and childcare and adult care facilities unless otherwise allowed;
- f) Lights for recreational facilities (subject to regulations based on the neighborhood, zoning district, and surrounding area that may limit the time of day and the number and nature of lights allowed);
- g) Public and semi-public buildings with heights greater than three (3) stories or fifty (50) feet;
- h) Class 2 Clubs or Lodges;
- i) Communal Living Facilities excluding Mentally Retarded or Mentally Ill in a multi-family zone.

“USES PROHIBITED” PROVISION - AMENDED VERSION

The “Uses Prohibited” provision found in Section 13.1.3 of Article XIII of the City of Foley Zoning Ordinance is hereby amended to read as follows:

13.1.3 USES PROHIBITED:

- A. On-street and off-street parking of motorized vehicles in excess of ten thousand (10,000) pounds and/or with more than six (6) wheels is prohibited in all residential zoning districts and in all residential areas of mixed use districts.
- B. Any occupancy of a dwelling unit by a group of people that do not meet the definition of a “Family” as defined herein.

It shall be presumptive evidence that three or more persons living in a single dwelling unit who are not related by blood, marriage or legal adoption do not constitute the functional equivalent of a traditional family. In determining whether individuals are living together as the functional equivalent of a traditional family, the following criteria must be present:

- (1) The group is one which in theory, size, appearance, structure and function resembles a traditional family unit.
- (2) The occupants must share the entire dwelling unit and live and cook together as a single housekeeping unit. A unit in which the various occupants act as separate roomers shall not be deemed to be occupied by the functional equivalent of a traditional family.

- (3) The group shares expenses for food, rent or ownership costs, utilities and other household expenses.
- (4) The group is permanent and stable. Evidence of such permanency and stability may include:
 - (a) The presence of minor dependent children regularly residing in the household who are enrolled in local schools;
 - (b) Members of the household have the same address for purposes of voter's registration, driver's licenses, motor vehicle registration and filing of taxes;
 - (c) Members of the household are employed in the area;
 - (d) The household has been living together as a unit for a year or more, whether in the current dwelling or in other dwelling units;
 - (e) There is common ownership of furniture and appliances among the members of the household; and
 - (f) The group is not transient or temporary in nature.
- (5) Evidence that the group is the functional equivalent of a traditional family may include other factor reasonably related to whether or not the group is the function equivalent of a family.

"PENALTIES" PROVISION - AMENDED VERSION

The "Penalties" provision found in Section 4.4 of Article IV of the City of Foley Zoning Ordinance is hereby renamed as the "Enforcement" provision and amended to read as follows:

4.4 ENFORCEMENT

4.4.1 ZONING ENFORCEMENT AND APPEALS

Whenever a violation of these ordinances is identified or is alleged to have occurred, an application to the Board of Adjustment and Appeals may be considered if it meets the criteria for a variance.

Whenever the Community Development Director or his/her designee has knowledge of a violation or an alleged violation, a thorough investigation may be initiated. After such investigation, and upon the finding of a violation, the violation procedures contained in this Article shall be initiated.

Violation of the provisions of these ordinances, including violation of conditions and safeguards established in connection with a grant of a variance, site plan approval or appeal, shall be addressed and punishable in accordance with sections contained herein.

In the event that any building or structure is erected, constructed, reconstructed, altered, repaired, converted, or maintained, or in the event that any building, structure, or land is used in violation of these ordinances, the Community Development Director may institute or cause the institution of any appropriate action or proceeding to:

- (a) Prevent the unlawful erection, construction, reconstruction, alteration, repair, conversion, maintenance, or use of the building, structure, or land.
- (b) Prevent the occupancy of the building, structure, or land.
- (c) Prevent any illegal act, conduct, business, or use in or about the premises.
- (d) Restrain, correct, or abate the violation.

4.4.2 VIOLATIONS

Any person(s), whether owner, lessee, principal, agent, employee, or occupant of any land or part thereof, and any architect, engineer, builder, contractor, agent or other person who: (a) violates any provision of these ordinances, (b) permits, participates, assists, directs, creates or maintains any such violation, (c) fails to comply with any of the requirements hereof, including conditions, stipulations, or safeguards attached to any approval, permit, variance, site plan approval or the like, or (d) who erects, constructs or reconstructs any building or structure, or uses any building, structure or land in violation of any written statement or plan submitted and approved pursuant to these ordinances, shall be in violation.

Any person(s) in violation of these ordinances shall be held responsible for such violation and be subject to the penalties and remedies as provided herein and as provided by law.

Each and every person who commits, permits, participates in, assists, directs, creates or maintains a violation may be found individually in violation of a separate offense. Each day that any violation continues to exist shall constitute an additional and separate violation.

Any structure or lot erected, constructed, altered, occupied or used contrary to any provision(s) of these ordinances or other applicable ordinances, stipulation, condition, approvals and variance shall be declared to be unlawful.

4.4.3 NOTICE OF VIOLATION

The Community Development Director or his/her designee shall issue a written notice of violation upon receipt of a complaint or knowledge of violation, to all persons in violation. The Notice of Violation may be served by certified mail, return receipt requested, or pursuant to Alabama Rules of Civil Procedure. The Notice of Violation shall allow thirty (30) days to correct or abate such violation.

The Notice of Violation shall ("Notice") clearly identify the property and particular alleged violation involved, the action necessary to correct it, the time permitted for such correction, and penalties for failure to comply. The Notice shall include but not be limited to:

- (a) A description of the location of the property involved, either by street address or by legal description.
- (b) A statement indicating the nature of the violation.
- (c) A statement showing the time within which all necessary remedial action must be accomplished, which time may not be less than 10 days nor more than 90 days from the date of such written Notice.
- (d) The name of the person(s) upon whom the Notice of Violation is served.
- (e) A statement advising that upon the failure to comply with requirements of the Notice, such enforcement procedure as may be required under these zoning ordinances shall be taken.

The Community Development Director may shorten or eliminate the time period to correct a violation if he/she determines that the alleged violation presents an imminent and serious threat to the public health, safety, or welfare, or the violation is irreparable or irreversible. The Notice of Violation shall, in such case, state that an immanent and serious threat to public health, safety, or welfare exists or the violation is irreparable or irreversible, along with the allowed time period for correction if any.

When the Community Development Director or his/her designee determines that the violation has not been corrected or abated by end of the prescribed time period, he/she shall issue a written notice forwarding the matter to the City of Foley Prosecutor for further action.

Upon the submission by the violator of evidence of compliance deemed adequate by the Community Development Director, the Director may deem the violation to be resolved and compliance achieved.

When, after issuance of a Notice of Violation but prior to commencement of any judicial proceedings, the Community Development Director determines that the person in violation is making a diligent effort to comply with the requirements of the Notice, the Community Development Director may issue a written stay of further enforcement actions pending full compliance. The stay shall list the diligent efforts to comply and should be provided to the violator(s). No enforcement actions shall be stayed longer than ninety (90) days.

When any Notice of Violation is issued to any person for substantially the same violation for which a previous Notice of Violation has been issued to such person, no period shall be allowed for correction or abatement of the violation. Rather, in such event, the Community Development Director shall immediately cause the matter to be forwarded to the City of Foley Prosecutor for further action.

Any person(s) violating any of the provisions herein shall be fined not more than \$150.00 for each separate violation, plus all costs of court, with each day such violation continues constituting a separate violation (see 4.2, above). The fines provided for herein shall commence and accrue upon receipt of the Notice of Violation or the expiration of the allowed period for correction, whichever is later. Said fines shall continue to accrue until paid, but shall not accrue on days during which the violation is properly on appeal.

When a violation results from a person's failure to obtain a permit or approval required by this Ordinance, and the person subsequently submits an application for the required permit, the Community Development Director may waive the daily fee and shall instead require double the normally required permit application fee as a reduced fine.

4.4.4 ADDITIONAL PENALTIES

The Community Development Director may issue, or cause to be issued, a Stop Work Order on a premises, lot or parcel that is in alleged violation of any provision of these ordinances, or is being maintained in a dangerous or unsafe manner. A Stop Work Order may be issued in place of or in conjunction with any other actions and procedures identified in these ordinances. Such Order shall be in writing and shall be given to the owner of the property, or to his agent, or to the person doing the work, and shall state conditions under which work may be resumed. Upon receipt of a Stop Work Order, all work associated with the violation shall immediately cease. Any person who continues to work shall be in violation of

these ordinances and subject to penalties and remedies contained herein. The Stop Work Order may be appealed to the respective Zoning Board of Adjustment for which the activity is located.

The Community Development Director may issue, or cause to be issued, a Cease and Abate Order to any person(s) maintaining any condition, or engaged in any activity or operation, which violates these ordinances. Such Order shall be in writing and shall be given to the owner of the property, or to the person maintaining such condition or engaged in such activity and operation. Upon receipt of a Cease and Abate Order, all conditions, activities and operations associated with the violation shall immediately cease and be abated. Any person who continues or fails to abate such condition, activity or operation shall be subject to penalties and remedies contained herein.

The Community Development Director may revoke, or cause the revocation of, permits or approvals in those cases where an administrative determination has been duly made that false statements or misrepresentations of material fact(s) were made in the application or plans upon which the permit or approval was based.

4.4.5 APPEALS

Any person(s) aggrieved by a decision of the Community Development Director or his or her designee in regards to zoning enforcement may file an appeal, made on forms provided by the City, to the respective Zoning Board of Adjustment and Appeals where the alleged violation has occurred. An appeal must be filed within thirty (30) days of the date of the Notice of Violation. An appeal is deemed filed once submitted to the Planning and Zoning Department. See also Section 26.3.A.

“PROCEDURE FOR APPEALS” PROVISION - AMENDED VERSION

The “Procedure for Appeals” provision found in Section 26.3.A of Article XXVI of the City of Foley Zoning Ordinance is hereby renamed as the “Appeals” provision and amended to read as follows:

26.3.A APPEALS

In exercising its authority, the Zoning Board of Adjustment and Appeals may reverse or affirm, wholly or partly, or modify the order, requirement, decision or determination appealed from and make such order, requirement, decision or determination as the Board deems proper and, to that end, shall have all the powers of the officer from whom the appeal is taken. The concurring vote of a majority of the Zoning Board of Adjustment and Appeals shall be necessary to reverse, affirm or modify any order, requirement, decision or determination of

any such administrative official or to decide in favor of the applicant on any matter upon which it is required to act. For purposes of this section, an appeal shall be filed with the board of adjustment at the Zoning Board of Adjustment and Appeals at the Community Development Department in Foley, Alabama, or by and shall be deemed filed when received regardless of the method of delivery.

Any party aggrieved by a final judgment or decision of a board of adjustment may within 15 days thereafter, appeal there from to the Circuit Court of Baldwin County, Alabama, by filing with the circuit court and the board of adjustment a written notice of appeal specifying the judgment or decision from which the appeal is taken and specifying in sufficient detail the grounds for appeal so that the non-appealing party may reasonably frame a responsive pleading.

PASSED, ADOPTED AND APPROVED this day of