

ORDINANCE NO. 1069-08



ORDINANCE AMENDING AND RESTATING
ORDINANCE NO. 424-89 and 457-92 REGARDING LITTER

BE IT ORDAINED BY the City Council of the City of Foley, Alabama, while in session on October 20, 2008, hereby amends and restates Ordinance No. 424-89 and Ordinance No. 457-92 as follows:

Section 1. Division 1, Article II entitled "Litter" is added to Chapter 9 entitled "Health and Sanitation" of the Code of Ordinances of Foley, Alabama; and

Section 2. Section 9-20 entitled "Title and Purpose", Section 9-21 entitled "Definitions", Section 9-22 entitled "Occupant's Responsibility", Section 9-23 entitled "Areas Surrounding Commercial Premises", Section 9-24 entitled "Residential Premises", Section 9-25 entitled "Sidewalks and Rights-of-way", Section 9-26 entitled "Sweeping Litter into Street", Section 9-27 entitled "Proper Disposal of Litter, Trash or Junk", Section 9-28 entitled "Cleaning Litter, Trash or Junk from Private Premises", Section 9-29 entitled "Litter Receptacles", Section 9-30 entitled "Litter from a Vehicle", Section 9-31 entitled "Verification and Escape of Load from Uncovered Vehicles", Section 9-32 entitled "Dumping of Litter, Trash or Junk", Section 9-33 entitled "Removal of Litter from Receptacles", Section 9-34 entitled "Applicability of Ordinance", Section 9-35 entitled "Penalties", and Section 9-36 entitled "Saving Clause" are added as Division 1, Article II entitled "Litter" of the Code of Ordinances of Foley, Alabama, which Sections are as follows:

Sec. 9-20. Title and Purpose.

This article shall be known and may be cited as the "Litter Ordinance of the City of Foley." In order to serve public health, safety and welfare, the declared purpose of this article is to prohibit and order the abatement of certain public nuisances within the city that are defined by this article.

Sec. 9-21. Definitions. The following definitions shall apply in the interpretation of this article:

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

City limits - the corporate boundaries of the city.

Commercial premises - any lot or any building, or part thereof, used in connection with or for the carrying on or any business, trade, occupation or profession for which a license is required by the city.

Garbage - putrescible animal and vegetable wastes resulting from handling, preparation, cooking and consumption.

Garbage can - a watertight receptacle or container for temporary storage of putrescible and nonputrescible waste, constructed of substantial metal, plastic or rubber, and having a capacity of not less than ten (10) gallons nor more than thirty (30) gallons, with a tight-fitting lid or cover and with a handle on the lid and two (2) handles on the receptacle by which same may be conveniently lifted or moved.

Household solid waste - garbage and man-made solid waste generated on residential premises.

Junk - any vehicle or vehicle parts, junked vehicle, rubber tires, appliances, dilapidated furniture, machinery, equipment, building material or other items which are either in a wholly or partially rusted, wrecked, junked, dismantled or inoperative condition.

Junked vehicle - a vehicle that does not bear a current license plate or is not capable of being driven.

Litter - all garbage, refuse, uncontainerized man-made solid waste, including but not limited to, paper, plastic, diapers, cigarette butts, bottles, cans, glass, crockery, scrap metal, construction materials, rubbish, disposable packages or containers.

Litter receptacle - a container constructed and placed for use as a depository for litter.

Occupant - as applied to any house, building, store, shop, room, lot or premises; the owner, tenant or other person who for the time being is in possession or is in charge or control thereof, whether for such person's self or for another, or as agent, officer or employee of a corporation.

Person - an individual, partnership, association, syndicate, company, firm, trust, corporation, government corporation, department, bureau, agency, business or any entity recognized by law.

Premises - any building or real property.

Private property - property owned by a person as defined herein.

Public nuisance - any growth of weeds, scrub (wild) bushes, and grass exceeding community standards, normally ten (10) inches in height, and/or nonorganic debris that presents a fire hazard, a health hazard, a safety hazard or otherwise endangers surrounding areas.

Residential premises - premises used as single or multiple-family dwellings, townhouses, apartments and condominiums, both privately and publicly owned.

Trash - nonputrescible solid wastes consisting of yard clippings, leaves, wood, tree limbs and trunks, bedding, appliances, paper and cardboard, plastics, wood, wrappings, cans and similar materials.

Vehicle - every device capable of being moved upon a public highway, street or waterway and in, upon or by which a person or property may be transported or drawn upon a public highway, street or waterway. This shall include any watercraft, boat, ship, vessel, barge or other floating craft.

Sec. 9-22. Occupant's Responsibility.

It shall be a violation of this ordinance for any occupant of property in

the city limits who generates litter, trash or junk to fail to insure that the litter, trash or junk is managed, stored and handled in accordance with the provisions of this ordinance.

Sec. 9-23. Areas Surrounding Commercial Premises.

- A. It shall be the duty of every occupant of any commercial premises in the city limits to keep the adjacent and surrounding area clear and free of litter, high grass and weeds that constitute a public nuisance.
- B. All persons performing construction and demolition work, or occupants of commercial premises shall provide on-site receptacles for loose debris, paper, building materials waste, scrap building materials and other litter products to prevent scattering of such materials by wind or rain if such materials are not otherwise properly disposed of on a daily basis.
- C. No occupant of commercial premises in the city limits may grant permission to any person to dispose of litter, garbage, trash or junk on his property.
- D. All occupants of commercial premises shall store their litter in bulk containers and shall maintain their premises to be clean, neat and sanitary. Spillage and overflow around the containers shall immediately be cleaned up as it occurs.
- E. It shall be a violation of this ordinance to fail to comply with any of the requirements of this section.

Sec. 9-24. Residential Premises.

It shall be a violation of this article for any owner or occupant of private property to fail to keep their premises free and clear of litter, garbage, trash, junk, high grass and weeds that constitute a public nuisance.

Sec. 9-25. Sidewalks and Rights-of-way.

It shall be a violation of this article for any owner or occupant whose property abuts a city right-of-way to fail to keep any sidewalks and city right-of-way between the street and their property line mowed and free of litter, trash and junk.

Sec. 9-26. Sweeping Litter into Street.

It shall be a violation of this article to blow, sweep or push litter, junk or trash, including yard clippings, leaves or grass, onto the city streets, alleys, storm water structures or ditches. All litter and trash shall be deposited into a garbage cart, garbage can, bag or box or litter receptacle tightly covered and secured to prevent scattering before pickup, and failure to do so shall be a violation of this article.

Sec. 9-27. Proper Disposal of Litter, Trash or Junk.

- A. In all areas of the city in which the city collects garbage and litter

through its automated garbage collection system, a garbage can is the only permitted container for litter and garbage. In those parts of the city where the city does not provide automated garbage collection, litter and garbage shall be placed in a garbage can. All household solid waste shall be stored in tightly closed metal, rubber or plastic cans, in heavy duty plastic garbage bags, or in recycling containers, constructed so as to prevent such material scattering of garbage by wind, water, traffic or scavenging animals.

- B. All trash shall be placed for collection at curbside no sooner than forty-eight (48) hours prior to the designated day for collection.
- C. Scrap, lumber, plaster, roofing, concrete, brick and sanding dust, resulting from the construction, repair, remodeling, removal or demolition of any building on private property will not be removed by city employees. All such materials shall be removed by the owner or occupant or the person responsible for the accumulation of same before, during or after construction.
- D. It shall be a violation of this article to fail to comply with the requirements of this section.

Sec. 9-28. Cleaning Litter, Trash or Junk from Private Premises.

- A. The code enforcement officer is hereby authorized to notify the owner of any vacant or unoccupied private property within the city to properly dispose of litter, garbage, junk or trash located on that property. The notice may be delivered in person or by certified mail, with return receipt addressed to the owner at his last known address or to the address that appears in the records in the office of the Baldwin County Revenue Commissioner. The failure, neglect or refusal of any owner so notified to properly dispose of litter, trash, garbage or junk within ten (10) days after receipt of the notice shall constitute a violation of this ordinance.
- B. Licensed junk dealers or commercial premises used for the repair, rebuilding, reconditioning or salvaging of goods whose work area is screened from public view by a fence, hedge, wall or similar device of sufficient height to provide a visual buffer, and who complies with the city's junk and zoning ordinances shall not be subject to the provisions of this section.

Sec. 9-29. Litter Receptacles.

- A. It shall be a violation of this article to deposit any item except litter into a litter receptacle.
- B. Every occupant of commercial premises shall, at his own expense, provide, place and regularly maintain litter receptacles, including cigarette litter receptacles, adequate to contain litter generated at those premises.
- C. Litter receptacles on any premises shall meet the following

minimum standards:

1. Constructed of such quality as to maintain the receptacle's original shape when kept in an outdoor location, and reasonably resistant to rust and corrosion.
 2. Constructed and designed or covered in such a manner as to prevent or preclude litter from escaping from the receptacle.
 3. Serviced with such frequency as necessary to prevent spillage from overflow and to prevent offensive odor.
- D. It shall be a violation of this article to fail to comply with the provisions of this section.

Sec. 9-30. Littering from a Vehicle.

- A. It shall be a violation of this article for any person in a vehicle to drop, deposit, discard or otherwise dispose of litter in or upon any public or private property within the city, including but not restricted to, any street, median, right-of-way, sidewalk, park, vacant or occupied lot, body of water, except in litter receptacles, or in an area designated by the department of environmental management as a permitted disposal site.
- B. The owner of the motor vehicle shall be responsible in the event that any person commits the following unlawful acts while in a motor vehicle, whether it is moving or at rest.

Sec. 9-31. Escape of Load from Uncovered Vehicles.

- A. It shall be an unlawful violation of this ordinance for any person, hauler, firm or business to haul garbage, paper, trash, sand, gravel, wet cement, construction materials, other loose materials or waste unless the truck or used vehicle is properly covered, secured or sealed to the extent that there will be nothing to prevent any loss or spillage during haulage, any littering of streets and highways or nuisances or hazards to the public health. The deposit of sand or other substance to increase traction, or of water or other substance applied on a street or roadway in the cleaning or maintenance of such street or roadway by the responsible government agency having such responsibilities, is excepted from the foregoing provision. Any person charged with a violation of this section shall be required to appear before a municipal judge.
- B. Any person cleaning litter or junk from a private premises and operating a vehicle on a public right-of-way in the city limits from which any glass, nails or other sharp objects have fallen or escaped, which could cause an obstruction or damage a vehicle or otherwise endanger travelers on such public property, shall immediately cause the public property to be cleared of such objects and shall pay any costs thereof. It shall be a violation of

this article to fail to comply with this subsection.

Sec. 9-32. Dumping of Litter, Trash or Junk.

- A. It shall be an unlawful violation of this article for any person to discard or dump any litter, garbage, trash or junk on any private or public property unless disposed of in receptacles provided for public use that comply with the requirement of this ordinance or in an area designated by the state department of environmental management as a permitted disposal site.
- B. For the purposes of this section, items found in an accumulation of garbage, trash, or other discarded material, including but not limited to, bank statements, utility bills, bank card bills, and other financial documents, clearly bearing the name of a person shall constitute a rebuttable presumption that the person whose name appears thereon knowingly deposited the litter. Advertising, marketing, and campaign materials and campaign literature shall not be sufficient to constitute a rebuttable presumption under this section. No prosecution for violation of this section based on evidence that creates a rebuttable presumption shall be brought against a person unless he or she has been given written notice by a designee of the city that items found in an accumulation of garbage, trash, or other discarded materials contain his or her name, and that, under this section, there is a rebuttable presumption that he or she knowingly deposited the litter. The notice shall advise the person of the penalty for violating this section, and shall provide that, unless the person can present satisfactory information or evidence to rebut the presumption to the designee of the city within fifteen (15) days of the date of the notice, an action under this section may be filed against him or her in municipal court. If the person responds to the notice and presents information or evidence to the code enforcement officer of the city, the code enforcement officer shall review the information or evidence presented and make a determination as to whether or not an action should be brought against the person for violating this section.

Sec. 9-33. Removal of Litter from Litter Receptacles.

- A. The removal of litter from receptacles placed at public parks, beaches, fishing areas and other public recreation sites shall be the responsibility of those state and local agencies now responsible for the maintenance of these sites.
- B. The removal of litter from garbage cans, litter receptacles or bulk containers placed on private property which are used by the public commercial premises shall be the duty of the occupant of those premises. It shall be a violation of this ordinance for an occupant to fail to remove or provide for the removal of litter as required by this subsection.

Sec. 9-34. Applicability of Ordinance.

Except where otherwise provided, the provisions of this article apply throughout the city limits.

Sec. 9-35. Penalties.

Any person who is found to have violated the terms of this ordinance 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 the Code of Ordinances of the City of Foley, Alabama. Each day such owner shall allow a violation to continue, after having received ten (10) days written notice from the code enforcement officer to correct or abate same, shall constitute a separate offense.

Sec. 9-36. Saving Clause.

Nothing in this article shall impair the right of the city to maintain a civil or criminal action to abate or assess the costs of abatement of the public nuisances defined by this article.

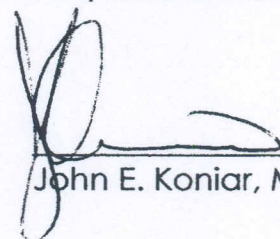
Section 3. In the event that any section, subsection, sentence, clause or phrase of this ordinance shall be declared or adjudged invalid or unconstitutional, such adjudication shall in no manner affect the other sections, sentences, clauses or phrases of this ordinance, which shall remain in full force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

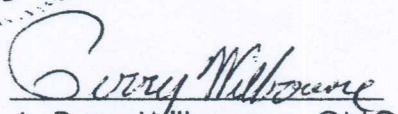
Section 4. This ordinance shall become effective immediately upon its adoption and publication.

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 20th day of October, 2008.

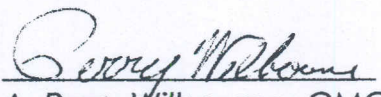



John E. Koniar, Mayor


A. Perry Wilbourne, CMC
City Clerk/Administrator

The instrument prepared by the office of the Foley
City Clerk, 407 East Laurel Ave., Foley, AL 36535.

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 Wednesday, October 29, 2008.


A. Perry Wilbourne, CMC
City Clerk/Administrator