

ORDINANCE NO. 1024-08



SHORELINE CONSTRUCTION ACTIVITIES

I. Title

This ordinance shall be known as the City of Foley Ordinance for Shoreline Construction Activities.

II. Jurisdiction

The provisions of this ordinance shall apply to all lands within the corporate limits of the City of Foley.

III. Findings

The U.S. Department of Army, Corps of Engineers and the Alabama Department of Environmental Management regulate activities in waters of the United States within the political boundaries of the State of Alabama. Joint application and notification, as required by federal and state regulations, shall be submitted to the U.S. Army Corps of Engineers, Mobile District.

Furthermore, the State of Alabama Department of Conservation and Natural Resources State Lands Division regulate the placement and configuration of piers and other improvements on State submerged lands. Notice of intent to impact state owned submerged lands, as required by State Lands Division Regulation 03-SL-01, Rule 220-4-09, shall be submitted to the Alabama Department of Conservation and Natural Resources State Lands Division, Submerged Lands.

IV. Purpose

It is the purpose of this Ordinance to promote coordination between federal, state, and local government agencies in the regulation of riparian construction activities. The City of Foley has concluded that construction of riparian structures shall be monitored by the City within the corporate limits.

V. Definitions

When used in these rules, the following definitions shall apply unless the context clearly indicates otherwise:

A. ACAMP: Alabama Coastal Area Management Plan

B. ADCNR: Alabama Department of Conservation and Natural Resources

C. ADEM: Alabama Department of Environmental Management

D. Boathouse: means a structure, constructed over water, designed or intended to be used for the purpose of docking, storing, and protecting one or more watercraft.

E. Bulkhead: means a structure which retains earth on one side, and is partially or completely surrounded by water on the other; the purpose of which is to prevent erosion or the shoreline.

F. Dock: means a fixed or floating structure, including moorings, used for the purpose of berthing buoyant vessels.

G. Fill: means any solids, dredged material, sludge, or other material the placement of which has the effect or purpose of raising the elevation of wetlands or lands

underlying coastal waters. Fill does not normally include the vertical placement of pilings or pile supported structures unless ADEM or the USCOE determines such placement has or would have the effect of fill,

- H. Footprint: means the ground area covered by a structure when viewed from the top or plan view.
- I. Habitable Structure: means any structure which, by virtue of its design, size or appurtenances, is suitable for occupation as a residence in a temporary or permanent basis, or any similar structure used for commercial purposes.
- J. Marginal Docks: means a fixed or floating structure placed immediately contiguous and parallel to an established seawall, bulkhead or revetment.
- K. Pier: means a fixed or floating structure, including moorings, used for the purposes of berthing buoyant vessels and access to waters.
- L. Retaining Walls: means a structure used for stabilizing and controlling erosion of steeply sloped areas of a lot. In some cases, retaining walls are used in conjunction with terracing to provide a level area for recreational purposes.
- M. Riparian: means an area situated adjacent to the banks of rivers, streams, or other waterways.
- N. Riparian Structure: for the purpose of this Ordinance, includes but is not limited to bulkhead, retaining wall, pier, dock, marginal dock or other object the whole or parts of which are arranged by human action.
- O. Site Plan: means a drawing depicting, at a minimum, the approximate configuration of the shoreline, the approximate location of the mean high tide, property boundaries, setbacks, the location, dimensions, orientation and footprint of all proposed structures, the location, dimension and volume of any proposed dredge or fill.
- P. State Owned Submerged Lands: means those lands including but not limited to, tidal lands, sand bars, shallow banks, and lands water ward of the mean low water line beneath navigable fresh water or the mean high tide line beneath tidally-influences waters, to which the State of Alabama has acquired.
- Q. Submersed Grassbeds: means areas within the coastal area which support rooted vegetation that are not normally emerged even at low tide but remain covered within coastal waters.
- R. USACOE – United States Army Corps of Engineers

VI. Permits

A. Riparian Structure Permits

Riparian Structure Permits shall be required for all of the following new construction activities: piers, docks, marginal docks, boathouses, retaining walls, wharves, and bulkheads. Repairs to existing structures that have been damaged greater than fifty percent shall also require a Riparian Structure Permit. The permits shall be valid for a period of six months from date of issuance. Extensions may be granted upon written request for six additional months.

B. Riparian Structure Repair Permits

Repairs to existing riparian structures that have been damaged less than fifty percent shall require a Riparian Structure Repair Permit. The permits shall be

valid for a period of six months from date of issuance. Extensions may be granted upon written request for six additional months.

VII. Permit Application and Fees

- A. Riparian Structure Permits shall require a written application, a site plan, copies of all required state and federal permits, a No Rise Certification (prepared by an engineer) if in a floodway, and a \$75.00 permit fee submitted to the Environmental Department three business days prior to the initiation of the construction. Once approved, the applicant shall receive a placard to be displayed visibly at the permitted property.
- B. Riparian Structure Repair Permits shall require a written application, a site plan, copies of all required state and federal permits, a No Rise Certification (prepared by an engineer) if in a floodway, and a \$25.00 permit fee submitted to the Environmental Department. Once approved, the applicant shall receive a placard to be displayed visibly at the permitted property.

VIII. Environmental Inspections

All riparian structures shall require the Environmental Department to inspect the construction area prior to construction for determination of potential impacts to the submersed grassbeds, wetlands, and waterways. A final inspection of the construction activities shall also be requested from the Environmental Department to determine that no impacts, other than those permitted by local, state, and federal agencies, have occurred. These inspections are intended as a supplement to state and federal requirements for environmental impacts. Furthermore these inspections will in no way examine construction requirements in relation to building codes.

IX. Environmental Recommendations

The City of Foley acknowledges the environmental recommendations for pier and shoreline protection construction on waterways. The City requests that new construction follow the recommendations where possible.

A. Piers, Decks, and Wharves

The length of the entire structure should extend no further than 20 feet beyond the point where water is 3 feet deep at mean low water, or 300 feet from mean high water, whichever is shorter. The pier should be no wider than 5 feet and must be at least 5 feet above mean high water. Spacing between the wooden decking boards may be no wider than 12 inches.

B. Bulkheads

Shoreline protection shall be considered in areas where the riparian vegetation proves inadequate in preventing erosion. Shoreline protection should consider the placement of riprap. Filter cloth should be installed beneath riprap and bulkhead materials.

X. Enforcement

- A. It shall be unlawful to violate any provision(s) of this Ordinance.
- B. Wherever the City of Foley determines that construction of riparian structures occurs prior to receiving the required permits from local, state, and federal agencies, a stop work order may be issued by the Environmental Manager until such time as all required permits are obtained.

C. Whenever the construction of a riparian structure creates sedimentation to be released into wetlands, waterways, or submersed grassbeds without approval through submitted permits, a stop work order may be issued until the violation is resolved. At a minimum the construction shall come into compliance within 14 days unless the Environmental Manager approves an extension due to extenuating circumstances.

D. Continued violations after a stop work order has been issued may be guilty of a misdemeanor. Any person who violates this Ordinance shall, upon conviction thereof, be fined not less than \$100 or more than \$500, and in addition shall pay all costs and expenses involved in the case. Each day during which any violation of any of the provisions of this Ordinance is committed, continued, or permitted shall constitute a separate offense. Nothing herein contained shall prevent the City of Foley from taking such other lawful actions as are necessary to prevent or remedy any violation.

XI. Abrogation and Greater Restrictions

This Ordinance is not intended to repeal, abrogate or impair any existing easements, covenants, deed restrictions, or state or federal regulations. However, where this Ordinance and another conflict or overlap, whichever imposes the more stringent restrictions prevail.

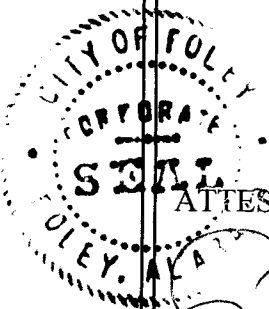
XII. Interference

No person shall hinder, prevent, delay or interfere with the City while engaged in carrying out the execution or enforcement of this Ordinance; provided, however, that nothing herein shall be construed as an attempt to prohibit the pursuit of any remedy, legal or equitable, in any court of competent jurisdiction for the protection of property rights by the owner of any property within the municipality.

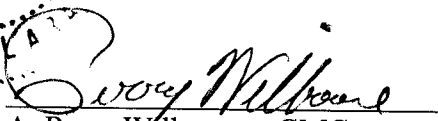
XIII. Severability

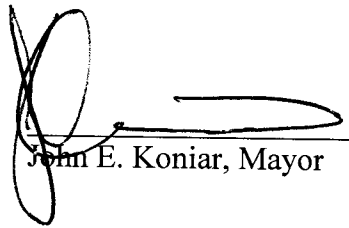
If any provision of this Ordinance is declared to be invalid, such declaration shall not affect, impair or invalidate the remaining provisions of this Ordinance.

PASSED, ADOPTED AND APPROVED this 21st day of January, 2008.



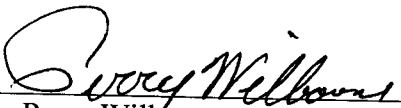
ATTEST:


A. Perry Wilbourne, CMC
City Administrator/Clerk


John E. Koniar, Mayor

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 Saturday, January 26, 2008".


A. Perry Willbourne
City Administrator/Clerk

YELIOT HO YIHO
OEN HUWASTION
OCTI BINE JA YELIOT