

11/27/08
ORDINANCE NO. 1066-08

ORDINANCE REGARDING PUBLIC NUISANCE ABATEMENT

BE IT ORDAINED BY the City Council of Foley, Alabama, while in session on October 7, 2008, as follows:

Section 1. Article IV entitled "Nuisance Abatement" is added to Chapter 9 entitled "Health and Sanitation" of the Code of Ordinances of Foley, Alabama; and

Section 2. Section 9-60 entitled "Definitions", Section 9-61 entitled "Certain Public Nuisances Defined", Section 9-62 entitled "Penalties", Section 9-63 entitled "Resolution of Abatement", Section 9-64 entitled "Notice of Declaration", Section 9-65 entitled "Hearing on Nuisance Declaration", Section 9-66 entitled "Order for Abatement", Section 9-67 entitled "Liability Insurance", Section 9-68 entitled "Billing and Collection", Section 9-69 entitled "Saving Clause" of Article IV, Chapter 9 entitled "Health and Sanitation" of the Code of Ordinances of Foley, Alabama, which Sections are as follows:

Sec. 9-60. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section:

Abandoned or junk motor vehicle - shall mean one of the following:

A. A vehicle left on a public street, alley, highway or on public property for a period in excess of twenty-four (24) hours in the same or substantially the same location.

B. A vehicle legally and physically incapable of being operated as a motor vehicle, this being one dismantled or partially dismantled or lacking essential parts or old equipment, or one which does not have attached thereto a current license plate.

C. A vehicle of any condition or description left on property of another without the property owner's permission.

Abandoned or junk watercraft - means any boat or conveyance designed to be or actually used to transport persons, goods or a combination thereof upon, under, or over the water that is:

A. Deteriorated, rotten, damaged, dismantled, or otherwise in a state of disrepair so as to admit water where designed to be watertight, or otherwise not seaworthy as it was originally designed and built; or

B. Not capable of being lawfully operated on the waters of the State of Alabama; or

C. Not displaying a current registration decal as required under state law; or

D. Not stored, parked, placed or maintained on an operational trailer, on which the vessel is designed to be transported.

Nuisance - anything that works hurt, inconvenience or damage to another. The fact that the act done may otherwise be lawful does not keep it from being a nuisance. The inconvenience complained of must not be fanciful or such as would affect only one of a fastidious taste, but it should be such as would affect an ordinary reasonable person.

Private nuisance - a nuisance limited in its injurious effects to one or a few individuals. A private nuisance gives a right of action to the person injured.

Public nuisance – a nuisance that damages all persons who come within the sphere of its operation though it may vary in its effects on individuals. A public nuisance gives no right of action to any individual, but must be abated by a process instituted in the name of the city.

Owner - shall be the holder of the fee simple title as revealed on the property tax rolls of Baldwin County, Alabama.

Sec. 9-61. Certain Public Nuisances Defined.

A. It shall be unlawful for any person to maintain a public or private nuisance upon any public or private property.

B. The following specific acts, omissions, conditions and things in or upon any lot, building, structure or premises, or in or upon any right-of-way, street, avenue, alley, park, parkway, drainage way, easement or other place in the city are hereby declared to be public nuisances, the existence of which is a danger to public safety:

1. All land shall be kept free of cesspools, sumps, pits or like places which are not securely protected from insects or rodents, or which are foul or malodorous.

2. All land, buildings, rooms or other places in the city used for trade, employment or manufacturing, shall be kept free of noxious exhalations, including, but not limited to, smoke, soot, dust, fumes or other gases, offensive odors or other annoyances that are discomforting or offensive or detrimental to the health or safety of individuals or of the public, or contributes to the depreciation of neighborhood.

3. Any unguarded or abandoned excavation, pit, well or hole which is or could be dangerous to life, except that this provision shall not apply to ponds, drainage impoundments, or other similar excavations approved by the city as part of a valid development order.

4. Leaving or permitting to remain outside of any dwelling, building or other structure, or within any unoccupied or abandoned building, dwelling or other structure, any abandoned, unattended or discarded icebox, refrigerator, freezer or other similar container.

5. No person shall create or maintain any condition that obstructs or renders dangerous the use or passage of any park, stream, water course, sidewalk, parkway, alley, street, highway or easement.

6. Buildings which are abandoned, partially destroyed, or left in a state of partial construction.

7. No graffiti shall be allowed on any exterior building surfaces or accessory improvements.

8. All land shall be maintained free from any accumulation of garbage, litter, debris, blight or deterioration.

9. All land shall be kept free of conditions that constitute or are likely to constitute a fire hazard, or would adversely affect the health or safety of adjacent property owners or occupants of those properties, or would depreciate adjacent property values.

10. All land shall be kept free of overgrown vegetation that interferes with or obstructs or renders dangerous the free passage or use of sidewalks, roadways, streets, public rights-of-way or easements; or obstructs or blocks the vision of drivers or their ability to

observe traffic-control devices or signs; or which breaks up or grows through broken areas of impervious manmade surfaces such as sidewalks and parking areas.

11. All land shall be kept free from insect and rodent infestation and noxious pests, or conditions that cause the property to harbor insects, rodents or noxious pests.

12. All pools, spas and other bodies of water shall be properly maintained so as not to create a safety hazard, harbor insect infestation, be polluted, become stagnant, deteriorated or blighted.

13. All land shall be maintained so as to prevent the accumulation of stagnant water where such water causes a hazardous or unhealthy condition, breeding area for insects, or erosion of foundation walls.

14. All public and private land shall be kept free of abandoned or junk motor vehicles and abandoned or junk watercraft.

C. The provisions of this article shall not apply where any other Division of this Article or Article V of Chapter 4 apply.

Sec. 9-62. 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. 9-63. Resolution of Abatement.

Whenever any such public nuisance occurs, the city council may, by resolution, declare the same to be a public nuisance and order its abatement. The resolution shall refer to the street by the name under which it is commonly known, describe the property upon which, or in front of which, the public nuisance exists, by giving a legal description thereof and no other description of the property shall be required. Any number of streets, sidewalks or parcels of property may be included in one and the same resolution.

Sec. 9-64. Notice of Declaration.

A. After the passage of the resolution, notice of a public hearing on the matter shall be given by certified mail, return receipt requested, mailed a minimum of thirty (30) days prior to the date of the public hearing and shall inform the owner of the time, date and place of the public hearing and reason therefore. The notice shall be mailed to the owner of the property as it appears of record in the Baldwin County Revenue Commissioner's office.

B. Notice shall also be given by publication in a newspaper of general circulation once a week for two (2) consecutive weeks. The first notice shall be published at least fourteen (14) days prior to the date of the scheduled public hearing. The wording of the newspaper notice shall be in substantially the following form:

PUBLIC NOTICE

Notice to the owner(s) of property located at: _____

_____.

Said property has been deemed by the City Council of the City of Foley, Alabama, to constitute a public nuisance, pursuant to state and local laws, due to but not limited to, _____. On _____, action was taken by the City Council in order to declare this property a public nuisance and to institute the mandatory legal posting requirements. A hearing shall be held at _____ on _____, to authorize an assessment in favor of the City for costs incurred. Any objections or appeal shall be filed with the City Clerk's office, prior to _____. If an appeal is not made to the City Clerk's office, or a notice of objection is not filed prior to the assessment hearing of the City Council, and a representative of the property owner is not present at the Council hearing, it shall be deemed that this notice is accepted and the associated right to contest the removal of the public nuisance is waived. The cost of this assessment is limited to the prescribed amount as set forth in state and local laws.

C. In addition thereto, signs shall be conspicuously posted at sixty-foot intervals along the frontage of the property. The caption of the signs shall not be less than one (1) inch in height and shall be in substantially the same form as expressed subsection B above.

D. The notice shall be posted at least seven (7) days prior to the time of the hearing of the city council.

Sec. 9-65. Hearing on Nuisance Declaration.

A. If objections are filed with the City Clerk's office prior to the time stated in the notice, the City Clerk's office shall hear and consider all evidence, objections and protests regarding the proposed removal of weeds and/or debris. The council may continue the assessment hearing from time to time, as needed. Upon the conclusion of an assessment hearing, the council, by resolution, shall decide whether a public nuisance exists and, if so, shall order it to be removed or abated with respect to any property or part thereof described. The city council, by passage of the resolution, shall be deemed to have acquired jurisdiction to proceed and either to perform or have performed the work of removal or abatement with respect to such property or part thereof. The decision of the governing body on the matter shall be deemed final and conclusive.

Sec. 9-66. Order for Abatement.

A. After the council passes the resolution finding the conditions of the property to be a public nuisance and ordering its abatement, all employees and duly authorized agents of the city are hereby expressly authorized to enter upon private property for that purpose.

B. The city may, at its option, engage and authorize city employees and/or private contractors, companies, enterprises or individuals to abate and remove the nuisance. The council, by resolution, shall designate the city employees and/or private contractors, companies, enterprises or individuals who may perform the work.

C. Any property owner shall have the right to abate any public nuisance at his own expense, providing the same is done prior to the time city employees or agents commence work.

Sec. 9-67. Liability Insurance.

Private contractors engaged by the city in accordance with this article shall be required to provide proof of liability insurance in the amounts routinely required by the city for similar projects and will accept responsibility for any damages to subject lots and surrounding areas which may occur during the cutting/cleaning of subject property. The insurance policy shall contain an endorsement that the same shall not be canceled without giving to the city ten (10) days written notice.

Sec. 9-68. Billing and Collection.

A. The city shall keep an account of the cost of abating each nuisance in front of or on each separate lot or parcel of land where work is completed by it or its employees, or by a duly authorized private contractor, company, enterprise or individual, and shall render a written itemized report to the city council showing the cost of removing a particular public nuisance; provided that before the report is submitted to the governing body, a copy of the same shall be posted for at least five (5) days prior thereto on or near the chamber door of the city council, together with a notice of the time when the report shall be submitted to the city council for confirmation.

B. Prior to the time fixed for the city council to receive and consider the report, the administrative appeal process of filing, hearing and ruling upon complaints and objections shall have been completed. Contested assessments shall be appealed to the city council, at the property owner's request upon filing a timely notice with the city clerk at least seven (7) days prior to the time fixed by the city council to receive and consider the report.

C. The cost of abating such nuisance in front of or upon the various parcels of land mentioned in the report shall constitute a special assessment and as thus made and confirmed shall constitute a lien on the property for the total amount of such assessment along with any administrative costs, respectively. After confirmation of the report, the city shall attempt to collect the lien. If this attempt by the city proves futile, a copy of the lien confirmation report will be turned over to the Baldwin County Revenue Commissioner who, under the "optional method of taxation," is charged with the collection of the city's municipal taxes pursuant to Code of Alabama, Sections 11-51-40 through 11-51-74, (1975). It shall be the duty of the Baldwin County Revenue Commissioner to add the amount of the respective lien to the next regular bill for taxes levied against the respective lots and parcels of land, and thereafter the amounts shall be collected at the same time and in the same manner as ordinary municipal ad valorem taxes are collected and shall be subject to the same penalties and the same procedure under foreclosure and sale in case of delinquency pursuant to Code of Alabama, Sections 11-51-40 through 11-51-74 (1975).

Sec. 9-69. 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 7th day of October, 2008.

John E. Koniar, Mayor

A. Perry Wilbourne

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 October 11, 2008.

A. Perry Wilbourne

A. Perry Wilbourne, CMC
City Clerk/Administrator