

ORDINANCE NO.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF FOLEY AS FOLLOWS:

Section 1- Pursuant to the State of Alabama Act 2013-361 the City of Foley may establish a pretrial diversion program. All discretionary powers endowed by common law and provided by statutes and acts of this state or powers or discretion otherwise provided by law for the city shall be retained.

Section 2 - The pretrial diversion program established under this ordinance shall be under the supervision of the presiding municipal judge for the municipality, in conjunction with any rules and regulations established by the municipal governing body. The presiding judge, with approval of the municipal governing body and the municipal prosecutor, may contract with any agency, person, or business entity for any service necessary to accomplish the purpose of this ordinance.

Section 3 — The presiding municipal judge, acting in consultation with the municipal prosecutor, shall have the authority to establish all rules and terms necessary for the implementation of a pretrial diversion program.

Section 4 — A person charged with a criminal offense under the jurisdiction of the municipal court in this municipality may apply to the court for admittance into the program under the guidelines listed herein.

- A. Upon receipt of the application and recommendation of the municipal prosecutor, the judge shall determine whether to grant the individual admittance to the program.
- B. Upon admittance into the program, the individual shall be required to enter a plea of guilty at which time the case shall be placed in an administrative docket until such time as the offender has completed all requirements of the pretrial diversion program. Imposition of any sentence shall be deferred until such time as the offender completes the pretrial diversion program or is terminated from the program.
- C. In the event the offender does not satisfactorily complete the program and all terms thereof, whether the terms of diversion have expired or not, the court shall impose an appropriate sentence in the same manner as available under a guilty plea.
- D. Upon successful completion of the program and all terms thereof, the court shall dismiss the case pursuant to the rules established by the municipality.
- E. A holder of a commercial driver's license, an operator of a commercial motor vehicle, or a commercial driver learning permit holder who is charged with a violation of a traffic law in this state shall not be eligible for a pretrial diversion program pursuant to this ordinance.

Section 5 — Definitions

- A. City: The City of Foley, Alabama
- B. Law Enforcement or Law Enforcement Officer:
Any person who is employed by an agency or department whose purpose is to protect people. This may include, but is not limited to police personnel, a correctional officer, coroner, Department of Human Resources personnel, parole and probation personnel, community corrections personnel, court referral personnel, and any other third party agency the municipality contracts with to implement the provisions of this ordinance whether that department or agency is located in the State of Alabama or not.
- C. Municipal Court: The municipal court of the City of Foley.
- D. Municipal Judge:
The municipal judge of the City of Foley or any attorney authorized by the Mayor to act in that capacity.
- E. Municipal Prosecutor:
The municipal prosecutor of the City of Foley or any Attorney authorized by the Mayor to act in that capacity.
- F. Offender:
Any person charged with a crime under the Code of Alabama 1975, or the Municipal Code of the City of Foley, which crime was committed within the jurisdiction of the municipal court of the City of Foley.

Section 6 — Application into Program

- A. A person charged with the following may apply for admission into the program.
 - (1) A traffic offense;
 - (2) A property offense;
 - (3) An offense wherein the victim did not receive any serious physical injury as defined in Section 13A-1-2 of the Code of Alabama 1975;
 - (4) An offense in which the victim was not a child under 14 years of age, a law enforcement officer, a school official or a correctional officer;
 - (5) A misdemeanor as classified by the Code of Alabama 1975 or municipal code;
 - (6) A violation as classified by the Code of Alabama 1975 or municipal code;
 - (7) A violation of a municipal ordinance
- B. The following offenses are ineligible for consideration for the pretrial diversion program:
 - (1) Any offense involving the abuse of a child or an elderly person;

- (2) Any sex offense
- (3) Any offense involving serious physical injury to a person.
- (4) Anyone the municipal prosecutor considers is unfit or not deserving of the benefits of the diversion program.
- (5) The municipal prosecutor, in his or her sole discretion, may waive any of the ineligible or prohibited offenses set forth above, if the prosecutor finds that justice or special circumstances dictate such a waiver.

Section 7 — Conditions and Eligibility

- A. The offender is 18 years of age or older, or 16 years of age or older if the offense is a traffic citation, at the time the alleged offense or violation was committed.
- B. There is a probability that justice will be served if the offender is placed in the pretrial diversion program.
- C. It is determined that the needs of the city and of the offender can be met through the pretrial diversion program.
- D. The offender appears to pose no substantial threat to the safety and well-being of the community.
- E. It appears the offender is not likely to be involved in further criminal activity.
- F. The offender will likely respond to rehabilitative treatment.
- G. The offender has no previous record of committing the offense or offenses or violation or violations with which he or she is charged.
- H. The municipal prosecutor may waive any of the standards specified in subsection (a) if justice or special circumstances dictate.

Section 8 — Process

- A. Prior to being admitted into the pretrial diversion program or as a part of the evaluation process, an offender may be required by the municipal prosecutor to furnish information concerning his or her past criminal history, educational history, work record, family history, medical or psychiatric treatment or care received, psychological tests taken, and any other information concerning the offender which the municipal prosecutor believes may have a bearing on the decision as to whether or not the offender should be admitted to the pretrial diversion program.
- B. The municipal prosecutor may require the offender to submit to any type of test or evaluation process or interview that the municipal prosecutor deems appropriate in evaluating the offender for admittance in the pretrial diversion program. The costs of any test or evaluation shall be paid by the offender or as otherwise agreed to or as provided by this ordinance.

Section 9 — Requirements

A. An offender who enters into the pretrial diversion program shall satisfy each of the following requirements:

- (1) Voluntarily waive, in writing, and contingent upon the successful completion of the program, his or her right to a speedy trial.
- (2) Voluntarily waive, in writing, his or her right to appeal any conviction or sentence.
- (3) Agree, in writing, to the tolling, while in the program, of the periods of limitations established by relevant statutes or rules of court.
- (4) Agree, in writing, to the conditions of the pretrial diversion program established by the prosecutor for the offender.
- (5) Agree, in writing, to pay restitution, if any, due to the victim within a specified period of time and in an amount to be determined by the municipal court taking into account circumstances of the offender and victim. Any restitution collected under this subsection shall be made payable to and disbursed by the clerk of the municipal court.
- (6) Provide a statement written and signed by the offender to the, municipal prosecutor admitting participation in and responsibility for the offense or violation which is the subject of the application for entry into the pretrial diversion program. This statement shall be admissible in any criminal trial.

Section 10 — Application Fee

- A. An applicant will be assessed a nonrefundable application fee of not more than one hundred dollars (\$100) when applying for admittance into the program. The amount of this application fee may be set from time to time by the municipal court. The application fee shall be in addition to the program fee, court costs, and other allowable costs listed in subsection herein. This fee shall not apply to a minor traffic violation.
- B. An offender will be assessed a monitoring fee of \$25.00 per month when the offender is approved for admittance into the program. The amount of the assessment for participation in the program shall be in addition to all of the following:
 - (1) The application fee set forth herein.

- (2) Any court costs and assessments for victims or drug, alcohol, or anger management treatment required by law, the municipal prosecutor, or the municipal court.
- (3) Any costs of supervision, treatment, and restitution for which the pretrial diversion admittee may be responsible.

C. Pretrial diversion program fees or application fees as established by this ordinance may be waived or reduced due to indigency or reduced ability to pay or for other just cause at the discretion of the municipal court.

D. The following program fees shall be paid by offenders accepted into the pretrial diversion program and shall be based on the criminal offense or violation committed.

- (1) Misdemeanor offenses excluding traffic: A fee up to five hundred dollars (\$500) as determined by the municipal court.
- (2) Traffic offenses: Not including DUI, a fee up to fifty dollars (\$50) as determined by the municipal court.
- (3) Driving under the influence: A fee up to seven hundred and fifty dollars (\$750.00).
- (4) Violations: A fee up to one hundred dollars (\$100) as determined by the municipal court.

E. The collection of fees required by this ordinance shall be under the supervision of the clerk of the municipal court of the City of Foley.

Section 11 — Conditions of Order

- A. The municipal prosecutor and offender may enter into an agreement as a part of the pretrial diversion program that the offender be admitted to a drug, alcohol, violence, or other self-improvement or self-help program on an inpatient or outpatient basis or receive other treatment alternatives deemed by the municipal prosecutor to be in the best interest of the offender and society.
- B. The municipal prosecutor may require the offender to submit to periodic or random drug or other testing as a part of the pretrial diversion program of the offender and require other terms and conditions related to substance abuse, domestic violence, or the offense charged as the municipal prosecutor may direct.
- C. The offender shall pay the costs of all services unless otherwise approved by the municipal court after considering the offender's ability to pay.
- D. In any case in which an offender is admitted into the program, there shall be a written agreement between the municipal prosecutor and the offender. The agreement shall include the terms of the pretrial diversion program, the length of the program, and the period of time after which the municipal prosecutor will proceed to dispose of the charges against the offender or what charges the offender will plead guilty to and the

recommended disposition of the matter. If, as a part of the pretrial diversion program, the offender agrees to plead guilty to a particular offense and receive a recommended sentence, this agreement concerning the offence and recommended sentence shall be submitted to and shall be subject to the approval of the municipal judge prior to admission of the offender into the pretrial diversion program.

- E. As a condition to being admitted into the pretrial diversion program, the municipal prosecutor may require the offender to agree to any of the following terms or conditions:
 - (1) Participate in an educational setting to include, but not be limited to, K-12, job training school, trade school, GED classes, or adult basic education courses.
 - (2) Learn to read and write.

- (3) Financially support his/her spouse, children, or both.
- (4) Pay child support, spousal support, or both, as ordered by an appropriate court.
- (5) Refrain from the use of alcohol and drugs and refrain from frequenting places where alcoholic beverages or illegal controlled substances are sold, possessed, or used in violation of law.
- (6) Refrain from contact with certain persons and premises.
- (7) Obtain and maintain employment.
- (8) Attend and pay for individual, group, or family counseling.
- (9) Pay victim restitution, if any is due. Any restitution collected under this subsection shall be made payable to and disbursed by the clerk of the municipal court.
- (10) Pay court costs, fines, or both, incurred as a result of the offense or violation charged and any other amounts the offender owes as a result of the criminal offenses.
- (11) Pay supervision fees and application fees pursuant to this ordinance, and pay court referral officer fees, and drug, alcohol, violence, or other self-help fees charged as a result of participation in the pretrial diversion program.
- (12) Enter into an agreement with the municipal prosecutor that all fees paid for admission into the pretrial diversion program shall be forfeited to the use and benefit of the pretrial diversion program should the offender be removed from the pretrial diversion program by the municipal prosecutor for any cause.
- (13) Observe curfews or home detention or travel constraints as set out in the offender's agreement with the court.
- (14) Enter into a written agreement with the municipal court to have restitution, court costs, fines, fees, or child support either withheld or garnished from the wages or salary of the offender.
- (15) Participate in a substance abuse program, including, but not limited to, being admitted to a drug or alcohol treatment program on an inpatient or outpatient basis or receive other treatment alternatives for substance abuse.
- (16) Refrain from the possession or use of any deadly weapon or dangerous instrument.

F. The offender shall be subject to such other terms or conditions as the municipal prosecutor and the offender may agree to in their written agreement, it being the purpose of this act to allow the municipal prosecutor broad discretion in designing a program specifically for each offender and the offender's circumstances.

Section 12 — Violations of Agreement

- A. If the offender violates any condition of the pretrial diversion program agreed to in writing by the offender, the municipal prosecutor may terminate the

participation of the offender in the pretrial diversion program and may actively pursue the prosecution of the offender for the offense or offenses or violation or violations charged. The offender shall be given written notice of the intent of the municipal prosecutor to terminate him or her from the pretrial diversion program, including the reason for termination. If removed from the program by the municipal prosecutor, the offender will be deemed to forfeit, for pretrial diversion purposes provided for in this ordinance, any fees paid in application for and admission into the pretrial diversion program.

- B. At his or her discretion, the municipal prosecutor may waive a violation for good cause shown as to why the offender should be allowed to remain in the pretrial diversion program.

Section 13 — Liability

The municipal prosecutor, the City of Foley, or the municipal court shall have no liability, criminal or civil, for the conduct of any offender while the offender is participating in the pretrial diversion program.

Section 14 — Grant Funding

The clerk of the municipal court may apply for and accept grant funding applicable to the aims of the program and may receive funding or appropriations from city, county, state, or federal agencies or departments to be used in the maintenance or expansion of the pretrial diversion program.

Section 15 — Severance of Provisions

The provisions of this ordinance are severable. If any part of this ordinance is declared invalid or unconstitutional, that declaration shall not affect the part which remains. The establishment of this program and the collection of the fee set forth herein shall not be construed as a violation of any provision of the Code of Alabama 1975.

Section 16 — Effective Date

This ordinance shall become effective immediately following its passage and approval by the Mayor, or its otherwise becoming law.

Section 17 — Application of Fees

The application fee shall be allocated to the general fund of the City of Foley. An applicant offender may not be denied access into the pretrial diversion program based solely on the inability of the offender to pay the application fee; however, this provision directly applies to Defendants who are classified as indigents. Application fees may be waived or reduced for just cause, including indigency of the offender, at the discretion of the town. Any determination of the indigency of the offender for purposes of program fee mitigation shall be made by the city but such mitigation shall be done only upon the determination by the city that there is no reasonable likelihood within the reasonably foreseeable future that the offender will have the ability to pay the application fee. Application fees required by this ordinance shall be collected by the court clerk of the City of Foley Municipal Court.

Adopted and approved by the City Council of the City of Foley, Alabama, on this day of _____, 2015.

Council President

IN WITNESS THEREOF, I have hereunto set my hand and affixed the official seal of the City of Foley, Alabama on this _____, 2015.

ATTEST:

_____, City Clerk

John E. Koniar, Mayor

I, the undersigned clerk, do hereby certify that the foregoing ordinance was published in the
Foley Onlooker on _____, 2015.