

ORDINANCE NO. 1076-08

ORDINANCE REGARDING THE REPAIR AND DEMOLITION OF DILAPIDATED BUILDINGS AND STRUCTURES THAT CONSTITUTE A PUBLIC NUISANCE

BE IT ORDAINED BY the City Council of Foley, Alabama, while in session on December 1, 2008, as follows:

Section 1. Article V entitled “Repair and Demolition of Dilapidated Buildings and Structures” is added to Chapter 4 entitled “Buildings, Construction and Related Activities” of the Code of Ordinances of Foley, Alabama; and

Section 2. Section 4-88 entitled “Findings and Purpose”, Section 4-89 entitled “Definitions”, Section 4-90 entitled “Notice”, Section 4-91 entitled “Request for Hearing Appeal”, Section 4-92 entitled “Repair, Demolition and Assessment”, Section 4-93 entitled “Payment of Assessment”, Section 4-94 entitled “Failure to Pay Assessment”, Section 4-95 entitled “Right of Redemption”, Section 4-96 entitled “Certificate of Warning to Redeem”, Section 4-97 entitled “Emergency Action”, Section 4-98 entitled “Applicability”, and Section 4-99 entitled “Saving Clause” are added as Article V entitled “Repair and Demolition of Dilapidated Buildings and Structures” of Article V, Chapter 4 entitled “Buildings, Construction and Related Activities” of the Code of Ordinances of Foley, Alabama, which Sections are as follows:

Sec. 4-88. Findings and Purpose.

A. The existence of unsafe and dilapidated buildings and structures within the city constitutes a public nuisance, the abatement of which burdens the city treasury and contributes to blight and crime in neighborhoods.

B. The Code of Alabama, Sections 11-53B-1 *et seq.*, permits the city, after meeting certain notice requirements, to repair or demolish unsafe buildings and to provide an effective means of collecting an assessment lien on the property for the costs of the work involved in abating the nuisance.

C. Implementing the procedures authorized by the new state law will be more efficacious in eliminating these nuisances and will protect the public safety, health, and welfare.

Sec. 4-89. Definitions. The following definitions shall apply in the interpretation of this article:

Assessment - the cost incurred to repair or demolish a structure as provided by this article.

Building - any building, structure, part of a building or structure, party wall, or foundation used or intended for supporting or sheltering any use or occupancy.

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

Official - the city's code enforcement officer or any other municipal employee designated by the mayor to exercise the authority and perform the duties provided in this article.

Owner - the person or persons, firm, association, or corporation last assessing the property who is the record owner of the property for state taxes according to the county tax assessor records.

Person - any natural or legal person including partnerships, corporations, limited liability companies and the like.

Permanent improvements - all repairs, improvements, appurtenances, buildings, and equipment attached to property as fixtures.

Public nuisance - any condition that renders a building unsafe and dangerous to the public safety, health or welfare.

Sec. 4-90. Notice.

A. Whenever the official finds that any building situated in the city is unsafe to the extent that it is a public nuisance, the official shall give the owner and all mortgagees of record notice to remedy the unsafe condition of the building or structure. Notice shall be sent by certified or registered mail:

1. The owner's address on file in the revenue commissioner's office;
2. To the address of the property; and
3. To all mortgagees of record to the address set forth in the mortgage, or if no address is set forth in the mortgage, to the address determined to be the correct address by the official.

B. The notice shall set forth in detail the basis for the official's finding and shall direct the owner to take either of the following actions:

1. In the case where repair is required, accomplish the specified repairs or improvements within forty-five (45) days of the date appearing on the notice, or if the same cannot be repaired within that time, to provide the official with a written work plan to accomplish the repairs. The work plan shall be submitted within forty-five (45) days of the making of the notice and shall be subject to the city's approval.

2. In the case where demolition is required, demolish the structure within forty-

five (45) days of the date appearing on the notice.

3. The notice shall also state that in the event the owner does not comply within the time specified in the notice, the repairs or demolition shall be accomplished by the city and the costs of the repairs or demolition shall be assessed against the property.

C. The mailing of the certified or registered notice as specified in this section, properly addressed and postage prepaid, shall constitute notice as required herein. A copy of the notice shall also be posted at or within three (3) feet of an entrance to the building. If there is no entrance the notice may be posted at any location upon the building. The notice shall be posted on the building within three (3) days of the date the certified or registered notice was mailed.

D. If the owner fails to take action as directed by the official, the city may take either of the following actions:

1. In the case where repair is required, repair the building at the expense of the city and assess the expenses of the repair on the land on which the building stands or to which it is attached.

2. In the case where demolition is required, demolish the building at the expense of the city and assess the expenses of the demolition on the land on which the building stands or to which it is attached.

Sec. 4-91. Request for Hearing; Appeal.

A. Within thirty (30) days from the date appearing on the notice given pursuant to section 4-90, any person having an interest in the building may file a written request for a hearing before the city council, together with that person's objections to the finding that the building is a public nuisance.

B. The filing of the request for a hearing shall hold in abeyance any action on the finding of the official until a determination is made by the council.

C. The council shall hold a hearing not less than five (5) or more than thirty (30) days after the request. In the event no hearing is timely requested, the hearing shall be held no earlier than thirty (30) days from the date the notice is given.

D. The council shall determine whether or not the building or structure is unsafe to the extent that it is a public nuisance. If the council finds that the building is a public nuisance, the council shall order the building or structure to be repaired or demolished, as the case may be.

E. Any person aggrieved by the council's decision may, within ten (10) days thereafter, appeal to the Circuit Court of Baldwin County, Alabama, upon filing with the clerk of the court

notice of the appeal and bond for security of costs in the form and amount to be approved by the circuit clerk.

1. Upon filing of the notice of appeal and approval of the bond, the clerk of the court shall serve a copy of the notice of appeal on the city clerk, and the appeal shall be docketed in the court, and shall be a preferred case therein.

2. The city clerk shall, upon receiving the notice of appeal, file with the clerk of the court a copy of the council's findings. The proceedings and trials in the Circuit Court of Baldwin County, Alabama, shall be held without jury upon the determination of the council that the building is a public nuisance.

Sec. 4-92. Repair, Demolition and Assessment.

A. The repair or demolition may be accomplished by a contract for the repairs or demolition. The city may sell or otherwise dispose of salvaged materials resulting from any demolition; provided, however, that the proceeds of any monies received from the sale of salvaged materials shall be used or applied against the cost of the demolition.

B. If the building or structure is to be repaired, and the cost to repair is greater than the anticipated cost to demolish, the council shall be notified and determine whether or not the building or structure shall be repaired or demolished.

C. Upon the demolition or repair of the building, the official shall report to the council the amount of the proposed assessment, and shall include an administrative fee in the amount of \$200.00 to offset the costs of administration.

D. The city clerk shall, by first class mail, give notice of the meeting at which the fixing of the costs is to be considered to the owner, all mortgagees of record and any other person known to the clerk to have an interest in the property. Any person having an interest in the property may be heard at the meeting as to any objection to the fixing of such costs or the amounts thereof.

E. The council shall adopt a resolution fixing the amount that was reasonably incurred in the demolition or repair and assessing the same against the property including the \$200.00 administrative fee. The cost fixed by resolution shall constitute a final assessment against the lot or lots, parcel or parcels of land upon which the building was/is located. The final assessment as made and confirmed shall constitute a lien on the property for the amount of the final assessment.

F. The lien shall be superior to all other liens on the property except liens for taxes, and except for mortgages recorded prior to the creation of the lien for the final assessment, and shall continue in force until paid.

G. A certified copy of the resolution fixing the final assessment shall also be recorded in

the office of the Judge of Probate of Baldwin County, Alabama.

H. The final assessment shall be assessed against any lot or lots, parcel or parcels of land purchased by the state at any sale for the nonpayment of taxes, and where such final assessment is made against the lot or lots, parcel or parcels of land, a subsequent redemption thereof by any person authorized to redeem or sale thereof by the state, shall not operate or discharge, or in any manner affect the lien of the city for the assessment, but any redemptioner or purchaser at any sale by the State of any lot or lots, parcel or parcels of land upon which final assessment has been levied, whether prior to or subsequent to a sale of the state for the nonpayment of taxes, shall take the same subject to the assessment.

Sec. 4-93. Payment of Assessment.

A. Any final assessment shall be paid in cash within thirty (30) days after the final assessment.

B. If the final assessment is greater than ten thousand dollars (\$10,000.00), the owner may, within thirty (30) days of the final assessment, give written notice to the officer that the owner elects to pay the final assessment in ten (10) equal annual installments. The first installment shall be payable within thirty (30) days after the final assessment is determined, and all installments thereof shall be payable to the treasurer of the City. Installment payments shall bear interest at the rate of twelve (12) percent per annum. Interest shall begin to accrue upon the expiration of thirty (30) days from the date of the final assessment and the interest shall be due and payable at the time and place the final assessment is due and payable.

C. Any owner electing installment payments may pay the outstanding balance, together with all accrued interest thereon, at any time during the installment payment schedule.

D. Upon full payment of the final assessment and accrued interest thereon, the city shall record a satisfaction of the lien in the office of the Judge of Probate of Baldwin County, Alabama.

Sec. 4-94. Failure to Pay Assessment.

A. If the property owner fails to pay the final assessment within thirty (30) days, or having elected to make installment payments, fails to make any installment payment when due, the entire balance shall immediately become due and payable, and the city may proceed to sell the property to the highest bidder for cash, but in no event less than the amount of the lien plus interest through the date of default.

B. Prior to the sale, notice shall be given by publication once a week for three (3) consecutive weeks in a newspaper published in the city or of general circulation therein, setting forth the date and time of the sale and the purpose for which the same is made, together with a description of the property to be sold. If the official shall fail to advertise and sell any property on which the

payments are past due, any taxpayer of the city shall have the right to apply for a writ of mandamus requiring the official to take such action to any court of competent jurisdiction, and the court shall, on proof, issue and enforce the writ.

C. Any owner, notwithstanding his or her default, may pay the final assessment lien with interest and all costs if tendered before a sale of the property.

D. The cost of any notice and sale resulting from a default shall constitute a charge against the property to be sold and shall be retained out of the proceeds of the sale.

E. The officer making the sale shall execute a deed to the purchaser, conveying all the right, title, and interest that the owner had or held on the date of the final assessment or on the date of sale.

F. Any surplus arising from the sale shall be paid to the city treasurer to be kept as a separate fund by the treasurer for the owner upon the responsibility of his or her official bond. The city may, by its agents, purchase real estate sold as provided under this chapter and, in the event of the purchase, the deed for the same shall be made to the city.

G. No mistake in the notice of sale in the description of the property or in the name of the owner shall vitiate the final assessment or the lien and if for any reason the sale is ineffectual to pass title, it shall operate as an assignment of the lien and, upon the request of the purchaser, supplementary proceedings of the same general character as required in this act may be had to correct the errors in the proceedings for his or her benefit or the lien so assigned to him or her may be enforced by civil action.

Sec. 4-95. Right of Redemption.

A. Any real property heretofore or hereafter sold for the satisfaction of an assessment lien imposed thereon by the council may be redeemed by the former owner, or his or her assigns, or other persons authorized to redeem property sold for taxes by the state, within two (2) years from the date of the sale by depositing with the city treasurer:

1. The amount of money for which the lands were sold, with interest thereon at the rate of twelve (12) percent per annum from the date of the sale through the date of the payment;

2. The amount of all insurance premiums paid plus interest computed from the date the premiums were paid at the rate of twelve (12) percent per annum through the date of payment;

3. The value of all permanent improvements as determined in accordance with this section; and

4. Interest on the value of all permanent improvements computed from the date the improvements were made at the rate of twelve (12) percent per annum through the date of the payment.

B. The value of the permanent improvements shall be determined as follows:

1. The proposed redemptioner shall make written demand upon the purchaser of a statement of the value of all permanent improvements made on the property since the assessment sale.

2. The purchaser shall within ten (10) days from the receipt of the demand, furnish the proposed redemptioner with the amount claimed as the value of the permanent improvements.

3. The proposed redemptioner shall within ten (10) days either accept the value so stated by the purchaser, or disagreeing therewith, appoint a referee to ascertain the value of the permanent improvements. The proposed redemptioner shall in writing:

- a. Notify the purchaser of his or her disagreement as to the value; and
- b. Inform the purchaser of the name of the appointed referee.

4. Within ten (10) days after the receipt of the notice, the purchaser shall appoint a referee to ascertain the value of the permanent improvements and advise the proposed redemptioner of the name of the appointee. The two (2) referees shall, within ten (10) days after the purchaser has appointed his or her referee, meet and confer upon the award to be made by them.

5. If they cannot agree, the referees shall at once appoint an umpire, and the award by a majority of the body shall be made within ten (10) days after the appointment of the umpire and shall be final between the parties.

C. If the proposed redemptioner fails or refuses to nominate a referee as provided in subsection B of this section, he or she shall pay the value put upon the improvements by the purchaser. If the purchaser refuses or fails to appoint a referee, as provided in subsection B of this section, the purchaser shall forfeit his or her claim to compensation for the improvements. The failure of the referees or either of them to act or to appoint an umpire shall not operate to impair or forfeit the right of either the proposed redemptioner or the purchaser in the premises. In the event of failure without fault of the parties to affect an award, the appropriate court shall proceed to ascertain the true value of the permanent improvements and enforce the redemption accordingly.

D. The fixed two-year period of redemption for any property heretofore or hereafter sold for the satisfaction of any assessment lien may be extended to a date sixty (60) days after the date of the certificate of warning to redeem, but in no event for a longer period than six (6) years from the

date of such sale.

Sec. 4-96. Certificate of Warning to Redeem.

A. At any time after an assessment sale deed has been recorded in the office of the Judge of Probate of Baldwin County and after expiration of the fixed two-year period of redemption, any person may apply to the judge of probate for the certificate of warning to redeem, which references the recorded volume and page number of the deed to be recorded in the real estate records, in substantially the following form:

"I hereby certify that on or prior to the date of this certificate, I mailed a certified copy of the deed here recorded, together with notice that the same is here recorded, and a warning to redeem to each of the one or more persons other than the grantee in said deed, to whom the property therein described was last finally assessed for ad valorem taxation at the address of each such person as shown by said ad valorem tax assessment records. This ____ day of _____, _____, Judge of Probate, Baldwin County, Alabama."

B. At the time of application for entry of the certificate of warning to redeem, the applicant shall deliver to the Judge of Probate three (3) certified copies of the recorded deed and shall pay to the Judge of Probate a fee of one dollar (\$1.00). The applicant shall also deliver to the Judge of Probate a certified copy of the ad valorem tax assessment records of the county containing the name of the person or persons other than the grantee in the deed to whom the property described in the deed was last finally assessed for ad valorem taxation, together with the address of each person as shown by the tax assessment records, or an affidavit that there is no one else. The Judge of Probate shall promptly mail to each person at such address one of the aforesaid certified copies of the deed, together with an attached warning to redeem in substantially the following form:

"Take notice that there is recorded in my office in Deed Book _____ at page _____ a deed of which the attached is a correct copy. You are warned that unless you, or those claiming under you, take prompt steps to redeem from those claiming under the deed, all rights of redemption may be lost. This ____ day of _____, _____, Judge of Probate, Baldwin County, Alabama."

Promptly upon or after mailing the notice or notices and certified copy or copies of the deed, it shall be the duty of the Judge of Probate to record in the real estate records the signed and dated certificate of warning substantially as prescribed by this section. At the expiration of sixty (60) days after the date of the certificate all rights to redeem from the sale shown by the deed shall cease and desist.

C. Redemption may be effected after expiration of the fixed two-year period of redemption allowed or provided by this section and before the extended period of redemption has expired in the same manner and at the same redemption price as is provided in this section; provided,

that if the Judge of Probate has made the certificate of warning to redeem as provided in this section, said redemption price shall be increased by one dollar (\$1.00).

Sec. 4-97. Emergency Action. Notwithstanding any other provisions of this article, the official may initiate immediate repair or demolition of a building when, in the opinion of the official so designated, such emergency action is required due to imminent danger of structural collapse endangering adjoining property, the public right-of-way, or human life or health. The cost of the emergency action shall be fixed by the council and shall be assessed as provided in this article.

Sec. 4-98. Applicability. The provisions of this article shall also apply to all assessment liens for demolition or repair of record as of the effective date of this article.

Sec. 4-99. 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. Pursuant to the Code of Alabama, Section 11-53 (a), the code enforcement officer is hereby designated as the “appropriate city official to exercise the authority and perform the duties delegated by this ordinance.”

Section 4. 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 5. This ordinance shall become effective immediately upon its adoption and publication.

Section 6. 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 1st day of December, 2008.

John E. Koniar, Mayor

ATTEST:

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 _____.

A. Perry Wilbourne, CMC
City Clerk/Administrator