



March 25, 2024

Mayor and City Council
City of Foley
407 East Laurel Avenue
Foley, Alabama 36535

RE: Zoning Ordinance Amendments Recommendation

Dear Mayor Hellmich and City Council Members:

The City of Foley Planning Commission held a regular meeting on March 20, 2024 and the following action was taken:

Zoning Ordinance Amendments

Commissioner Hellmich made a motion to approve the Zoning Ordinance amendments regarding recreational vehicles and amendments 1, 2 and 3. Commissioner Quaite seconded the motion. All Commissioners voted aye.

Motion to approve the Zoning Ordinance amendments regarding recreational vehicles and amendments 1, 2 and 3 passes.

Please let me know if you have any questions or concerns.

Respectfully,

Melissa Ringler

Melissa Ringler
Planning & Zoning Coordinator
mringler@cityoffoley.org

MAYOR: Ralph Hellmich

CITY ADMINISTRATOR: Michael L. Thompson

CITY CLERK: Kathryn Taylor

COUNCIL MEMBERS: J. Wayne Trawick; Vera Quaite; Richard Dayton; Cecil R. Blackwell; Charles Ebert III

CITY OF FOLEY ZONING ORDINANCE – March 2024

ARTICLE II – DEFINITIONS

Recreational Vehicle: For the purposes of this Ordinance, a recreational vehicle shall consist of any of the following as herein defined:

Travel Trailer: A travel trailer is a vehicular portable structure mounted on wheels, of such size or weight as not to require special highway movement permits when drawn by a stock passenger automobile. It is primarily designed and constructed to provide temporary living quarters for recreation, camping, or travel use.

Camping Trailer: A camping trailer is a vehicular portable structure mounted on wheels, constructed with collapsible partial side walls of fabric, plastic, or other pliable material for folding compactly while being drawn by another vehicle. When unfolded at the site or location, it provides temporary living quarters, and its primary design is for recreation, camping, or travel use.

Truck Camper: A truck camper is a portable structure designed to be loaded onto, or affixed to, the bed or chassis of a truck. It is constructed to provide temporary living quarters and is primarily designed for recreation, camping, or travel use.

Motor Home: A motor home is a structure built on and made an integral part of a self-propelled motor vehicle chassis other than a passenger car. Its primary purpose is to provide temporary living quarters for recreation, camping, and travel.

Boat: A boat is any recreational vehicle designed or intended for operation on water. Boats and trailers used to transport them shall be considered recreational vehicles and are subject to the same requirements and restrictions applying to other recreational vehicles.

Utility Trailer: A separate vehicle, not driven or propelled by power, designed to transport vehicles and/or other types of personal property or equipment.

ARTICLE XIV - SINGLE FAMILY RESIDENTIAL & DUPLEX DISTRICTS

14.2 Miscellaneous Provisions in Residential Zones

14.2.1 Recreational Vehicles, Utility Trailers, and Equipment Parked, Stored, or Kept on a Lot or Parcel

A. The owner of the recreational vehicle shall be the owner or lessee of the principal structure of the lot or parcel on which it is located.

B. All recreational vehicles parked, stored, or kept on a lot or parcel zoned residential shall be fully operable, readily movable, kept in good repair, and display the current license plate and/or registration as may be appropriate under state law for the particular type of vehicle.

C. A recreational vehicle may not be permanently attached to utility connections, except as may periodically be required to maintain the equipment and its appliances, if any. Boats and similar recreational vehicles must be on functional operational trailers and stored without the benefit of cradles or other stationary supports.

D. A recreational vehicle may be temporarily parked in a front yard for the limited purposes of loading, unloading, and/or cleaning before or after a trip, not to exceed seven (7) days.

E. Parking is permitted in the rear or side yard provided it is not closer than five (5) feet to any parcel line, lot line, and does not block operable windows or doors of a room of a house used for human habitation through the maintenance of a three (3) foot clearance from the side of the house.

F. The maximum number of recreational vehicles permitted to be parked, stored, or kept on the lot or parcel shall be calculated as follows depending on the zoning of the lot or parcel:

Table 1

Residential Zoning District	Maximum number of Recreational Vehicles
R-1R	3
R-1A	2
R-1B	2
R-1C	2
R-1D	1
R-2	1
R-4	1

G. Multiple recreational vehicles may be on a parcel subject to Table 1 and the following: (1) One RV may be parked, stored, or kept on a parcel without any screening. (2) Up to 3 RVs may be stored on a parcel when screened from view in such a manner that the RVs are not visible from public roadways.

H. Recreational vehicles may only be parked, stored, or kept in a location behind the front façade line of the principal buildings or behind the portion of the front building line farthest from the front lot line if the front of the building is not a continuous straight line (This is not the same as the front yard building set back line).

I. When located in the exterior side yard of a corner lot, screening of the visible side of the recreational vehicle shall be required. Aesthetically sensitive screening shall be provided, which may include evergreen trees and bushes or a combination of fencing and vegetative screening.

J. Recreational vehicles parked, stored, or kept inside any fully enclosed legally permitted accessory structure, carport, or garage shall not be counted against the maximum number of recreational vehicles permitted on a lot or parcel.

K. A recreational vehicle may not be used or occupied for living, sleeping, or housekeeping purposes in residential districts, except as provided herein: Guests may occupy a recreational vehicle for up to fourteen (14) days in a calendar year.

L. It shall be unlawful for any person, whether owner or operator, to leave any recreational vehicle, mobile home, motor home, boat, trailer, utility trailer, or equipment on any public street.

14.3. Utility Trailers and Equipment

A. It shall be unlawful for any person or entity to park, store, or keep utility trailers and equipment used in the operation of a business on any lot or parcel zoned for residential use except as follows:

One (1) single-axle utility trailer may be stored in a residential area when screened from public view.

B. Commercial construction equipment, whether on or off a trailer, such as bobcats, dozers, and similar equipment typically used in construction, shall not be stored in residential areas.

14.4. Notwithstanding the prohibitions in 14.3(a) and (b), temporary parking of utility trailers and equipment used to provide services to residential properties shall be permitted.

(a) Temporary parking for service provision shall be limited to the duration of the service being provided and shall not exceed 48 hours, unless otherwise authorized by the municipal authorities.

(c) Any utility trailers and equipment parked temporarily for service provision must not impede traffic flow, pedestrian access, or otherwise create a nuisance to the surrounding residential properties.

City of Foley Planning Commission

Staff Report – Zoning Text Amendment and Associated Map Amendments

Title: Zoning Applicability to Public Structures Uses and, Streets and Public Ways, and Public Utilities (Publicly or Privately Owned)

Comments: These series of zoning amendments are intended to clarify and establish clear procedures for review of public projects within the City and its jurisdiction as defined herein. Review criteria is also provided to provide clear direction and standards of review. The map amendments will reflect the intent of the text amendments for consistency in the two documents.

Justification of Amendments:

Applicability of Zoning Ordinances to Public Projects:

The prevailing literature on the application of zoning ordinances to public properties and projects for a general government purpose, often referred to as government function, generally asserts that, in the absence of specific state enabling statutes mandating adherence, such projects are not subject to the Zoning Ordinance. Notably, Alabama draws a distinction between public projects of a governmental nature and public projects of a proprietary nature.

Litigation dating back to the 1950s in Alabama addresses this matter, forming the basis for recent decisions, as seen in the case of *Barnes v. TOWN COUNCIL OF PERDIDO BEACH* (Alabama Supreme Court 2022). In this case, the court concluded that, in undertaking the boat-launch project, the Town Council is performing a governmental function, not a proprietary one. As a result, the Town Council is "immune" from the wetland-setback provisions in the zoning ordinance and subdivision regulations. While the topic of the boat ramp in Perdido Beach involves numerous nuances accumulated over years of litigation, the most recent court decision effectively

articulates the interpretation of the law that appears to be consistent with previous decisions on the matter of public projects of a governmental function.

The court has consistently asserted that "Zoning and other land-use regulations act to limit and restrict the development of private property." This perspective aligns with a consensus view across America and is further affirmed in the notes of the Standard Zoning Enabling Act published in 1926. However, this does not exempt the City from oversight in public project development. Once a Comprehensive Plan (master plan) has been adopted by the City, all public projects must undergo review by the Planning Commission. In numerous instances, the implementation of zoning is contingent upon having a Comprehensive Plan (master plan) in place. According to Code of Alabama 11-52-11, in the context of governmental public projects, the zoning ordinance is not the legal instrument of review; instead, the Planning Commission holds reviewing authority based on consistency with the Comprehensive Plan (master plan), with the provision for council appeal under certain circumstances.

Zoning Ordinance Application in Foley

Foley has consistently applied the Zoning Ordinance to all public projects, aiming to treat them on par with the general private development. However, there's a realization that we are surpassing the standards applicable to the private development. For City public projects, we adhere to the 11-52-11 standard of review for location, extent, and character, as well as the general zoning ordinance enabled by 11-52-70. In contrast, private development projects only need to comply with zoning ordinance.

While all public projects are mandated to undergo review by the Planning Commission when the municipality has adopted a comprehensive plan (master plan) for location, character, and extent, it's evident that this review is contingent upon the adoption of a comprehensive plan. Therefore, master plan consistency is not only encouraged but also implied as a primary review document in addition to considerations of location, extent, and character.

Importantly, no public project is exempt from some level of City review, be it through the 11-52-11 review conducted by the Planning Commission for public buildings or uses for governmental purposes, or the general zoning review for public buildings or uses of a proprietary nature.

Governmental Function vs. Proprietary Function

Clear and concise definitions of "governmental function" and "proprietary function" are not explicitly provided; however, through the years courts have offered insights. The Alabama Supreme Court, for example, has defined governmental function as an action done by authority of law, not for profit, and not of a proprietary nature. It operates under the police power to promote public health and well-being, essential for carrying out statutorily authorized functions and purposes. The power and authority to perform a function involve activities reasonably necessary for the city's authorized functions.

While numerous scenarios exist for governmental and proprietary uses, certain guidelines help distinguish between them. If there is a commercial or business purpose for the public building or items stored within, the city gains revenue from their use, the building is made available to the public or commercial establishments, or the building is an adjunct to any commercial activity, it is typically considered proprietary. Additionally, when a city is involved in the business of supplying for compensation, it falls under the proprietary category.

However, a "common sense" approach should guide the determination of governmental proprietary uses. For instance, the act of requiring an incidental fee or collecting money at a public building or on public grounds does not automatically make it a proprietary use. It becomes pertinent to assess whether the anticipated fee or money collected will result in de minimis revenue. In the context of government proprietary use, de minimis revenue refers to an amount so minimal or negligible that it is inconsequential or trivial in relation to the overall financial operations of the government.

Planning Commission Review of Public Utilities whether Publicly or Privately Owned

The amendment activates the authority outlined in Code of Alabama, 11-52-11, (established in 1935) empowering the Planning Commission to assess public utilities, whether publicly or privately owned. The focus of the commission's review is not on intricate technical design and construction specifications or the general conduct of business. Instead, it centers on the general location and geographic areas to be served, aiming to prevent potential conflicts with municipal improvements such as roads and streets and to ensure coordination with the Comprehensive Plan (master plan) in regards to coordinating growth with new or expanded utilities service areas.

Effectively guiding capital utility investment in conjunction with other municipal capital investments is a key aspect of an efficient planning program as envisioned by the Alabama enabling planning acts. A comprehensive review of all public projects leads to operational efficiencies. For instance, coordinating street improvements with the installation of new utilities reduces road cuts, costly utility relocations, promoting cost-effective installation and construction while safeguarding the City's investment in the street.

Moreover, aligning new streets or improvements with a major street plan in coordination with the Comprehensive Plan (master plan) embodies the total planning process. This approach allows street and utility upgrades and improvements to be tailored to the type and intensity of development along and near the new street. The utility achieves maximum returns on infrastructure investments by strategically prioritizing upgrades in areas with the highest growth potential. This approach aligns with and complements the City's planning efforts for optimal coordination.

This coordinated strategy exemplifies real "smart growth," representing the most fiscally conservative and responsible approach to planning and the effective use of tax dollars.

The Planning Commission's role then transforms from “zoning” activities into implementing the Comprehensive Plan (master plan) through public project review and coordinating the timing of infrastructure improvements. This approach not only offers clear direction for developers but also defines expectations for the public regarding the types and intensities of development. Ultimately, it fosters predictability and stability in the City's development process.

Handling of Public Projects in Baldwin County Municipalities

Following discussions with other municipalities in Baldwin County, it is evident that there is no consensus on how public projects are handled, or if they are considered at all for review. There exists a diverse range of perspectives on how these projects should be approached, reflecting a lack of uniformity in views across the municipalities. The Baldwin County Commission has no such statutory authorization to review public projects.

Amendment for Consistency and Efficiency in Public Project Review

The proposed amendment is crucial to establish consistency and efficiency in the City's review of public projects. This ensures that public projects undergo a level of review consistent with state law, tailored to the context and needs of the community, while avoiding unnecessary burdens on the City with reviews lacking clear authorization and guidance.

Why should the review of Public Governmental Building and/or Uses be different than private land development applications?

Public governmental buildings and facilities are funded through public tax dollars, typically as a result of long-term budgeting and capital planning efforts. These structures, along with streets and public spaces, play a significant multi-functional role

in shaping a city's character. They encompass city halls, libraries, squares, boulevards, neighborhood playgrounds, city parks, and other public spaces. Public buildings require careful architectural consideration, representing symbolic needs, functional requirements, and aesthetics, exerting a strong influence over the city's development. The municipality's long-term planning efforts, often contained in a master plan or comprehensive plan, guide the development. The Planning Commission's review is contingent on the adoption of a master plan. This emphasizes the drafter's of the Alabama planning legislations desire for the master plan to be a comprehensive, long-range document for investment in public buildings and uses and their coordination with private development.

Quoting note 31 in the Standard Planning Enabling Act, "the planning commission can greatly promote the beautification of the city in locating public buildings and streets and squares, to take account of opportunities for interesting and beautiful vistas or for sites for monuments and the like." This discussion underscores that public buildings and spaces work together to form the fabric of the city through high level coordination and a focus on aesthetics and livability. The planning commission's authorized design-oriented approach, empowered to go beyond isolated private development decisions, deals with subject matter on a non-private development typology.

It's logical that the creator and implementing agency of a master plan must also have broad discretion over public project design review, free from detailed "zoning" rules designed for private development with dissimilar profit motive goals. For governmental public projects, the decision is not whether it conforms to zoning plans but whether it aligns with the master plan. The intent and goals of a zoning plan for private development versus the goals and intent of a Comprehensive Plan (master plan) differ significantly in scale, scope, and subject matter. This distinction is reflected in the process and scope of review outlined in 11-52-11. Moreover, local governments play a crucial role in ensuring the adequate provision of these spaces, especially given the

limited incentive for the private sector, a key player in urban development, to provide them. In a city, these defining urban design structures and public uses are exclusively provided by municipal government, devoid of competition from the private development sector based on market demand.

The purpose of public buildings and uses differs from the profit-driven motives of the private development sector, necessitating a distinct level of review. Municipal investment and development in public buildings and uses focus on public health, safety, and general welfare. Creating a city where public facilities support these purposes requires a perspective beyond isolated private development project reviews. Instead, the goals are broader and long-range, necessitating a comprehensive city-wide review separate from private development to ensure alignment with public demands and harmonious design with other municipal infrastructure. This level of review was reflected in the Standard Planning Enabling Act and later in the Code of Alabama planning statutes adopted in 1935.

The aforementioned points make it evident that the planning commission and the master plan are appropriate review bodies and documents for government-led public projects. This stance is emphasized by the distinctive role that public governmental buildings and spaces play in the long-range planning approach, as outlined in master plans, guiding the development of these structures. The distinctions between public and private development are numerous, encompassing factors such as funding through public tax dollars and playing a primary role in shaping a city's urban design and character. These structures and facilities would not be provided if solely subjected to the market forces and profit-driven demands of private development. Moreover, it is crucial to underscore the pivotal role of municipal government in providing essential public services, spaces and structures, with a specific focus on ensuring public health,

safety, and overall welfare. This also highlights the historical significance of planning statutes that advocate for intentional city-wide development and urban design.

Amendment #1. (text amendment)

Amend Article 2.1 definitions in the Zoning Ordinance for "Public Buildings, Governmental" and "Public Building, Proprietary" in alignment with the legislative intent and for consistency with prevailing case law.

Public Building: A building used or designed to be used principally by a municipality, county, state, public corporation, public utility or by the federal government as a courthouse, jail, city hall, auditorium, library, civic center, music hall, art gallery, art center, museum, municipal building, post office, office, warehouse, storage, and other uses deemed necessary by these types of entities.

Public Building, Governmental: ~~A public building used or designed to be used principally by a municipality, county, state, or by the federal government for purposes directly related to the discharge of their governmental powers, such as for courthouses, jails, city hall, post offices, office spaces, and other similar uses.~~

A public building, intended primarily for use by a municipality, county, or state, is authorized by law for the execution of the entity's statutorily sanctioned functions and purposes. This authorization is grounded in the power and authority to perform functions essential for activities reasonably necessary to fulfill the city's governmentally authorized functions and activities.

Public Building, Proprietary: A public building or structure with proprietary purposes serves a commercial or business function through its function or structure, designed to generate revenue. It may be available to the public or commercial establishments A

~~building used or designed to be used principally by a municipality, county, state, public corporation, public utility or by the federal government for purposes that are proper for these entities but which are not directly related to the discharge of their governmental powers, such as for auditoriums, libraries, civic centers, gymnasiums, music halls, art galleries, art centers, museums, warehouses, storage, and other similar uses.~~

Amendment #2 (text amendment)

Amend Article 4. Purpose and Method of the Zoning Ordinance to include a new section 3.6 entitled “Zoning Applicability to Public Buildings, Structures and Uses.”

Section 3.6. Zoning Applicability to Public Buildings, Structures and Uses

No street, park, or other public place, open space, or public building or structure, public utilities (publicly or privately owned) within the jurisdiction of the City of Foley, as specified herein, shall be authorized or constructed without compliance with the provisions of this regulation.

3.6.1. Zoning Ordinance Applicability

1. Public Building, Governmental: While it is encouraged to adhere to specific zoning regulations for Public Building, Governmental in nature, such as parks, public places, open spaces, or public buildings, it is not required. The approval criteria remain in accordance with the requirements outlined in the Code of Alabama, Section 11-52-11. The Planning Commission's review focusing on location, character, and extent, in conjunction with the Comprehensive Plan (master plan).
2. Public Building, Proprietary: Compliance with the zoning ordinance is mandatory for buildings and uses defined as Public Building, Proprietary. Additionally, the

Code of Alabama, Section 11-52-11 review by the Planning Commission is mandatory.

3. Change in Use or Conditions: When changes occur affecting the status of public buildings, structures and uses, the following provisions apply:

- a. If a public building and/or property ceases to be used for general government purposes, the property shall immediately become subject to the zoning ordinance and other relevant municipal ordinances as applicable.
- b. Upon the sale of public property or a change of use for property used for general government purposes, the buyer or public entity must initiate a rezoning request within 60 days. Failure to initiate this request within the specified timeframe will result in the property being ineligible for subdivision, site plan approval, or a building permit until it has been properly zoned in accordance with this section.
- c. At the discretion of the Planning Commission, a zoning amendment may be initiated through Article V. 5.3.

Amendment #3 (map amendment)

Zoning Map Adjustment for Governmental Public Structures and/or Uses: Any public building, use, or structure of a general governmental nature, or the parcel it occupies, currently contains a “zoning” designation, shall have its “zoning” designation removed. The subject parcels should bear an appropriate descriptive title, accompanied by "public use," for example, "Max Griffin Park – Public Use." The review and approval of projects

within this category will be exclusively through the Planning Commission pursuant COA, 11-52-11, for location, character and extent.

Amendment #4 (text amendment)

Amend Article VI – General Regulations, Section 6.1.4 Public Utilities, to strike construction and erection of poles, wires etc. and to provide intent that utility providers must comply with municipal ordinance and regulations on the subject matter of utilities.

6.1.4 PUBLIC UTILITIES

Utility structures including, but not limited to, poles, wires, cross arms, transformers attached to poles, guy wires, insulators, conduits and other facilities necessary for the transmission or distribution of electric power or to provide telephone service or cable television, and pipe lines, vents, valves, hydrants, regulators, meters and other facilities necessary for the transmission or distribution of gas, oil, water or other utilities may be ~~constructed, erected~~, repaired, maintained or replaced within any district within the City unless specifically prohibited by municipal ordinance or regulations. This is not to be construed to include the erection or construction of buildings. Electric substations are conditional uses in all zoning districts of the City.

Amendment #5 (text amendment)

Amend Article 4. Purpose and Method of the Zoning Ordinance to include a new section 3.7 entitled “Planning Commission Review of Public Uses, Structures, Streets, Public Ways, and Public Utilities (Publicly or Privately Owned)”.

3.7. Planning Commission Review of Public Uses, Structures, Streets, Public Ways, and Public Utilities (Publicly or Privately Owned)

No street, park, or other public place, open space, or public building or structure, public utilities (publicly or privately owned) within the jurisdiction of the City of Foley, as specified herein, shall be authorized or constructed without Planning Commission approval in compliance with Code of Alabama 11-52-11, and these provisions.

A. The limitations of this review are as follows:

1. Normal routine maintenance and repairs of public buildings and structures do not require review and alterations or additions that do not materially affect or impact to location, aesthetics and scale.
2. Secondary distribution lines, lower-voltage power lines branching off from primary distribution lines serving end-users, do not require Planning Commission approval.
3. Water and sewer project review is limited to large-scale projects that involve extensive upgrades in capacity or introduce new services to a significant geographic area, which may affect the City's planning efforts.
4. Telecommunications installation review is limited to projects in any right-of-way exceeding 3,500 linear feet.

B. These limitations do not apply to the following:

1. Primary distribution lines, commonly referred to as primaries, responsible for carrying high-voltage power from substations to various distribution points.
2. Upgrades to the infrastructure of existing served areas that involve the relocation or replacement of existing poles with larger diameter or girth, taller poles, which

materially affect the use of a right of way, potential future road related improvements or impact aesthetics.

3.7.1 Geographic Applicability:

- a. Review of public uses, buildings, and structures shall be limited to projects within the municipal corporate limits.
- b. Review of transportation-related public ways is applicable to projects within the corporate limits. Specifically, in the planning jurisdiction, the focus is on subdivision development including private streets with connections to public streets or roads.
- c. Review of publicly or privately owned public utilities is conducted for projects within the corporate limits and planning jurisdiction.

3.7.2. Standards of 11-52-11 Review and Approval

In adherence to Code of Alabama 11-52-11, the prerequisite to the Planning Commission's authority for the review is the adoption of a Comprehensive Plan (master plan) and 11-52-34 Major Street Plan for the evaluation of streets and transportation-related public ways. The Comprehensive Plan (master plan) and Major Street Plan shall serve as the primary tools in the long-range planning decision-making process. In addition to these overarching standards of review, the following specific criteria will be considered in the decision making process of the Planning Commission.

- a. **Location, Character, and Extent of Public Buildings, Structures and Uses**
Standards of Review:

In the context of public uses and structures:

1. "Location" pertains to the specific area, considering factors such as context, transportation, amenities, and urban or rural setting.
2. "Character" encompasses visual appearance, architectural style, and design elements, influenced by historical, cultural, and contextual factors.
3. "Extent" addresses the size, scale, and scope of the project, including physical dimensions, height, and footprint.

b. Location, Character, and Extent of Streets and Transportation-Related Public Ways Standards of Review:

1. The evaluation process should consider street location and context based on the Comprehensive Plan (master plan) and Future Land Use Plan, and Major Street Plan—identified as primary documents in the review process.
2. Street design context, user requirements, and transportation functions.
3. The connectivity and character of land use.
4. Context-sensitive street location and design.
5. Alignment, coordination, and consistency with major street plan as required in Code of Alabama Section 11-52-34.
6. In the context of subdivision development, this review should occur at the time of site plan and/or plat approval by the Planning Commission.

c. Location, Character, and Extent of Public Utilities, whether publicly or privately owned, Standards of Review:

1. The general location and areas to be served, ensuring consistency with the

Comprehensive Plan and Future Land Use Plan, and aligning with recommended density and intensity of development.

2. Coordination with other municipal capital investments, including roads, buildings, and other capital projects.
3. Accomplishing coordinated, adjusted, and harmonious development of the City and its environs consistent with present and future needs.
4. Ensuring efficiency in service delivery to prevent wasteful redundancy of utilities and overcrowding of right of ways.

3.7.3. Timely Approval

The failure of the planning commission to act on a proposal request within 60 days from the official submission date shall be deemed as approval.

3.7.4 Planning Commission Disapproval

In the case of disapproval the planning commission shall communicate its reasons to the City Council, which shall have the power to overrule such disapproval by a recorded vote of not less than two thirds of its entire membership