



## Legislation Text

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**File #:** 24-0410, **Version:** 1

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(First Reading) AN ORDINANCE ESTABLISHING AN ENTERTAINMENT DISTRICT FOR THE DOWNTOWN FOLEY ARTS AND ENTERTAINMENT DISTRICT

WHEREAS, the City deems it necessary to create an Arts & Entertainment District to benefit Downtown Foley;

WHEREAS, Code of Alabama Section 28-3A-17.1 allows any municipality which is located 15 miles north of the Gulf of Mexico to establish up to nine (9) entertainment districts;

WHEREAS, the City has chosen a beginning date of September 1, 2024 and will review the status of the Entertainment District at the end of a one year period. At that time, the Entertainment District may be approved for an extended period of time;

WHEREAS, the district must contain a minimum of four (4) licensees holding a manufacturer's license that conducts tastings or samplings on the licensed premises, a restaurant retail liquor license, an on-premises alcoholic beverage license, or other retail liquor license in that area, and the district may not exceed a half mile ( $\frac{1}{2}$ ) by a half mile ( $\frac{1}{2}$ ) but may be irregularly shaped; more specifically as shown on the attached Exhibit "A";

WHEREAS, the Foley Arts and Entertainment District is located in the heart of Historic Foley and includes the Foley Main Street District, a Local Downtown Historic District and a National Register Historic District that includes retail, dining, and similar uses;

WHEREAS, establishing an entertainment district will support existing and future restaurants and other similar uses by allowing patrons to purchase alcoholic beverages in those establishments and consume them anywhere within the District but may not enter another licensed premise with open or closed containers of alcoholic beverages acquired elsewhere. No Licensee within the district shall allow alcoholic beverages acquired elsewhere;

### SECTION 1. The Foley Arts and Entertainment District

(a) Definitions. The following words, terms, phrases, when used in this section, shall have the meanings ascribed to them in this subsection except where the context clearly indicates a different meaning.

Approved container means a non-glass container not exceeding a volume of 16 fluid ounces, which is provided to a customer by the seller who is an arts and entertainment district permittee, the container must bear the name or logo of the district and can also bear the name or logo of the

entertainment district permittee.

Brown Bagging means the practice of bringing one's own liquor to a restaurant or club that cannot sell alcoholic beverages.

Entertainment district or district means the district established hereinafter in subsection (b) of this section, as such district may be from time to time amended.

Entertainment district area or area means public places within the entertainment district except for an excluded public space.

Entertainment district permittee or permittee means an on-premise retail city licensee permitted by the city in accordance with subsection (f) of this section.

Excluded public place means a public place within the entertainment district that is not included within the entertainment district area as follows:

- a. a public building, facility, garage or parking lot that is posted with signage at each entrance or in conspicuous places that no open containers of alcoholic beverages are allowed on the premises;
- b. property privately owned or controlled that is posted with signage at each entrance or in conspicuous places that no open containers of alcoholic beverages are allowed on the premises;
- c. an area being used for a special event that is posted with signage at each entrance or in conspicuous places occupied by the event that no open containers of alcoholic beverages are allowed on the premises;
- d. an area being used for a special event that is licensed to sell alcoholic beverages; or
- e. the premises of a city licensee.

(b) Purpose.

The purpose of this section is:

1. To establish districts authorized by Section 28-3A-17.1 Code of AL, within which certain conduct that is otherwise prohibited by this article is permitted, specifically, regulations against possessing an open container and drinking in a public place, regulations against removal of open containers, regulations against allowing an open container or consumption of alcoholic beverages on the parking area of a city licensee and regulations against brown bagging on the premises of another city business licensee; and
2. To establish regulations governing the district.

(c) Foley Arts and Entertainment District established.

1. Subject to subsections (2) and (3) of this subsection (c), there is hereby established the following named and generally described district, the Foley Arts and Entertainment District, which is also shown on the appended map incorporated herein by reference, which district shall constitute an entertainment district pursuant to Section 28-3A-17.1a, Code of Ala. 1975:

Beginning at the southwest corner of State Hwy 59 (aka N McKenzie St) and W Rose Ave, the Point of Beginning, run west along W Rose Ave for 1 block to the alley; thence south along the alley for 2 blocks to W Jessamine Ave; then west along W Jessamine Ave for 1 block to N Alston St; thence south along N Alston St for 1 block to the alley; thence west along the alley for 1 block to N Pine St; thence south along N Pine St for 1 block to US Hwy 98 (aka W Laurel Ave); thence south along S Pine St for 1 block to the alley; thence east along the alley for 1 block to S Alston St; thence south along S Alston St for 1½ blocks to W Myrtle Ave; thence east along W Myrtle Ave for 2 blocks to State Hwy 59 (aka S McKenzie St); thence north along State Hwy 59 for 5 blocks back to the Point of Beginning.

2. Notwithstanding anything in this section to the contrary, at any time and from time to time, the entertainment district established in this section may be enlarged, reduced, modified, or eliminated, in whole or part, and the regulations set forth in this section are subject to amendment at any time and from time to time. No vested rights shall be acquired by or be conferred upon any person as a result of the establishment of the entertainment district or permitting under this section.
3. In the event the entertainment district established by this section falls below the number of retail liquor licensees required for the establishment of the district according to Section 28-3A-17.1, Code of Ala. 1975, then the city may amend this section to either eliminate the entertainment district or modify the district so as to remain in compliance with section 28-3A-17.1, unless applicable state alcoholic beverage control laws allow for continuance of a once-established district regardless of the number of retail liquor licensees remaining.

(d) Opening of the district.

1. Regular hours of the district. The regular hours for the entertainment district shall be between the hours of 11:00 a.m. to 11:00 p.m. on Monday through Sunday.
2. City-sponsored opening of the district. At any time and from time to time the city may elect to sponsor the opening of all or a portion of the entertainment district.

(e) Conduct in the entertainment district.

1. The regulations of this article concerning the possession of an open container or drinking an alcoholic beverage in a public place, shall not apply in the case of the possession or consumption of alcoholic beverages in an approved container within the confines of the entertainment district area during the hours of operation of the entertainment district. Otherwise the regulations shall apply.
2. The regulations of this article concerning removal of an open container from an authorized licensed premises, shall not apply in the case of the removal of an approved container of alcoholic beverages from the premises of the entertainment district permittee providing the same, during the hours of operation of the entertainment district. Otherwise the regulations shall apply.
3. The regulations of this article concerning allowing an open container or consumption of alcoholic beverages in the parking area of a city licensee, shall not apply in the case of the possession or consumption of alcoholic beverages in an approved container within the confines of the entertainment district area during the hours of operation of the entertainment district. Otherwise the regulations shall apply.
4. The regulations of this article concerning brown bagging on the premises of another city business licensee shall not apply in the entertainment district area during the hours of operation of the district in the case of alcoholic beverages in an approved container. Otherwise the regulations shall apply. Nothing in this subsection 4 shall be construed to allow brown bagging on city licensed premises, which includes patios or sidewalk café area of the city licensee.
5. It shall be unlawful for any person to re-use or to knowingly allow the re-use of an approved container for an alcoholic beverage and nothing in this section shall be construed to authorize the same.
6. Nothing in this section shall be construed to authorize any person to violate the state's open container law found at Section 32-5A-330, Code of Ala. 1975.
7. Nothing in this section shall be construed to authorize any person to violate the state and City's laws against under-age drinking.

(f) Permitting.

1. Qualifications.

In order to qualify for an entertainment district permit an applicant shall meet each of the following:

- a. The applicant shall be a city licensee that is authorized by the city to sell alcoholic beverages at retail for on-premises consumption; and,

b. No adverse criminal, quasi-criminal or administrative action shall be pending or shall have been taken in the immediately preceding 12-month period against the city licensee or its owner related to the retail license or the operation of the city licensed premises.

2. Application process; permit duration.

A city licensee that meets the qualification of subsection 1. above may apply with the city Revenue Department to become an entertainment district permittee by filling out a form provided by the city. The city Revenue Department may deny a permit if the applicant does not meet the qualifications stated in subsection 1. above. The applicant may appeal the denial of the application for a permit to the liquor license review committee by filing a written notice of appeals with the city Revenue Department within 15 days after the denial. A permit shall be valid for a license year, at the end of which a renewal application must be made.

3. Action against permit. A permit may be revoked, suspended, or not renewed by the city Revenue Department if the permittee or applicant for renewal no longer meets the qualifications stated in subsection 1. above. The permittee or applicant for renewal may appeal the adverse decision of the city Revenue Department to the liquor license review committee by filing a written notice of appeal with the city Revenue Department within 15 days after the adverse action.

(g) Security.

1. Temporary closure of district. At any time and from time to time, the Chief of Police shall have the authority to temporarily close the entertainment district, which includes the authority to require persons to disperse from the area, should he, in his sole discretion, determine it is appropriate to do so in order to protect the public health, safety, or general welfare. The entertainment district shall remain closed until the Chief of Police allows the district to be re-opened. The city shall not be responsible for any costs incurred by any person as a result of the closing and the city shall still be entitled to a reimbursement for city services provided in connection with the opening of the district for a special event.

2. Number of permits. The Chief of Police shall have the authority at any time and from time to time to limit the number of entertainment district permits issued in a given license year should he, in his discretion, determine that it is in the interest of public health, safety, or general welfare to do so. In such an event, permits shall be issued on a first come, first serve basis based on the time a completed application is submitted to the office of the city Revenue Department. If there is a question as to first in time, the city Revenue Department is authorized to conduct a random

drawing to decide the issue.

NOW, THEREFORE BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF FOLEY, ALABAMA while in regular session accepted the following:

SECTION 2.

- (a) A map/and written description of the entertainment district that meets the criteria;
- (b) Effective dates for the District;
- (c) Established the Foley Arts and Entertainment District.

SECTION 3. The terms and provisions of this ordinance are severable. If any part or portion of this ordinance is declared invalid, void, or unconstitutional, that portion shall be deemed severed, and the remaining portions of the ordinance shall remain in full force and effect.

SECTION 4. All ordinances or parts of ordinances, in any manner conflicting herewith are hereby repealed.

SECTION 5. This ordinance shall become effective upon its publication as required by law.