

AN ORDINANCE DEFINING A WALKING TRAIL AND NATURE AREA; PROVIDING REGULATIONS THEREIN; AND PROVIDING PENALTIES FOR VIOLATIONS THEREOF

**WHEREAS**, the regulations contained in this ordinance are required and ordained for the public health, safety, morals, good order, and convenience, and for the general welfare of the community. It is the intention hereby to establish reasonable limits to minimize detrimental effects to the area herein and the surrounding properties, and to provide a regulatory framework for the use of the designated area; and,

**WHEREAS**, The City of Cleveland, Mississippi, has acquired certain property hereinafter described in and abutting the Central Business District for the municipal park and recreation purposes as hereinafter described and including a two-lane paved roadway or drive designated as Bayou Avenue or Bayou Road; and,

**WHEREAS**, said property has been developed as a nature and walking trail, with natural planting, lighting, seating, and paved driving and walking lanes, and the character of such area needs to be established and maintained as herein provided; and,

**WHEREAS**, part of said area is within the Crosstie Historic District as provided by the ordinances of this City and laws of the State of Mississippi, and within said area is the Bolivar County Library located within the building formerly used as a railroad depot, and said premises should be used consistently with its intended educational use; now, therefore,

**BE IT ORDAINED BY THE MAYOR AND BOARD OF ALDERMEN OF THE CITY OF CLEVELAND, MISSISSIPPI, as follows:**

**SECTION 1: BOUNDARY OF AREA.** The nature and walking trail herein, together hereinafter “the trailway,” are hereby designated a municipal park and encompass that area in The City of Cleveland, Mississippi, described as follows:

**Area One.** That property acquired by The City of Cleveland, Mississippi in the Southwest Quarter (SW ¼ ) of Section 16, Township 22 North, Range 5 West lying North of the North line of Sunflower Road, which is also designated as Mississippi State Highway 8, more particularly described in that deed from Columbus and Greenville Railway Company now of record beginning on page 624 of Land Deed Record M-230 of the records in the office of the Chancery Clerk of Bolivar County, Mississippi, in said City.

**Area Two.** That property bounded on the North by the South line of said Sunflower Road and on the South by the North line of College and Lee Streets; and,

Bounded on the West by the East line of Cotton Row, formerly known as Central Avenue, between said Sunflower Road and the center line of South Court Street, by the West line of Bayou Avenue, from said center line of South Court Street, between said center line of South Court Street and the South line of the Commerce building property, and by the West line of Jones Bayou, between said South line of the Commerce Building property and the North line of said College and Lee Streets; and,

Bounded on the East by the West line of Sharpe Avenue; and this Area Two also includes property acquired from said Railway and other property acquired by said City.

**Area Three.** That property in Sections 21 and 28, Township 22 North, Range 5 West lying South of the South line of College Street and Lee Street acquired by The City of Cleveland, Mississippi, and more particularly described, by that deed from Columbus and Greenville Railway Company now of record beginning on page 638 of Land Deed Record M-230 of the records in the office of the Chancery Clerk of Bolivar County, Mississippi, in said City.

**SECTION 2. BOUNDARY OF WALKING TRAIL.** The walking trail herein includes that walkway presently paved and running North and South between said Cotton Row and said West line of Bayou Avenue on the West and Sharpe Avenue on the East, and it also includes Area One and Area Three hereinabove described.

**SECTION 3. BOUNDARY OF NATURE AREA.** The nature area herein includes that property serving as an arboretum lying between the West line of Jones Bayou and said Bayou Avenue, also known as Bayou Road, and between said Commerce building property and College Street.

**SECTION 4. USE AND VEHICLE SPEED LIMIT.** Said walking trail and nature area (the trailway) shall be used for recreational walking only. Within said areas (the trailway), it shall be unlawful for any person to operate any wheeled vehicle, except that passenger vehicles may operate upon said Bayou Avenue at a speed not to exceed 20 miles per hour and may park in the designated paved areas.

**SECTION 5. ANIMALS REGULATED.** Within said walking trail and nature area (the trailway) it shall be unlawful for any person to have a dog or any other animal present at the instance of such person, either with or without a leash, and such animal may be considered as running at large and be impounded as otherwise provided by the ordinance of this City.

**SECTION 6. CERTAIN ANIMALS AND VEHICLES ALLOWED.** It is specifically understood and provided hereby that any disabled person shall have full access to said premises and may use any reasonable prescribed riding vehicle or walking device and may be accompanied by a properly trained Seeing Eye dog upon such leash as is appropriate. It is further understood that any person may walk with an infant or child in a baby carriage, provided such carriage shall be under the full control of an adult or other person over 18 years of age.

**SECTION 7. WALKING LANE USE.** Users of the paved walking trail, either walking or with any authorized vehicle, shall travel or walk on, and meet other users from, the right side of the trail, as is customary for the lawful rules of the road.

**SECTION 8. VEHICLE USE AND PARKING REGULATED.** It shall be unlawful for any person to skate or coast upon any wheeled or sliding device or to drive or park any wheeled vehicle upon the grass or planted area, or to park any vehicle except at the

designated parking areas, or to park any vehicle within, or partially within, or upon any portion of the paved driving way of said Bayou Avenue.

**SECTION 9. PROTECTION OF PUBLIC PROPERTY.** It shall be unlawful for any person to damage, deface, or remove any structure, equipment, device, plant or any part thereof, or landscape feature or device.

**SECTION 10. REGULATION OF GLASS AND ALCOHOLIC BEVERAGES.** It shall be unlawful for any person to possess any glass container or to possess or consume any alcoholic beverage within the trailway provided the Board of Aldermen may authorize the dispensing and consumption of such beverages during the annual Oktoberfest which is an event designed to increase tourism and bring favorable notice to the City and other events which are designed to increase tourism and bring favorable notice to the City. However, authorization for the allowance of the possession, consumption and dispensing of alcoholic beverages must be first obtained by the Board of Aldermen who shall determine whether the event has sufficient organization, police and insurance protection and is designed to attract tourists and be beneficial to the City prior to permission being granted.

**SECTION 11. NOISE CONTROL.** It shall be unlawful for any person to play any musical instrument or recording thereof, or to play, or make amplification of any recording, instrument or voice or any other sound within the trailway, except such as shall be audible only to the player by way of earphones; however, during Oktoberfest, the Crosstie Jazz, Heritage Festival and Record Store Day, voice and musical amplification may be made by live acts or recordings as well as any similar events, provided that permission must be first obtained by the Board of Aldermen who shall determine whether the event has sufficient organization, police and insurance protection and is designed to attract tourists and be beneficial to the City prior to permission being granted.

**SECTION 12. DEFINITIONS.**

1. The regulated area shall mean the area described and embraced as described in SECTION 1 hereinabove and may be referred to as the “trailway,” and the regulations herein are applicable and in effect within such area.

2. Block party shall mean a gathering of neighbors or businesses for the purpose of fellowship, the beautification of an area, or the exposure of the residents to the arts or music that may or may not require the use or blocking of any portion of the regulated area. The definition of block parties includes barbeques, picnic, music, games, dances or exhibits of arts, crafts or performances.

**12.3.** Other special events shall mean street fair, art and craft show, carnival, block party or other neighborhood or community activity, picnic, dance, rally, promotional or fund raising activities, community celebrations and observances, and other special events which occur within said regulated area so as to impede, obstruct, impair, delay or interfere with the recreational or preservation uses by any other person for which the area is designated or

requires any special municipal efforts to protect and preserve the property uses otherwise intended herein.

### **SECTION 13. GROUP EVENTS REGULATED.**

1. It shall be unlawful for any person or group of persons to organize or to participate in any block party or special event to be held upon the regulated area except as hereinafter provided.

**13.2.** Provided, the annual Crosstie Festival, Oktoberfest and Record Store Day (which the City finds to be events designed to increase tourism and bring favorable notice to the City) may be held upon said premises under the supervision of the police and public works departments, with careful consideration for the preservation of the character and intended purpose of the regulated area; other such group events desiring to use the premises must obtain permission first from the Board of Aldermen who shall determine affirmatively, prior to permission being granted, whether the event has sufficient organization, police and insurance protection and is designed to attract tourists and be beneficial to the City. Also provided, events and activities associated with the normal uses for the Literacy Council located in the former depot building may continue as usual and within its policies, rules and regulations for use; and also provided, organized walks or small groups of walkers are permitted, but larger groups for organized walks, and such walks sometimes referred to as “walk-a-thons” for fund raising, may be held upon application to the police department and shall be regulated by the police department or public works department so as not to interfere with the use and enjoyment of the trailway by others nor to damage any of the premises.

**13.3.** The Board of Aldermen may make other rules and regulations for the use and enjoyment of the trailway by order or resolution. Such rules may be enforced by the police or public works departments, and it shall be unlawful for any person to violate any of such rules, directions, signs, markers, or control devices of said police or public works department.

### **SECTION 14. VIOLATION AND PENALTY.**

1. Any violation of the provisions of this ordinance shall be unlawful and punishable as for a misdemeanor as provided by law.

**14.2.** In order to prevent breach of the intended or peaceful use of the regulated premises and damage to any portion thereof, any violator may be immediately ordered to leave the premises and failure to obey such order shall be a violation punishable as herein provided and subject to immediate arrest or citation as provided by law and by the ordinances of this City.

A. This ordinance is cumulative, and the City may undertake and initiate any other lawful remedy for the enforcement of this ordinance and these regulations.

**SECTION 15. CONSTRUCTION AND SEVERABILITY.** Severability is intended through and within the provisions of this ordinance. If any provision, including *inter alia* any exception, part, phrase, or term or the application thereof to any person or circumstances, is held invalid, the application to other persons or circumstances shall not be effected thereby and the validity of this ordinance in any and all other aspects shall not be affected thereby. The Board of Aldermen does not intend a result that is absurd, impossible to execute, or unreasonable. It is intended that this ordinance shall be held inapplicable in such cases, if any, where its application would be unconstitutional. A constitutional construction is intended and shall be given. Said Board does not intend to violate the Constitution of the State of Mississippi or the Constitution of the United States of America.

**SECTION 16. EFFECTIVE DATE OF ORDINANCE.** The regulated area herein contains planting, landscaping, sodding, surfacing and equipment which can be irreparably damaged by any use in violation of these regulations, and this Board finds that an emergency exists for its protection, use and enjoyment within the provisions of Section 21-13-11 of the Mississippi Code of 1972, as amended, therefore this ordinance shall take effect and be in force immediately upon its passage and adoption as provided by law.

**ORDAINED, ADOPTED AND APPROVED** this 2<sup>nd</sup> day of June, 2014.

/s/ Billy Nowell  
BILLY NOWELL, being the same person and  
Duly authorized to act as BILLY NOWELL, Mayor

(SEAL)

Attest:  
/s/ John Lindsey  
JOHN LINDSEY, City Clerk

It is hereby certified that the foregoing ordinance was offered and introduced in writing and its adoption was duly moved by Alderman GAINSPOLETTI and seconded by Alderman ABRAHAM, and the vote was taken on final passage by both “YEAS” and “NAYS” as follows:

- Alderman Billy Nowell voted “YEA”
- Alderman Maurice Smith voted “YEA”
- Alderman Theodore “Ted” Campbell voted “YEA”
- Alderman Robert Sanders voted “YEA”
- Alderman Danny Abraham voted “YEA”
- Alderman Kirkham Povall voted “YEA”
- Alderman Gary Gainspoletti voted “YEA”
- Alderman Paul Janoush voted “YEA”

WHEREUPON, the Mayor declared the ordinance duly, legally, and unanimously adopted, and he signed the same in open session at this meeting on April 1, 2014.

/s/ *Billy Nowell*  
BILLY NOWELL, being the same person and  
Duly authorized to act as BILLY NOWELL, Mayor

(SEAL)

Attest:

/s/ *John Lindsey*  
JOHN LINDSEY, City Clerk