

**AN ORDINANCE TO CREATE A PRESERVATION COMMISSION: TO ESTABLISH THE MEMBERSHIP, OFFICER, TERMS OF OFFICE OF ITS MEMBERS AND DUTIES OF SUCH COMMISSION; PROVIDING PROCEDURE FOR ADOPTION OF ORDINANCES TO ESTABLISH PRESERVATION DISTRICTS AND TO DESIGNATE ARCHAEOLOGICAL, ARCHITECTURAL, CULTURAL, AND HISTORICAL LANDMARKS AND LANDMARK SITES; PROVIDING THAT THE PRESERVATION COMMISSION SHALL BE NAMED THE "CLEVELAND HERITAGE COMMISSION" AND SHALL SERVE AS A REVIEW BODY TO REVIEW PROPOSED WORK IN PRESERVATION DISTRICTS AND ON LANDMARKS AND LANDMARK SITES; PROVIDING THE CRITERIA FOR EVALUATING A PROPOSED ACTIVITY; PROVIDING STANDARDS AND A PROCEDURE TO PREVENT DEMOLITION OF LANDMARKS BY INTENT OR NEGLIGENCE; PROVIDING A PROCEDURE FOR THE ISSUANCE OF CERTIFICATES OF APPROPRIATENESS AND RELATED PURPOSES.**

## **SECTION I. STATEMENT OF PURPOSE**

The city hereby recognize that The City of Cleveland, Mississippi is known for its extensive and concentrated collection of historic public, commercial, and residential buildings and sites. Cleveland's unique qualities have proven increasingly attractive to residents, business interests, and tourists.

As a matter of public policy the city aims to preserve, enhance, and perpetuate those aspects of the city having historical, cultural, architectural, and archaeological merit. Such preservation activities will promote and protect the health, safety, prosperity, education, and general welfare of the people living in and visiting said City of Cleveland.

More specifically, this historic preservation ordinance is designed to achieve the following goals:

- A. Protect, enhance and perpetuate resources which represent distinctive and significant elements of the city's historical, cultural, social, economic, political, archaeological, and architectural identity;
- B. Insure the harmonious, orderly, and efficient growth and development of the city;
- C. Strengthen civic pride and cultural stability through neighborhood conservation;
- D. Stabilize the economy of the city through the continued use, preservation, and revitalization of its resources;
- E. Protect and enhance the City's attractions to tourists and visitors and the support and stimulus to business and industry thereby provided;
- F. Promote the use of resources for the education, pleasure, and welfare of the people of the City of Cleveland;
- G. Provide a review process for the preservation and appropriate development of the city's resources.

## **SECTION II. DEFINITIONS**

Unless specifically noted otherwise, the following definitions are standard throughout this ordinance.

**ALTERATION:** Any change to a resource because of construction, repair, maintenance, or other means. Alterations shall include repointing of brickwork and sandblasting.

**APPLICANT:** The owner of record of a resource; the lessee thereof with the approval of the owner of record in notarized form; or a person holding a "bona fide" contract to purchase a resource.

**APPURTENANCE:** An accessory to a building, structure, object, or site, including, but not limited to, landscaping features, walls, fences, light fixtures, steps, paving, sidewalks, shutters, awnings, solar panels, satellite dishes, and signs.

**BUILDING:** A structure created to shelter any form of human activity, such as a house, garage, barn, church, hotel, or similar structure.

**CERTIFICATE OF APPROPRIATENESS:** A document evidencing the approval of the commission for work proposed by an applicant.

**CERTIFIED LOCAL GOVERNMENT (CLG):** A federal program authorized by the National Historic Preservation Act 16 U.S.C. 470 et seq., that provides for the participation of local governments in a federal/state/local government preservation partnership. The federal law directs the State Historic Preservation Officer of Mississippi and the Secretary of the Interior to certify local governments to participate in this partnership. Specific Mississippi requirements for the program are published in “State of Mississippi, Guidelines and Regulations for the Certified Local Government Program.”

**CITY:** The City of Cleveland, Mississippi, as represented by the Mayor and Board of Aldermen.

**COMMISSION:** The Cleveland Heritage Commission, a local historic preservation commission created pursuant to Miss. Code Ann. 1972 Sec. 39-13-5 as amended, herein the preservation commission or the commission.

**CONSTRUCTION:** The addition or placement of any improvement to a resource.

**DEMOLITION:** The complete or partial removal of a building, structure, object, or site, including landscape features.

**DEMOLITION BY NEGLECT:** Improper maintenance or lack of maintenance of any resource which results in substantial deterioration of the resource and threatens its continued preservation.

**EXTERIOR FEATURES:** Exterior features or resources shall include, but not be limited to, the color, kind, and texture of the building materials and the type and style of all windows, doors, and appurtenances.

**IMPROVEMENT:** Additions to or new construction on landmarks or landmark sites, including, but not limited to, buildings, structures, objects, landscape features, and manufactured units, like mobile homes, carports, and storage buildings.

**LANDMARK:** A building, structure, or object, and its historically associated land or other appropriate setting, designated by the commission and approved by the city through an ordinance, which possesses particular architectural, cultural, or historic significance by meeting at least one of the following criteria source:

- A. Exemplifies or reflects the broad cultural, political, economic, or social history of the nation, region, state, county, or city; or
- B. Is identified with historic personages or with important events in national, state, or local history; or
- C. Embodies distinguishing characteristics of a landscape type or is a specimen inherently valuable for the study of a period, style of a period, style, method of construction, or use of indigenous materials or craftsmanship; or
- D. Is representative of the notable work of a master builder, designer, or architect whose individual ability has been recognized or who influenced his age.

**LANDMARK SITE:** An unimproved or improved parcel of ground designated by the commission and approved by the city through an ordinance, which possesses particular archaeological, architectural, geological, or historic significance. For the purposes of this

ordinance, a landmark site encompasses prehistoric or historic sites on unimproved or improved land. Landmark sites meet at least one of the following criteria:

- A. Exemplifies or reflects the broad cultural, political, economic, or social history of the nation, region, state, county, or city; or
- B. Is identified with historic personages or with important events in national, regional, state or local history; or
- C. Embodies distinguishing characteristics of a architectural type or is a specimen inherently valuable for the study of a period, style, method of construction, or use of indigenous materials or craftsmanship; or
- D. Has yielded, or may be likely to yield, information important in prehistory or history. A “Landmark Site” may be a culturally significant natural feature other than landscape.

**LANDSCAPE:** Any improvement or vegetation including, but not limited to: Shrubbery, trees, plantings, outbuildings, walls, courtyard, fences, swimming pools, planters, gates, street furniture, exterior lighting, and site improvements, including but not limited to, subsurface alterations, site regarding, fill deposition, and paving.

**NATIONAL HISTORIC LANDMARK:** A district, site, building, structure, and/or object that has been formally designated as a National Historic Landmark by the Secretary of the Interior and possesses exceptional value or quality in illustrating or interpreting the heritage of the United States in history, architecture, archaeology, engineering, and culture and that possesses a high degree of integrity of location, design, setting, materials, workmanship, feeling, and association, National Historic Landmarks are automatically listed in the National Register.

**NATIONAL REGISTER OF HISTORIC PLACES:** A federal list of cultural resources worthy of preservation, authorized under the National Historic Preservation Act of 1966 as part of a national program to coordinate and support public and private efforts to identify, evaluate, and protect the nation’s historic and archaeological resources. The National Register Program is administered by the Commission, by the State Historic Preservation Office, and by the National Park Service under the Department of the Interior. Significant federal benefits may accrue to owners of properties listed or determined eligible for listing in the National Register.

**OBJECT:** A material thing of functional, cultural, historical, or scientific value that may be, by nature or design, movable, yet related to a specific setting or environment.

**ORDINARY REPAIR OR MAINTENANCE:** Work done to prevent deterioration of a resource or any part thereof by returning the resource or as nearly as practical to its condition prior to such deterioration, decay, or damage.

**OWNER OF RECORD:** The owner of a parcel of land, improved or unimproved, reflected on the city tax roll and in county deed records.

**PRESERVATION DISTRICT:** A district designated by the commission and approved by the city through an ordinance, which contains a geographically definable area, urban or rural, possessing a significant concentration of sites, buildings, structures, or objects associated by past events or by plan or physical development, and which meets at least one of the following criteria:

- A. Exemplifies or reflects the broad cultural, political, economic, or social history of the nation, state, county, or city; or
- B. Is identified with historic personages or with important events in national, state, or local history; or
- C. Embodies distinguishing characteristics of architectural types or contains examples inherently valuable for the study of periods, styles, methods of construction, or uses of indigenous materials or craftsmanship; or
- D. Is representative of the notable work of master builders, designers, or architects whose individual abilities have been recognized or who influenced their eras.

**RELOCATION:** Any changes in the location of a building, object, or structure in its present setting or to another setting.

**RESOURCE:** Parcels located within preservation districts, individual landmarks, and landmark sites, regardless of whether such sites are presently improved or unimproved. Resources can be separate buildings, districts, structures, sites, and objects and related groups thereof.

**SECRETARY OF THE INTERIOR'S STANDARDS FOR REHABILITATION AND GUIDELINES FOR REHABILITATING HISTORIC BUILDINGS:** A federal document stating standards and guidelines for the appropriate rehabilitation and preservation of historic buildings.

**SITE:** The location of a significant event, a prehistoric or historic occupation or activity, or a building or structure, whether standing, ruined, or vanished, where the location itself maintains historical or archaeological value regardless of the value of any existing buildings or objects.

**STATE HISTORIC PRESERVATION OFFICE:** The Historic Preservation Division of the Mississippi Department of Archives and History (SHPO).

**STATE HISTORIC PRESERVATION OFFICER:** The director of the Mississippi Department of Archives and History.

**STRUCTURE:** A work made up of interdependent and interrelated parts in a definite pattern of organization constructed by man. The term includes, but is not limited to engineering projects, earth works, boats, barges and bridges.

**UNREASONABLE ECONOMIC HARDSHIP:** The inability of an owner to obtain a reasonable return or a reasonable beneficial use from a resource as required by the United States Supreme Court in Penn Central Transportation Company v. New York City, 438 U.S. 104 (1978), and subsequent decisions.

### **SECTION III. CLEVELAND HERITAGE COMMISSION, COMPOSITION, AND TERMS**

By virtue of Miss. Code Ann. 1972, Sec. 39-13-15 as amended, the city is authorized to establish a preservation commission to preserve, promote, and develop the city's historical resources and to advise the city on the designation of preservation districts, landmarks, and landmark sites and perform such other functions as may be provided by law.

There is hereby created the Cleveland Heritage Commission.

All members of the commission are appointed by the city and shall serve the will and pleasure of the city. The commission shall consist of not fewer than nine (9) members resident in the City of Cleveland unless the state enabling legislation is amended to allow for a smaller commission, at which time the city may choose to decrease the size of the commission in conformity with state law. All members of the commission shall serve for terms established by the city and shall be eligible for reappointment. All commission members shall have a demonstrated knowledge of or interest, competence, or expertise in historic preservation. To the extent available in the community, the city shall appoint professional members from the primary historic preservation-related disciplines such as urban planning, American studies, American civilization, cultural geography, cultural anthropology, interior design, law, and related fields. In conformity with the "State of Mississippi, Guidelines and Regulations for the Certified Local Government Program," the city shall document a "good faith effort" to locate professionals to serve on the commission before appointing lay members.

- A. The city shall publish at least one notice in a newspaper in its jurisdiction to solicit responses from citizens who are professionals in the related fields of historic preservation and who are interested in serving on the commission. The city may contact known professionals and interested lay persons and invite submission of their qualifications in written resume form.
- B. The city shall provide three (3) weeks (15 working days) for responses. Respondents shall submit, in written resume form, information concerning their demonstrated interest,

competence, knowledge, or expertise. Such information should include, but is not limited to, educational and professional background, membership in appropriate preservation organization, subscriptions to suitable professional publication, volunteer work, attendance at workshops and seminars, and other relevant experience.

- C. When the city has collected adequate information concerning the potential appointees to the commission, it shall decide, with the assistance of the State Historic Preservation Office, if desired, which candidates can be considered professionals and thereby qualified for appointment to the commission.

#### **SECTION IV. POWERS OF THE COMMISSION**

In order to preserve, promote, and develop the distinctive appearance and the historic resources of the City of Cleveland and to accomplish the purposes set forth in Miss. Coe Ann. 1972, Sec. 39-13-5 as amended, and in this ordinance:

- A. The commission shall conduct or cause to be conducted a continuing study and survey of resources within the City of Cleveland, Mississippi.
- B. The commission shall recommend to the city the adoption of ordinances designating preservation districts, landmarks, and landmark sites. All properties presently listed in the National Register of Historic Places and located within the jurisdiction of the City of Cleveland, whether publicly or privately owned, are hereby designated as landmarks, landmark sites, and preservation districts, whichever category is appropriate, with suitable boundaries which shall be similar to but not smaller than the boundaries for National Register purposes. The commission shall promptly notify the owners of such properties by public notice or in writing that the provision has become applicable to them.
- C. As other buildings, structures, objects, sites, and historic districts within the jurisdiction of the City of Cleveland are listed in the National Register of Historic Places, or are officially determined eligible for such listing in writing by the State Historic Preservation Office, they shall automatically come under the jurisdiction of the Cleveland Preservation Ordinance for a six (6) month period so that their designation can be considered. During this period, such properties shall be subject to all provisions of this ordinance otherwise applied to resources. The commission shall promptly notify the owners of such properties, in writing or by public notice, that these provisions have become applicable to them.
- D. The commission may recommend that the city recognize sub-districts within any preservation district, in order that the commission may adopt specific guidelines for the regulation of properties within such a sub-district.
- E. The commission shall review applications proposing construction, alteration, demolition, or relocation of any resource, which may include such within and adjacent to the area of the City's jurisdiction within any preservation district.
- F. The commission shall grant or deny certificates of appropriateness, and may grant certificates of appropriateness contingent upon the acceptance by the applicant of specified conditions.
- G. The commission shall not consider interior arrangements of buildings and structures except that it shall advise the Mississippi Department of Archives and History on questions relating to the interiors of publicly owned resources.
- H. The commission, subject to the requirements of the city, is authorized to apply for, receive, hold and spend funds from private and public sources, in addition to appropriations made by the city for the purpose for carrying out the provisions of this ordinance.

- I. The commission is authorized to employ such staff or contract with technical experts or other persons as may be required for the performance of its duties and to obtain the equipment, supplies, and other materials necessary for its effective operation.
- J. The commission is authorized, solely in the performance of its official duties and only at reasonable times, to enter upon private land for the examination or survey thereof. No member, employee, or agent of the commission shall enter any private dwelling or structure without the express consent of the owner of record or occupant thereof.

## **SECTION V. RULES OF PROCEDURE**

To fulfill the purposes of this ordinance and carry out the provisions contained therein:

- A. The commission annually shall elect from its membership a chairman and vice-chairman. It shall select a secretary from its membership or its staff. If neither the chairman nor the vice-chairman attends a particular meeting, the remaining members shall select an acting chairman from the members in attendance at such meeting.
- B. The commission shall develop and adopt rules of procedure which shall govern the conduct of its business, subject to the approval of the city. Such rules of procedure shall be a matter of public record.
- C. The commission shall develop design review guidelines for determining appropriateness as generally set forth in Section VII of this ordinance. Such criteria shall insofar as possible be consistent with local, state, and federal guidelines and regulations, including, but not limited to, building safety and fire codes and the Secretary of the Interior's Standards For Rehabilitation.
- D. The commission shall keep minutes and records of all meetings and proceedings including voting records, attendance, resolutions, findings, determinations, and decisions. All such materials shall be a matter of public record.
- E. The commission shall establish its own regular meeting time; however, the first meeting shall be held within thirty (30) days of the adoption of this ordinance and regular meetings shall be scheduled at least once every three (3) months. The chairman or any two (2) members may call a special meeting to consider an urgent matter.

## **SECTION VI. DESIGNATION OF LANDMARKS, LANDMARK SITES, AND HISTORIC DISTRICTS.**

By ordinance, the city may establish landmarks, landmark sites, and preservation districts within the area of its jurisdiction. Such landmarks, landmark sites, or preservation districts shall be designated following the criteria as specified in Section II.

- A. The commission shall initiate a continuing and thorough investigation of the archaeological, architectural, cultural, and historic significance of the city's resources. The findings shall be collected in a cohesive format, made a matter of public record, and made available for public inspection. The commission shall work toward providing complete documentation for previously designated preservation districts which would include:
  - 1. An inventory of all property within the boundary of the district, with photographs of each building and an evaluation of its significance to the district. Building evaluation are to be used only as reference or guide and shall not be used as the determining factor for issuing or denying a certificate of appropriateness.
  - 2. An inventory which would be in format consistent with the statewide inventory format of the Historic Preservation Division of the Mississippi Department of Archives and History (SHPO).

- B. The commission shall advise the city on the designation of preservation districts, landmarks, or landmark sites and submit or cause to be prepared ordinances to make such designation.
- C. A resource or resources may be nominated for designation upon motion of three members of the commission or by an organization interested in historic preservation or by an owner of the property being nominated. A nomination shall contain information as specified by the commission. The commission must reach a decision on whether to recommend a proposed nomination to the city within six (6) months in the case of a preservation district and two (2) months in the case of either a landmark or landmark site.
- D. If the commission votes to recommend to the city the designation of a proposed resource, it shall promptly forward to the city its recommendation, in writing together with an accompanying file.
- E. The commission's recommendations to the city for designation of preservation districts shall be accompanied by:
  - 1. A map of the preservation district that clearly delineates the boundaries.
  - 2. A verbal boundary description and justification.
  - 3. A written statement of significance for the proposed preservation district.
- F. Any property designated under a previous city ordinance shall remain designated.
- G. No preservation district or districts shall be designated until the Mississippi Department of Archives and History, acting through such agent or employee as may be designated by its director, shall have made an analysis of, and recommendations concerning, the proposed district boundaries. Failure of the department to submit its analysis and recommendations to the city within sixty (60) days after a written request for such analysis has been mailed to it shall relieve the city of any responsibility for awaiting such analysis; and the city may at any time thereafter take any necessary action to adopt or amend its ordinance.
- H. No preservation district or districts shall be designated until the National Park Service, Department of the Interior, acting through such agent or employee as may be designated by its director, shall have made an analysis of, and recommendations concerning, the proposed district boundaries. Failure of the National Park Service to submit its analysis and recommendations to the city with sixty (60) days after a written request for such analysis has been mailed to it shall relieve the city of any responsibility for awaiting such analysis; and the city may at any time thereafter take any necessary action to adopt or amend its ordinance.
- I. If a proposed ordinance is to designate a landmark or landmark site, it may be presented to the city with a recommendation that it be adopted without submission to the Mississippi Department of Archives and History or the National Park Service, Department of the Interior.
- J. The city shall conduct a public hearing after notice to discuss the proposed designation and boundaries thereof. A notice of the hearing shall be published once a week for at least three (3) consecutive weeks in at least one (1) newspaper published in the city. If a newspaper is not published in the city, then the notice shall be published in a paper published in the county. The first publication of such resolution shall be made not less than twenty-one (21) days prior to the date fixed in the resolution for the public hearing and the last publication shall be made not more than seven (7) days prior to such date.
- K. Within sixty (60) calendar days after the public hearing held in connection herewith, the city shall adopt the ordinance as proposed, reject it entirely, or adopt the ordinance with modifications.

- L. Furthermore, the commission shall notify, as soon as is reasonably possible, the appropriate state, county, and municipal agencies of the official designation of all landmarks, landmark sites, and preservation district. An updated list and map shall be maintained by such agencies and made available to the public.

## **SECTION VII. CERTIFICATES OF APPROPRIATENESS**

No exterior feature of any resource shall be altered, relocated, or demolished until after an application for certificate of appropriateness of such work has been approved by the commission. Likewise no construction which affects a resource shall be undertaken without a certificate of appropriateness. Therefore,

- A. The commission shall serve as a review body with the power to approve or deny applications for certificates of appropriateness.
- B. In approving and denying applications for certificates of appropriateness, the commission shall seek to accomplish the purposes of this ordinance.
- C. A certification of appropriateness shall not be required for work deemed by the commission to be ordinary maintenance or repair of any resource.
- D. All decisions of the commission shall be in writing and shall state the findings of the commission, its recommendations, and the reasons therefore.

## **SECTION VIII. CRITERIA FOR ISSUANCE OF CERTIFICATES OF APPROPRIATENESS**

The commission and the city shall use the following criteria in granting or denying certificates of appropriateness:

### A. General Factors:

- 1. Architectural design of existing building, structure, or appurtenance and proposed alteration;
- 2. Historical significance of the resource;
- 3. General appearance of the resource;
- 4. Condition of resource;
- 5. Materials composing the resource;
- 6. Size of the resource;
- 7. The relationship of the above factors to, and their effect upon the immediate surroundings and, if within a preservation district, upon the district as a whole and its architectural and historical character and integrity.

### B. New construction:

- 1. In advance of new construction, steps shall be taken to insure evaluation of possible archaeological resources, as set forth in the Mississippi Antiquities Act.
- 2. The following aspects of new construction shall be visually compatible with the buildings and environment with which the new construction is visually related, including but not limited to: the height, the gross volume, the proportion between width and height of the façade(s), the proportions and relationship between doors and windows, the rhythm of solids to voids created by openings in the façade, the materials, the textures, the colors, the patterns, the trims, and the design of the roof.

3. Existing rhythm created by existing building masses and spaces between them shall be preserved.
4. The landscape plan shall be compatible with the resource, and it shall be visually compatible with the environment with which it is visually related. Landscaping shall also not prove detrimental to the fabric of a resource or adjacent to public or private improvements like sidewalks and walls.
5. No specific architectural style shall be required.

C. Exterior alteration:

1. All exterior alterations to a building, structure, object, site, or landscape feature shall be compatible with the resource itself and other resources with which it is related, as is provided in Section VIII A and B, and the original design of a building, structure, object, or landscape feature shall be considered in applying these standards.
2. Exterior alterations shall not affect the architectural character or historic quality of a landmark and shall not destroy the significance of landmark sites.

D. In considering an application for the demolition of a landmark or a resource within a preservation district, the following shall be considered:

1. The commission shall consider the individual architectural, cultural, and/or historical significance of the resource.
2. The commission shall consider the importance or contribution of the resource to the architectural character of the district.
3. The commission shall consider the importance or contribution of the resource to neighboring property values.
4. The commission shall consider the difficulty or impossibility of reproducing such a resource because of its texture, design, material, or detail.
5. Following recommendation for approval of demolition, the applicant must seek approval of replacement plans, set forth in Section VIII, B, prior to receiving a demolition permit and other permits. Replacement plans for this purpose shall include, but shall not be restricted to, project concept, preliminary elevations and site plans, and completed working drawings for at least the foundation plan which will enable the applicant to receive a permit for foundation construction.
6. Applicants that have received a recommendation for demolition shall be permitted to receive such demolition permit without additional commission action on demolition, following the commission's recommendation of a permit for new construction. Permits for demolition and construction shall be issued simultaneously. If requirements of Section VIII B, are met, and the applicant provides financial proof of his ability to complete the project.
7. When the commission recommends approval of demolition of resource, a permit shall not be issued until all plans for the site have received approval from all appropriate city boards, commissions, department and agencies.

**SECTION IX. PROCEDURES FOR ISSUANCE OF CERTIFICATES OF APPROPRIATENES**

Anyone desiring to take action requiring a certificate of appropriateness concerning a resource for which a permit, variance, or other authorization from either the city building official or the city is also required, shall make application therefore in the form and manner required by the applicable code section or ordinance. Any such application shall also be considered an application for a certificate of appropriateness and shall include such additional information as

may be required by the commission. After receipt of any such application, the city building official shall be assured that the application is proper and complete. No building permit shall be issued by the city building official which affects a resource without a certificate of appropriateness. In the event that a building permit need not be obtained for a building, structure, or object to be erected within a preservation district or on a landmark or landmark site, or moored within or adjacent to the area of the city's jurisdiction within any preservation district, a certificate of appropriateness is still required before such building, structure, or object may be erected or moored. Thereafter, such application shall be reviewed in accordance with the following procedure:

- A. When any such application is filed, the city building official shall immediately notify the commission chairman or vice-chairman, if the chairman is unavailable, of the application having been filed.
- B. The chairman or vice-chairman shall set a time and date, which shall be not later than the next regular meeting after the filing of the application sufficiently distant for the notices herein provided, for a hearing by the commission, and the city building official shall be so informed.
- C. The applicant shall, upon request, have the right to a preliminary conference with a member of the commission or of the commission staff for the purpose of making any changes or adjustments to the application which might be more consistent with the commission's standards.
- D. Not later than five (5) days before the date set for the said hearing, the city building official or chairman of the commission shall advise or notify the applicant of the date of said hearing.
- E. Notice of the time and place of said hearing shall be given not later than five (5) days before the date set therefor, by posting a copy of a notice upon the premises which is the site of the proposed change, indicating the subject of the requested certificate of appropriateness. The giving of such notice having been, and hereby being, found by the Heritage Commission and the Mayor and Board of Aldermen to be sufficient reasonable and in the best interest of the applicant and other interested property owners, and all certificates of appropriateness heretofore granted upon such notice are affirmed and valid.
- F. At such hearing, the applicant for a certificate of appropriateness shall have the right to present any relevant evidence in support of the application. Likewise, the governing body shall have the right to present any additional relevant evidence in support of the application.
- G. The commission shall have the right to recommend changes and modifications to enable the applicant to meet the requirements of the commission.
- H. Within not more than twenty-one (21) days after the hearing on an application, the commission shall act upon it, either approving, denying, or deferring action until the next meeting of the commission, giving consideration to the factors set forth in Section VIII hereof. Evidence of approval of the application shall be by certificate of appropriateness issued by the commission and, whatever its decision, notice in writing shall be given to the applicant and the city building official.
- I. In all cases of applications affecting national historic landmarks, at least two-thirds (six members of a nine-member board) of the members of the commission must approve a certificate of appropriateness in order for it to be granted.
- J. The issuance of a certificate of appropriateness shall not relieve an applicant for a building permit, special use permit, variance, or other authorization from compliance with any other requirement or provision of the laws of the city concerning zoning, construction, repair, or demolition.

## **SECTION X. UNREASONABLE ECONOMIC HARDSHIP**

When a claim of unreasonable economic hardship is made due to the effect of this ordinance, the owner of record must present evidence sufficient to prove that as a result of the preservation commission's action he is unable to obtain a reasonable return or a reasonable beneficial use. The owner of record shall submit by affidavit to the commission for its review at least the following information:

- A. Date the property was acquired by its current owner;
- B. Price paid for the property (if acquired by purchase) and the relationship (if any) between the buyer and the seller of the property;
- C. Mortgage history of the property, including current mortgage;
- D. Current market value of the property;
- E. Equity in current use and in alternative uses;
- F. Past and current income and expense statements for a two-year period;
- G. Past capital expenditures during ownership of current owner;
- H. Appraisals of the property obtained within the previous two years; and
- I. Income and property tax factors affecting the property.

The preservation commission may require that an applicant furnish additional information relevant to its determination of unreasonable economic hardship.

The preservation commission may receive and consider studies and economic analyses from other city agencies and from private organizations relating to the property in question.

Should the commission determine that the owner's present return is not reasonable, it must consider whether there are other uses currently allowed that would provide a reasonable return and whether such a return could be obtained through investment in the property for rehabilitation purposes.

Should the applicant satisfy the commission that he will suffer an unreasonable economic hardship if a certificate of appropriateness is not approved, such certificate must be approved.

## **SECTION XI. APPEALS**

The applicant who desires to appeal a decision by the commission shall file an appeal to the circuit court of Bolivar County within thirty (30) days after the determination of the issue by the commission in the manner provided by law.

## **SECTION XII. MINIMUM MAINTENANCE REQUIREMENTS**

In order to insure the protective maintenance of resources, the exterior features of such properties shall be maintained to meet the requirements of the city's minimum housing code and the city's building code.

## **SECTION XIII. DEMOLITION BY NEGLECT**

- A. Any resource which is a landmark and all resources within a preservation district shall be preserved by the owner or such other person or persons as may have the legal custody or control thereof against decay and deterioration and free from unreasonable structural defects. The owner or other person having legal custody and control thereof shall repair such resource if it is found to have one or more of the following defects:

1. Deterioration to the extent that it creates or permits a hazardous or unsafe condition as determined by the city's building inspector.
  2. Deterioration, as determined by the building inspector, of a building characterized by one or more of the following:
    - a. Those buildings which have parts thereof which are so attached that they may fall and injure persons or property;
    - b. Deteriorated or inadequate foundations;
    - c. Defective or deteriorated floor supports or floor supports inefficient to carry imposed loads with safety;
    - d. Members of walls or other vertical supports that split, lean, list, or buckle due to defective material, workmanship, or deterioration;
    - e. Members of walls or other vertical supports that are insufficient to carry imposed loads with safety;
    - f. Members of ceilings, roofs, ceiling and roof supports, or other horizontal members which sag, split, or buckle due to defective material, workmanship, or deterioration;
    - g. Members of ceilings, roofs, ceiling and roof supports, or other horizontal members that are insufficient to carry imposed loads with safety;
    - h. Fireplaces or chimneys which list, bulge, or settle due to defective material, workmanship, or deterioration;
    - i. Any fault, defect, or condition in the building which renders the same structurally unsafe or not properly watertight.
- B. If the commission makes a preliminary determination that a resource is being demolished by neglect, it shall direct the city building official to notify the owner or owners of the resource of this preliminary determination, stating the reasons therefore, and shall give the owner of record thirty (30) days from the date of mailing of such notice or the posting thereof on the property, whichever comes later, to commence work to correct the specific defects as determined by the commission.
- Said notice shall be given as follows:
1. By certified mail, restricted delivery, mailed to the last known address of the record owner or owners as listed on the city and/or county tax rolls; or
  2. If the above mailing procedure is not successful, notice shall be posted in a conspicuous, protected place on the resource.
- C. If the owner or owners fail to commence work within the time allotted as evidenced by a building permit, the commission shall notify the owner or owners in the manner provided above to appear at a public hearing before the commission at a date, time, and place to be specified in said notice, which shall be mailed or posted at least thirty (30) days before said hearing. For the purpose of insuring lawful notice, a hearing may be continued to a new date and time. The commission shall receive evidence on the issue of whether the subject resource should be repaired and the owner or owners may present evidence in rebuttal thereto. If, after such hearing, the commission shall determine that the resource is being demolished by neglect, it may direct the city building official to bring misdemeanor charges against the owner or owners if the necessary repairs are not completed within ninety (90) days of the determination by neglect, it may direct the city building official to bring misdemeanor charges against the owner or owners if the

necessary repairs are not completed within ninety (90) days of the determination by the commission that the subject building or structure is being demolished by neglect.

#### **SECTION XIV. PUBLIC SAFETY EXCLUSION**

None of the provisions of this ordinance shall be construed to prevent any action of construction, alteration, or demolition necessary to correct or abate the unsafe or dangerous condition of any resource, or part thereof, where such condition has been declared unsafe or dangerous by the city building official or the fire department and where the proposed actions have been declared necessary by such authorities to correct the said condition; provided, however, that only such work as is necessary to correct the unsafe or dangerous condition may be performed pursuant to this section. In the event any resource designated as a landmark or located within a preservation district, shall be damaged by fire or other calamity to such and extent that cannot be repaired and restored, it may be removed in conformity with normal permit procedures and applicable law, provided that:

- A. The city building official concurs with the property owner that the resource cannot be repaired and restored and so notifies the commission in writing.
- B. The preservation commission, if in doubt after receiving such notification from the city building official, shall be allowed time to seek outside professional expertise from the State Historic Preservation Office and/or an independent structural engineer before issuing a certificate of appropriateness for the demolition. The commission may indicate in writing appropriateness for the demolition. The commission may indicate in writing by letter to the city building official that it will require a time period of up to thirty days for this purpose, and, upon such notification to the city building official, this section shall be suspended until the expiration of such a delay period.

#### **SECTION XV. ENFORCEMENT AND PENALTIES**

The following civil and criminal penalties may be imposed upon those persons, firms, or corporations found to have violated requirements or prohibitions contained within this ordinance.

##### **A. Civil Penalty:**

- 1. Any person who constructs, alters, relocates, or demolishes any resource in violation of this ordinance shall be required to restore the resource to its appearance or setting prior to the violation. Any action to enforce this provision shall be brought by the City of Cleveland. This civil remedy shall be in addition to, and not in lieu of, any criminal prosecution and penalty.
- 2. If construction, alteration, relocation, or demolition of any resource occurs without a certificate of appropriateness, then the license of the company, individual, principal owner, or its or his successor in interest performing such construction, alteration, relocation, or demolition shall be revoked for a period of three (3) years.
- 3. If demolition of a resource occurs without a certificate of appropriateness, then any permits on subject property will be denied for a period of three (3) years. In addition, the applicant shall not be entitled to have issued to him by any city office a permit allowing any curb cuts on subject property for a period of three (3) years from and after the date of such demolition.
- 4. If demolition of a resource occurs without a certificate of appropriateness, then the license of the company, individual, principal owner, or its or his successor in interest performing such demolition shall be revoked for a period of five (5) years.

##### **B. Criminal Penalty:**

Any persons, firm or corporation violating any provision of this ordinance shall be guilty of a misdemeanor, and each shall be deemed guilty of a separate violation for each day

during which any violation hereof is committed. Upon conviction, each violation shall be punishable by a fine not to exceed one thousand dollars (\$1,000.00).

#### **SECTION XVI. APPROPRIATIONS**

The city is authorized to make appropriations to the commission necessary for the expenses of the operation of the commission and may make additional amounts available as necessary for the acquisition, restoration, preservation, operation, and management of historic properties.

#### **SECTION XVII. TITLE TO PROPERTY ACQUIRED**

All property acquired by funds appropriated by the city shall be acquired in the name of the city unless otherwise provided by the city. So long as owned by the city, properties may be maintained by or under the supervision and control of the city. However, all property acquired by the commission from funds other than those appropriated by the city may be acquired and held in the name of the commission, the city, or both. Whenever the commission shall hold title to properties in its own name, such properties shall be administered in accordance with this and other city ordinances.

#### **SECTION XVIII. NON-RESTRICTIVE CLAUSE**

Nothing in this ordinance shall be construed to prevent the regulation or acquisition of property, improved or unimproved, by the State of Mississippi or any of its political subdivisions, agencies, or instrumentalities or by the United States of America or any of its political subdivisions, agencies, or instrumentalities.

Furthermore, the City of Cleveland hereby acknowledges that the Antiquities Law of Mississippi (39-7-1 et. seq. of the Mississippi Code of 1972, as amended in 1983), provides for the sensitive treatment of publicly owned property, improved or unimproved, shown to possess certain architectural, historical, or archaeological significance, which are designed by the Board of Trustees of the Mississippi Department of Archives and History as Mississippi Landmarks. Whenever the city proposes to rehabilitate, alter, or enlarge a Mississippi Landmark (or proposes similar actions which would affect a Mississippi Landmark), the city shall submit its plans to the Mississippi Department of Archives and History for review and compliance.

#### **SECTION XIX. DISQUALIFICATION OF MEMBERS BY CONFLICTS OF INTEREST**

Because the city may possess few residents with experience in the individual fields of history, architecture, architectural history, archaeology, urban planning, law, or real estate, and in order not to impair such residents from practicing their trade for hire, members of the commission are allowed to contract their services to an applicant for a certificate of appropriateness, and, when doing so, must expressly disqualify themselves from the commission during all discussions for that application. In such cases, the city shall, upon the request of the chairman of the commission or the vice-chairman in his stead, appoint a substitute member who is qualified in the same field as the disqualified member, and who will serve for that particular case only. If no qualified resident of the city is able to substitute for the disqualified member, the city may appoint, in this case only a qualified substitute who is a resident of Mississippi but not a resident of the City of Cleveland. If any member of the commission must be disqualified due to a conflict of interest on a regular and continuing basis, the chairman or the vice-chairman, in his stead, shall encourage the member to resign his commission seat. Failing this resignation, and, if the commission member continues to enter into conflict of interest situations with the commission, the chairman or vice-chairman of the commission shall encourage the city to replace the member. Likewise, any member of the commission who has an interest in the property in question or in property within three hundred feet of such a property, or who is employed with a firm that has been hired to aid the applicant in any matter whatsoever, or who has any proprietary, tenancy, or personal interest in a matter to be considered by the commission shall be disqualified from participating in the consideration of any request for a certificate of appropriateness involving such a property. In such cases, a qualified substitute shall be appointed as provided above.

**SECTION XX. SEVERABILITY**

The requirements and provisions of this ordinance are separable. If any article, section, paragraph, sentence, or portion thereof, be declared by any court of competent jurisdiction to be void, invalid, or inoperative, the decision of the court shall not affect the validity or applicability of the ordinance as a whole or of any part thereof other than the part held void, invalid, or otherwise inoperative.

**SECTION XXI. CONFLICTING ORDINANCES**

All ordinances and parts of ordinances in conflict herewith are hereby repealed.

**SECTION XXII. CONFLICT WITH THE ANTIQUITIES LAW OF MISSISSIPPI**

Likewise, all ordinances and parts of ordinances in conflict with the Antiquities Law of Mississippi (39-7-1 et. seq. of the Mississippi Code of 1972, as amended in 1983) are hereby repealed.

**SECTION XXIII. EFFECTIVE DATE**

This ordinance shall become effective one month after its passage.

**ORDAINED, ADOPTED, AND APPROVED** this June 6, 1995.

MARTIN T. KING, JR., Mayor

Attest:

LYNN C. BUTRUM, City Clerk

**ORDAINED, ADOPTED, AND AMENDED** this June 5, 2001.

MARTIN T. KING, JR. Mayor

Attest:

LYNN C. BUTRUM, City Clerk