

CITY OF JACKSON

HISTORIC PRESERVATION ORDINANCE



ADOPTED
May 25, 2004

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**ORDINANCE AMENDING THE HISTORIC PRESERVATION
ORDINANCE OF JACKSON, MISSISSIPPI.**

ARTICLE I. IN GENERAL

Sec. 70-1. Title of chapter.

**This chapter shall be known as the historic preservation ordinance for the city.
(Code 1971, 151/2-1)**

Sec. 70-2. Purpose of chapter.

It is hereby declared as a matter of public policy that the protection, enhancement and perpetuation of properties of cultural, architectural, archaeological or historical merit is a public necessity and is required in the interest of the health, prosperity and welfare of the people. Therefore, pursuant to the Mississippi Local Government Historic Preservation Act of 1978 (MCA 1972, -39-13-1 et seq.), this chapter intends to:

1. Effect and accomplish the protection, enhancement and perpetuation of landmarks, landmark sites, and historic districts which represent distinctive elements of the city's cultural, social, economic, political and architectural history;
2. Safeguard the city's historic, aesthetic and cultural heritage, as embodied and reflected in such landmarks, landmark sites, and historic districts;
3. Foster civic pride in the accomplishments of the past;
4. Ensure the harmonious, orderly and efficient growth and development of the city;
5. Stabilize the economy of the city through the continued use and revitalization of its landmarks, landmark sites, and historic districts;
6. Protect and enhance the city's attractions to tourists and visitors and the support and stimulus to business and industry thereby provided; and
7. Promote the use of landmarks, landmark sites, and historic districts for the education, pleasure and welfare of the people of the city.

(Code 1971, - 151/2-2)

Sec. 70-3. Definitions.

The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Alteration means any change in the exterior appearance or materials of a landmark or a structure within a historic district or on a landmark site.

Applicant means the record owner of a landmark, landmark site, or building within a historic district or the lessee thereof with the notarized approval of the owner of record, or a person holding a bona fide contract to purchase same who makes application for a certificate of appropriateness under this chapter.

Building means any building or structure or any part thereof, built for shelter or enclosure of persons, animals or chattels, and any part of any such building or structure when subdivided by division walls or party walls extending to or above the roof and without openings in such separate walls; including, but not limited to, churches, houses, hotels, fences, signs, paving and boundary walls.

Certificate of Appropriateness means an official signed and dated governmental document issued by either a local historic preservation commission or a governing authority to permit specific work in a historic district or at a landmark site or landmark which has been reviewed and approved.

City means the City of Jackson as represented by the mayor and the city council. For all intents and purposes the terms “city” and “local governing authority” shall be interchangeable.

Color system means wherein the tonal combination of colors is indicative of the architectural style and historical significance of the structure.

Commission means the historic preservation commission created under this chapter and pursuant to MCA 1972, 39-13-5, as amended.

Construction means the erection of any onsite improvement to a landmark or to a building or to any parcel of ground located within a historic district or on a landmark site, whether the site is presently improved or unimproved, or hereafter becomes unimproved by demolition, demolition by neglect or as a result of destruction by fire, windstorm or other casualty, or otherwise.

Demolition means the complete or partial removal of a building on any site.

Demolition by neglect means substantial deterioration of a historic structure that results from improper maintenance or a lack of maintenance.

Design review guidelines, if adopted by the commission, shall be in a written form designed to inform local property owners about historical architectural styles prevalent in a community and to recommend preferred treatments and discourage treatments that would compromise the architectural integrity of structures in a historic district or on a landmark site or individually designated as landmarks.

Earthworks means any subsurface remains of historic, archaeological or architectural importance or any unusual ground formations of archaeological significance.

Exterior features means the architectural style, general design and general arrangement of the exterior of a building or other structure, including the color system, the kind and texture of the building material and the type and style of all windows, doors, light fixtures, signs. And other appurtenant fixtures and natural features such as live tress.

- In the case of on-premises signs, exterior features shall be construed to mean the style, material, size, color, and location of all such signs.

- Live trees larger than six inches in diameter at a point five feet above the ground shall be considered as exterior features.

Historic district means an area designated by the city through an ordinance which contains a geographically definable area, possessing a significant concentration, linkage, or continuity so sites, buildings, structures, or objects united by past events or aesthetically by plan or physical development, and which meet at least one of the following criteria:

1. Exemplifies or reflects the broad cultural, political, economic or social history of the nation, state, county, or city;
2. Is identified with historic personages or with important events in national, state or local history;
3. Embodies distinguishing characteristics of an 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
4. Is representative of the notable work of a master builder, designer, or architect whose individual ability has been recognized or who influenced his age.

Historic resources means, as recognized by the National Register of Historic Places, consisting of separate and aggregate buildings, districts, structures, sites and objects and are defined as follows:

- *District* means a geographically definable area possessing a significant concentration, linkage, or continuity of sites, buildings, structures, or objects united by past events or aesthetically by plan or physical development.
- *Landmark* means an improved parcel of ground with a building, structure and/or object designated by the city through an ordinance which possesses particular historic, architectural, cultural significance by meeting 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;
 - b. Is identified with historic personages or with important events in national, state or local history;
 - c. Embodies distinguishing characteristics of an 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. 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 means an unimproved or improved parcel of ground designated by the city through an ordinance, which possesses particular historic, architectural, or archeological significance by meeting 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;

- b. Is identified with historic personages or with important events in national, state or local history;
- c. Embodies distinguishing characteristics of an 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.

Landmark sites differ from the landmarks in that the physical location, not the building or structure, possesses primary significance. Although some of the criteria for landmark sites parallels the criteria for landmarks, landmark sites which are accompanied by buildings or structures which do or do not possess significance related to the site, may appear eligible as landmarks but must be classified as landmark sites. For the purposes of this chapter, therefore, landmark sites encompass prehistoric or historic sites on unimproved or improved parcels of land.

Object means a material thing of functional, aesthetic, cultural, historical or scientific value that may be, by nature or design, movable yet related to a specific setting or environment.

Site means 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 archeological value regardless of the value of any existing structures. For the intents and purposes of this chapter the definition of a National Register District corresponds as a historic district; buildings, structures or objects correspond as a landmark, and the definition of a National Register Site corresponds as a landmark site.

Structure means a work made up of interdependent and interrelated parts in a definable pattern and interrelated parts in a definable pattern of organization. Constructed by man, it is often an engineering project in scale.

Ordinary repairs or maintenance means work done to prevent deterioration of a building or any part thereof by restoring the building as nearly as practicable to its condition prior to such deterioration, decay or damage.

Owner of record means the holder of title in fee, or mortgagee or trustee, whose interest is shown of record, or the agent of any such person.

Period of greatest historic significance for a landmark means the time period which the landmark had been essentially completed but not yet altered. It is also the period during which the style of architecture of the landmark was commonplace or typical. If a landmark also achieved historical importance in part because of designed landscape features, the period of greatest historic significance included the time period during which such landscape features were maintained.

Planning division means the division of metropolitan planning of the city.

Relocation means moving of a structure to a new location on its tax parcel or the relocation of such a structure to a new tax parcel.

Secretary of the Interior's Standards for the Rehabilitation and Guidelines for Rehabilitating Historic Buildings (Secretary's Standards) means a federal document delineating ten standards and numerous guidelines for the sensitive rehabilitation for the sensitive rehabilitation and preservation of historic buildings. The Secretary's Standards shall be used as the guideline for judging all applications for a certificate of appropriateness.

Substantial deterioration means structural degradation of such a nature that water penetration into a historic structure can no longer be prevented, or structural degradation that causes stress or strain on structural members when supports collapse or warp, evidence of which includes defective roofing materials, broken window coverings and visible interior decay.

Unauthorized demolition means the deliberate demolition of a historic structure without prior review and approval by the commission or city to which such a commission has made a recommendation.

Unreasonable economic hardship means the definition under constitutional standards used to determine whether a "taking" exists.

(Code 1971, - 151/2 -3)

cross reference –definitions generally, -1-2.

Sec. 70-4. Title to property acquired.

All lands, buildings, structures, sites, areas or objects 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 they are owned by the city, historic properties may be maintained by or under the supervision and control of the city. However, all lands, buildings or structures 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.

(Code 1971, - 15½ -8)

Sec. 70-5. Nonrestrictive clause.

Nothing in this chapter shall be construed to regulate historic buildings, structures, or sites, areas or objects owned by the United States of America or any of its political subdivision; or by the state or any of its political subdivisions, agencies, or instrumentalities, having been designated state landmarks.

(Code 1971, - 5½ -9)

Sec. 70-6. Designation of landmarks, landmark sites and historic districts.

The city may establish landmarks, landmark sites and historic districts within the city. Such landmarks, landmarks sites and historic districts shall be designated following the criteria as established in this section, and no landmarks, landmark sites, or historic districts shall be designated until the following requirements have been met:

1. The commission shall initiate, or receive from the owners of record of a proposed landmark or landmark site, or a majority of the owners of record in a proposed

historic district, a thorough investigation of historic, architectural, archaeological, and/or cultural significance of the buildings, structures, features, sites, and surroundings of such districts, landmarks, and landmark sites. The findings shall be collected and/or received in a cohesive printed format, and contain a written recommendation from the zoning division and other pertinent public works departments, made a matter of public record, and available for public inspection.

2. After investigation and/or review, if the commission shall decide to recommend the designation of a historic district, landmark, or landmark site, it shall prepare or cause to be prepared a proposed ordinance to effectuate such designation.
3. The commission's recommendation to the city for designation of a historic district shall be accompanied by complete documentation, including, but not limited to:
 - a. A concise description of the extant historic resource in the district, offering a description of building types and architectural styles represented;
 - b. A concise statement of the district's historical, architectural or cultural significance;
 - c. Boundary description and justification;
 - d. An inventory of all the buildings, with each building evaluated for its significance to the district;
 - e. A map showing all historic resources in the district; and
 - f. Photographs of typical streetscapes in the districts as well as of major types of contributing and noncontributing buildings.
4. No historic district shall be designated until the state 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 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.
5. 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 state department of archives and history.
6. Within 45 days after the receipt of the recommendation of the commission, the city shall hold a public hearing after notice, specifying the boundaries of the proposed historic district, or the location of the landmark or landmark site. The date, time and place of the public hearing shall be established by resolution, adopted by the city. Such notice shall be published once a week for at least three consecutive weeks in at least one newspaper published with citywide circulation. The first publication of such resolution shall be made not less than 21 days prior to the date fixed for the public hearing, and the last publication shall be made not more than seven days proper to such date.
7. Within 60 calendar days after the public hearing held in connection herewith, the city shall adopt the ordinance as proposed, reject it, or adopt the ordinance as proposed, reject it, or adopt any portion thereof. However, the city shall not adopt an ordinance designating a historic district unless a majority of the property owners voting in support of the designation.

8. A property owner may only vote once, regardless of the number of parcels owned, or portion of ownership within the proposed district. A property owner is defined as any person, corporation, or other entity, that owns property in fee, in the proposed historic district.
9. An updated list and map shall be maintained by the planning division, of all historic districts, landmarks, and landmark sites, and recorded with the county chancery clerk.
10. After the nomination of a resource to the City Council or the Commission for possible local designation, the resource shall be fully protected by the provisions of this ordinance for a period of six months, as if it were already designated.
(Code 1971, - 1511/2 -11)

Sec. 70-7. Ad valorem tax exemptions for landmarks, landmark sites, and properties within a historic district.

1. Upon designation as a landmark, landmark site or historic district, all of such properties are hereby designated as part of the central business district of the city, only for the purpose of exemption of ad valorem taxes, as authorized by MCA 1972, 17-21-5, for the purpose of promoting the preservation of such historic properties and thereby promoting business and commerce in the central business district. For all purposes other than those set forth in this chapter, such property shall bear the zoning classification reflected on the official zoning map of the city.
2. Ad valorem taxes, excluding ad valorem taxes for school districts purposes and excluding as valorem taxes on personal property, shall be exempt on all property, whether residential or commercial, upon application by the property owner and verification by the city tax collector that improvements have been made, and verification by the historic preservation commission that a certificate of appropriateness was obtained and improvements made pursuant thereto.
3. Each application shall then be submitted to the city council for its consideration and approval of a tax exemption of ad valorem taxes for a period not to exceed seven years.
4. The tax exemption shall not include ad valorem taxes as they exist on the property at the time of the application, but shall only apply to the taxes as they will exist with the improvements.

(Code 1971, - 151/2 -12)

Sec. 70-8. Demolition by neglect.

The City, may enact local legislation governing “demolition by neglect,” defined as improper maintenance or lack of maintenance of any property in a historic district, or any historic landmark or landmark site, which results in substantial deterioration of such a property and threatens it continued stability and preservation.

1. Any building or structure which is a landmark and all buildings or structures within a historic district shall be preserved by the owner or such other person who may have the legal custody or control thereof against decay and deterioration and free from unreasonable structural defects. The owner of record or other person having legal custody and control shall repair such building or structure if it is found to have one or more of the following defects:
2. The deterioration of a building to the extent that it creates or permits a hazardous or unsafe condition as determined by the building official.
3. The deterioration, as determined by the building or housing official, of a building characterized by one or more of the following:
 - Those buildings which have parts thereof which are so attached that they may fall and injure persons or property;
 - Deteriorated or inadequate foundation;
 - Defective or deteriorated floor supports or floor supports insufficient to carry imposed loads with safety;
 - Members of walls or other vertical supports that split, lean, list or buckle due to defective material or deterioration;
 - Members of walls or other vertical supports that are insufficient to carry imposed loads with safety;
 - Members of ceilings, roofs, ceiling and roof supports, or other horizontal members which sag, split or buckle due to defective material or deterioration;
 - Members of ceilings, roofs, ceiling and roof supports, or other horizontal members that are insufficient to carry imposed loads with safety;
 - Fireplaces or chimneys which list, bulge, or settle, due to defective material or deterioration;
 - Any fault, defect or condition in the building which renders the same structurally unsafe or not properly watertight.
4. If the commission makes a preliminary determination that a building or structure which is a landmark or is located within a historic district is being demolished by neglect, it shall direct the housing official to investigate and to notify the owner of record of this preliminary determination, stating the reasons therefore, and the building official shall give such a notice as required by statute and ordinances of the city to commence work to correct the specific defects as determined by the commission and/or housing official.
5. If the owner fails to commence work within the time allotted by the building official, as evidenced by a building permit, the housing official shall notify the owner of record in the manner provided by the state statute and ordinances of the city to appear at a public hearing before 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 or demolished, and the owner 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 the commission that the subject building or structure is being demolished by neglect.

6. In addition to the powers specified in Section 21-19-11 (1), a governing authority, if the Historic Preservation Division of the Department of Archives and History concurs, may make repairs necessary to correct demolition by neglect, and the cost of such repairs shall become a lien against the property in accordance with Section 21-19-11(3).
7. The city is further authorized, in its discretion, to fine any property owner who has been found to own a property that has been determined to be threatened by demolition by neglect as defined herein. Such a property owner, from the date such property is found to be in demolition by neglect by the governing authority until such repairs are made to remove the danger to the property, shall be in violation of the provisions of this section.
8. This section shall not be construed to alleviate the requirements for a certificate of appropriateness as provided in this chapter.

(Code 1971, 151/2 -17)

Sec. 70-9. Public safety exclusion.

None of the provision of this chapter shall be construed to prevent any measure of construction, alteration, or demolition necessary to correct or abate the unsafe or dangerous condition of any resource, other feature, or part thereof, where such condition has been declared unsafe or dangerous by the building official, housing official, or the fire department, and where the proposed measures have been declared necessary, by such authorities, to correct the condition; provided, however, that only such work as is reasonably necessary to correct the unsafe or dangerous condition may be performed pursuant to this action. If any structure or other feature shall be damaged by fire or other calamity, or by act of God or by the public enemy, to such an extent that in the opinion of such authorities it cannot reasonably be repaired and restored, it may be removed in conformity with normal permit procedures and applicable laws.

(Code 1971, - 151/2 -18)

Sec. 70-10. Minimum maintenance requirements.

In order to ensure that protective maintenance of landmarks, landmark sites and resources in the historic district, each building, whether a landmark or within the historic district, shall be maintained to meet the requirements of the minimum housing, building, electrical, plumbing, and other pertinent ordinances, as adopted by the city.

(Code 1971, - 151/2 -19)

Sec. 70-11. Administrative interpretation of chapter.

If there is a question concerning the general intent or meaning of any provision of this chapter's text, the planning director shall have the right to make such administrative decision and interpretation. An aggrieved person may submit a written appeal of an administrative interpretation to the commission. The commission shall affirm, reverse or modify the administrative interpretation rendered by the planning director. An interpretation from which an appeal is made must be in writing, and must be in response to a written request for an administrative interpretation. It is expressly intended that such administrative interpretation shall in no manner be construed as permitting or granting an exception or variance to the provisions of this chapter. The decision of the commission shall be final, subject, however, to such remedy as any aggrieved party might have at law or in equity.

(Code 1971, - 151/2 -21)

Sec. 70-12 Minimum requirements; greater restrictions

The provisions of the chapter are for the promotion of the public health, safety, morals and general welfare for the city and are considered to be minimum requirements. Wherever the requirements of any other lawfully adopted rules, regulations, ordinances, deed restrictions or covenants filed of record are not in conflict with the intent and purpose of this chapter, but impose more restrictive or higher standards shall govern.

(Code 1971, - 151/2 22)

Sec. 70-13. Penalty for violation of chapter.

1. Violation by any person of the provisions of this chapter or failure to comply with any of its requirements, after having been duly notified by the planning director, housing official, or building official, following the commission's determination of the type, nature, and extent of the violation of this chapter, shall upon conviction, constitute a misdemeanor.
2. Any person who violates the provisions of this chapter or fails to comply with any of its requirements, after having been duly notified by the planning director, housing official, or building official, shall, upon conviction, be fined not more that \$1,000.00, and in addition, shall pay all costs and expenses involved in the case. Each day such violation continues shall be considered a separate offense. The owner or tenant of any building, structure, or property designated a landmark site, landmark, or within a historic district, and any architect, builder, contractor, engineer, agent or other person who commits, or participates in, assists in, or maintains such violations may be found guilty of a separate offense and suffer the penalties provided in the this section. Nothing contained in this section shall prevent the city from taking such other lawful action as is necessary to prevent or remedy any violation.
3. 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.

Civil Penalty:

- a. 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 Jackson. This civil remedy shall be in addition to, and not in lieu of, any criminal prosecution and penalty.
 - b. If construction, alteration, or relocation 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, or relocation shall be revoked for a period of three (3) years.
4. 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. No permit will be issued for any structure or structures proposed for the same parcel which would require a footprint larger than the footprint of the demolished structure or structures. In addition, the owner must rebuild on the site using as much of the original building material as possible, and in general following the same form. In addition, unauthorized demolition of a portion of a structure shall not serve as justification for a demolition permit whenever it can be shown that restoration or rehabilitation would still be feasible. In addition, the applicant shall not be entitled to have issued to him by any city/town/county 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.
 5. If a historic landmark or landmark site of statewide or national significance is demolished without review and approval by a local historic preservation commission, no permit for any construction on the parcel from which the landmark or landmark site has been removed may be issued for a period of up to twenty-four (24) months.
 6. 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.

(Code 1971, - 151/2 -23)

Secs. 70-14—70-45. Reserved.

ARTICLE II. HISTORIC PRESERVATION COMMISSION*

Secs. 70-46. Composition and terms.

- 1 By virtue of MCA 1972, 39-13-5, as amended, a historic preservation commission is hereby created to preserve, promote and develop the historical resources of the city and to advise the governing authorities as to the designation of historic districts, landmarks, and landmark sites and to perform such other functions as may be provided for in this article.
- 2 The commission shall consist of not less than nine residents of the city. All members of the commission shall serve for three-year terms, and shall be eligible for reappointment. However, the first nine members appointed shall serve the following terms: three members, one year, three members, two years; and three members,

three years. All member of the commission shall serve at the will and pleasure of the governing authorities.

- 3 All commission members shall have a demonstrated knowledge or interest, competence, or expertise in historic preservation. All commission members shall be nominated by the Mayor and confirmed by the city council with due regards for such fields as architecture, history, urban planning, archaeology and law, and others, to reflect the racial and economic diversity of the city. Further, one member shall be appointed from each of the seven wards within the city, and the remaining two members, shall be at-large members, appointed from different wards.

(Code 1971, - 151/2-4)

Sec. 70-47. Rules of Procedure.

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

- 1 The commission annually shall elect from its membership a chairman, vice-chairman and secretary. 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. A quorum shall consist of a majority of the members of the commission.
- 2 The commission shall develop and adopt rules of procedure which shall govern the conduct of its business, subject to the approval of the governing authorities.
- 3 The commission shall use as a basis for its decisions on applications for certificate of appropriateness the Secretary of the Interior's Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings as well as any more specific design review guidelines adopted by the commission or the city council or a combination thereof.
- 4 The commission shall establish its own regular meeting time. However, the first meeting shall be held within 30 days of the appointment of a full commission, and regular meetings shall be scheduled at least once every three months. The meeting place of the commission shall be the council chamber of city hall, or such other place as designated by the commission.

(Code 1971, - 151/2-5)

Sec. 70-48. Disqualification of members.

- 1 If any member of the commission must be disqualified due to a conflict of interest more than twice in one year, the chairman or vice-chairman in his stead, shall encourage the member to resign his commission seat. If the commission member continues to enter into conflicts of interest with the commission, the chairman or vice-chairman of the commission shall encourage the city to replace the member.
- 2 Likewise, any member of the commission who has an interest in the property within 300 feet of the site in question, 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 any case to be considered by the commission, shall be

disqualified from participating in the consideration of any request. In any such cases that a quorum may not be remaining due to the number of recused members, a qualified substitute shall be appointed as provided in the this section.

- 3 If a historic commission member has more than three (3) unexcused absences in a calendar year, the commission may recommend to the Mayor the dismissal of that member.

(Code 1971, - 151/2-6)

Sec. 70-49. Appropriations.

The city is authorized to make appropriations to the commission necessary for the expenses of the operation of the commission. However, such funds shall be appropriated to the planning division for the use of the commission.

(Code 1971, - 151/2-7)

Sec. 70-50. Powers.

In order to preserve, promote and develop the historic resources of the city and to accomplish the purposes set forth in the Mississippi Local Government Historic Preservation Act of 1978 (MCA 1972, _ 39-13-1 et seq.) and in this chapter:

- 1 The commission shall implement, provide for, plan to conduct or conduct or cause to be conducted, studies and surveys of architectural, archaeological, cultural and historic resources within the city, if such study has not already been conducted. Such study and survey activity shall be ongoing and updated as necessary.
- 2 The commission shall recommend to the city the adoption of ordinances designating landmarks, landmark sites and historic districts.
- 3 The commission shall review applications proposing erection, alteration, restoration, demolition or moving of any landmark or building located on a landmark site or within a historic district so designated by the board and may grant or deny the certificates of appropriateness in whole or in part and may grant certificates of appropriateness contingent upon the acceptance by the applicant of specified conditions.
- 4 The commission shall not consider interior arrangements of buildings and structures except that it may when requested by the Department of Archives and History to advise the department on questions relating to the interiors of publicly owned historic buildings. Interior arrangements not to be considered by the commission shall include floor plans, architectural details and finishes, but the commission may consider interior structural elements visible through doors windows if they become deteriorated because of demolition by neglect. Such interior structural elements may include walls, floors and ceilings, as well as other supporting elements of a composite structure.
- 5 The commission shall promulgate and publish such standards and rules of procedure as are necessary to carry out the provisions of this chapter.
- 6 The commission 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 of carrying out provisions of this chapter.
- 7 The commission, solely, in the performance of its official duties and only at reasonable times, may 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.

- 8 The commission may recommend that the city recognize subdistricts within any historic district in order that the commission may adopt specific guidelines for the regulation of properties within such a subdistrict
- 9 The commission may, by local ordinance, review proposed governmental actions affecting governmentally owned structures included within local historic districts, located on landmark site or designated as landmarks.
- 10 The commission, subject to the consent of and the requirements of the city, may employ such staff or contract with technical experts or other persons as may be required for the performance of its duties and may obtain the equipment, supplies and other materials necessary for its effective operation.

(Code 1971, - 151/2-10)

Secs. 70-51—70-80. Reserved.

ARTICLE III. CERTIFICATES OF APPROPRIATENESS

Sec. 70-81 Required.

In order to promote the general welfare through the preservation and protection of historic resources, no exterior feature of any landmark, landmark site or building or structure within a historic district including, but not limited to, walls fences, light fixtures, steps, pavement, trees or other appurtenant features, or any aboveground utility structure or any type of outdoor advertising sign, shall be erected, altered, reconstructed, restored or rehabilitated, moved, cut or demolished within any such historic district or on any such landmark site or as to any landmark until after an application for a certificate of appropriateness of such work has been submitted to and approved by the commission to the city. Therefore:

- 1 The commission shall serve as a review body with power to grant certificates of appropriateness, with conditions.
- 2 In making determinations, evaluations and decisions under this chapter, the commission and city shall seek to accomplish the purposes of the chapter; in particular, to preserve and protect the architectural and historic integrity and character of any landmark site, landmark or historic district.
- 3 A certificate of appropriateness shall not be required for ordinary maintenance or repair of any landmark, or building or structure upon a landmark site or within a historic district which does not involve a change in design, material, or other appearance thereof. A certificate of appropriateness is not required for a change in paint color.
- 4 The commission shall not recommend disapproval of any plans without giving its recommendations for changes to be made before such plans can be reconsidered. Within one year after denial, an applicant may comply with the reasons for denial, and a certificate of appropriateness may be granted by the commission.
- 5 Whenever the commission shall deny or recommend denial of a certificate of appropriateness, the commission must state the reasons for such denial in writing. Thereafter, an applicant may resubmit a new application at any time, except that an applicant must wait six (6) months whenever an application for a certificate of appropriateness is denied for a landmark property of statewide or national significance and notice of any second or subsequent application must be sent to the

Mississippi Department of Archives and History as well as to the local historic preservation commission.
(Code 1971, - 151/2-13)

Secs. 70-82. Procedures for issuance.

Applications for certificates of appropriateness shall be filed with the planning division on forms provided for such purpose. The planning director shall request review and a written report from the zoning division and other pertinent public works departments on behalf of the commission. No building permit or variance shall be granted which affects a resource in a historic district, a landmark or landmark site when a certificate of appropriateness is obtained. Applicants are encouraged to request a conference with the planning division and other appropriate city divisions prior to filing applications for certificates of appropriateness to determine any modifications to the proposed application which might be more consistent with the commission's standards, and current city ordinances and standards. Applications for certificates of appropriateness shall be reviewed in accordance with the following procedure:

- 1 Within 35 days after an application for a certificate of appropriateness has been filed, the commission shall hold a public hearing thereon.
- 2 Notice of the time and place of the hearing shall be given by publication in a newspaper having general circulation in the city at least 15 days before such hearing, and by posting such notice on the bulletin board in the lobby of the city hall.
- 3 At such hearing, the applicant and other interested parties shall have the right to present evidence regarding the application for the certificate of appropriateness. The commission shall have the right to present any additional evidence in support of the application.
- 4 A court reporter or recording secretary shall transcribe the public hearing.
- 5 The commission may continue the public hearing until its next regular meeting or may defer action after closing the public hearing until its next regular meeting. Final action by the commission shall not be deferred longer than 30 days after the date on which the public hearing on the certificate of appropriateness was initially held.
- 6 The commission shall approve the certificate of appropriateness, as requested, or approve it with changes which may be necessary to enable the applicant to meet the requirements of the commission, or it may deny the application. Written notice of the commission's action pertaining to the requested certificate of appropriateness shall be provided to the applicant and any parties of record, and to the zoning division, public works and other pertinent departments. The decision shall be final unless appealed as provided for in subsection (7) of this section.
- 7 Any person aggrieved by any action of the commission pertinent to an application for the certificate of appropriateness who is a party of record may appeal such action to the city council pursuant to the procedure provided in this section.
- 8 A Certificate of Appropriateness shall expire after (6) months if work has not begun, as evidenced by a building permit.

(Code 1971, - 151/2-14)

Sec. 70-83. Application fee.

All applications for certificates of appropriateness or designation of a landmark, landmark site or historic district shall be accompanied by a \$25.00 nonrefundable application fee.

(Code 1971, - 151/2-24)

Sec. 70-84. Appeals to the city council.

- 1 Any person who is a party of record and who is aggrieved by the commission's recommendation or decision may appeal on the record to the city council. Appeals shall be submitted in writing not more than ten days following the date of the commission's action. Appeals shall be submitted to the planning division and shall specify the action of the commission being appealed and the grounds or reasons for the appeal. A transcript of the commission's hearings, actions, records, and any and all documents pertaining thereto shall be provided to the city. Costs shall be borne by the appellant.
- 2 The planning director shall mail a copy of a written notice of appeal to all parties of record which shall include the date, time and place when the appeal will be presented to the city council. Costs shall be borne by the appellant. Failure to receive a mailed notice shall not invalidate the actions of the city council taken as a result of the appeal.
- 3 Within 30 days of the notice to appeal, the city council shall hold a hearing on the record, and shall approve or reverse in whole or in part the recommendation or decision of the commission. Where there is a need for additional information the council may remand the case for further consideration.

(Code 1971, - 151/2-15)

Sec. 70-85. Criteria for issuance.

Pursuant to the Secretary of the Interior's Standards for Rehabilitation, the commission and the city shall use the following criteria in granting or denying certificates of appropriateness:

- 1 **General factors.** General factors are as follows:
 - a. General appearance of the land, building or improvement under consideration;
 - b. Structural condition of existing building or structure;
 - c. Structural composition of existing building or structure or improvement and proposed alteration;
 - d. Architectural design of existing building or structure or improvement and proposed alteration;
 - e. Size of existing land parcel, building or structure or improvement and proposed alteration;
 - f. Historical significance of existing land, building, structure or improvement;
 - g. Economic use of existing land, building, structure or improvement;
 - h. Relative cost of the proposed project and alternatives;

- i. The owner's legitimate right to earn a reasonable return for his investment in the site, building or structure; and
 - j. The relationship of the above factors to, and their effect upon, the immediate surroundings and, if within a historic district, upon the district as a whole and its architectural and historical character and integrity.
2. **New Construction.** New construction (additions to existing resources and infill construction on vacant properties) shall be as follows:
- a. The following aspects of new construction shall be visually compatible with the buildings and environment with which the new construction is visually related, i.e., the height, the gross volume, the proportion between width and height of the facades, the proportions and relationship between door and windows, the rhythm of solids to voids created by openings in the façade, and materials used in the façade, the texture inherent in the façade, and the design of the roof.
 - b. Existing rhythm created by existing building masses and spaces between them should be preserved.
 - c. The landscape plan should be sensitive to the individual building and its occupant and needs, and should be visually compatible with the buildings and environment with which it is visually related.
 - d. A new street facade should blend directionally with the other buildings with which it is visually related, which is to say, when adjacent buildings have a dominant horizontal or vertical expression, that expression should be carried over in the new façade.
 - e. New construction must be compatible with the original construction of the historic resources, and should be distinguishable from the original construction and should enhance the architectural characteristic of the historic district.
 - f. No single architectural style shall be imposed. Stylistic character consistent and harmonious with the resources in the district shall be encouraged.
 - g. The quality and excellence on design should be major determinants.
3. **Exterior alteration** shall be as follows:
- a. All exterior alterations to a building or structure should be compatible with the building itself and other buildings with which it is related, as is provided in subsection (2)a of this section, and in applying these standards, the original design of the building or structure must be considered.
 - b. Exterior alterations shall not diminish the architectural character or historic quality of the building.
4. **Signs** shall be as follows:
- a. The scale and design of any sign should be compatible with the building and environment with which it is related.
 - b. The materials, style, size, color and patterns used in any sign should be compatible with the buildings and environment in which it is related.

5. **Demolition.** In considering an application of the demolition of a landmark or a resource within a historic district the following shall be considered:
 - a. The individual historical or architectural significance of the resource.
 - b. The importance or contribution of the resources to the aesthetics of the district.
 - c. The difficulty or impossibility of reproducing such a resource because of its texture, design, material or detail.
 - d. The proposed replacement structure and the future utilization of the site.

6. **Reconstruction.** The reconstruction of a building destroyed by fire, storm or other act of God shall be regulated in accordance with the criteria set forth in subsection (3) of this section.

7. **Denial of application.** An application for a certificate of appropriateness shall only be denied upon a determination that the proposed changes or project would:
 - a. Result in such disharmony of scale, materials, massing, spacing and/or style between the proposed project and its immediate surroundings and the historic district, landmark or landmark site as a whole so as to undermine the architectural integrity and character of the historic district, or landmark site or landmark and inhibit the accomplishment of the purpose of this article;
 - b. Result in such a change in the architectural design or character of an existing building or improvement so as to undermine the architectural integrity or character of a historic district as a whole and inhibit the accomplishment of the purposes of this article;
 - c. Result in the loss of or irreparable harm to an existing building or improvement of architectural or historical significance; or
 - d. Notwithstanding subsections (7)a—(7)c of this section, a certificate of appropriateness should not be denied if that denial would deprive the owner of earning a reasonable rate of economic return from the building or site.

8. **Demolitions.** Demolition of a landmark building or site, or a building or site in a historic district, constitutes an irreplaceable loss to the quality and character of the city. Therefore, all demolitions of such buildings or sites shall require a certificate of appropriateness. Such certificates shall be granted according to the following standards:
 - a. **Conditions.** Certificates of Appropriateness for demolition shall be issued by the commission or city only when one or both of the following two conditions have been established pursuant to the standards and criteria required as follows:
 - (1) The demolition is required to alleviate a threat to public health and safety; and/or
 - (2) The demolition is required to rectify a condition of unreasonable economic return.
 - b. **Standards and criteria.** The standards and criteria required to be shown in order to establish the existence of the conditions specified in the subsection (8)a of this section shall be as follows:

- (1) Threats to public health and safety. To prove the existence of a threat to public health and safety, the applicant must establish, and the commission must find, the following:
 - (a) Demonstrate through independent analyses and supporting information that a major and imminent threat to public safety exists;
 - (b) Present all reasonable alternatives for rectifying the threat and analysis of all such alternatives; and
 - (c) Demonstrate that the costs associated with rectifying the threat would create a condition whereby the investments in the project are incapable of earning a reasonable economic return as described in subsection (8)b.2 of this section.
- (2) Unreasonable economic return. To prove the existence of a condition of unreasonable economic return, the applicant must establish, and the commission must find both of the following:
 - (a) That the building or site is incapable of earning a reasonable economic return. This finding shall be made by considering, and the applicant shall submit to the commission evidence establishing each of the following factors:
 - The applicant's knowledge of the landmark or historic district designation at the time of acquisition, or whether the property was designated by the city, state or federal government subsequent to acquisition.
 - The current level of economic return on the property as considered in relation to the following:
 - The amount paid for the property, the date of purchase, and party from whom purchased, including a description of the relationship, if any, between the owner of record or applicant and the person from whom the property was purchased.
 - The annual gross and net income, if any, from the property for the previous three years; itemized operating and maintenance expenses for the previous three years; and depreciation deduction and annual cash flow before and after debt service, if any, during the same period.
 - Remaining balance on any mortgage or other financing secured by the property and annual debt service, if any, during the prior three years.
 - Real estate taxes for the previous four years and assessed value of the property according to the two most recent assessed valuations.
 - All appraisals obtained within the previous two years by the owner or applicant in connection with the purchase, financing or ownership of the property.
 - The fair market value of the property immediately prior to its designation and the fair market value of the property (in its protected status as a designated building or site) at the time the application is filed.
 - Form of ownership or operation of the property, whether sole proprietorship, for-profit or not for profit corporation, limited partnership, joint venture, or both.
 - Any state or federal income tax returns and any tax abatements received on or relating to the property for the past two years.

That the property is not marketable or able to be sold, considered in relation to any listing of the property for sale or rent, price asked, and offers received, if any, within the previous two years, including testimony and relevant documents regarding:

- Any real estate broker or firm engaged to sell or lease the property. Reasonableness of the price or rent sought by the applicant.
- Any advertisements placed for the sale or rent of the property.
- The infeasibility of alternative uses that can earn a reasonable economic return for the property as considered in relation to the following:
 - A report from a licensed engineer or architect with experience in rehabilitation as to the structural soundness of any structures on the property and their suitability for rehabilitation.
 - Estimate of the cost of the proposed construction, alteration, demolition, or removal, and an estimate of any additional cost that would be incurred to comply with the recommendation and decision of the commission of the city concerning the appropriateness of proposed alterations.
 - Estimated market value of the property in the current condition; after completion of the proposed construction, alteration, demolition, or removal; and, in the case of a proposed demolition, after renovation of the existing property for continued use.
 - In the case of a proposed demolition, the testimony of an architect, developer, real estate consultant, appraiser, or other real estate professional experienced in rehabilitation as to the economic feasibility of rehabilitation or reuse of the existing structure on the property.
 - The infeasibility of new construction around, above or below the existing protected building or site.
 - Economic incentives and/or funding available to the applicant through federal, state, city or private programs.

- ii. That the applicant has the present intent and the secured financial ability, demonstrated by documentary evidence and by those plans and materials which would otherwise be required in order to secure a building permit, to replace a landmark building or site with a replacement building as the term "building" is defined in section 70-3, which has a total square footage of the footprint of the building or site proposed to be demolished or moved.

9. **Stay of demolition.** If an application for a certificate of appropriateness is for demolition of a resource within a historic district or a landmark or landmark site, action upon such application may be stayed for a period 180 days, during which time the commission and the applicant shall undertake meetings and continuing discussion for the purpose of finding a method save such property. During such period, the applicant and the commission shall cooperate in attempting to avoid demolition of the property. At the end of the 180-day period, the commission shall meet again to discuss the application and if, no mutually agreeable method of saving the property bearing a reasonable prospect of eventual success is underway, or if no formal application for funds from any governmental unit or non-profit organization to

preserve the property is pending, the commission shall notify the city and the building and housing official, and, upon written notice, the city may, but is not required to, issue a permit for demolition.

(Code 1971, - 151/2-16)