

An Ordinance to Amend

Chapter 44, Article IV

Mobile City Code

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**AN ORDINANCE TO AMEND CHAPTER 44, ARTICLE IV,
MOBILE CITY CODE ENTITLED "HISTORIC PRESERVATION"**

Sponsored by: _____

**BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MOBILE
that Article IV, Chapter 44, *Mobile City Code* is hereby amended as follows:**

1. FINDINGS AND PURPOSE

- (a) The City of Mobile has long counted its historical, cultural and aesthetic heritage among its most valued assets. Mobile was the first city in Alabama, and among the first in the nation, to create a Historic Development Commission and to adopt laws recognizing and protecting historic structures and historic neighborhoods. Act of August 30, 1963, 1963 Ala. Acts 855; amended, Act of August 30, 1965, No. 613, repealed by Act of August 26, 1971, No. 420, 1971 Ala. Acts 1153; 1965 Ala. Acts 1127; Act of September 30, 1965, No. 83, 1965 Ala. Acts 113, repealed by Act of August 26, 1971, No. 420, 1971 Ala. Acts 1153; Act of September 1, 1971, No. 421, 1971 Ala. Acts.
- (b) The City has amended its preservation ordinances from time to time, as well as the ordinances relating to the Mobile Historic Development Commission. Mobile City Code section 44-91 to 44-99 (Mobile Historic Development Commission; §44-111 to §44-116 (Architectural Review Board; §44-131 to §44-153 (Old Dauphin Way Review Board). Since 1963 the City has recognized seven Historic Districts and plans to add additional districts.
- (c) In recent years the state has enacted legislation authorizing all municipalities to adopt ordinances and procedures similar to the ones used in Mobile. (Alabama Code section 11-68-1 through 11-68-15). Because of the many amendments to the laws and procedures pertaining to preservation, and because of the many new projects planned in and around Historic Districts, the Council finds it desirable to revise its ordinances to eliminate inconsistencies; to take advantage of new provisions in state law; to streamline its laws and rules related to historic development; and to otherwise renew and restate its commitment to historic preservation.
- (d) The Council also finds and determines that:
 - 1) many significant historic structures in the City have been destroyed by demolition and the continued destruction of these properties has

- 2) an adverse impact on the public health, safety and welfare of the City;
- 3) preservation of the City's historical, cultural and aesthetic heritage is essential to the promotion of the health, prosperity and general welfare of the people;
- 4) historic preservation stimulates revitalization of the business districts; protects and often increases property values in historic neighborhoods; and protects and enhances local historical and aesthetic attractions for residents and tourists, thereby promoting and stimulating commerce; and,
- 5) the designation, protection, preservation and rehabilitation of historic properties and Historic Districts enables Mobile's citizens to participate in federal and state programs and enhances opportunities for federal and state tax benefits.

NOW, THEREFORE, in consideration of these findings, the Council hereby amends Article IV, Chapter 44 of the Mobile City Code and hereby declares it to be the purpose and intent of this ordinance to establish a uniform procedure that provides for the protection, enhancement, perpetuation and use of places, districts, sites, buildings, structures, objects, landscape features and works of art having a special historical, cultural or aesthetic interest or value, in accordance with the provisions of this Chapter.

2. DEFINITIONS

"Board" -- Means the Architectural Review Board established pursuant to this Chapter.

"Board Members" -- Means persons appointed to the Architectural Review Board pursuant to this Chapter.

"Certificate of Appropriateness" -- Means a document evidencing approval of an application for a Material Change to property located within a Historic District.

"Certificate of Economic Hardship" -- Means a document evidencing approval of an Owner's application for relief from the application of this Chapter as provided in Section 11.

"City" -- Means the City of Mobile, an Alabama municipal corporation.

"Commission" -- Means the Mobile Historic Development Commission established pursuant to this Chapter.

"Conflict of Interest" -- Means a conflict on the part of a Board Member or Commission

Member between his or her private interest and the responsibilities imposed by this Chapter. A Conflict of Interest involves any action, inaction, or decision by a Member or Board Member in the discharge of his or her duties which would materially affect his or her financial interest or those of his or her Family Members or any business with which the person is associated in a manner different from the manner it affects the other members of the class to which he or she belongs.

"Exterior Architectural Features" -- Means the architectural style, general design and general arrangement of the exterior of a building or other structures, including but not limited to the kind or texture of the building material, and the type and style of all windows, doors, signs and other appurtenant architectural fixtures, features, details or elements relative to the foregoing.

"Exterior Environmental Features" -- Means all those aspects of the landscape or the development of a site which affect the historical character of the property such as walks, drives, outbuildings and landscaping.

"Family Members" -- Means the spouse, a dependent, an adult child and his or her spouse, a parent, a spouse's parents, a sibling and his or her spouse, of the Member or Board Member.

"Historic District" -- Means a geographically definable area designated by the City Council as a Historic District, including all Historic Districts existing as of the date of this ordinance.

"Historic Property" -- Means an individual building, structure, site, object or work of art including the adjacent area necessary for the proper appreciation thereof listed in the "National Register of Historic Places", and located in a Historic District.

"Material Change " -- Means a change in appearance that will affect either the Exterior Architectural or Environmental Features of a Historic Property or any building, structure, site, object, landscape feature or work of art within a Historic District, including, but not limited to:

1. Reconstruction or alteration of the size, shape or elevation of a Historic Property, including, but not limited to, relocation or replacement of any doors or windows or removal or alteration of any architectural features, details or elements;
2. Demolition or relocation of a Historic Property;
3. Commencement of excavation for construction purposes;
4. A change in the materials, size or location of advertising visible from the public right of way;

5. The erection, alteration, restoration or removal of any building or other structure within a Historic District, including walls, fences, steps, drives and pavements or other appurtenant features;
6. The destruction or trimming of any heritage tree as defined in Chapter ____ of this Code or the significant alteration of important landscape features; or
7. Any exterior work that must be permitted by the City's Department of Urban Development.

"Members" -- Means those persons appointed to serve as members of the Mobile Historic Development Commission.

"Member Organizations" -- Means the organizations authorized to appoint Commission Members.

"Original Members" -- Means those persons serving as members of the Mobile Historic Development Commission as of the effective date of this ordinance.

"Original Board Members" -- Means those persons serving as members of either the Architectural Review Board or the Old Dauphin Way Review Board as of the effective date of this ordinance.

"Owner" -- Means the holder of the fee simple title as revealed on the relevant property tax rolls, and any person (natural, legal or corporate) or groups of persons, companies, associations, corporations, or partnerships who, alone or jointly or severally with others: (1) shall have legal title to any property, with or without an accompanying right of possession; or (2) shall have charge, care or control of any property as owner, executor, executrix, administrator, trustee, guardian of the estate owner, mortgagee or vendee in possession, or assignee of rents, lessee, or other person, firm or corporation in control of a property.

"Substantial Economic Hardship" -- Means a hardship so great that 1) the owner will effectively be deprived of all reasonable and beneficial use of or return from the property; and 2) that the owner did not create the conditions underlying the claim of hardship.

3. HISTORIC PRESERVATION COMMISSION CREATED.

- (a) **Creation of the Commission.** There is hereby created a Commission that shall be named the Mobile Historic Development Commission. The Commission shall constitute a non-profit governmental agency whose funds shall be used exclusively for public purposes as provided.
- (b) **Tax Exempt Status.** The Commission shall have tax-exempt status and the properties of the Commission, and the income therefrom, together with all leases,

agreements, and contracts made by it, shall be forever exempt from any and all taxation by the State of Alabama and any political subdivision thereof, including, but not limited to, sales and use tax, gross receipts tax, income, admission, amusement, excise, and ad valorem taxes.

(c) **Commission Membership.** The Commission shall consist of not less than eleven (11) Members who have demonstrated training or experience in the fields of history, architecture, architectural history, urban planning, archaeology or law, or who shall be residents of a Historic District.

(d) **Member Organizations.** Each Member Organization named below shall appoint two (2) persons to serve on the Commission. The list of Member Organizations may be amended from time to time in accordance with the rules established by the Commission pursuant to this chapter.

American Association of University Women
American Institute of Architects, Mobile Chapter
Architectural Review Board of the City of Mobile
Art Patrons League
Ashland Place Historic District
Bragg Mitchell Mansion
Church Street East Historic District
City of Mobile Department of Urban Development
Colonial Dames of the 17th Century
DeTonti Square Neighborhood Association
Friends of Magnolia Cemetery, Inc.
Friends of Old Mobile, Inc.
Friends of Museum of Mobile
Historic Mobile Homes Tour, Inc.
Historic Mobile Preservation Society
Junior League of Mobile
Keep Mobile Beautiful
Leinkauf Historic District
Main Street Mobile, Inc.
Martin Luther King Avenue Development Corporation
Mobile Area Association of Realtors, Inc.
Mobile Arts Council
Mobile Area Chamber of Commerce
Mobile Medical Museum
National Society of Colonial Dames of America in Alabama
Conde/Charlotte Museum
Oakleigh Garden Society
Old Dauphin Way Association
ReVive Mobile
Richards DAR House Museum

United Council of Historic Districts
Young Women's Civic Club

- (e) **Other Appointments.** In addition to the Members appointed pursuant to Section 3(d), the Mayor, each member of the City Council, and each member of the Mobile County Commission may appoint one Member to the Commission.
- (f) **Experience.** All appointments of Members shall be made so as to insure that the Commission will be composed of persons with as much of the training and experience specified in section 3(c) as is possible.
- (g) **Term.** Commission Members shall serve four year terms, commencing July 1 of the appointment year. Members may be reappointed. Original Members shall hold office until June 30 of their current term; thereafter, the Member Organizations shall appoint Members as provided herein.
 - (1) If a Member is absent, without excuse, from three (3) consecutive, regular meetings of the Commission, such Member shall be removed from office.
 - (2) Any vacancy occurring on the Commission other than by expiration of term shall be filled for the unexpired term of such member.
 - (3) Members may be removed without cause by a two-thirds (2/3) vote of the Members attending a regularly called Commission meeting.
- (h) **Compensation.** Members shall serve without compensation, but may be reimbursed for expenses incurred on behalf of the Commission in accordance with the rules and regulations for the reimbursement of expenses adopted by the Commission.

4. POWERS AND DUTIES OF THE COMMISSION

- (a) **Standards and Rules.** The Commission shall adopt and may amend from time to time such rules and regulations it deems necessary and proper to govern its operations and to fulfill its duties and responsibilities under this chapter. The Commission's rules shall constitute a public record and shall be furnished to the City Clerk. The rules shall, at a minimum:
 - 1) Designate the optimum number of Commission members and identify the organizations eligible to have representatives serve on the Commission;
 - 2) Specify the number of members needed for a quorum, but in no event less than twenty-five percent (25%);

- 3) Provide that its meetings be public, and occur at least monthly during the months from September to June of each year;
- 4) Provide for written notice of its meetings (by facsimile, email or US Mail) and furnish a copy of its meeting schedule to the City Clerk, the City press office, and Commission Members;
- 5) Require that a public record be kept of the Commission's resolutions, proceedings and actions;
- 6) Encourage members to attend at least one informational or educational meeting per year pertaining to historic preservation, such as meetings sponsored by the Alabama Historical Commission, Board of Advisors, the National Trust for Historic Preservation or a local preservation organization; and,
- 7) Provide an opportunity for public comment whenever the Commission reviews properties for nomination to the National Register.

(b) **Powers and Duties of the Commission.** The Commission shall be authorized to:

- 1) Prepare and maintain an inventory of all property with the potential for designation as a Historic Property;
- (2) Recommend to the City Council specific places, districts, sites, buildings, structures, or works of art to be designated by resolution or ordinance as Historic Properties or Historic Districts;
- (3) Recommend to the City Council the revocation of any previously designated place, district, site, building, structure, object or work of art as a Historic Property or as a Historic District;
- (4) Restore, protect and preserve any Historic Properties acquired by the City or acquired by the Commission;
- (5) Promote and accept open-space, interior, façade and conservation easements;
- (6) Develop and conduct educational programs concerning Historic Preservation;
- (7) Make investigations and studies of matters relating to historic preservation;

- (8) Employ such experts the City or the Commission itself may, from time to time, deem necessary or appropriate for the purposes of preserving historic resources;
- (9) Seek out local, state, federal and private funds for historic preservation and make recommendations concerning the most appropriate uses of any funds acquired;
- (10) Serve as the City's official agency for historic preservation programs;
- (11) Employ persons, if necessary, to carry out the responsibilities of the Commission;
- (12) Purchase, sell, contract to purchase, contract to sell, own, encumber, lease, mortgage and insure real and personal property in carrying out the purposes and responsibilities of the Commission; provided, however, the Commission shall not obligate city funds without prior consent of the City;
- (13) Review and make comments to the Alabama Historical Commission concerning the nomination of properties within its jurisdiction to the National Register of Historic Places;
- (14) Investigate, survey and process nominations of properties to the National Register of Historic Places;
- (15) Investigate, survey and process applications for certification of Historic Properties for tax credits for preservation expenditures;
- (16) Participate in private, state and federal historic preservation programs and enter into agreements with the same to perform historic preservation related functions;
- (17) Receive donations, grants, funds or gifts of property; set up one or more lawful depositories in the City;
- (18) Establish one or more "Revolving Funds for Historic Development to be used for the furtherance of the objectives and purposes of the Commission;
- (19) Administer one or more awards programs recognizing historic structures and persons involved in preservation;

- (20) Exercise all powers now or that may hereafter be conferred by Alabama law, including Alabama Code §11-68-14 et seq. as may be amended and, in addition, all powers previously granted the Commission by any local or general law existing as of the date of this ordinance; and,
 - (21) Exercise such further powers as the Commission may deem reasonably necessary and proper to carry out the purposes, responsibilities and powers of this ordinance.
- (c) **Annual Reports of the Commission's Activities.** The Commission shall prepare and file an annual report with the City Council and with the Alabama Historical Commission. The annual report shall cover the period from October 1 to September 30 and shall be submitted not later than October 31 of each year. The report shall include such information the Commission deems appropriate, including, such items as the number of cases reviewed, Historic District and property designations made, revised resumes of Commission Members, staff, appointments to the Commission, attendance records and all minutes relating to the review of National Register nominations.
 - (d) **Conflict of Interest.** No Member shall vote, present, discuss or participate in any matter in which the Member has a Conflict of Interest or in which the Member or any Family Member has any financial gain or interest.
 - (e) **Liaison between the Commission and the Alabama Historical Commission.** The Mayor shall designate one or more employees of the City to act as professional staff for the Commission. Such employees shall serve as a source of technical, administrative, and professional assistance to be responsible for the operations of the Commission, and to insure that the certification requirements for participation in the Certified Local Government Program are met. At least one member of the Commission and/or the person serving as the Commission's technical staff, and/or a representative appointed by the Mayor who has an ongoing relationship with the Commission, will attend the Alabama Certified Local Government orientation/training session sponsored by the Alabama Historical Commission each year.

5. RECOMMENDATION AND DESIGNATION OF HISTORIC DISTRICTS AND PROPERTIES

- (a) **Historic District Defined.** A Historic District is a geographically definable area, shown on the City's official zoning map, which contains buildings, structures, sites, objects, landscape features and works of art or a combination thereof which:
 - (1) Represents one or more periods, styles or types of architecture typical of

- one or more eras in the history of the city, county, state, region or nation;
- (2) Represents a significant aspect of the cultural, political, economic, military or social history of the locality, region, state or nation;
 - (3) Has had a significant relationship with the life of a historic person or event, representing a major aspect of the history of the locality, region, state or nation;
 - (4) Is a part of the historic, architectural, archaeological or aesthetic heritage of the locality, region, state or nation; or
 - (5) Contains vernacular structures which contribute to an overall character and sense of place which is representative of the City.
- (b) **Classification of Properties in Historic Districts.** Individual properties within Historic Districts shall be classified as either "contributing" (contributing to the district) or "non-contributing".
- (c) **Individually Designated Historic Property Defined.** A Historic Property is a building, structure, site, object, or work of art, including the adjacent area necessary for the proper appreciation or use thereof, deemed worthy of preservation by reason of value to the City for one of the following reasons:
- (1) It is an outstanding example of a structure representative of its era;
 - (2) It is one of the few remaining examples of a past architectural style;
 - (3) It is a place or structure associated with an event or persons of historic or cultural significance to the City, the state or the region;
 - (4) It is a site of natural or aesthetic interest that is continuing to contribute to the cultural or historical development and heritage of the city, county, state or region; or
 - (5) The building or structure is an example of an architectural style, or combination of architectural styles, which is representative of the City or which is unique to the City.
- (d) **Recommendation.** The Commission shall compile and collect information and conduct surveys of historic resources within the City and County of Mobile and recommend to the City Council or other designating authority property the Commission deems suitable for designation as a Historic District or an Individually Designated Historic Property.

- (e) **Form of Recommendation.** The Commission's recommendation to the City Council shall be in the form of a resolution and accompanied by a report consisting of:
- (1) A physical description;
 - (2) A statement of the historical, cultural, architectural and/or aesthetic significance;
 - (3) A map showing district boundaries and classification of individual properties therein (contributing, non-contributing) or showing boundaries of Individually Designated Historic Properties;
 - (4) A statement justifying the district or individual property boundaries;
 - (5) Representative photographs; and
 - (6) A proposed ordinance that:
 - (A) Lists each property in a proposed Historic District;
 - (B) Requires a Certificate of Appropriateness prior to any Material Change in Appearance of a property in a Historic District; and
 - (C) Requires the district be shown on the City's official zoning map.
- (f) **Required Public Hearings.**
- (a) Prior to making its recommendation to the Council, the Commission shall hold a public hearing. Notice of the hearing shall be published in the principal newspaper of the local circulation, once a week for two consecutive weeks, the latter of which must be done at least fifteen days before the hearing.
 - (b) In addition to the notice required in subsection (a) of this section, notice shall be mailed to all owners of property within in the proposed historic district, as such owners are identified on the relevant property tax rolls.
- (g) **City Council Action on Commission Recommendation.** Following receipt of the Commission's recommendation, the City Council may adopt the ordinance as proposed, may adopt the ordinance with any amendments it deems necessary, or reject the ordinance.
- (h) **Notification of Adoption of Ordinance for Designation.** Within sixty (60) days following the adoption of the ordinance for designation by the City Council, the

owners of each structure, site or work of art located within a designated Historic District, shall be given written notification of such designation, which notice shall apprise said owners and occupants of the necessity of obtaining a Certificate of Appropriateness. A notice sent via the United States Mail to the last known owner of the property shown on the Mobile County tax roll shall constitute legal notification to the owner and occupant under this ordinance. For districts with more than fifty property owners, notice that is published in the principal newspaper of the local circulation, once a week for two consecutive weeks shall constitute legal notice.

- (i) **Notification of Other Agencies Regarding Designation.** The Commission shall notify all municipal agencies within the City of the ordinance for designation.
- (j) **Disclosure of Historic Designation.** The fact that a property is located within a Historic District and subject to the restrictions of this Chapter shall be disclosed by the seller upon sale.

6. CREATION OF AN ARCHITECTURAL REVIEW BOARD

- (a) **Creation of the Board.** There is hereby created an Architectural Review Board to perform the duties and responsibilities set forth in this Chapter including accepting, approving, approving with conditions or rejecting applications for Certificates of Appropriateness and Certificates of Economic Hardship.
- (b) **Composition: Quorum.** The Board shall be comprised of eleven (11) members who shall have demonstrated training or experience in the fields of history, architecture, architectural history, urban planning, archaeology or law. Members must be residents of the City. No member of the City Council or the Mayor shall serve on the Board. Five (5) members shall constitute a quorum.
- (c) **Appointment.** Members shall be appointed by the City Council as follows:
 - One (1) from a list of two (2) persons recommended by the Historic Mobile Preservation Society;
 - Six (6) from a list of ten (10) persons recommended by the Commission in consultation with the historic neighborhood associations; and
 - Four (4) from a list of eight (8) registered architects recommended by the Mobile Chapter of the American Institute of Architects.
- (d) **Alternates.** The Mayor shall appoint four (4) persons who will be available to serve as alternate Board Members whenever one (1) or more regular Board

Members are unable to attend any meeting. The Mayor shall name alternates from a list of qualified individuals provided by the Commission.

- (1) The persons selected as alternates may serve for five (5) years. The list of alternates shall be kept in alphabetical order;
 - (2) An alternate may serve for one (1) meeting; thereafter, alternates shall be selected alphabetically based on availability.
- (e) **Staggered Terms.** Except for the Original Board Members, Board Members shall serve five (5) year terms and shall be appointed in such a manner so as to serve overlapping terms. As soon as practical after the adoption of this ordinance, the Mayor shall appoint three (3) of the Original Board Members to serve one (1) year terms; two (2) of the Original Board Members to serve two (2) year terms; and two (2) of the Original Board Members to serve three (3) year terms; two (2) of the Original Board Members to serve four (4) year terms; and one (1) of the Original Board Members to serve five (5) year terms. The Council shall, as soon as practicable after the adoption of this ordinance, appoint the eleventh member for a five-year term.
- (f) **Compensation.** Board Members shall serve without compensation, but may be reimbursed for expenses incurred on behalf of the Board in accordance with the rules and regulations for the reimbursement of expenses adopted by the Board.
- (g) **Removal and Vacancy.** Members of the Board may be removed without cause by the City Council. Vacancies on the Board for any reason shall be filled in the same manner as their appointment as provided in subsection (c) of this section. Such appointments shall be for the unexpired term of the member replaced.
- (h) **Standards and Rules.** The Board shall adopt and may amend from time to time such rules and regulations it deems necessary and proper to govern its operations and to fulfill its duties and responsibilities under this ordinance. The rules shall constitute a public record and copies of the rules shall be furnished to the City Clerk. The rules shall, at a minimum:
- (1) Provide that Board meetings shall be publicly announced, open to the public, and shall be held at designated times and places as set forth in the Board's rules and regulations. Minutes of all decisions and actions of the Board, including the reasons for making these decisions, must be kept on file and available for public inspection;
 - (2) Provide for notice of its meetings to the applicants, Board Members, and the City Clerk;

- (3) Require the annual election of a chairman and vice chairman and such other officers as the Board deems necessary.
- (i) **Staff.** The Board may utilize the staff of the Commission and other City personnel, as may be necessary, to carry out the purposes and responsibilities of the Board.
- (j) **Powers and Duties of the Board.** The Board shall be authorized to:
 - (1) Review applications for Certificates of Appropriateness and Certificates of Economic Hardship and grant, conditionally grant or deny same in accordance with the provisions of this ordinance;
 - (2) Adopt rules and regulations governing the procedure for submission and consideration of applications for Certificates of Appropriateness and Certificate of Economic Hardship. The Board may prescribe a reasonable application fee to help defray the costs of processing the application;
 - (3) The Board shall also adopt general design standards applicable in considering the granting and denial of Certificates of Appropriateness. Design standards shall be consistent with Secretary of the Interior's Standards, taking into account local characteristics and local goals;
 - (4) Seek technical advice from outside its membership on any application;
 - (5) Adopt expedited review procedures for approval of Minor Projects; routine maintenance and alterations, including awnings, in-kind repairs, fencing, painting, driveways and sidewalks, and accessory structures utilizing stock designs previously approved by the Board. Routine maintenance includes ordinary maintenance or repair of any Exterior Architectural or Environmental Feature to correct deterioration, decay or damage, or to sustain the existing form. Expedited review procedures may also include provisions eliminating the requirement for consideration at a public meeting, public notice and may authorize staff to issue Certificates of Appropriateness; and
 - (6) Subject to funding, attend at least two (2) informational or educational meetings per year pertaining to historic preservation. Such meetings may include those sponsored by the Alabama Historical Commission, the National Trust for Historic Preservation, or a local preservation organization. One of the two meetings should be regional or statewide.
- (k) **Conflict of Interest.** No Board Member shall vote, present, discuss or participate in any matter in which the Board Member has a Conflict of Interest or in which

the Board Member or any Family Member has any financial gain or interest. .

7. CERTIFICATES OF APPROPRIATENESS

- (a) **Certificate of Appropriateness Required.** After the designation by ordinance of a Historic District, no Material Change may be made on a site, any portion of which is contained within a Historic District, nor may any building or structure in a Historic District be erected or demolished, and no Material Change of such structure, site, object or work of art within such Historic District, shall be made or be permitted to be made by the owner or occupant thereof, unless or until the application for a Certificate of Appropriateness has been submitted to and approved by the Board.
- (b) **Signs within Designated Districts.** Signs shall be considered as structures and no sign in a Historic District shall be changed, erected or demolished unless and until the Board approves a Certificate of Appropriateness.
- (c) **Alterations or Demolitions of Public Property within Historic Districts or Public Property which has been designed as a Historic Property.** The requirement of a Certificate of Appropriateness shall apply to public property which is contained in a Historic District and shall apply to all actions by public authorities which involve historic properties and properties within Historic Districts; notwithstanding the foregoing, those properties that have been ordered demolished by order of the City Council pursuant to the Unsafe Building Act shall be exempt from a Certificate of Appropriateness.
- (d) **Painting Originally Unpainted Surfaces.** The Board shall review paint color and placement. The painting of originally unpainted surfaces shall require a Certificate of Appropriateness.
- (e) **Interior Alterations.** In reviewing of applications for Certificates of Appropriateness, the Board shall not consider interior room arrangement or use having no effect on Exterior Architectural Features; however, the Board may require a floor plan to aid understanding the exterior design scheme.

8. PROCEDURE FOR GRANTING OR DENYING APPLICATIONS FOR CERTIFICATES OF APPROPRIATENESS

- (a) **Applications.** An application for a Certificate of Appropriateness shall be accompanied by such drawings, photographs, plans or other documentation as may be required by the Board. Applications involving demolition or relocation shall also conform to the requirements in Section 10 of this ordinance.

- (b) **Hearings on Applications.** Except for matters considered under the Board's procedures for expedited review, applications for Certificates of Appropriateness shall be considered by the Board at public meetings, held at least once a month at a time and place set out in the rules of the Board. All applicants, owners of the property in the District, and other interested parties shall be afforded a reasonable opportunity to be heard on the application.
- (c) **Notice of Hearing.** At least seven (7) days prior to the hearing the Board shall notify the applicant of the time and place of the hearing and shall provide the applicant with a copy of any staff reports pertaining to the application. A notice shall be posted on the property indicating that an application is pending. The Board may take such further action as may reasonably be required to inform the owners of any property likely to be affected by reason of the application of the meeting.
- (d) **Deadline for Approval or Rejection of Application.** The Board shall approve, approve with conditions, or reject an application for a Certificate of Appropriateness within forty-five (45) days after the filing of a complete application. Failure of the Board to act within said forty-five (45) days shall constitute approval and no other evidence of approval shall be needed, and upon the request the Board shall notify the building official that a permit may issue for the work specified.
- (e) **Notice of Decision.** Notice of the Board's decision shall be sent by United States Mail to the applicant and all other persons who have requested such notice in writing filed with the Board.
- (f) **Necessary Actions to be taken by the Board upon Rejection of Application for Certificate of Appropriateness.**
 - (1) In the event the Board rejects an application, it shall state its reasons for doing so and shall transmit a record of such actions and reasons, in writing, to the applicant. The Board may suggest alternative courses of action it thinks proper if it disapproves of the application submitted. The applicant, if he or she so desires, may make modifications to the plans and may resubmit the application at any time after doing so.
 - (2) The rejection of the application for a Certificate of Appropriateness by the Board shall be binding upon the building official or other administrative officer charged with issuing building permits and, in such cases, no permits shall be issued.

- (g) **Certificate of Appropriateness Void if Construction not Commenced.** A Certificate of Appropriateness shall become void unless construction is commenced within one (1) year from the date of issuance. Certificates of Appropriateness shall be issued for a period of eighteen (18) months and are renewable.
- (h) **Requirements of Conformance with Certificate of Appropriateness.** All work performed pursuant to a Certificate of Appropriateness shall strictly comply with all conditions of such certificate. In the event work is performed not in accordance with such certificate, the Board shall issue a cease-and-desist order and all work shall cease.

9. STANDARD OF REVIEW

- (a) **Required Findings for Approval.** The Board shall not approve any application proposing a Material Change in Appearance unless it finds that the proposed change:
 - (1) In the case of existing buildings, will not materially impair the architectural or historical value of the building, the buildings on adjacent sites or in the immediate vicinity, or the general visual character of the Historic District; or
 - (2) In the case of a proposed new building, that such building will not, in itself or by reason of its location on the site, materially impair the architectural or historical value of the buildings on adjacent sites or in the immediate vicinity and that such building will not be injurious to the general visual character of the Historic District in which it is to be located.
- (b) **Factors to be Considered.** In making its findings, the Board shall consider, in addition to any other pertinent factors, the structure's historical and architectural value and significance, architectural style, general design arrangement, texture and material of the architectural features involved and the relationship thereof to the exterior architectural style and pertinent features of the other structures in the immediate neighborhood.

10. DEMOLITION/RELOCATION

- (a) **Required Findings -- Demolition/Relocation.** The Board shall not grant Certificates of Appropriateness for the demolition or relocation of any property within a Historic District unless the Board finds that the removal or relocation of such building will not be detrimental to the historical or architectural character of the district. In making this determination, the Board shall consider:

- The historic or architectural significance of the structure;
- The importance of the structure to the integrity of the Historic District, the immediate vicinity, an area, or relationship to other structures;
- The difficulty or the impossibility of reproducing the structure because of its design, texture, material, detail or unique location;
- Whether the structure is one of the last remaining examples of its kind in the neighborhood, the county, or the region or is a good example of its type, or is part of an ensemble of historic buildings creating a neighborhood;
- Whether there are definite plans for reuse of the property if the proposed demolition is carried out, and what effect such plans will have on the architectural, cultural, historical, archaeological, social, aesthetic, or environmental character of the surrounding area.

(b) **Content of Applications.** All applications to demolish or remove a structure in a Historic District shall contain the following minimum information:

- The date the owner acquired the property, purchase price, and condition on date of acquisition;
- The number and types of adaptive uses of the property considered by the owner;
- Whether the property has been listed for sale, prices asked and offers received, if any;
- Description of the options currently held for the purchase of such property, including the price received for such option, the conditions placed upon such option and the date of expiration of such option;
- Replacement construction plans for the property in question and amounts expended upon such plans, and the dates of such expenditures;
- Financial proof of the ability to complete the replacement project, which may include but not be limited to a performance bond, a letter of credit, a trust for completion of improvements, or a letter of commitment from a financial institution; and
- Such other information as may reasonably be required by the Board.

- (c) **Post Demolition or Relocation Plans Required.** In no event shall the Board entertain any application for the demolition or relocation of any Historic Property unless the applicant also presents at the same time the post-demolition or post-relocation plans for the site.

11. CERTIFICATE OF ECONOMIC HARDSHIP

- (a) **Substantial Economic Hardship.** If the Board denies an application for a Certificate of Appropriateness, a property owner may apply for a Certificate of Economic Hardship. The purpose of the Certificate of Economic Hardship is to provide relief where the application of this chapter would otherwise impose a Substantial Economic Hardship.
- (b) **Burden of Proof.** The burden of proof rests on the applicant to show that the denial of the Certificate of Appropriateness will result in a Substantial Economic Hardship.
- (c) **Applications.** The applicant shall provide such information as may reasonably be required by the Board to establish the owner's claim of Substantial Economic Hardship. The data provided by the applicant must be substantiated by either professionals in an applicable field or by thorough documentation of how the information was obtained. The Board may request additional information from the applicant as necessary to make informed decisions. Certificates of Economic Hardship are granted only to the applicant and are not transferable.
- (d) **Standards for Consideration.** In making its determination, the Board may consider, but is not limited to, the following described factors, evidence, and testimony:
 - (1) Date property was acquired and status of the property under this ordinance at the time of acquisition, e.g., whether property was protected by this chapter, its condition etc.
 - (2) The structural soundness of the building, or any structures on the property and their suitability for rehabilitation.
 - (3) The current level of economic return on the property.
 - (4) The economic feasibility of rehabilitation or reuse of the existing property;
 - (5) The marketability of the property for sale or lease, considered in relation to any listing of the property for sale or lease, and the price asked and offers received, if any, within the previous two (2) years. This determination can include 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; and,
 - Any advertisements placed for the sale or rent of the property by the owner or applicant;
- (6) Comments and/or reports from any community organizations, preservation groups, other associations and private citizens that wish to comment on a submission made under the financial hardship provision; and
- (7) The extent to which the owner is responsible for his or her own economic hardship, if any, such as owner's failure to:
- Perform normal maintenance and repairs;
 - The failure to diligently solicit and retain tenants;
 - The failure to prescribe a rental amount which is reasonable;
 - The failure to provide normal tenant improvements; and,
 - The owner's purchase of the subject property after the enactment of the relevant provisions of this Chapter without making said purchase contingent upon the owner's first obtaining the approvals required by this chapter.
- (e) **Hearing.** The Board shall hold a public hearing as soon as practicable but not longer than forty-five (45) days of receipt of a completed application for a Certificate of Economic Hardship. Notice shall be provided in the same manner the Board uses for hearings on Certificates of Appropriateness. At the hearing, the Board shall take testimony presented by the owner and any other interested parties on the standards set forth above. The Board shall issue its decision within forty-five (45) days of the hearing.
- (1) If the Board fails to timely hold a public hearing, or having conducted a hearing fails to render a decision within forty-five days, the applications for a Certificate of Economic Hardship shall be deemed granted.

- (f) **Denial.** If the Board denies the application for a Certificate of Economic Hardship, the applicant shall be notified in writing and shall be provided a copy of the Board's final order.
- (g) **Initial Determination.** If the Board makes an initial determination that the applicant has presented a case which may establish substantial economic hardship, but finds that reasonable alternatives may exist which should be addressed by the applicant, the Board may delay its final order for a period of no more than six (6) months. The applicant shall be notified of the initial determination and shall be provided a copy of the Board's findings and reasons for the postponement.
- (h) **Postponement.** Within any period of postponement specified in subsection (g), the Board, in cooperation with the City, the Commission, and the Owner, may explore alternatives that will assure reasonable use of the property including, but not limited to, loans or grants from public or private sources, acquisition by purchase or eminent domain, building and safety code modifications to reduce cost of maintenance, restoration, rehabilitation or renovation, changes in applicable zoning regulations, or relaxation of the provisions of this chapter sufficient to allow reasonable use of the property.
- (i) **Issuance of Certificate.** Upon the expiration of the period of postponement, the Board shall issue the Certificate of Economic Hardship. The certificate may be subject to conditions including design guidelines for subsequent construction not inconsistent with the standards set forth in this chapter and the Board's design guidelines. The Certificate of Economic hardship shall be valid for a period of one hundred twenty (120) days from approval by the Board.

12. APPEALS

- (a) **Notice of Appeal.** Within fifteen (15) days after a final decision of the Board any person aggrieved by the decision of the Board may appeal the decision to the City Council by filing a notice and request for appeal with the City Clerk and serving notice of the appeal upon the Director of the Commission. Upon request, the Board shall provide forms suitable for the appeal.
- (b) **Record of Proceedings.** Upon receiving notice of appeal, the Board shall transmit to the Clerk of the Court a certified record of the proceedings in the case.
- (c) **Standard of Review.** The appeal shall be determined solely on the question of whether the Board, in rendering its decision, acted beyond the limits of its powers or abused its discretion.

13. MAINTENANCE OF PROPERTIES IN HISTORIC DISTRICTS

- (a) **Failure to Provide Ordinary Maintenance or Repair.** Except for Owner-occupied residential property, Owners of properties within Historic Districts shall not allow their buildings to deteriorate by failing to provide ordinary maintenance or repair. It shall be a violation of this ordinance for an Owner to fail to maintain any structure to prevent the deterioration of any exterior appurtenance or architectural features. At a minimum, Owners shall keep such structure or property, including all accessory structures, adequately maintained and repaired in accordance with the following:
- (1) *Foundation.* The building foundation system shall be maintained in a safe manner and capable of supporting the load which normal use may cause to be placed thereon;
 - (2) *Exterior Walls.* Every exterior wall shall be free of holes, breaks, loose or rotting boards or timbers, and any other conditions that might admit rain or dampness to the interior portions of the walls or to the occupied spaces of the building. All siding material shall be kept in repair;
 - (3) *Roofs.* Roofs shall be structurally sound and maintained in a safe manner and have no defects that might admit rain or cause dampness in the walls or interior portion of the building;
 - (4) *Stairs, Porches and Appurtenances.* Every outside stair, porch and any appurtenance thereto shall be safe to use and capable of supporting the load that normal use may cause to be placed thereon and shall be kept in sound condition and good repair;
 - (5) *Windows and Doors.* Every window, exterior door and basement or cellar door and hatchway shall be substantially weather-tight, watertight, and rodent proof and in good repair. Only material consistent with the design and architectural integrity of the building may be used to enclose windows or doorways. Every uncovered window shall be fully supplied with glass windowpanes or an approved substitute, which are without open cracks or holes. Window panes shall not be painted;
 - (6) *Hardware.* Every exterior door shall be provided with proper hardware and be maintained in good condition;
 - (7) *Door Frames.* Every exterior door shall fit reasonably well within its frame so as to substantially exclude rain and wind from entering the building; and,

- (8) *Protective Treatment.* All exterior wood surfaces, other than decay-resistant woods shall substantially be protected from the elements and decay by painting or other protective covering or treatment. All siding shall be weather resistant and watertight. All masonry joints shall be sufficiently tuck pointed to insure water and air tightness.
- (b) **Vacant Buildings.** In the case of unoccupied buildings, a Mothballing Plan approved by the Board in accordance with Secretary of Interior's Standards may be used in lieu of the standards contained in this section.
- (c) **Review and Inspection Authority.** Authority to assure compliance with the standards, and, where required by other provisions of the City's building codes, to approve all improvements, alterations, repairs, rehabilitation or painting of existing structures and new construction is vested in the building official of the City of mobile or his designee, utilizing the City's Environmental Court.
- (d) **Time for Compliance.** The Building Inspector shall allow owners a reasonable period of time, but not more than two (2) years, to bring their properties into compliance with the standards prescribed herein. In the event repairs are not timely completed, or there is no attempt to correct the problems, the inspector may issue a Municipal Offense Ticket.
- (e) **Affirmation of Existing Building and Zoning Codes.** Nothing in this Ordinance shall be construed as to exempt property owners of occupied buildings from complying with existing City building and zoning codes, nor to prevent any property owner from making any use of his property not prohibited by other statutes, ordinances or regulations. Nothing herein shall limit, modify, supersede or restrict any other existing law or regulation governing buildings, the issuance of building permits, the inspection of buildings or any other law or regulation.

14. PENALTY PROVISIONS

- (a) **Criminal Penalties.** It shall be unlawful for an Owner of property, any portion of which is contained within a Historic District to:
 - (1) make or permit to be made any Material Change without first obtaining Certificate of Appropriateness as required by this Chapter; or
 - (2) fail to provide for ordinary maintenance and repair as required by section 13 of this Chapter.
 - (3) All violations shall constitute a misdemeanor and shall be punished in the same manner and in accordance with the schedule of fines and other

procedures set out in Chapter 1, Mobile City Code.

- (b) **Other Remedies.** The Commission, the Architectural Review Board, and/or the City may institute any appropriate action or proceeding in a court of competent jurisdiction to prevent any Material Change to any property, any portion of which is contained in a Historic District, except in compliance with the provisions of this Chapter, or to prevent any illegal act or conduct with respect to such Historic District, and to recover any damages that may have been caused by the violation of this Ordinance.

15. SEVERABILITY

In the event that any section, subsection, sentence, clause or phrase of this Ordinance shall be declared or adjudged invalid or unconstitutional, such adjudication shall in no manner affect the other sections, sentences, clauses or phrases of this Ordinance, which shall remain in full force and effect, as if the section, subsection, sentence, clause or phrase so declared or adjudged invalid or unconstitutional were not originally a part thereof.

16. REPEALER

All ordinances and parts of ordinances in conflict with this Ordinance are hereby repealed, including Chapter 44, sections 44-71 through 44-173.

17. EFFECTIVE DATE

This Ordinance shall become effective on December 1, 2002 and its provisions shall apply to any application that is pending at the time of its adoption.

ATTEST:

City Clerk