

01-023

2023

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

Sponsored by: William S. Stimpson, Mayor

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:

Sec. 44-70. FINDINGS AND PURPOSE.

(a) The City of Mobile ("City") 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 ("Commission") and to adopt laws recognizing and protecting historic structures and historic neighborhoods.

(b) In 1989, the State enacted legislation authorizing all municipalities to adopt ordinances to establish historic development commissions and architectural review boards, and to promote educational, cultural, economic and general welfare of Alabama municipalities through preservation and protection of historic resources. (Alabama Code Section 11-68-1 through 11-68-15).

(c) Alabama Code Section 11-68-14 additionally authorizes the City to grant the Commission and Architectural Review Board ("Board") additional powers set forth in Alabama Code Title 11 Chapter 68.

(d) The City Council also finds and determines that:

- (1) Many significant historic structures in the City have been lost and the continued preservation of these properties promotes the public health, safety and welfare of the City;
- (2) 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;

- (3) 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**
- (4) 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.**

(e) The City Council of the City of Mobile hereby adopts a new Chapter 44 Article IV of the City Code to supersede and replace the current version.

NOW, THEREFORE, in consideration of these findings, the Council hereby adopts anew and *in toto* this Article IV, Chapter 44 of the Mobile City Code as follows.

Sec. 44-71. DEFINITIONS.

- (a) "Board" or "ARB" – means the Architectural Review Board established pursuant to this Chapter.**
- (b) "Board Member" – means a person appointed to the Architectural Review Board pursuant to this Chapter.**
- (c) "Building Inspector" – means the City's designated Building Inspector or his or her designee**
- (d) "Certificate of Appropriateness" – means a document evidencing approval by the Architectural Review Board to make a Material Change or repair in the appearance of a designated Historic Property or of a property located within a designated local Historic District. A Certificate of Appropriateness is also required for demolition of a structure within a Historic District.**
- (e) "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 44-80.**
- (f) "Certified Local Government ("CLG")" – means a local government certified by the National Park Service and the Alabama Historical Commission to participate in the federal Historic Preservation Program and eligible to receive**

federal technical assistance and funding for preservation activities. The City of Mobile is a Certified Local Government.

(g) "City" – means the City of Mobile, an Alabama municipal corporation.

(h) "City Council" – means the elected members of the City Council of Mobile, Alabama.

(i) "Commission" – means the Mobile Historic Development Commission as established pursuant to this Chapter.

(j) "Commissioner" or "Commission Member" – means a person appointed to the Commission pursuant to this Chapter.

(k) "Conflict of Interest" – means a conflict on the part of a Board Member or Commissioner 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 Commissioner 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.

(l) "Contributing Property" – means a building, structure, site, or object recognized as adding to the historic significance of a district.

(m) "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.

(n) "Exterior Environmental Features" – means all 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.

(o) "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 a Commission or Board Member.

(p) "Guidelines" – means the design standards adopted pursuant to this chapter in compliance with, but not limited to, the Secretary of the Interior's Standards for Preservation, Rehabilitation, Restoration and Reconstruction.

(q) "Local Historic District" – means a geographically definable area designated by the City Council as a local Historic District, including all such districts existing as of the date of this chapter and any districts subsequently designated by the City Council as a local Historic District."

(r) "Historic Property" – means an individual building, structure, site, or object including the adjacent area necessary for the proper appreciation thereof listed in the "National Register of Historic Places," located in a local Historic District or designated by the City Council as a Historic Property.

(s) "Historic Site" – means a parcel of real property listed in the "National Register of Historic Places," located in a local Historic District or designated by the City Council as a Historic Property.

(t) "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, or landscape feature of a property within a local Historic District, or designated by the City Council as a Historic Property 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 removal or alteration of any architectural features, details or elements, including selection of paint colors;

(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 local Historic District, including walls, fences, steps, drives and pavements or other appurtenant features;

(6) Any exterior work that must be permitted by the City; or

(7) The painting of originally unpainted surfaces.

(u) "Mayor" – means the Mayor of the City of Mobile.

(v) "Non-Contributing Property" – means a building, structure, site, or object not recognized as adding to the historic significance of a district.

(w) "Owner" – means the holder of the fee simple title as revealed on the relevant property tax rolls and in probate court records, 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.

(x) "Staff" – means City of Mobile employees designated by the Mayor who provide technical assistance and support to the Commission and Board in the carrying out of their duties and responsibilities as set out in this Chapter.

(y) "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) the owner would be unfairly penalized given that the owner did not create the conditions at issue.

SEC. 44-72. HISTORIC PRESERVATION COMMISSION CREATED.

- (a) Creation of the Commission. Pursuant to Ala. Codes 11-68-1, *et seq.* (1975) 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. 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 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 thirteen (13) members. Commissioners shall be bona fide residents of the City of Mobile and shall 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 Local Historic District. No elected official shall serve on the Commission. A minimum of seven (7) members of the Commission shall reside or own property in a Local Historic District. The remaining six (6) Members of the Commission may reside or own property in a local Historic District but such shall not be required for their nomination by the Mayor. Members of the Commission shall be nominated by the Mayor, with the Mayor to nominate one Commissioner from each of the Local Historic Districts existing from time to time, with representation of the Local Historic Districts not to exceed seven (7) in total, and shall be appointed by the City Council. Nomination and appointment of members of the Commission shall be made so as to ensure that the Commission will be composed of persons with as much of the training and experience identified in this section as is possible. In making such appointments, the Mayor shall solicit non-binding recommendations of potential Commissioners from the following:

Recommendations of Additional Commission Members:

American Institute of Architects, Mobile Chapter
Architectural Review Board of the City of Mobile
Ashland Place Historic District
Bragg Mitchell Mansion
Church Street East Historic District
Church Street East Historic District Neighborhood Association
City of Mobile Department of Urban Development
DeTonti Square Historic District
DeTonti Square Neighborhood Association
Friends of Magnolia Cemetery, Inc.

**Friends of Mobile Historic Development
Friends of Museum of Mobile
Friends of Old Mobile, Inc.
Historic Mobile Preservation Society
Leinkauf Historic District
Leinkauf Historic District Neighborhood Organization
Lower Dauphin Street Commercial Historic District
Main Street Mobile, Inc.
Mobile Area Association of Realtors, Inc.
Mobile Area Chamber of Commerce
Mobile Medical Museum
National Society of Colonial Dames of America in Alabama
Conde/Charlotte Museum
Oakleigh Garden District Society
Oakleigh Garden Historic District
Old Dauphin Way Association
Old Dauphin Way Historic District
Richards DAR House Museum**

Such additional local Historic Districts as shall be created after the Effective Date.

- (d) Terms. Members of the Commission shall serve three- (3) year, overlapping terms, with two (2) Members to be initially appointed for a one (1) year term, two (2) Members to be initially appointed for a two (2) year term and the remaining initial Members to be appointed for a three (3) year term; thereafter, as terms expire for such initial Members, subsequent Members shall be appointed for full three (3) year terms. All appointments shall be made per Section 44-72 (c). Terms shall begin on January 1 of the appointment year and end on December 31 of the termination year. Upon expiration of the term of a Commissioner that Commissioner shall not be allowed to continue to serve and shall have no further powers or duties hereunder. Members of the Commission may be reappointed to the Commission.**

(1) If a Member is absent, without excuse, from three (3) regular meetings of the Commission in the calendar year, the Mayor and City Council shall be notified so that a qualified replacement may be appointed as per Section 44-72(c).

(2) Any vacancy occurring on the Commission other than by expiration of term shall be filled for the unexpired term of such member as provided in Section 44-

72(c).

(3) Members of the Commission may be removed for cause by the City Council.

(e) 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.

(f) 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.

(g) Officers. Members of the Commission shall elect a President and a Vice President and such other officers as the Commissioners deem necessary.

Sec. 44-73. RULES, POWERS AND DUTIES OF THE COMMISSION.

(a) Rules. The Commission shall adopt, and may amend from time to time, such policies and bylaws as it deems necessary and proper to govern its operations and to fulfill its duties and responsibilities under this Chapter. The Commission's bylaws shall constitute a public record and shall be furnished to the City Clerk. At a minimum, the bylaws shall:

(1) Specify the number of members needed for a quorum, but in no event less than fifty percent (50%);

(2) Provide that its meetings be public and occur at least quarterly;

(3) Provide for written notice of its meetings (by electronic transmission or US Mail) and furnish a copy of its meeting schedule to the City Clerk, Mayor, and Commission Members and post such notices on the City's web page;

(4) Require that a public record be kept of the Commission's minutes, resolutions, proceedings and actions;

(5) Require Commissioners to attend at least one informational or educational meeting per year pertaining to historic preservation. Such meetings may include those sponsored by the Alabama Historical Commission, the National Trust for Historic Preservation, National Alliance of Preservation Commissions, Alabama

Trust for Historic Preservation, the Commission Preservation Leadership Class or other equivalent preservation organization. Commissioners shall also attend an orientation session offered by the Staff within three months of their appointment.

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

- (1) Preserve and protect buildings, structures and sites of historic and architectural value in the local Historic Districts designated pursuant to this chapter;**
- (2) Prepare a survey of all property within the city limits of the City of Mobile;**
- (3) Recommend to the City Council buildings, structures, sites, and districts for designation as historic properties or local districts.**
- (4) Restore, protect and preserve any historic properties acquired by the City or the Commission;**
- (5) Promote acquisition of façade and conservation easements by the City or by the Commission;**
- (6) Develop and conduct educational programs on historic projects and districts designated pursuant to this chapter and on historic preservation subjects;**
- (7) Make such investigations and studies of matters relating to historic preservation as the City or the Commission, respectively, deem necessary and appropriate for the purposes of this chapter provided that such activities by the Commission shall not cause the City to expend funds or incur obligations without the City's express agreement;**
- (8) Apply for funds to carry out the purposes and responsibilities of the commission from municipal, county, state, federal, and private agencies and sources;**
- (9) 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;**

(10) Investigate, survey and process nominations of properties to the National Register of Historic Places;

(11) Investigate, survey and process applications for certification of Historic Properties for tax credits for preservation expenditures;

(12) Contract with other municipal, county, state, federal, and private agencies and organizations to perform historic preservation related functions;

(13) Administer one or more awards programs recognizing historic structures and persons involved in preservation;

(14) Review and make comments to the Alabama Historical Commission concerning the nomination of properties within its jurisdiction to the National Register of Historic Places;

(15) Exercise such further powers as the Commission may deem reasonably necessary and proper to carry out the purposes, responsibilities and powers of the Commission.

Sec. 44-74. RECOMMENDATION AND DESIGNATION OF HISTORIC DISTRICTS AND PROPERTIES

(a) Criteria for Determining a local Historic District. A local Historic District is a geographically definable area identified in an ordinance adopted by the City Council, 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:

(1) Contributing to the historic character of the district; or

(2) Not Contributing to the historic character of the district.

(c) Criteria for Determining a Designated Historic Property. 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, state, or 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.

A historic property listed in the National Register but outside a Local Historic District identified in an ordinance adopted by the City Council is not considered a "historic property" for purposes of the City Code, including, but not limited to, its zoning ordinance.

(d) Recommendation. The Commission shall compile and collect information and conduct surveys of historical 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 local Historic District or as an individually designated Historic Property. The recommendation shall be made in accordance with the rules and regulations of

the Alabama Historical Commission.

(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:

(i) Lists each property in a proposed Historic District;

(ii) Requires a Certificate of Appropriateness prior to any Material Change in appearance of a property in a local Historic District; and

(iii) requires the district be shown on the City's official zoning map.

(f) Required Public Hearings. The Commission shall hold a public hearing to allow for public comments on any proposed ordinance for the designation of any local Historic District or Historic Property. Notice of the hearing shall be published on the City's web page which must be done at least fifteen days before the hearing, and written notice of the hearing shall be mailed by the Commission to all owners of properties proposed for designation. All such notices shall be published or mailed not less than ten (10) nor more than twenty (20) days prior to the date set for the public hearing. A notice sent via regular U.S. Mail to the last known owner of the property shown on the Mobile Revenue Commissioner's tax rolls shall constitute legal notice under this Chapter.

(g) Recommendations on Proposed Designations: A recommendation to affirm, modify or withdraw the proposed ordinance for designation shall be made by the Commission within forty-five (45) days following the Public Hearing and shall be in the form of a resolution to the City Council.

(h) 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.

(i) Notification of Adoption of Ordinance for Designation. Within thirty (30) days following the adoption of the ordinance for a designation by the City Council, the owners and occupants of each designated Historic Property and 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 from the Architectural Review Board prior to undertaking any Material Change in appearance of the Historic Property designated or within the local Historic District designated. A notice sent via the United States Mail to the last known owner of the property shown on the Mobile County Revenue Commissioner's tax rolls shall constitute legal notification under this Chapter.

(j) Notification of Other Agencies Regarding Designation. The Commission shall notify all municipal agencies within the City in writing of the ordinance for designation.

(k) Seller Disclosure of Historic Designation. The fact that a property is located within a local Historic District and subject to the restrictions of this Chapter shall be disclosed by the seller upon sale of the property.

Sec. 44-75. ARCHITECTURAL REVIEW BOARD CREATED.

- (a) Creation of the Board.** Pursuant to Ala. Code Sec. 11-68-13 (a) (1975) ; there is hereby created an Architectural Review Board to perform the duties and responsibilities set forth in Ala. Code Sections 11-68-9 through 11-68-12 (1975), as those sections may be amended from time to time, and to have the power and perform the duties as provided in Section 44-76 of this Chapter.
- (b) Composition.** The Board shall be comprised of nine (9) Board Members who shall have demonstrated training or experience in the fields of history, architecture, architectural history, urban planning, archaeology or law. Board Members must be residents of the City. No member of the City Council or the Mayor shall serve on the Board.

(c) Appointment. Board Members shall be nominated by the Mayor from persons qualified per Mobile City Code Sec. 44-75 (b) and appointed by the City Council. In making such nominations, the Mayor shall solicit non-binding recommendations of potential ARB Board Members from the following:

(1) The Historic Mobile Preservation Society;

(2) The Commission in consultation with the historic neighborhood associations; and

(3) The Mobile Chapter of the American Institute of Architects

(d) Terms. Members of the Board shall serve three- (3) year, overlapping terms, with two (2) Board Members to be initially appointed for a one (1) year term, and the remaining initial Board Members to be appointed for a three (3) year term; thereafter, as terms expire for such initial Members, subsequent Board Members shall be appointed for full three (3) year terms. All appointments shall be made per Section 44-75 (c). Terms shall begin on January 1 of the appointment year and end on December 31 of the termination year. Members may be reappointed thereafter to the Board in accordance with Section 44-75(c).

(e) Compensation. Board Members shall serve without compensation, but may be reimbursed for expenses incurred on behalf of the Board and in accordance with the rules and regulations for the reimbursement of expenses adopted by the Board.

(f) Removal and Vacancy. Board Members may be removed for 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 Board Member replaced.

(g) Conflict of Interest. No Board 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.

Sec. 44-76. RULES, POWERS AND DUTIES OF THE ARCHITECTURAL REVIEW BOARD

(a) Rules and Bylaws. The Board shall adopt and may amend from time to time

such rules of procedure and bylaws as it deems necessary and proper to govern its operations and to fulfill its duties and responsibilities under this Chapter. The rules and bylaws shall constitute a public record and copies shall be furnished to the City Clerk. The rules and bylaws 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;

(2) Provide for notice of its meetings to the applicants, Board Members, and the City Clerk;

(3) Provide that minutes of all decisions and actions of the Board, including the reasons for making these decisions, be kept on file and available for public inspection;

(4) Require the annual election of a chairman and vice chairman and such other officers as the Board deems necessary;

(5) Specify the number of Board Members needed for a quorum; and

(6) Provide for design assistance through a Design Review Committee.

(b) Powers and Duties of the Board and Staff. The Board, supported by Staff, is hereby authorized to:

(1) Apply general design standards adopted by the Commission in considering the granting and denial of Certificates of Appropriateness;

(2) Adopt rules and regulations governing the procedure for submission and consideration of applications for Certificates of Appropriateness and Certificates of Economic Hardship;

(3) Review applications for Certificates of Appropriateness and Certificates of Economic Hardship and grant, conditionally grant, assign to a design review committee, hold over for further action, or deny same in accordance with the provisions of this Chapter and the guidelines;

(4) Prescribe a reasonable fee to help defray the costs of processing the application;

- (5) Seek technical advice from outside its membership on any application;**
- (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, the National Alliance of Preservation Commissions, the Alabama Trust for Historic Preservation, the Commission's Preservation Leadership Class or other training approved by the Commission. One of the two meetings should be regional or statewide;**
- (7) Receive, review and assess each application for a Certificate of Appropriateness to determine if the application qualifies for Expedited Review by City staff. Should the application be found to so qualify, designated City staff shall conduct the Expedited Review to determine whether the application adheres to the design guidelines and does not impair the architectural integrity of the building, the property, or the surrounding neighborhood. If an application does not qualify for Expedited Review, Staff shall prepare an analysis of the application and present it to the applicant and to the Board, including any recommendations, for full review;**
- (8) Award a Certificate of Appropriateness to applicants who duly qualify for such;**
- (9) Retain the records of the Board and all Expedited Reviews shall be retained in such a manner that decisions are secure and readily available to the public and cataloged for easy reference.**

Sec. 44-77. CERTIFICATES OF APPROPRIATENESS.

(a) Certificate of Appropriateness Required. After the designation by ordinance of any local Historic District, no exterior Material Change shall be made on any property or site, any portion of which is contained within a local Historic District, nor shall any building or structure in a local Historic District be erected or demolished, and no Material Change of such property or 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, except that no Certificate of Appropriateness shall be required by the City for the demolition of all or part of a structure, building or other property deemed to be a public nuisance and ordered to be demolished by the City Council.

(b) Signs on Historic Properties or within Historic Districts. Signs shall be considered as structures, and no sign in a local Historic District or along Government Street from Water Street to Dauphin Island Parkway shall be demolished, changed or erected unless and until the Board approves a Certificate of Appropriateness in accordance with design guidelines adopted by the Commission.

(c) Alterations or Demolitions of Public Property within Local Historic Districts or Public Property which has been designated as a Historic Property. The requirement of a Certificate of Appropriateness shall apply to any public property which has been designated a Historic Property or which is contained in a local Historic District, excepting those addressed in Section 11-68-15 of the Alabama Code, and shall apply to actions by public authorities which involve Historic Properties and properties within local 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. At such time as the City issues its notice to the property owner that such property is in violation of the City's Unsafe Building Act, a copy of such notice shall be provided to the Commission.

(d) Demolition by Neglect. Demolition by neglect and the failure to maintain a Historic Property or a structure within a local Historic District shall constitute a Material Change for which a Certificate of Appropriateness is required.

(e) Paint Colors. The Board shall review paint color and placement. The painting of originally unpainted surfaces shall require a Certificate of Appropriateness.

(f) Interior Alterations. In reviewing 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 in understanding the exterior design scheme.

(g) Prior to Receiving Building Permit. A Certificate of Appropriateness must be obtained prior to an Applicant receiving a building permit from the City of Mobile for any work to the outside of any property located within a local Historic District.

(h) Enforcement of Inspections. For adherence to the requirements of this

Chapter, the reporting of conditions and the enforcement of punitive actions when necessary shall be administered by the Staff who will receive the administrative support of the City of Mobile. Included within its enforcement authority, the City shall have all rights and remedies specified by law.

Sec. 44-78. 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 Sec. 44-79 (a-b).
- (b) Expedited Review. Staff shall assess applications and execute Expedited Review on items approved by the Commission and found to meet the design guidelines. Expedited review shall be approved for the following minor projects, routine maintenance and minor alterations, including awnings, in-kind repairs, fencing, painting, repair and resurfacing of existing driveways and sidewalks; and accessory structures utilizing stock designs previously approved by the Board; and for those other instances that may be allowed by resolution. Routine maintenance shall include ordinary maintenance or repair of any exterior architectural or environmental feature to correct deterioration, decay or damage, or to sustain the existing form, while not impairing the historic integrity of the building, the property, or the neighborhood.
- (c) Hearings on Applications. Except for matters considered under procedures for Expedited Review, applications for Certificates of Appropriateness shall be considered by the Board at public meetings, held at least once a month, provided there is business before the Board, at a time and place set out in the rules of the Board. All applicants, owners of the property in the local Historic District, and other interested parties shall be afforded a reasonable opportunity to be heard on the application.
- (d) 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 or Staff may take such further action as may reasonably be required to inform the owners of any property likely to be affected by the application.

(e) Deadline for Approval or Rejection of Application. Failure of the Board to act within forty-five (45) days of submission shall constitute approval, and no other evidence of approval shall be needed. Upon request, the Board shall notify the building official that a permit may be issued for the work specified in the application. An applicant requesting a delay or a Board-adopted motion to holdover an application shall relieve the Board of the 45-day deadline. An application may be amended at the meeting to remedy any problems with the consent of the applicant and the Board.

(f) Basis for Decision. In considering an application the Board shall consider two criteria:

(1) Does the request impair the historic integrity of the building;

(2) Does the request impair the historic integrity of the neighborhood.

If the answer to both questions is negative, the Board shall grant a Certificate of Appropriateness. If the answer to either or both questions is affirmative, the Board shall deny the application, approve the application with conditions, assign the application to a design review committee, or hold over the request for further information or action.

(g) Notice of Decision. Notice of the Board's decision shall be sent to the applicant and all other persons who have requested such notice in writing filed with the Board.

(h) 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. Resubmission of the same application is not allowed for a period of six months following the meeting at which the request was denied. However, the applicant may make modifications to the plans and resubmit the application at any time provided the modifications are significant in addressing the concerns of the Board.

(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.

(i) 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 are renewable by Staff for one (1) additional year.

(j) 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 City shall issue a cease-and-desist order and all work shall cease.

Sec. 44-79. STANDARD OF REVIEW.

(a) Required Findings for Approval. The Board shall not approve any application / or issue a Certificate of Appropriateness unless it finds that the proposed change, erection or demolition conforms to the design guidelines; is compatible with the character of the Historic Property or local Historic District; and does not detract from the value of the Historic Property or local Historic District. In making this determination, the Board shall consider, in addition to any other pertinent factors, the historical and architectural features involved and the proposed change thereto, and the relationship thereof, to the exterior architectural style, and pertinent features of other structures in the immediate neighborhood.

(b) New Structures in a Local Historic District. In the case of a proposed new building, the Board shall not approve any application or issue a Certificate of Appropriateness unless it finds 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 local Historic District in which it is to be located.

Sec. 44-80. DEMOLITION/RELOCATION.

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

- (1) The historical or architectural significance of the structure;**
 - (2) The importance of the structure to the integrity of the local Historic District, the immediate vicinity or area, or relationship to other structures;**
 - (3) The difficulty or the impossibility of reproducing the structure because of its design, texture, material, detail or unique location;**
 - (4) 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; and**
 - (5) 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 Historic Property or a structure in a local Historic District shall contain the following minimum information:**
- (1) The date the owner acquired the property, purchase price, and condition on date of acquisition;**
 - (2) The number and types of adaptive uses of the property considered by the owner;**
 - (3) Whether the property has been listed for sale, prices asked and offers received, if any;**
 - (4) 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;**
 - (5) Replacement construction plans for the property in question, amounts expended upon such plans, and the dates of such expenditures;**
 - (6) 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

(7) Such other information as may reasonably be required by the Board. With respect to applications for relocation of a building, the required information shall clearly define the anticipated impact on both the present site and the future site.

(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 or property in a local Historic District, unless the applicant also presents at the same time the post-demolition or post-relocation plans for the site.

Sec. 44-81. 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 factors, evidence, and testimony:

(1) The date the property was acquired and status of the property under this Chapter at the time of acquisition, e.g., whether the property was protected by this Chapter or earlier versions of 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 or structures;

(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. Evidence of this factor shall include testimony and relevant documents regarding:

- (i) Any real estate broker or firm engaged to sell or lease the property;
- (ii) Reasonableness of the price or rent sought by the applicant; and,
- (iii) Any advertisements placed for the sale or lease 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 economic hardship provision; and

(7) The extent to which the owner is responsible for his or her own economic hardship, if any, such as the owner's:

- (i) Failure to perform normal maintenance and repairs;
- (ii) Failure to diligently solicit and retain tenants;
- (iii) Failure to prescribe a rental amount which is reasonable;
- (iv) Failure to provide normal tenant improvements; and,
- (v) Purchase of the subject property without making said purchase contingent upon first obtaining the approvals required by this Chapter or earlier versions of this chapter.

(e) Hearing. The Board shall hold a public hearing as soon as practicable but not longer than forty-five (45) days after 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. If the Board fails to timely hold a public hearing or, having conducted a hearing, fails to render a decision within forty-five (45) days, the application 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 determination and a Certificate of Appropriateness shall not be issued.

(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 pursued by the applicant, the Board may delay its final determination 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 the cost of maintenance, restoration, rehabilitation or renovation or changes in applicable zoning regulations 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 adherence to the design guidelines for subsequent construction. The Certificate of Economic Hardship shall be valid for a period of one hundred twenty (120) days from approval by the Board.

Sec. 44-82. APPEALS.

(a) Notice of Appeal. Within fifteen (15) days after a final decision of the Board, any person having a request for a Certificate of Appropriateness denied by the Board may appeal the decision to the Circuit Court of Mobile County.

(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.

Sec. 44-83. MAINTENANCE OF HISTORIC PROPERTIES AND PROPERTIES IN HISTORIC DISTRICTS.

(a) **Failure to Provide Ordinary Maintenance or Repair.** Owners of Historic Properties and/or properties within local Historic Districts shall not allow their buildings to deteriorate by failing to provide ordinary maintenance or repair. It shall be a violation of this Chapter for an Owner to fail to maintain any structure or 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 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 vermin, 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 condition and have no defects that might admit vermin, 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, rodent proof and in good repair. Only material consistent with the design and architectural integrity of the building shall be used to enclose windows or doorways. Every uncovered window shall be fully supplied with glass window panes 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 be substantially 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 may be used in lieu of the standards contained in this section.

(c) **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 citation for violation of a municipal ordinance or file a criminal Complaint with a Magistrate or a civil Complaint with the Clerk of the Circuit Court.

(d) **Affirmation of Existing Building and Zoning Codes.** Nothing in this Chapter 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 or her 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.

Sec. 44-84. PENALTY PROVISIONS.

(a) **Criminal Penalties.** It shall be unlawful for an owner of a Historic Property or any property, any portion of which is contained within a local Historic

District, to:

- (1) Make or permit to be made any Material Change without first obtaining a Certificate of Appropriateness as required by this Chapter; or**
- (2) violate any other provision of this Chapter.**

(b) Fines. All violations shall be punished by a fine of \$100, plus costs and fees of court. Any person convicted of a second violation of this Chapter within a five-year period shall be punished by a fine of \$500 plus costs and fees of court. Every day any violation of this Chapter shall continue shall constitute a separate offense.

(c) Other Remedies. The Commission 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 local Historic District; or to prevent any illegal act or conduct with respect to such Historic Property or local Historic District, and to recover any damages that may have been caused by the violation of this Chapter.

Sec. 44-85. SEVERABILITY.

In the event that any section, subsection, sentence, clause or phrase of this Chapter 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.

Sec. 44-86. REPEALER.

All ordinances and parts of ordinances in conflict with this Ordinance are hereby repealed.

Sec. 44-87. EFFECTIVE DATE.

This Ordinance shall become effective upon July 14, 2023 ("Effective Date"), and its provisions shall apply to any application that is pending on the Effective Date.

ADOPTED: MAY 09 2023


City Clerk

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