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

## SECTION I. STATEMENT OF PURPOSE

The City of Tupelo hereby recognizes that it is known for its extensive and concentrated collection of prominent historical and architectural buildings, as well as urban groupings of historic public, commercial, and residential buildings, and that Tupelo's unique qualities have proven increasingly attractive to residents, business interests, and tourists.

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

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

A. Protect, enhance and perpetuate resources which represent distinctive and significant elements of the City of Tupelo's historical, cultural, social, economic, political, archaeological, and architectural identity;

B. Insure the harmonious, orderly, and efficient growth and development of the City of Tupelo;

C. Strengthen civic pride and cultural stability through neighborhood conservation;

D. Stabilize the economy of the City of Tupelo through the continued use, preservation, and revitalization of its resources;

E. Protect and enhance the City of Tupelo's attractions to tourists and visitors and the support and stimulus to business and industry thereby provided;

F. Promote the use of resources for the education, pleasure, and welfare of the people of the City of Tupelo.

G. Provide a review process for the preservation and appropriate development of the City of Tupelo's resources.

## SECTION II DEFINITIONS

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

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

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

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

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

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

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

City of Tupelo: The City of Tupelo as represented by the Mayor and City Council.

Construction: Work which is neither alteration nor demolition. Essentially, it is the erection of a new structure which did not previously exist, even if such a structure is partially joined to an existing structure.

Demolition: The intentional removal of a structure within a local historic district or on a landmark site or which has been designated as a landmark.

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

Design review guidelines: As adopted by the local historic preservation commission, shall be in a written form designed to inform local property owners about historical architectural styles

prevalent in a community and to recommend preferred treatments and discourage treatments that would compromise the architectural integrity of structures in a historic district or on a landmark site or individually designated as landmarks.

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

Historic district: A group of two (2) or more tax parcels and their structures, and may be an entire neighborhood of structures linked by historical association or historical development. It is not necessary that all structures within a historic district share the same primary architectural style or be from the same primary historical period. A historic district may also include both commercial and residential structures, and may include structures covered by two (2) or more zoning classifications. A historic district may include both contributing and noncontributing structures. A historic district is designated by the commission and approved by the City of Tupelo through an ordinance.

Historic landmark: A structure of exceptional individual significance, and its historically associated land, which typically could not be included within a local historic district or other appropriate setting, a historic landmark is designated by the commission and approved by the City of Tupelo through an ordinance.

Historic preservation commission: The City of Tupelo Historic Preservation Commission, is a local historic preservation commission established to advise the local government on matters relating to historic preservation, including the designation of historic districts, landmarks and landmark sites, and which may be empowered to review applications for permits for alteration, construction, demolition, relocation or subdivision for structures in historic districts or on landmark sites or designated as landmarks.

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

Landmark site: A location where a primary architectural or historical resource formerly stood or a significant historic event took place or an important archeological resource remains. For the purposes of this ordinance, a landmark site encompasses prehistoric or historic sites on unimproved or improved land. A historic landmark is designated by the commission and approved by the City of Tupelo through an ordinance

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

National Historic Landmark: A district, site. building, structure, and/or object that has been formally designated as a National Historic Landmark by the Secretary of the Interior and

possesses exceptional value or quality in illustrating or interpreting the heritage of the United States in history, architecture, archaeology, engineering, and culture and that possesses a high degree of integrity of location, design, setting, materials, workmanship, feeling, and association. National Historic Landmarks are automatically listed in the National Register.

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

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

Ordinary Repair or Maintenance: Work done to prevent deterioration of a resource or any part thereof by returning the resource as nearly as practical to its condition prior to such deterioration, decay, or damage.

Owner of Record: The owner of a parcel of land, improved or unimproved, reflected on the City of Tupelo tax roll and in county deed records.

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

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

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

Secretary of the Interior's Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings: A federal document stating standards and guidelines for the appropriate rehabilitation and preservation of historic buildings.

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

State Historic Preservation Office: The Historic Preservation Division of the Mississippi Department of Archives and History.

State Historic Preservation officer: The director of the Mississippi Department of Archives and History.

Structure: A man-made object and typically will be visible because of portions which exist above grade. Structures built during the historic period, 1700 forward, may in some instances not be visible above grade if they are cellars, cisterns, icehouses or similar objects which by their nature are intended to be built into the ground. A structure includes both interior components and visible exterior surfaces, as well as attached elements such as signs and related features such as walks, walls, fences and other nearby secondary structures or landmark features.

Subdistricts: Discrete areas within a larger historic district within which separate design guidelines are appropriate and that may be created to recognize different zoning. classifications or historic development patterns which have caused adjacent historic areas to develop at different times.

Subdivision: Any change in the boundaries of a single tax parcel, whether the change results in expansion or reduction or a boundary relocation.

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

Survey of resources: The documentation, by historical research or a photographic record, of structures of historical interest within a specified area or jurisdiction or of existing structures within a proposed historic district.

Unauthorized demolition: The deliberate demolition of a historic structure without prior review and approval by a local historic preservation commission or a governing authority to which such a commission has made a recommendation.

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

## SECTION III. CITY OF TUPELO PRESERVATION COMMISSION, COMPOSITION, AND TERMS

By virtue of Miss. Code Ann. §§39-13-5, 39-15-7 and 39-13-9 (1972), as amended, the City of Tupelo is authorized to establish a preservation commission to preserve, promote, and develop the City of Tupelo's historical resources and to advise the City of Tupelo on the designation of historic districts, landmarks, and landmark sites and perform such other functions as may be provided by law.

All members of the commission are appointed by the City of Tupelo and shall serve at the will and pleasure of the City of Tupelo and shall serve staggered terms. The commission shall consist of not fewer than five (5) members nor more than nine (9) members *(see Section 39-13-5, Mississippi Code of 1972, as amended).*

All members of the commission shall serve for terms established by the City of Tupelo and shall be eligible for reappointment. All commission members shall have a demonstrated knowledge of or interest, competence, or expertise in historic preservation. To the extent available in the community, the City of Tupelo shall appoint professional members from the primary historic preservation-related disciplines such as urban planning, American studies, American civilization, cultural geography, cultural anthropology, interior design, law, and related fields. The City of Tupelo shall document a good faith effort to locate professionals to serve on the commission before appointing lay members. Also the City of Tupelo shall document a good faith effort to locate residents of the municipality to serve on the commission before appointing individuals who own property within the boundary of the municipality or are in the service of an employer located within the boundary of the municipality (*see Section 39-13-5, Mississippi Code of 1972, as amended*).

A. The City of Tupelo shall publish at least one notice in a newspaper in its jurisdiction to solicit responses from citizens who are professionals in the related fields of historic preservation and who are interested in serving on the commission. The City of Tupelo may contact known professionals and interested lay persons and invite submission of their qualifications in written resume form.

B. The City of Tupelo shall provide three (3) weeks (15 working days) for responses. Respondents shall submit, in written resume form, information concerning their demonstrated interest, competence, knowledge, or expertise. Such information should include, but is not limited to, educational and professional background, membership in appropriate preservation organizations, subscriptions to suitable professional publications, volunteer work, attendance at workshops and seminars, and other relevant experience.

C. When the City of Tupelo has collected adequate information concerning the potential appointees to the commission, it shall decide, with the assistance of the State Historic Preservation Office, if desired, which candidates are qualified for appointment to the commission.

## SECTION IV. POWERS OF THE COMMISSION

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

A. The commission shall conduct or cause to be conducted a continuing study and survey of resources within the City of Tupelo.

B. The commission shall recommend to the City of Tupelo the adoption of ordinances designating historic districts, landmarks, and landmark sites.

C. The commission may recommend that the City of Tupelo recognize sub-districts within any historic district, in order that the commission may adopt specific guidelines for the regulation of properties within such a sub-district.

D. The commission shall review applications proposing construction, alteration, demolition, or relocation of any resource as defined in Section n above.

E. The Commission shall grant or deny certificates of appropriateness, and may grant certificates of appropriateness contingent upon the acceptance by the applicant of specified conditions.

F. The commission shall not consider interior arrangements of buildings and structures except that it shall advise the Mississippi Department of Archives and History on questions relating to the interiors of publicly-owned resources.

G. The commission, subject to the requirements of the City of Tupelo, is authorized to apply for, receive, hold and spend funds from private and public sources, in addition to appropriations made by the City of Tupelo for the purpose for carrying out the provisions of this ordinance.

H. The commission is authorized to employ such staff or contract with technical experts or other persons as may be required for the performance of its duties and to obtain the equipment, supplies, and other materials necessary for its effective operation.

I. The commission is authorized, solely in the performance of its official duties and only at reasonable times, to enter upon private land for the examination or survey thereof. No member, employee, or agent of the commission shall enter any private dwelling or structure without the express consent of the owner of record or occupant thereof.

J. Paint color changes are outside the jurisdiction of the commission.

## SECTION V. RULES OF PROCEDURE

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

A. The commission annually shall elect from its membership a chairman and vice-chairman. It shall select a secretary from its membership or its staff. If neither the chairman nor the vice-chairman attends a particular meeting, the remaining members shall select an acting chairman from the members in attendance at such meeting.

B. The commission shall develop and adopt rules of procedure that shall govern the conduct of its business, subject to the approval of the City of Tupelo. Such rules of procedure shall be a matter of public record.

C. The commission shall develop design review guidelines for determining appropriateness as generally set forth in Section VII of this ordinance. Such criteria shall insofar as possible be consistent with local, state, and federal guidelines and regulations, including, but not limited to, building safety and fire codes and the Secretary of the Interior's Standards For Rehabilitation.

D. The commission shall keep minutes and records of all meetings and proceedings including voting records, attendance, resolutions, findings, determinations, and decisions. All such material shall be a matter of public record.

E. The commission shall establish its own regular meeting time; however, the first meeting shall be held within thirty (30) days of the establishment of the commission by the local government and regular meetings shall be scheduled at least once every three (3) months. The chairman or any two (2) members may call a special meeting to consider an urgent matter.

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

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

A. The commission shall initiate a continuing and thorough investigation of the archaeological, architectural, cultural, and historic significance of the City of Tupelo's resources. The findings shall be collected in a cohesive format, made a matter of public record, and made available for public inspection. The commission shall work toward providing complete documentation for locally designated historic districts that would include:

1. An inventory of all property within the boundary of the district, with photographs of each building and an evaluation of its significance to the district. Building evaluations are to be used only as a reference or guide and shall not be used as the determining factor for issuing or denying a certificate or appropriateness.

2. An inventory which would be in format consistent with the statewide inventory format of the Historic Preservation Division of the Mississippi Department of Archives and History (SHPO).

B. The commission shall advise the City of Tupelo on the designation of historic districts, landmarks, or landmark sites and submit or cause to be prepared ordinances to make such designation.

C. A resource or resources may be nominated for designation upon motion of three members of the commission or by an organization interested in historic preservation or by an owner of the property being nominated. A nomination shall contain information as specified by the commission. The commission must reach a decision on whether to recommend a proposed nomination to the City of Tupelo within six months in the case of a historic district and two months in the case of either a landmark or landmark site.

D. If the commission votes to recommend to the City of Tupelo the designation of a proposed resource, it promptly forwards to the City of Tupelo its recommendation, in writing, together with an accompanying file.

E. The commission's recommendations to the City of Tupelo for the designation of a historic district shall be accompanied by:

1. A map of the historic district that clearly delineates the boundaries.

2. A verbal boundary description and justification.
3. A written statement of significance for the proposed historic district.

F. After the nomination of a resource to the City of Tupelo for possible local designation, the resource shall be fully protected by the provisions of this ordinance for a period of six months, as if it were already designated.

G. Any property designated under a previous City of Tupelo ordinance shall remain designated.

H. No historic district or districts shall be designated until the Mississippi Department of Archives and History has been notified by certified letter by the City of Tupelo and invited to make recommendations concerning the proposed district boundaries. The Mississippi Department of Archives and History may comment by letter, telephone, e-mail or in person through designated staff. The City of Tupelo shall provide to the Mississippi Department of Archives and History the dates of the next two (2) public meetings at which action on the designation of such a district might be taken so that the Mississippi Department of Archives and History may comment in a timely manner. Failure of the Mississippi Department of Archives and History to comment by the date of the second such meeting shall relieve the City of Tupelo of any responsibility for awaiting and responding to such analysis, and the City of Tupelo may at any time thereafter take any necessary action to create the proposed historic district.

1. If a proposed ordinance is to designate a landmark or landmark site, it may be presented to the City of Tupelo with a recommendation that it be adopted without submission to the Mississippi Department of Archives and History.

I. The City of Tupelo shall conduct a public hearing, after notice, to discuss the proposed designation and boundaries thereof. A notice of the hearing shall be published once a week for at least three (3) consecutive weeks in at least one (1) newspaper published in the City of Tupelo. If a newspaper is not published in the City of Tupelo, then the notice shall be published in a paper published in the county. The first publication of such resolution shall be made not less than twenty-one (21) days prior to the date fixed in the resolution for the public hearing and the last publication shall be made not more than seven (7) days prior to such date.

J. Within sixty (60) calendar days after the public hearing held in connection herewith, the City of Tupelo shall adopt the ordinance as proposed, reject it entirely, or adopt the ordinance with modifications.

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

## SECTION VII. CERTIFICATES OF APPROPRIATENESS

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

A. The commission shall serve as a .review body with the power to approve and deny applications for certificates of appropriateness.

B. In approving and denying applications for certificates of appropriateness, the commission shall seek to accomplish the purposes of this ordinance.

C. A certification of appropriateness shall not be required for work deemed by the commission to be ordinary maintenance or repair of any resource.

D. All decisions of the commission shall be in writing and shall state the findings of the commission, its recommendations, and the reasons therefore.

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

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

A. General Factors:

1. Architectural design of existing building, structure, or appurtenance and proposed alteration;

2. Historical significance of the resource;

3. General appearance of the resource;

4. Condition of the resource;

5. Materials composing the resource;

6. Size of the resource;

7. The relationship of the above factors to, and their effect upon the immediate surroundings and, if within a historic district, upon the district as a whole and its architectural and historical character and integrity.

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B. New construction:

1. In advance of new construction, steps shall be taken to insure evaluation of possible archaeological resources, as set forth in the Mississippi Antiquities Act.

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2. The following aspects of new construction shall be visually compatible with the buildings and environment with which the new construction is visually related, including but not limited to: the height, the gross volume, the proportion between width and height of the facade (s), the proportions and relationship between doors and windows, the rhythm of solids to voids created by openings in the facade, the materials, the textures, the colors, the patterns, the trims, and the design of the roof.

3. Existing rhythm created by existing building masses and spaces between them shall be preserved.

4. The landscape plan shall be compatible with the resource, and it shall be visually compatible with the environment with which it is visually related. Landscaping shall also not prove detrimental to the fabric of a resource, or adjacent public or private improvements like sidewalks and walls.

5. No specific architectural style shall be required.

C. Exterior alteration:

1. All exterior alterations to a building, structure, object, site, or landscape feature shall be compatible with the resource itself and other resources with which it is related, as is provided in Section VIII A and B, and the original design of a building, structure, object, or landscape feature shall be considered in applying these standards.

2. Exterior alterations shall not affect the architectural character or historic quality of a landmark and shall not destroy the significance of landmark sites.

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

1. The commission shall consider the individual architectural, cultural, and/or historical significance of the resource.

2. The commission shall consider the importance or contribution of the resource to the architectural character of the district.

3. The commission shall consider the importance or contribution of the resource to neighboring property values.

4. The commission shall consider the difficulty or impossibility of reproducing such a resource because of its texture, design, material, or detail.

5. Following recommendation for approval of demolition, the applicant must seek approval of replacement plans, set forth in Section VIII, B, prior to receiving a demolition permit and other permits. Replacement plans for this purpose shall include, but shall not be restricted to, project concept, preliminary elevations and site plans, and completed working drawings for at least the foundation plan which will enable the applicant to receive a permit for foundation construction.

6. Applicants that have received a recommendation for demolition shall be permitted to receive such demolition permit without additional commission action on demolition, following the commission's recommendation of a permit for new construction. Permits for demolition and construction shall be issued simultaneously if requirements of Section VIII B, are met, and the applicant provides financial proof of his ability to complete the project.

7. When the commission recommends approval of demolition of a resource, a permit shall not be issued until all plans for the site have received approval from all appropriate City of Tupelo boards, commissions, departments and agencies.

## SECTION IX. PROCEDURES APPROPRIATENESS FOR ISSUANCE OF CERTIFICATES OF APPROPRIATENESS

Anyone desiring to take action requiring a certificate of appropriateness concerning a resource for which a permit, variance, or other authorization from either the City of Tupelo building official or the City of Tupelo is also required, shall make application therefore in the form and manner required by the applicable code section or ordinance. Any such application shall also be considered an application for a certificate of appropriateness and shall include such additional information as may be required by the commission. After receipt of any such application, the City of Tupelo building official shall be assured that the application is proper and complete. No building permit shall be issued by the City of Tupelo building official which affects a resource without a certificate of appropriateness. In the event that a building permit need not be obtained for a building, structure, or object to be erected within a historic district or on a landmark or landmark site, a certificate of appropriateness is still required before such building, structure, or object may be erected. Thereafter, such application shall be reviewed in accordance with the following procedure:

A. When any such application is filed, the City of Tupelo building official shall immediately notify the commission chairman or vice-chairman, if the chairman is unavailable, of the application having been filed.

B. If at the time of filing of an application, there is not a commission meeting already scheduled within thirty (30) days of this filing, the chairman or vice-chairman shall set a time and date, which shall be not later than fifteen (15) days after the filing of the application for a hearing by the commission, and the City of Tupelo building official shall be so informed.

C. The applicant shall, upon request, have the right to a preliminary conference with commission staff for the purpose of making any changes or adjustments to the application which might be more consistent with the commission's standards.

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D. Not later than eight (8) days before the date set for the said hearing, the City of Tupelo building official shall mail notice thereof to the applicant at the address in the application and to all members of the commission.

E. Notice of the time and place of said hearing shall be given by publication in a newspaper having general circulation in the community at least ten (10) days before such hearing and/or by posting such notice on the bulletin board in the lobby of City of Tupelo hall.

F. At such hearing, the applicant for a certificate of appropriateness shall have the right to present any relevant evidence in support of the application. Likewise, the governing body shall have the right to present any additional relevant evidence in support of the application.

G. The commission shall have the right to recommend changes and modifications to enable the applicant to meet the requirements of the commission.

H. Within not more than twenty-one (21) days after the hearing on an application, the commission shall act upon it, either approving, denying, on deferring action until the next meeting of the commission, giving consideration to the factors set forth in section VIII hereof. Evidence of approval of the application shall be by certificate of appropriateness issued by the commission and, whatever its decision, notice in writing shall be given to the applicant and the City of Tupelo building official. Whenever a local historic preservation commission shall deny or recommend denial of a certificate of appropriateness, the commission must state the reasons for such denial in writing. Thereafter, an applicant may resubmit a new application at any time, except that an applicant must wait six (6) months whenever an application for a certificate of appropriateness is denied for a landmark property of statewide or national significance and notice of any second or subsequent application must be sent to the Mississippi Department of Archives and History as well as to the local historic preservation commission.

I. In all cases of applications affecting National Historic Landmarks, at least two-thirds of the members of the commission must approve a certificate of appropriateness in order for it to be granted.

J. The issuance of a certificate of appropriateness shall not relieve an applicant for a building permit, special use permit, variance, or other authorization from compliance with any other requirement or provision of the laws of the City of Tupelo concerning zoning, construction, repair, or demolition.

K. Denial of a certificate of appropriateness shall be binding upon the City of Tupelo building inspector or the agency responsible for issuing building permits and shall prevent the issuance of other building permits for the same parcel until a certificate of appropriateness is approved. A certificate of appropriateness may be required for work which does not require a building permit. A certificate of appropriateness may be evidenced by either a written and dated letter to an owner or applicant or such a letter accompanied by a signed and dated stamp on the face of any and all architectural or project drawings prepared for a project.

L. A certificate of appropriateness shall expire after six (6) months if work has not begun.

## SECTION X. UNREASONABLE ECONOMIC HARDSHIP

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

A. Date the property was acquired by its current owner;

B. Price paid for the property (if acquired by purchase) and the relationship (if any) between the buyer and the seller of the property;

C. Mortgage history of the property, including current mortgage;

D. Current market value of the property;

E. Equity in current use and in alternative uses;

F. Past and current income and expense statements for a two-year period; G. Past capital expenditures during ownership of current owner;

G. Appraisals of the property obtained within the previous two years; and

H. Income and property tax factors affecting the property.

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

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

Should the commission determine that the owner's present return is not reasonable, it must consider whether there are other uses currently allowed that would provide a reasonable return

and whether such a return could be obtained through investment in the property for rehabilitation purposes.

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

## SECTION XI. APPEALS

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

## SECTION XII. MINIMUM MAINTENANCE REQUIREMENTS

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

## SECTION XIII. DEMOLITION BY NEGLECT

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

1. Deterioration to the extent that it creates or permits a hazardous or unsafe condition as determined by the City of Tupelo's building inspector.

2. Deterioration, as determined by the building inspector, of a building characterized by one or more of the following:

a. Those buildings which have parts thereof which are so attached that they may fall and injure persons or property;

b. Deteriorated or inadequate foundations;

c. Defective or deteriorated floor supports or floor supports inefficient to carry imposed loads with safety;

d. Members of walls or other vertical supports that split, lean, list, or buckle due to defective material, workmanship, or deterioration.

e. Members of walls or other vertical supports that are insufficient to carry imposed loads with safety;

f. Members of ceilings, roofs, ceiling and roof supports, or other horizontal members which sag, split, or buckle due to defective material, workmanship, or deterioration.

g. Members of ceilings, roofs, ceiling and roof supports, or other horizontal members that are insufficient to carry imposed loads with safety;

h. Fireplaces or chimneys which list, bulge, or settle due to defective material, workmanship, or deterioration; or

i. Any fault, defect, or condition in the building which renders the same structurally unsafe or not properly watertight.

B. If the commission makes a preliminary determination that a resource is being demolished by neglect, it shall direct the City of Tupelo building official to notify the owner or owners of the resource of this preliminary determination, stating the reasons therefore, and shall give the owner of record thirty (30) days from the date of mailing of such notice or the posting thereof on the property, whichever comes later, to commence work to correct the specific defects as determined by the commission.

Said notice shall be given as follows:

1. By certified mail, restricted delivery, mailed to the last known address of the record owner or owners as listed on the City of Tupelo and/or county tax rolls; or

2. If the above mailing procedure is not successful, notice shall be posted in a conspicuous, protected place on the resource.

C. If the owner or owners fail to commence work within the time allotted as evidenced by a building permit, the commission shall notify the owner or owners in the manner provided above to appear at a public hearing before the commission at a date, time, and place to be specified in said notice, which shall be mailed or posted at least thirty (30) days before said hearing. For the purpose of insuring lawful notice, a hearing may be continued to a new date and time. The commission shall receive evidence on the issue of whether the subject resource should be repaired and the owner or owners may present evidence in rebuttal thereto. If, after such hearing, the commission shall determine that the resource is being demolished by neglect, it may direct the City of Tupelo building official to bring misdemeanor charges against the owner or owners if the necessary repairs are not completed within ninety (90) days of the determination by the commission that the subject building or structure is being demolished by neglect.

D. The City of Tupelo, in addition to the powers specified in Section 21-19-11(1) of the Mississippi State Code of 1972, as amended, if the Historic Preservation Division of the Department of Archives and History concurs, may make repairs necessary to correct demolition by neglect, and the cost of such repairs shall become a lien against the property in accordance with the Mississippi State Code of 1972 as amended.

## SECTION XIV. PUBLIC SAFETY EXCLUSION

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

A. The City of Tupelo building official concurs with the property owner that the resource cannot be repaired and restored and so notifies the commission in writing.

B. The preservation commission, if in doubt after receiving such notification from the City of Tupelo building official, shall be allowed time to seek outside professional expertise from the State Historic Preservation Office and/or an independent structural engineer before issuing a certificate of appropriateness for the demolition. The commission may indicate in writing by letter to the City of Tupelo building official that it will require a time period of up to thirty days for this purpose, and, upon such notification to the City of Tupelo building official, this section shall be suspended until the expiration of such a delay period.

## SECTION XV. ENFORCEMENT AND PENALTIES

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

### A. Civil Penalty:

1. Any person who constructs, alters, relocates, or demolishes any resource in violation of this ordinance shall be required to restore the resource to its appearance or setting prior to the violation. Any action to enforce this provision shall be brought by the City of Tupelo. This civil remedy shall be in addition to, and not in lieu of, any criminal prosecution and penalty.

2. If construction, alteration, or relocation of any resource occurs without a certificate of appropriateness, then the license of the company, individual, principal owner, or its or his successor in interest performing such construction, alteration, or relocation shall be revoked for a period of three (3) years.

3. If demolition of a resource occurs without a certificate of appropriateness, then any permits on subject property will be denied for a period of three (3) years. No permit will be issued for any structure or structures proposed for the same parcel which would require a footprint larger than the footprint of the demolished structure or structures. In addition, the owner must rebuild on the site using as much of the original building material as possible, and in

general following the same form. In addition, unauthorized demolition of a portion of a structure shall not serve as justification for a demolition permit whenever it can be shown that restoration or rehabilitation would still be feasible. In addition, the applicant shall not be entitled to have issued to him by any City of Tupelo office a permit allowing any curb cuts on subject property for a period of three (3) years from and after the date of such demolition.

4. If a historic landmark or landmark site of statewide or national significance is demolished without review and approval by a local historic preservation commission, no permit for any construction on the parcel from which the landmark or landmark site has been removed may be issued for a period of up to twenty-four (24) months.

5. If demolition of a resource occurs without a certificate of appropriateness, then the license of the company, individual, principal owner, or its or his successor in interest performing such demolition shall be revoked for a period of five (5) years.

**B. Criminal Penalty:**

Any persons, firm or corporation violating any provision of this ordinance shall be guilty of a misdemeanor, and each shall be deemed guilty of a separate violation for each day during which any violation hereof is committed. Upon conviction, each violation shall be fined not less than Ten Dollars ($10.00) nor more than Five Hundred Dollars ($500.00). Each day that a violation continues to exist shall constitute a separate offense.

## SECTION XVI. APPROPRIATIONS

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

## SECTION XVII. TITLE TO PROPERTY ACQUIRED

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

## SECTION XVIII. NON RESTRICTIVE CLAUSE

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

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

## SECTION XIX. DISQUALIFICATION OF MEMBERS BY CONFLICT OF INTERESTS

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

## SECTION XX. SEVERABILITY

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

SECTION XXI. CONFLICTING ORDINANCES

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

SECTION XXII. CONFLICT WITH THE MISSISSIPPI ANTIQUITIES ACT

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

SECTION XXIII. EFFECTIVE DATE

This ordinance shall become effective one month after its passage.

The foregoing ordinance was proposed in a motion by Councilman Neelly, seconded by Councilman Taylor, and after discussion, no council member having called for a reading, was brought to a vote as follows:

| | |
|---|---|
| Councilman Barrows | aye |
| Councilman Neelly | aye |
| Councilman Nesmith | aye |
| Councilman Hill | aye |
| Councilman Taylor | aye |
| Councilman Heavner | aye |
| Councilwoman Davis | aye |
| Councilman Cole | aye |
| Councilman Smith | aye |

**WHEREUPON,** the motion having received a majority of affirmative votes, the President of the Council declared that the Ordinance had been passed and adopted on this the 19th day of April, 2005.

**CITY OF TUPELO, MISSISSIPPI**

**BY:** Danny Barrows
**DANNY BARROWS, President**

**ATTEST:**
Glenda Muse
**GLENDA MUSE, Clerk of the Council**

**APPROVED:**
**LARRY K. OTIS, Mayor**
April 19, 2005
**DATE**