

Chapter 6

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Article I. Building Code

Sec.6-1.Reserved.(Ord.3034, sec. 1, 4-7-09)**

Secs. 6-2. Reserved.(Ord. 3034, sec. 1, 4-07-09)**

*****Cross reference—see Ordinance 3034, abolishing the Construction Board of Examining, Adjustment and Appeal Board, Electric Board and Plumbing, Gas, Mechanical and Specialty Trades Examining Review and establishing Contractor Review Board. See chapter 6-8.1 and chapter 9.***

****Cross reference--see chapter 22, - Art. I Building Codes Formerly known as Board of Adjustments and Appeals and a General/Builder/Remodeler Contractors Examining Review Board***

Article I.(1) Cable Advisory Board

Sec. 6-3. Board established; membership; duties.

There is hereby created and established the Cable Advisory Board for the City of Hattiesburg.

A. That the Cable Advisory Board shall be established, composed of seven members appointed by the Mayor and ratified by an affirmative vote of a majority of the City Council present and voting at such meeting. Five (5) of these members shall be appointed to represent the wards of the City, and these members shall reside within the boundaries of the ward they are appointed to represent and shall be qualified electors of the City of Hattiesburg. Two members shall be appointed at large, based upon their knowledge and/or experience in telecommunications, and shall not be required to reside within the City of Hattiesburg. These terms of membership shall be as follows:

Ward Representation:

Ward 1	The initial appointment shall be for one (1) year
Ward 2	The initial appointment shall be for two (2) years
Ward 3	The initial appointment shall be for three (3) years
Ward 4	The initial appointment shall be for four (4) years
Ward 5	The initial appointment shall be for one (1) year

At Large Representation:

One Member shall be appointed for an initial term of two (2) years
One member shall be appointed for an initial term of four (4) years

All subsequent appointments shall be for four (4) year terms. In event of a vacancy in office, the Mayor shall appoint a successor in such a manner as to maintain equal representation from each ward and in keeping with requirements for technical knowledge and/or experience. Upon the expiration of any said term, the Mayor shall appoint a successor for a term in keeping with the schedule of appointments outlined above.

The members shall annually elect one of their own members to serve as chairman for a period of one(1) year.

B. In the case of a vacancy on said Board by death, resignation or other cause, other than the expiration of such member's term of office, the Mayor shall appoint a member to serve for the balance of the unexpired term, in such a manner as to maintain equal representation from each ward and in keeping with requirements for technical knowledge and/or experience, with said appointments being confirmed by an affirmative vote of the majority of the City Council present and voting at such meeting.

C. Members of the Board representing Wards 1,2,3,4, and 5 shall be qualified electors of the City of Hattiesburg, and shall meet the ward residency requirements as set forth hereinabove.

D. The Board shall set its own meeting time and place as from time to time it deems necessary.

- E. The Board shall act in an advisory capacity to the Mayor and City Council and shall make recommendations from time to time as it deems necessary to the Mayor and City Council in regard to the new federal regulations for cable companies. (Ord. 2582, sec. 1--6, 1-21-97, Ord. 2442, sec. 1--5, 4-20-93)

Sec. 6-3.1 STATEMENT OF INTENT AND PURPOSE

The City intends by adoption this Franchise, is to bring about the continued operation of a Cable System. Such Cable System can contribute significantly to the communication needs and desires of the residents and citizens of the City and the public generally. Further, the City may achieve better utilization and improvement of public services and enhanced economic development with the development and operation of a Cable System.

Adoption of this Franchise is, in the judgment of the City Council, in the best interests of City and its residents.

Sec. 6-3.2 SHORT TITLE AND DEFINITIONS

1. Short Title. This Franchise Ordinance shall be known and cited as the Cable Television Franchise Ordinance.
2. Definitions. For the purposes of this Franchise, the following terms, phrases, words, and their derivations shall have the meaning ascribed to them in the Cable Communications Policy Act of 1984, as amended from time to time, 47 U.S.C. §§521 et seq. (the “Cable Act”), unless otherwise defined herein. When not inconsistent with the context, words in the singular number include the plural number and words in the plural number include the singular number. The word “shall” is always mandatory and not merely directory. The word “may” is directory and discretionary and not mandatory. Words not defined shall be given their common and ordinary meaning.
 - a. “Applicable Law” means any law, statute, charter, ordinance, rule, regulation, code, license, certificate, franchise, permit, writ, ruling, award, executive order, directive, requirement, injunction (whether temporary, preliminary or permanent), judgment, decree or other order issued, executed, entered or deemed applicable by any governmental authority with jurisdiction over the subject matter herein.
 - b. “Basic Cable Service” means any service tier which includes at a minimum the retransmission of local television broadcast signals. Basic Cable Service as defined herein shall not be inconsistent with 47 U.S.C. § 543(b)(7).
 - c. “Cable Service” means (A) the one-way transmission to Subscribers of (i) Video Programming or (ii) Other Programming Service, and (B) Subscriber interaction, if any, which is required for the selection or use of such Video Programming or Other Programming Service. Cable Service as defined herein shall not be inconsistent with the definition set forth in 47 U.S.C. § 522(6).

- d. “Cable System” means a facility, consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment that is designed to provide Cable Service which includes Video Programming and which is provided to multiple Subscribers within the City but such term does not include:
- (1) a facility that serves only to retransmit the television signals of one (1) or more television broadcast stations;
 - (2) a facility that serves Subscribers without using any public Rights-of-Way;
 - (3) a facility of common carrier which is subject, in whole or in part, to the provisions of 47 U.S.C. § 201 et seq., except that such facility shall be considered a Cable System (other than for purposes of 47 U.S.C. § 541(c)) to the extent such facility is used in the transmission of Video Programming directly to Subscribers, unless the extent of such use is solely to provide interactive, on-demand services;
 - (4) an open video system that complies with 47 U.S.C. § 573; or
 - (5) facilities of any electric utility used solely for operating its electric utility systems.
- e. “Cable Channel” means an electromagnetic frequency spectrum which is used in a Cable System and which is capable of delivering a television channel (as television channel is defined by the FCC by regulation). Cable Channel as defined herein shall not be inconsistent with the definition set forth in 47 U.S.C. 522(4), or those regulations subsequently adopted by the FCC.
- f. “Cable Franchise Administrator” means a City authorized position responsible for the administration of this Franchise. This designation shall be made in writing by the Mayor pursuant to Section 8.1.
- g. “City” means the City of Hattiesburg, a municipal corporation in the State of Mississippi, acting by and through its City Council or its lawfully appointed designee.
- h. “City Council” means the governing body of the City of Hattiesburg, Mississippi.
- i. “Converter” means an electronic device which converts signals to a frequency acceptable to a television receiver of a Subscriber and by an appropriate selector permits a Subscriber to view all authorized signals in accordance with the Subscriber’s level of service.
- j. “Day” is defined as a calendar day. “Business Day” is Monday through Friday, excluding Saturday and Sunday and legal Federal and State Holidays.
- k. “Drop” means the cable that connects the ground block on the Subscriber’s building or institution to the nearest point of connection to the Cable System.

- l. “FCC” means the Federal Communications Commission and any legally appointed, designated or elected agent or successor.
- m. “EG” means Educational and Governmental access programming.
- n. “Franchise” or “Cable Franchise” means this Cable Television Franchise Ordinance and the regulatory and contractual relationship established hereby.
- o. “Franchise Area” means the present legal boundaries of the City as of the Effective Date, and shall also include any subsequent additions thereto, by annexation or other legal means.
- p. “Franchise Fee” includes any tax, fee or assessment of any kind imposed by the City or other governmental entity on Grantee or Subscriber, or both, solely because of their status as such. It does not include any tax, fee or assessment of general applicability (including any such tax, fee or assessment imposed on both utilities and cable operators or their services but not including a tax, fee or assessment which is unduly discriminatory against cable operators or cable Subscribers); capital costs which are required by the Franchise to be incurred by Grantee for public, educational or governmental access facilities; requirements or charges incidental to the awarding or enforcing of the Franchise, including payments for bonds, security funds, letters of credit, insurance, indemnification, penalties or liquidated damages; or any fee imposed under Title 17 of the Communications Act of 1934, as amended.
- q. “Grantee” is Comcast of Southern Mississippi, Inc., its lawful successors, transferees or assignees.
- r. “Gross Revenue” means all revenue derived directly or indirectly by the Grantee, its affiliates, subsidiaries, or parent company from the operation of the Cable System in the Franchise Area to provide Cable Services and includes, but is not limited to, all fees charged the subscriber (e.g. installation fees, equipment rental fees, DVR rental fees, On Demand rental fees, pay-per-view fees, and others), advertising, home shopping revenue, franchise fees, and any other revenue derived from the operation of a Cable System that is not specifically excluded by law. Gross Revenue shall not include bad debt, refundable deposits nor any taxes, fees or assessments imposed or assessed by any governmental authority. Gross Revenue shall also include revenue from any other product or service provided over the Cable System that the FCC determines during the term of this Franchise Agreement to be a Cable Service or consistent with any amendments to 49 U.S.C. § 522(6).
- s. “Installation” means the connection of the Cable System from feeder cable to the point of connection including Standard Installations and custom Installations with the Subscriber Converter or other terminal equipment.

- t. “Institutional Network” means a telecommunications network which is constructed and operated by the City and which is generally available to City departments and/or its divisions and not to Subscribers.
- u. “Local Customer Service Center” means a facility physically located within the City and staffed during Normal Business Hours.
- v. “Normal Business Hours” means those hours during which most similar businesses in the City are open to serve customers. Normal Business Hours shall also include some evening hours at least one night per week and/or a minimum of four hours on the weekend.
- w. “Normal Operating Conditions” means those conditions which are within the control of Grantee. Those conditions which are not within the control of Grantee include, but are not limited to, natural disasters, civil disturbances, power outages, telephone network outages, and severe or unusual weather conditions. Those conditions which are ordinarily within the control of Grantee include, but are not limited to, special promotions, pay-per-view events, rate increases, regular peak or seasonal demand periods, and maintenance or upgrade of the Cable System.
- x. “Other Programming Service” means information that the Grantee makes available to all Subscribers generally.
- y. “Pay Television” means the delivery over the Cable System of pay-per-channel or pay-per-program audio-visual signals to Subscribers for a fee or charge, in addition to the charge for Basic Cable Service or cable programming services.
- z. “Parental Control” means the ability of a Subscriber to block the viewing of a particular Cable Channel or Cable Channels.
- aa. “Person” is any natural person, firm, partnership, association, corporation, company, limited liability entity or other legal entity, whether for-profit or not-for profit, but shall not mean the City.
- bb. “Rights-of-Way” means the area on, below or above any real property in City in which the City has an interest including, but not limited to, any street, road, highway, alley, sidewalk, parkway, park, skyway or any other place, area or real property owned by or under the control of City, including other dedicated Rights-of-Way for travel purposes and utility easements.

- cc. “Rights-of-Way Ordinance” means any ordinance codifying requirements regarding regulation, management, and use of Rights-of-Way in the City, including registration and permitting requirements.
- dd. “Service Interruption” means the loss of picture or sound on one (1) or more Cable Channels.
- ee. “Standard Installation” means any installation in the City which can be completed using a Drop of not more than two hundred fifty feet (250) or less from the nearest point of connection to Grantee’s existing distribution cable.
- ff. “Subscriber” means a Person or user of the Cable System who lawfully receives Cable Service therefrom with the Grantee’s express permission.
- gg. “Video Programming” means programming provided by, or generally considered comparable to, programming provided by a television broadcast station.

Sec. 6-3.3. GRANT OF AUTHORITY AND GENERAL PROVISIONS

- 1. Grant of Franchise. This Franchise is granted pursuant to the terms and conditions contained herein.
- 2. Grant of Nonexclusive Authority.
 - a. The Grantee shall, in accordance with Applicable Law and the terms and conditions of this Franchise, have the right and privilege, subject to the permitting and other lawful requirements of City ordinances, rules or procedures, to construct, erect, and maintain, in, upon, along, across, above, over, and under the Rights-of-Way in the City a Cable System and shall have the right and privilege to provide Cable Service. The Cable System constructed and maintained by Grantee or its agents shall not interfere with other uses of the Rights-of-Way. Grantee shall make use of existing poles and other above and below ground facilities available to Grantee to the extent it is technically and economically feasible to do so.
 - b. Notwithstanding the above grant to use the Rights-of-Way, no Rights-of-Way shall be used by Grantee if City determines that such use is inconsistent with the terms, conditions or provisions by which such Right-of-Way was created or dedicated, or with the present use of the Right-of-Way.
 - c. This Franchise shall be nonexclusive, and City reserves the right to grant use of said Rights-of-Way to any Person at any time during the period of this Franchise for the provision of Cable Service.

- d. The grant of this Franchise does not waive or act as an estoppel to the lawful use by City of its police powers or ordinance-making authority to adopt a comprehensive Rights-of-Way Ordinance of general applicability.
3. Cable Service without Franchise or Assignment Prohibited. No Person may use the City's Rights-of-Way to provide Cable Service until and unless such Person shall have first obtained either a valid franchise from the City or received City's approval for the assignment of this Franchise. Any such assignment of rights under this Franchise shall be subject to and in accordance with the requirements of Section 10.9, herein. This Section 2.3. shall not prevent Grantee from complying with any commercial leased access requirements or any other provisions of Applicable Law.
4. Franchise Term. The term of the Franchise granted hereunder shall be for five (5) years, commencing upon final adoption by the City Council (the "Effective Date"), and ending five (5) years following said final passage, unless the Franchise is renewed or is lawfully terminated in accordance with the terms of this Franchise and the Cable Act.
5. Previous Franchises. Upon acceptance by Grantee as required by Section 14, herein, this Franchise shall supersede and replace any previous ordinance or other authorization granting a franchise to Grantee. The Franchise granted on December 8, 1998, along with all amendments or extensions, is hereby expressly repealed.
6. Grantee Subject to Police Power. Subject to Applicable Law, the terms of this Franchise shall define the contractual rights and obligations of Grantee with respect to the provision of Cable Service and operation of the Cable System in the City. Grantee shall at all times during the term of this Franchise be subject to all lawful exercise of the police power, statutory rights, local ordinance-making authority, taxing authority, and eminent domain rights of the City, including any new or additional generally applicable requirements that may not now exist and that may impact the Rights-of-Way.
 - a. In the event Grantee cannot determine how to comply with any current or future Rights-of-Way requirement of the City, whether pursuant to this Franchise or other requirement, Grantee shall immediately provide written notice of such question, including Grantee's proposed interpretation, to the City, in accordance with Section 2.10., herein.
 - b. The City shall provide a written response within fourteen (14) Business Days of receipt of such question indicating how the requirement cited by Grantee applies. Grantee may proceed in accordance with its proposed interpretation in the event a written response is not received from the City within seventeen (17) Business Days of mailing or delivering such written question.

7. Reservation of Authority. Nothing in this Franchise shall (A) abrogate the right of the City to perform any public works or public improvements of any description, (B) be construed as a waiver of any codes or ordinances of general applicability promulgated by the City, or (C) be construed as a waiver or release of the rights of the City in and to the Rights-of-Way or its inherent authority to exercise its police powers over the public Rights-of-Way.

8. Rules of Grantee. Grantee shall have the authority to promulgate such rules, regulations, terms, and conditions governing the conduct of its business as shall be reasonably necessary to enable said Grantee to exercise its rights and perform its obligations under this Franchise and to assure uninterrupted Cable Service to each and all of its Subscribers; provided that such rules, regulations, terms, and conditions shall not be in conflict with Applicable Law or this Franchise.

9. Territorial Area Involved. This Franchise is granted for the present legal boundaries of the City as of the Effective Date, and shall also include any subsequent additions thereto, by annexation or other legal means herein defined as the “Franchise Area.”

10. Written Notice. All notices, reports or demands required to be given in writing under this Franchise shall be deemed to be given when delivered personally to the Mayor’s Office, the City Clerk, and the Cable Franchise Administrator of this Franchise or when it is deposited in the United States mail in a sealed envelope, with registered or certified mail postage prepaid thereon, addressed to each party to whom notice is required herein, as follows:

If to City: Mayor’s Office
 City of Hattiesburg
 200 Forrest Street
 Hattiesburg, MS 39401

with copy to: City Clerk
 City of Hattiesburg
 200 Forrest Street
 Hattiesburg, MS 39401

and: Cable Franchise Administrator
 City of Hattiesburg
 200 Forrest Street
 Hattiesburg, MS 39401

If to Grantee: Comcast of Southern Mississippi, Inc.
 Attention: Vice-President/General Manager
 5915 I-55 North
 Jackson, MS 39213

with copy to both: Comcast Cable
Attention: Vice President, Government Affairs
600 Galleria Parkway, Suite 1100
Atlanta, Georgia 30339

and: Comcast Cable
Attention: Legal Department
One Comcast Center
1701 JFK Blvd.
Philadelphia, PA 19103

Such addresses may be changed by either party upon notice to the other party given as provided in this section.

Sec. 6-3.4. CONSTRUCTION STANDARDS

1. Registration, Permits, Construction Codes, and Cooperation.

- a. Grantee shall comply with the construction requirements of local, state, and federal laws.
- b. Grantee agrees to obtain a permit as required by City prior to removing, abandoning, relocating, constructing, or reconstructing any portion of its facilities that are within the Rights-of-Way. Notwithstanding the foregoing, City understands and acknowledges there may be instances when Grantee is required to make repairs that are of an emergency nature. Grantee shall notify City prior to such repairs, if practicable, and shall obtain the necessary permits in a reasonable time after notification to City.
- c. The fees associated with the City's permitting process which are generally applicable to all users of the Rights-of-Way are separate from and in addition to, any other fees provided for in this Franchise. Permitting fees shall not be considered Franchise Fees.
- d. Grantee shall comply with the procedures established by the City to coordinate the issuance of multiple engineering permits in the same Rights-of-Way segments for all users of the Rights-of-Way.
- e. Subject to Section 3.1.b., above, failure to obtain permits or comply with permit requirements shall subject Grantee to all enforcement remedies available to the City under Applicable Law or this Franchise.
- f. Grantee shall use its best efforts to meet with developers and be present at pre-construction meetings applicable to Grantee to ensure that the Cable System facilities are installed in new developments within the City in a timely manner provided Grantee is notified in writing at least ten (10) days prior to such meetings.

2. Use of Existing Poles and Conduits.

- a. Grantee shall utilize existing poles, conduits, and other facilities whenever commercially reasonable and shall not construct or install any new, different or additional poles, conduits or other facilities on public property until the written approval of City is obtained. No location of any pole or wire-holding structure of Grantee shall be a vested interest in such location and such poles or structures shall be removed or modified by Grantee at its own expense whenever the City Council determines that the public convenience would be enhanced thereby.
- b. The facilities of Grantee shall be installed underground in those areas of City where existing telephone, electric, and other services are underground at the time of construction by Grantee. In areas where telephone, electric, or other utility facilities are installed aerially at the time of Cable System construction, Grantee may install its facilities aerially; however, at such time as all the existing aerial facilities are placed underground, Grantee shall likewise place its facilities underground at its sole cost. If the City requires utilities and other users of the Rights-of-Way to bury lines which are currently overhead, and the City provides funding for such undergrounding, then the City shall make such funds available to Grantee.

3. Minimum Interference.

- a. Grantee shall use its best efforts to give reasonable prior notice to any adjacent private property owners who will be negatively affected or impacted by Grantee's work in the Rights-of-Way.
- b. All transmission and distribution structures, lines, and equipment erected by Grantee shall be located so as to cause minimum interference with the unencumbered use of Rights-of-Way and other public places and minimum interference with the rights and reasonable convenience of property owners who adjoin any of the Rights-of-Way.
- c. Disturbance or Damage. Subject to Section 13.9, herein, if, in connection with the construction, operation, maintenance or repair of the Cable System, the Grantee disturbs, alters or damages any Rights-of-Way, then the Grantee agrees that it shall, at its own cost and expense and in a reasonable amount of time which shall not exceed sixty (60) days, replace and restore any such Rights-of-Way to a condition reasonably comparable to the condition of the Rights-of-Way existing immediately prior to such disturbance. If Grantee shall fail to promptly perform the restoration required herein, after written request of City, City shall have the right to put the Rights-of-Way back into condition reasonably comparable to that prevailing prior to Grantee's work. In the event City determines that Grantee is responsible for such

disturbance or damage and has exceeded the time limits, Grantee shall be obligated to fully reimburse City for such restoration within thirty (30) Days after its receipt of City's invoice therefore.

4. Temporary Relocation.

- a. At any time during the term of this Franchise, Grantee shall, at its own expense, protect, support, temporarily disconnect, relocate or remove any of its property when, in the opinion of City, (i) the same is required by reason of traffic conditions, public safety, Rights-of-Way vacation, freeway or Rights-of-Way construction, alteration to or establishment of any Rights-of-Way or any facility within the Rights-of-Way or sidewalk including but not limited to, installation of sewers, drains, waterlines, power lines, traffic signal lines or transportation facilities; or (ii) a City project or activity makes disconnection, removal or relocation necessary or less expensive for City.
- b. Grantee shall, on request of any Person holding a permit to move a building, temporarily raise or lower its wires to permit the movement of such buildings. The expense of such temporary removal or raising or lowering of wires shall be paid by the Person requesting the same, and Grantee shall have the authority to require such payment in advance. Grantee shall be given not less than ten (10) Business Days advance notice to arrange such temporary wire alterations.

5. Emergency. Whenever, in case of fire or other bonafide emergency, it becomes necessary in the judgment of the City, police chief, or fire chief, to remove, alter or relocate any of Grantee's facilities, no charge shall be made by Grantee against City for restoration, repair or damages, provided, however, City shall use reasonable efforts to notify Grantee of such emergency and the need to remove, alter or relocate Grantee's facilities prior to removing, altering or relocating Grantee's facilities to allow Grantee to perform such work.

6. Tree Trimming. Grantee shall have the authority to trim trees on public Rights-of-Way at its own expense as may be necessary to protect its wires and facilities, subject to supervision and direction by City. Trimming of trees growing from or on private property shall require consent of the property owner. Any trimming of trees by the Grantee in the Rights-of-Way shall be subject to such regulation of general applicability as the City or other authorized City official may reasonably establish for all users of the Rights-of-Way to protect the public health, safety, and convenience.

7. Protection of Facilities. Nothing contained in this section shall relieve any Person from liability arising out of the failure to exercise reasonable care to avoid damaging Grantee's facilities while performing any work connected with grading, regrading or changing the line of any Rights-of-Way or the construction or reconstruction of any sewer or water system.

8. Rights-of-Way Construction Records. Grantee shall keep accurate construction records of the location of all Cable System facilities in the Rights-of-Way, subject to Section 8.4 & 8.5, herein, furnish strand maps to City upon reasonable prior written request. Upon completion of new or relocation construction of underground facilities in the Rights-of-Way, Grantee shall provide City with construction records in an electronic format showing the location of the underground and above ground facilities. Grantee shall make electronic strand maps available to the City upon request, irrespective of format compatibility.
9. City's Rights.
 - a. When the City uses its prior superior right to the Rights-of-Way, Grantee shall move its property that is located in the Rights-of-Way, at its own cost, to such a location as the City directs. Notwithstanding the foregoing, in the event the public project is paid for totally or in part by public or non-public funds, then Grantee's costs of moving its property shall be borne by the source of the public or non-public funds in the same ratio as the public or non-public funds bear to the total project costs.
 - b. Nothing in this Franchise shall be construed to prevent City from constructing, maintaining, repairing or relocating sewers; grading, paving, maintaining, repairing, relocating, and/or altering any Rights-of-Way; constructing, laying down, repairing, maintaining or relocating any water mains; or constructing, maintaining, relocating or repairing any sidewalk or other public work.
10. Facilities in Conflict. If, during the course of a project, the City determines Grantee's facilities are in conflict, the following shall apply:
 - a. Prior to City Notice to Proceed to Contractor: Grantee shall, within a reasonable time, but in no event exceeding three (3) months, remove or relocate the conflicting facility. This time period shall begin running upon receipt by Grantee of written notice from City. However, if both City and Grantee agree, the time frame may be extended based on the requirements of the project.
 - b. Subsequent to City Notice to Proceed to Contractor: Subject to the foregoing, City and Grantee will immediately begin the coordination necessary to remove or relocate the facility. Removal or relocation is to begin no later than seventy-two (72) hours, if practicable, after written notification from City of the conflict.
 - c. Relocation Delays. Subject to Section 13.9, herein, and to Grantee's compliance with Section a and b above, if Grantee's relocation effort so delays construction of a public project causing City to be damaged or liable for damages, Grantee shall reimburse City for those damages attributable to the delay created by Grantee. In the event Grantee should dispute the amount of damages attributable to Grantee, the matter shall be referred to the City engineer for a decision. In the event that Grantee disagrees with the City engineer's decision, the matter shall be submitted to the Cable Franchise Administrator for determination, whose decision shall be final and

binding upon Grantee as a matter of City review, but nothing herein waives any right of appeal to the City Council or courts.

- d. In the event City becomes aware of a potential delay involving Grantee's facilities, City shall promptly notify Grantee of this potential delay.
11. Interference with City Facilities. The construction, use, and maintenance of the Grantee's facilities within the Rights-of-Way authorized herein shall be in such a manner as not to interfere with City's placement, construction, use, and maintenance of its Rights-of-Way, Rights-of-Way lighting, water pipes, drains, sewers, traffic signal systems or other City systems that have been, or may be, installed, maintained, used or authorized by City.
12. Rights Not Limited. Nothing in this section is meant to limit any rights Grantee may have under Applicable Law to be compensated for the cost of relocating its facilities from the utility that is requesting the relocation.
13. Co-location. To maximize public and employee safety, to minimize visual clutter of aerial plant, and to minimize the amount of trenching and excavation in and along City Rights-of-Way and sidewalks for underground plant, Grantee shall make every commercially reasonable effort to co-locate compatible facilities within the Rights-of-Way subject to the engineering requirements of Grantee and other users of the Rights-of-Way.
14. Safety Requirements.
 - a. Grantee shall at all times employ ordinary and reasonable care and shall install and maintain in use nothing less than commonly accepted methods and devices for preventing failures and accidents which are likely to cause damage or injuries.
 - b. Grantee shall install and maintain its Cable System and other equipment in accordance with City's codes and the requirements of the National Electric Safety Code and all other applicable FCC, state, and local regulations, and in such manner that they will not interfere with City communications technology related to health, safety, and welfare of the residents.
 - c. Cable System structures and lines, equipment, and connections in, over, under, and upon the Rights-of-Way of City, wherever situated or located, shall at all times be kept and maintained in good condition, order, and repair so that the same shall not menace or endanger the life or property of the City or any Person.

Sec. 6-3.5. DESIGN PROVISIONS

1. Minimum Channel Capacity.
 - a. Grantee maintains and operates a single-mode, two-way, hybrid fiber/coaxial Cable System in the City with a functional bandwidth of seven hundred fifty (750) MHz, which is sufficient to satisfy the current and future cable-related community needs of the City. The Cable System utilizes a node configuration with the capability to expand the number of nodes and reduce the number of homes served per node to accommodate future demand requirements, if any.
 - b. Grantee specifically reserves the right to alter, adjust, change, modify, rebuild, upgrade, redesign or otherwise reconfigure the Cable System at any time during the term of this Franchise, in any manner whatsoever, in accordance with this Franchise. Grantee does not warrant, guarantee or otherwise promise that the design and technical specifications of the Cable System as it exists on the Effective Date of this Franchise will continue throughout the term of the Franchise, but does agree that no such alteration, adjustment, modification, rebuild, upgrade, redesign or other reconfiguration shall have the effect of reducing the technical capabilities of the Cable System from those that exist on the Effective Date of the Franchise.
 - c. The Grantee shall offer to all Customers a diversity of video programming services. Grantee further agrees that it will provide a diverse selection of programming categories to Customers, including, but not limited to sports, news, cultural/arts, family entertainment, music, religion, and weather.
2. Emergency Alert Capability. Grantee shall at all times comply with the Emergency Alert System standards pursuant to Title 47, Section 11, and Subparts A-E of the Code of Federal Regulations, as may be amended or modified from time to time.
3. Technical Standards. The technical standards used in the operation of the Cable System shall comply with the technical standards promulgated by the FCC relating to Cable Systems pursuant to Title 47, Section 76, Subpart K of the Code of Federal Regulations, as may be amended or modified from time to time, which regulations are expressly incorporated herein by reference.

4. Special Testing.
 - a. The City shall have the right, on reasonable prior written notice and in the presence of Grantee's employee, to periodically inspect the construction and maintenance of the Cable System in the City as necessary to monitor Grantee's compliance with the provisions of this Franchise. The City may require special testing of a location or locations within the Cable System on the basis of written complaints received or other written evidence indicating noncompliance with FCC technical standards. City shall endeavor to so arrange its request for such special testing so as to minimize hardship or inconvenience to Grantee or to Subscribers caused by such testing. Written evidence may include a complaint received by the City reduced to a log entry or other City record and does not require a letter or form in writing signed by a subscriber.
 - b. Grantee shall be given thirty (30) Days advance written notice of such written complaints or evidence that shows noncompliance with the FCC technical standards. City shall meet with Grantee to discuss the potential need to visually inspect those locations which may be the focus of concern. If, after such meetings, City determines that such special tests are needed and the thirty (30) Days have elapsed, a qualified engineer selected by City shall conduct the tests at City's expense. Grantee shall participate and cooperate in such testing.
5. FCC Reports. The results of any tests required to be filed by Grantee with the FCC shall be provided to the Cable Franchise Administrator not later than ten (10) business days after receipt of a written request from the City.
6. Parental Control Device. Upon the request of a Subscriber, the Grantee shall provide by sale or lease, subject to Applicable Law, the capability by which the Subscriber can block viewing of a particular Cable Channel or Cable Channels.
7. Drops to Designated buildings.
 - a. Cable Service to School Buildings. The Grantee shall provide free "Basic" and "Expanded Basic" Cable Service, and free installation of one (1) outlet to each public and private school, not including "home schools," located in the Franchise Area within two hundred fifty (250) feet to the nearest point of connection to the Grantee's existing distribution cable including but not limited to those listed on Exhibit A, herein.

- b. Service to Governmental and Institutional Facilities. The Grantee shall provide free “Basic” and “Expanded Basic” Cable Service, and free installation of one (1) outlet to each municipal building located in the Franchise Area within two hundred fifty (250) feet to the nearest point of connection to the Grantee’s distribution cable including but not limited to those listed on Exhibit A, herein. “Municipal buildings” are those non-residential buildings owned or leased by the City for government administrative purposes, and shall not include buildings owned by City but leased to third parties or buildings such as storage facilities at which government employees are not regularly stationed. These free accounts provided hereunder shall not be available for use by the general public.

- c. Requests for Service. All requests for service under this paragraph 7 shall be made via the Cable Franchise Administrator and must be approved by the Cable Franchise Administrator before Grantee is obligated to provide the service. Grantee shall not be in violation of this paragraph unless the request for service has been made by the Cable Franchise Administrator to serve a facility herein and Grantee has failed to timely install the services as defined in the Customer Service Standards.

Sec.6-3.6. SERVICE PROVISIONS

- 1. Regulation of Service Rates. City may regulate rates for the provision of Cable Service and equipment provided over the Cable System to the extent allowed under Applicable Law. City reserves the right to regulate rates for any future Cable Services to the extent permitted by Applicable Law.

- 2. Provision of Service. The Grantee shall make Cable Service available to every residential dwelling unit within the Franchise Area where the minimum density is at least twenty (20) dwelling units per mile as measured from the nearest point of connection to Grantee’s existing distribution cable. Subject to the density requirement, Grantee shall offer Cable Service to all new homes or previously unserved homes located within two hundred fifty (250) feet of the Grantee’s distribution cable.

- 3. Non-Standard Installation. The Grantee may elect to provide Cable Service to areas not meeting the above density and distance standards. The Grantee may impose an additional charge in excess of its regular installation charge for any service installation requiring a drop in or line extension in excess of the above standards. Any such additional charge shall be computed on a time plus materials basis to be calculated on that portion of the installation that exceeds the standards set forth above.

4. Local Customer Service Center. Grantee shall maintain a convenient Local Customer Service Center and billing or payment office physically located in the City for receiving Subscriber payments, handling billing questions, subscription additions or modifications, billing dispute resolution, and equipment exchange.
 - a. Grantee shall establish a local phone number which shall enable Subscribers to contact Comcast during Normal Business Hours and shall publish this local phone number on its bill. After Normal Business Hours this phone may ring to any other customer service center established by Grantee or to an electronic answering machine or voicemail device. Customer Service Standards in Section 5.5 shall apply to the Local Customer Service Center.
 - b. The Local Customer Service Center shall employ persons capable of answering questions, accessing customer accounts, making changes to customer accounts and trained to resolve disputes. If the local representative needs other authority or assistance then the local representative shall contact on behalf of the customer any person authorized to address the request by the customer and assist the customer in getting the request resolved. If the issue cannot be resolved on the same day then Subscriber shall be provided a work order or other written confirmation of the manner in which the issue will be resolved. Customer Comment Cards shall be available in the Local Customer Service Center and conveniently located in a place accessible and visible to customers and contain the address of the City with instructions to send a copy to the City and Grantee.
5. Customer Service Standards. Grantee shall at a minimum comply with the customer service standards set forth in 47 CFR 76.309, as amended from time to time to the extent it improves the standards but amendments shall not dilute the standards and shall also comply with the following additional customer service standards (which contain current 47 CFR 76.309) under Normal Operating Conditions:
 - a. Customer Service Center hours and telephone availability:
 - (1) Grantee shall maintain a local, toll-free telephone access line, which shall be available to Subscribers twenty-four (24) hours a Day, seven (7) Days a week.
 - (A) Trained Grantee representatives shall be available to respond to customer telephone inquiries during Normal Business Hours.

- (B) After Normal Business Hours, the access line may be answered by a service or automated response system, including an answering machine. Inquiries received after Normal Business Hours shall be responded to by a trained Grantee representative on the next Business Day.
 - (2) Under Normal Operating Conditions, telephone answer time by a customer representative, including wait time, shall not exceed thirty (30) seconds when the connection is made. If the call needs to be transferred, transfer time shall not exceed thirty (30) seconds. These standards shall be met no less than ninety percent (90%) of the time under Normal Operating Conditions, measured on a quarterly basis.
 - (3) Grantee will not be required to acquire equipment or perform surveys to measure compliance with the telephone answering standards above unless an historical record of complaints indicates a clear failure to comply.
 - (4) Under Normal Operating Conditions, the customer shall receive a busy signal less than three percent (3%) of the time.
 - (5) The local Customer Service Center shall be open at least during Normal Business Hours and will be conveniently located.
- b. Installations, Outages, and Service Calls. Under Normal Operating Conditions, each of the following six (6) standards will be met no less than ninety-five percent (95%) of the time measured on a quarterly basis:
- (1) Standard Installations shall be performed within seven (7) Business Days after an order has been placed. "Standard" installations are those that are located up to 250 feet from the distribution system pursuant to the requirement of Section 5.2.
 - (2) Excluding conditions beyond the control of Grantee, Grantee will begin working on Service Interruptions promptly and in no event later than twenty-four (24) hours after the interruption becomes known. Grantee must begin actions to correct other service problems the next Business Day after notification of the service problem. If Service is interrupted for a total period of more than twenty-four (24) continuous hours Subscribers shall be credited pro rata for such interruption, upon request, unless the interruption is determined to have been caused by the subscriber.

- (3) The “appointment window” alternatives for Installations, service calls, and other Installation activities shall be either a specific time or, at maximum, a four (4) hour time block during Normal Business Hours. (Grantee may schedule service calls and other Installation activities outside of Normal Business Hours for the express convenience of the customer).
- (4) Grantee may not cancel an appointment with a customer after the close of business on the Business Day prior to the scheduled appointment.
- (5) If Grantee's representative is running late for an appointment with a customer and will not be able to keep the appointment as scheduled, the customer shall be contacted. The appointment shall be rescheduled, as necessary, at a time which is convenient for the customer.
- (6) Grantee shall complete any unfinished service on the next business day, if technically feasible and not due to a customer terminated service call, unless the customer requests a different date or time.

c. Communications between Grantee and Subscribers:

(1) Notifications to Subscribers:

- A. Grantee shall provide written information on each of the following areas at the time of Installation of Cable Service, at least annually to all Subscribers, and at any time upon request:
 - a. products and services offered;
 - b. prices and options for programming services and conditions of subscription to programming and other services;
 - c. Installation and service maintenance policies;
 - d. instructions on how to use the Cable Service;
 - e. Cable Channel positions of the programming carried on the Cable System, and;
 - f. billing and complaint procedures, including the address and telephone number of the City.

- B. Subscribers shall be notified of any changes in rates, programming services or Cable Channel positions as soon as possible in writing. Notice must be given to Subscribers a minimum of thirty (30) days in advance of such changes if the change is within the control of the Grantee. In addition, the Grantee shall notify Subscribers thirty (30) Days in advance of any significant changes in the other information required by this Section 5.5(c)(1)(a)-(f). Grantee shall not be required to provide prior notice of any rate changes as a result of a regulatory fee, Franchise Fee, or any other fee, tax, assessment or charge of any kind imposed by any federal agency, state or City on the transaction between the Grantee and the Subscriber. All notices required by this paragraph shall also be sent to City pursuant to Section 2(10).
- C. In addition to the requirements of paragraph 2 of this section (c)(i) regarding advance notification to customers of any charges in rates, programming services or channel positions, Grantee shall give thirty (30) days written notice to both subscribers and the City before implementing any rate or service change. Such notice shall state the precise amount of any rate change and briefly explain in readily understandable fashion the cause of the rate change (e.g. inflation, change in external costs or the addition/deletion of channels). When the change involves the addition or deletion of channels, each channel added or deleted must be separately identified.
- D. Grantee shall provide written notice to a subscriber of any increase in the price to be charged for the basic service tier or associated equipment at least thirty (30) days before any proposed increase is effective. The notice should include the address of the City.

(2) Billing:

- A. Bills will be clear, concise, and understandable. Bills shall be fully itemized, with itemizations including, but not limited to, basic and premium Cable Service charges, equipment charges, rebates and credits.
- B. In case of a billing dispute, the Grantee shall respond to a written complaint from a Subscriber within thirty (30) Days.

(3) Refund Policy:

- A. Refunds. Refund checks will be issued promptly, but no later than either:
 - a. The Subscriber's next billing cycle following resolution of the request or thirty (30) Days, whichever is earlier, or
 - b. The return of the equipment supplied by Grantee if Cable Service is terminated.
- B. Credits. Credits for Cable Service shall be issued no later than the Subscriber's next billing cycle following the determination that a credit is warranted.

6. Late Fees. Fees for the late payment of bills shall not be assessed until after the service has been fully provided and, as of the due date of the bill notifying Subscriber of an unpaid balance, the bill remains unpaid.

Sec.6-3.7. ACCESS CHANNEL(S) PROVISIONS

- 1. Grantee Support for EG Access. If the City determines that Educational and Governmental Access would be of benefit to the citizens of Hattiesburg, Grantee shall provide the following support for EG access usage within the Franchise Area:
 - a. Provision of the Cable Channels designated in this Franchise for local EG programming and access use at no charge pursuant to Section 6.2.
 - b. Support of EG programming to the extent specified in Section 6.2.
- 2. Educational and Governmental Access.
 - a. Use of Channel Position. Upon ninety (90) days written notice, Grantee shall provide to the City the use of one (1) Channel Position for the purpose of showing educational and governmental access programming ("EG Access") in accordance with the Cable Act, Section 611, and as further set forth below. "Channel Position" means a number designation on the Grantee's channel lineup regardless of the transmission format (analog or digital) which shall be at the sole discretion of Grantee, but shall be available to all Basic Cable Service Subscribers.

- i. Grantee does not relinquish its ownership of or ultimate right of control over a Channel Position by designating it for EG access use. An EG access user – whether an educational or governmental user – acquires no property or other interest by virtue of the use of a Channel Position so designated.
 - ii. Grantee shall make a good faith effort to not move the Channel Position more than once in any twelve (12) month period. Grantee shall provide the City and Subscribers thirty (30) days notice prior to making such move. In the event any EG access Channel(s) is relocated, Grantee shall pay City for all reasonable costs associated with such move including but not limited to change of letterhead, promotion of new Channel location and promotional spots for the new location, and inform subscribers of the new Channel location through bill inserts and/or other appropriate methods.
 - iii. The City shall have total control and responsibility for programming and operating EG Access. Grantee shall not exercise editorial control over any EG programming or use of a Channel Position, except Grantee may refuse to transmit any programming or portion of a program that contains obscenity, indecency or nudity. The City shall be responsible for developing, implementing, interpreting and enforcing rules for EG access Channel Position use.
 - iv. The City does not require and Grantee shall not provide an access channel for the public.
- b. EG Access. The Channel Position designated for EG Access programming shall be for a) noncommercial use by the City for the purpose of showing local government at work, and b) noncommercial use by educational institutions of the Hattiesburg Public School System and other private schools within the Franchise Area. Unused time on the Channel Position may be utilized by Grantee subject to the provisions for “fallow time” below.
 - c. Grantee Use of Fallow Time. Because a blank or under-utilized EG Access Channel Position is not in the public interest, in the event the City or other EG Access user elects not to fully program the Channel Position with EG Access programming, Grantee may program unused time on such Channel Position subject to reclamation by the City upon no less than sixty (60) Days notice.

- d. Indemnification. The City shall indemnify Grantee for any liability, loss or damage it may suffer due to violation of the intellectual property rights of third parties or arising out of the content of programming shown on the Channel Position designated for EG Access programming and from claims arising out of the City's rules for the administration of the EG Access Channel Position and programming.
- e. Additional Channel Position. The City may request one (1) additional Channel Position provided the following threshold use requirement is met for the Channel Position designated in paragraph 2a., above. The placement of such Channel Position on the Grantee's channel line-up including the tier of service shall be at the sole discretion of Grantee
 - i. Prior to requesting one (1) additional Channel Position, the Channel Position provided for in section 1a., above, must be programmed at least eight (8) hours a Day with non-repetitive, locally-produced programming, Monday through Friday, for a minimum of six (6) consecutive weeks.
 - ii. The City must provide Grantee with written, documentation evidencing the usage of the Channel Position, provided for in section 1a., above, meets the aforementioned threshold requirement. If such usage threshold is met to the Grantee's satisfaction, Grantee shall have one hundred ninety (90) Days to provide the requested additional Channel Position for EG Access use. Once the threshold is met and the additional Channel Position is provided by Grantee, the Channel Position provided for in section 1a., above must continue to maintain the usage threshold requirement.
 - iii. If either or both Channel Position(s) fails to meet the usage threshold for two (2) consecutive months, the Channel Position(s) may be reclaimed by Grantee upon sixty (60) Days written notice to the City.

3. Promotion of EG Access Channel Position

- a. Subject to Grantee's billing process and procedures and upon written request of the City, the City may co-ordinate with Grantee to place bill stuffers in Grantee's Subscriber billing statements promoting the City's EG Access programming at a cost to the City not to exceed Grantee's cost, no more than once per year provided, however, that the insertion of such bill stuffers shall not materially and adversely affect Grantee's cost for the production and mailing of Grantee's billing statements.

- b. The City agrees to pay Grantee in advance for the actual cost of inserting the City's bill stuffers promoting the City's EG Access programming and to meet Grantee insertion deadlines which shall not in any way delay the production and mailing of Subscriber bills.
- c. Grantee shall also distribute, at no charge to City, through advertising insertion equipment, fifteen (15) weekly promotional and awareness commercial spots promoting the City's EG Access programming, on a "run of schedule" basis, produced at the City's cost and submitted by the City in a format compatible with such advertising insertion equipment.

Sec. 6-3.8. INSTITUTIONAL NETWORK (I-NET) PROVISIONS

- 1. Institutional Network. If requested, the Grantee shall assist the City in the development of an Institutional Network ("I-Net") in accordance with City specifications and needs that provides two-way broadband voice, video and data capabilities for non-commercial use by governmental or educational organizations designated by the City.
- 2. The I-Net shall be owned, operated, funded, and programmed exclusively by the City. The I-Net will be used for City communications.

Sec. 6-3.9. OPERATION AND ADMINISTRATIVE PROVISIONS

- 1. Administration of Franchise. Upon execution of this Franchise, the Mayor shall appoint a Cable Franchise Administrator who shall have continuing regulatory jurisdiction and supervision over administration of this franchise on behalf of the City; provided, however, that appropriate permitting, public works and other departments shall have that authority granted by other ordinance of general applicability and the City Council shall retain the final authority to hear all appeals regarding enforcement action pursuant to this Franchise.
- 2. Delegated Authority. The City may appoint a citizen advisory body or may delegate to any other body or Person authority to monitor the performance of Grantee pursuant to the Franchise provided, however, that the City Council shall retain the final authority to hear all appeals regarding enforcement action pursuant to this Franchise including revocation or termination. Grantee shall cooperate with any such delegates of City. The City Council shall review any enforcement action *de novo*.

Franchise Fee.

- a. During the term of this Franchise, Grantee shall pay to the City a Franchise Fee in an amount equal to four percent (4%) of its annual Gross Revenues.
 - i. The payment of Franchise Fees shall be made on a quarterly basis and shall be due forty-five (45) days after the close of each calendar quarter.
 - ii. The payment of Franchise Fees shall be made on a quarterly basis and shall be due forty-five (45) days after the close of each calendar quarter.
 - iii. Each Franchise Fee payment shall be accompanied by a report prepared by a representative of the Grantee showing the basis for the computation of the Franchise Fees paid during that period. The report shall be formatted to provide information using the form shown in Exhibit B.
 - iv. In the event that a Franchise Fee payment is not received by the City on or before the date due or is underpaid, Grantee shall pay, in addition to the payment or sum due, interest from the due date at a rate established by the Internal Revenue Service for delinquent tax payments.
- b. All amounts paid shall be subject to an audit and re-computation by the City and acceptance of any payment shall not be construed as an accord that the amount paid is in fact the correct amount; provided, however, that any such audit shall take place within three (3) years from the date the City receives such payment, after which period any such payment shall be considered final.
 - i. Upon the completion of any such audit by the City, the City shall provide to the Grantee a final report setting forth the City's findings in detail, including any and all substantiating documentation. In the event of an alleged underpayment, the Grantee shall have thirty (30) Days from the receipt of the report to provide the City with a written response agreeing to or refuting the results of the audit, including any substantiating documentation.
 - ii. Based on these reports and responses, the parties shall agree upon a Finally Settled Amount. For purposes of this Section, the term "Finally Settled Amount" shall mean the agreed upon underpayment, if any, to the City by the Grantee as a result of any such audit. If the parties cannot agree on a Finally Settled Amount, the parties shall submit the dispute to a mutually agreed upon mediator within sixty (60) Days of reaching an impasse. In the event an agreement is not reached at mediation, either party may bring an action to have the disputed amount determined by a court of law.

- iii. Any Finally Settled Amount due to the City as a result of such audit shall be paid to the City by the Grantee within thirty (30) Days from the date the parties agree upon the Finally Settled Amount. Once the parties agree upon a Finally Settled Amount and such amount is paid by the Grantee, the City shall have no further rights to audit or challenge the payment for that period. The City shall bear the expense of its audit of the Grantee's books and records.
- iv. In the event the audit finds the underpayment by Grantee to be six percent (6%) or more of the amount due during the audit period, the Grantee shall reimburse the City for the City's reasonable costs of the audit.
- c. Not Franchise Fees. Grantee acknowledges and agrees that the Franchisee Fees payable by the Grantee to the City pursuant to this section shall take precedence over all other payments, contributions, services, equipment, facilities, support, resources or other activities to be provided or performed by Grantee pursuant to this Franchise and that the Franchise Fees provided for in this section of this Franchise shall not be deemed to be in the nature of a tax and shall be in addition to any and all taxes and other fees and charges of general applicability which Grantee shall be required to pay to City and/or to any other governmental authority, all of which shall be separate and distinct obligations of Grantee.
- d. No Deduction From Franchise Fees. Grantee shall not apply or seek to apply or make any claim that all or any part of the Franchisee Fees made by Grantee to City pursuant to this Franchise shall be deducted from or credited or offset against any income taxes, sales taxes, property taxes or other taxes, fees or assessments of general applicability levied or imposed by City or any other governmental authority, including any such tax, fee or assessment imposed on both utilities and cable operators or their services.
- 4. Access to Records. The City shall have the right to inspect, upon reasonable prior written notice which shall not be less than fifteen (15) Days and during Normal Business Hours, copies of any records maintained by Grantee which relate to Grantee's calculation of Franchise Fees to the City, including necessary accounting and financial records related to the calculations. City acknowledges that some of the records which may be offered to Grantee for inspection may be classified as confidential and therefore may subject Grantee to competitive disadvantage if made public. Employees and agents of the City authorized to inspect such records of Grantee shall sign a confidentiality agreement and thereby agree to maintain the confidentiality of any and all records offered to it by Grantee for inspection

which are not required to be made public pursuant to Applicable Laws. Grantee shall offer such records for City's inspection at Grantee's local office within the City or at such other mutually agreed upon location to which the parties may agree. The City agrees that such records identified as confidential by Grantee shall not be available under any disclosure laws or public records requests and the City shall be exempted from any production of such records if in compliance with the law. The City will advise Grantee of any request for its records from a third party and allow the Grantee the opportunity to challenge such production, in court if necessary, or defend any action brought by another party for said records should the City elect not to contest the request.

5. Confidential and Proprietary Information Protection. All strand maps regarding the location of all facilities constructed by the Grantee, including the database and electronic data provided to the City, shall be considered confidential and proprietary information and shall not be subject to disclosure to anyone except for the use in conducting City business related to use and maintenance of Rights of Way or other legitimate purposes of a similar nature. The aforementioned information shall not be provided in response to a public records request under Mississippi law. If such a request is made, the City agrees to notify the Grantee within five (5) Days of such request orally and in writing. The City agrees such information will not be disclosed except upon final order of a court of competent jurisdiction. City agrees to cooperate in and support any objection or legal challenge to the production of this information to the public or any Person not otherwise authorized to obtain such information.
6. Periodic Evaluation. The City may require evaluation sessions with the Franchise Administrator at any time during the term of this Franchise, upon fifteen (15) Days, prior written notice to Grantee provided, however, the City shall conduct periodic evaluation sessions no more often than one (1) time in any twelve (12) month period. Topics which may be discussed at any evaluation session may include, but are not limited to, application of new technologies, Cable System performance, programming offered, access Channels, facilities, and support, municipal uses of cable, Subscriber rates, customer complaints, amendments to this Franchise, judicial rulings, FCC rulings, line extension policies, and any other topics City deems relevant. The Cable Franchise Administrator shall report to the City Council within thirty (30) days of the meeting and shall identify any issues or findings it may have made during the review along with generally reporting on the overall operation of the Cable System.

7. Beginning no sooner than the first anniversary of the Effective Date of this Franchise the City shall hold a public meeting in order for Subscribers to provide comments to the Grantee regarding Cable Service. The City shall provide a minimum of thirty (30) days written notice to Grantee of the intent to hold a public meeting. Such public meetings may be held once each year following the first year. The hearing shall be presided over by the Cable Franchise Administrator who shall issue a report to the City Council within thirty (30) days following the meeting.

Sec. 6-3.10. INSURANCE PROVISIONS

1. Letter of Credit.
 - a. At the time of acceptance of this Franchise, Grantee shall deliver to City an irrevocable and unconditional Letter of Credit, in form and substance acceptable to City, from a National or State bank approved by City, in the amount of Twenty-Five Thousand and No/100 Dollars (\$25,000.00).
 - b. The Letter of Credit shall provide that funds will be paid to City, Subject to Section 10, herein, upon written demand of City, and in an amount solely determined by City in payment for penalties charged pursuant to this Franchise, in payment for any monies owed by Grantee to City pursuant to its obligations under this Franchise, or in payment for any damage incurred by City as a result of any acts or omissions by Grantee pursuant to this Franchise.
 - c. If said letter of credit or any subsequent letter of credit delivered pursuant thereto expires prior to thirty (30) months after the expiration of the term of this Franchise, it shall be renewed or replaced during the term of this Franchise to provide that it will not expire earlier than thirty (30) months after the expiration of this Franchise. The renewed or replaced letter of credit shall be of the same form and with a bank authorized herein and for the full amount stated in subparagraph (a) of this section.
 - d. If City draws upon the letter of credit or any subsequent letter of credit delivered pursuant hereto, in whole or in part, Grantee shall replace or replenish to its full amount the same within ten (10) Business Days and shall deliver to City a like replacement letter of credit or certification of replenishment for the full amount stated in this Section as a substitution of the previous letter of credit. This shall be a continuing obligation for any draws upon the letter of credit. This obligation is a material term of this Franchise.

- e. The collection by City of any damages, monies or penalties from the letter of credit shall not affect any other right or remedy available to City, nor shall any act, or failure to act, by City pursuant to the letter of credit, be deemed a waiver or release of any right of City pursuant to this Franchise or otherwise.

2. Liability Insurance.

- a. Upon the effective date, Grantee shall, at its sole expense take out and maintain during the term of this Franchise public liability insurance with a company licensed to do business in the state of Mississippi that shall protect the Grantee, City, and its officials, officers, directors, and employees from claims which may arise from operations of the Cable System under this Franchise, whether such operations be by the Grantee, its officials, officers, directors, employees, and agents or any contractors of Grantee. This liability insurance shall include, but shall not be limited to, protection against claims arising from bodily and personal injury and damage to property, resulting from Grantee's vehicles, products, and operations. The amount of insurance for single limit coverage applying to bodily and personal injury and property damage shall not be less than one million and no/100 dollars (\$1,000,000.00). The following endorsements shall be attached to the liability policy:
 - i. The policy shall provide coverage on an "occurrence" basis.
 - ii. The policy shall cover personal injury as well as bodily injury.
 - iii. The policy shall cover blanket contractual liability subject to the standard universal exclusions of contractual liability included in the carrier's standard endorsement as to bodily injuries, personal injuries, and property damage.
 - iv. Broad form property damage liability shall be afforded.
 - v. City and its employees shall be named as an additional insured on the policy.
 - vi. An endorsement shall be provided which states that the coverage is primary insurance and that no other insurance maintained by the City will be called upon to contribute to a loss under this coverage.
 - vii. Standard form of cross-liability shall be afforded.
 - viii. An endorsement stating that the policy shall not be canceled without thirty (30) Days notice of such cancellation given to City.

- b. Grantee shall submit to City documentation of the required insurance, including a copy of the certificate of insurance signed by the insurance agent and companies named, as well as all properly executed endorsements.
3. Indemnification
- a. Grantee shall indemnify, defend and hold City, its officers, boards, commissions, and employees (collectively, the “Indemnified Parties”) harmless from and against any and all lawsuits, claims, causes or action, actions, liabilities, demands, damages, judgments, settlements, disability, losses, expenses (including reasonable attorney’s fees and disbursements of counsel) and costs of any nature that any of the Indemnified Parties may at any time suffer, sustain or incur arising out of, based upon, or in any way connected with, the Grantee’s operation of the Cable system in the Franchise Area, the exercise of the Franchise, the breach of Grantee of its obligations under this Franchise, and/or the activities of Grantee, its contractors, employees, and agents hereunder. Grantee shall be solely responsible for and shall indemnify, defend, and hold the Indemnified Parties harmless from and against any and all matters relative to payment of Grantee’s employees, including compliance with Social Security and withholdings. Grantee shall not be required to provide indemnification to City for programming cablecast over the EG access Cable Channel positions administered by City in accordance with Section 6.2(d), herein.
 - b. The indemnification obligations of Grantee set forth in this Franchise are not limited in any way by the amount or type of damages or compensation payable by or for Grantee under Workers’ Compensation, disability or other employee benefit acts, acceptance of insurance certificates required under this Franchise or the terms, applicability or limitations of any insurance held by Grantee.
 - c. City does not, and shall not, waive any rights against Grantee which it may have by reason of the indemnification provided for in this Franchise, because of the acceptance by City or the deposit with City by Grantee, of any of the insurance policies described in this Franchise.
 - d. The indemnification of City by Grantee provided for in this Franchise shall apply to all damages and claims for damages of any kind suffered by reason of any of the Grantee’s operations referred to in this Franchise, regardless of whether or not such insurance policies shall have been determined to be applicable to any such damages or claims for damages.

- e. Grantee shall not be required to indemnify City for negligence or misconduct on the part of City or its officials, boards, commissions, agents, or employees. City shall hold Grantee harmless, subject to the limitations in state statutes for any damage resulting from the negligence or misconduct of the City or its officials, boards, commissions, agents, or employees in utilizing any EG access Cable Channels, equipment or facilities, and for any such negligence or misconduct by City in connection with work performed by City and permitted by this Franchise, on or adjacent to the Cable System.
- f. Grantee shall not commence any Cable System reconstruction work or permit any contractor to commence work until all insurance required under this Franchise has been obtained. Said insurance shall be maintained in full force and effect until the expiration of this Franchise.
- g. Grantee shall be liable for all damages or losses caused by any of its contractors.
- h. In order for City to assert its rights to be indemnified, defended, and held harmless, City must, with respect to each claim:
 - i. Promptly, but in no event more than fifteen (15) Days, notify Grantee in writing of any claim or legal proceeding which gives rise to such right;
 - ii. Afford Grantee the opportunity to participate in any compromise, settlement or other resolution or disposition of any claim or proceeding; and
 - iii. Fully cooperate with reasonable requests of Grantee, at Grantee's expense, in its participation in, and control, compromise, settlement or resolution or other disposition of such claim or proceeding subject to paragraph 2 above.
- i. Grantee may not deny indemnification for late notice unless it can show actual prejudice.
- j. If the City determines that it is necessary for it to employ separate counsel, the costs for such separate counsel shall be the responsibility of the City.

Sec. 6-3.11. DEFAULT, REVOCATION, AND TRANSFER OF FRANCHISE

1. Notice of Violation or Default. In the event the City believes that the Grantee has not complied with the terms of this Franchise, the City shall notify the Grantee in writing with specific details regarding the exact nature of the alleged noncompliance or default. The City shall mail to the Grantee written notice by certified or registered mail of the alleged violation and the proposed liquidated damage, specifying the violation at issue, pursuant to the Notice provisions of Section 2.10.

2. Grantee's Right to Cure or Respond; Assessment of Penalty.
 - a. Grantee's Right to Cure or Respond. The Grantee shall have thirty (30) Days from the date of the City's written notice to: (A) respond to the City in writing, contesting the assertion of noncompliance or default; or (B) cure such default; or (C) in the event that, by the nature of the default, such default cannot be cured within such thirty (30) Day period, initiate reasonable steps to remedy such default and notify the City of the steps taken and the projected date that the cure will be completed. In the case of breaches of requirements measured on a monthly, quarterly or longer period, Grantee's cure period shall be no less than one (1) such period.

 - b. The City may not assess any penalties set forth herein if the Grantee has timely responded to the notice of violation or default and cured or commenced to cure, as may be appropriate, the violation following receipt of written notice from the City, unless some other cure period is approved by the City.
 - i. In the event Grantee fails to respond or fails to cure, or commence to cure, the City may draw on the Letter of Credit for the full penalty assessed, and daily thereafter until cured.

 - ii. The City shall determine whether the violation has been cured, or whether the cure commenced is satisfactory. If the City concludes Grantee has failed to cure or commence to cure, or failed to refute the alleged breach satisfactorily, the City may assess the penalties set forth herein and shall inform Grantee in writing of its decision and of the assessment and the City may draw on the Letter of Credit immediately for the full penalty assessed, and daily thereafter until cured.

3. Appeal.

In the event Grantee disagrees with the notice of breach, the decision of the City, or the amount of the assessed penalties, then Grantee may appeal to the City Council within Thirty (30) Days of the date of the notice of breach received or the date of imposition of any penalty.

- a. To appeal, Grantee shall notify the City in writing pursuant to Section 2.10 that there is a dispute as to whether a violation or failure has in fact occurred and such written notice by Grantee to City shall specify with particularity the matters disputed by Grantee.
- b. Upon receipt of such notice the City shall immediately place the issue on the agenda for the next available meeting of the City Council for hearing, but in no event shall more than Thirty (30) days elapse.
- c. At the public hearing, the City shall give the Grantee an opportunity to state its position on the matter, present evidence and question witnesses, and the City may present its own witnesses or evidence after which it shall determine whether or not the Franchise has been breached. The public hearing shall be on the record and any party may request a written transcript at their cost.
- d. The Grantee may appeal such determination to an appropriate court pursuant to Mississippi law.
- e. All penalties shall continue to accrue during any appeal pursuant to this paragraph.

4. Stay During Appeal.

The City Council may suspend or stay collection of further liquidated damages against the letter of credit pending such hearing before the City Council upon request by Grantee. If the City declines to suspend such collection, then if City or a court of competent jurisdiction later determines that the Grantee has not violated this Franchise, then the City shall repay all collections plus interest charged to Grantee on such funds, if any.

5. Default Time and Remedies.

In no event may liquidated damages be assessed for a time period exceeding one hundred twenty (120) Days. If after that amount of time Grantee has not cured or commenced to cure the alleged breach to the satisfaction of the City, the City may pursue all other remedies including, but not limited to:

- a. Seeking injunctive relief or specific performance of any provision that reasonably lends itself to such remedy as an alternative to damages or seek other equitable relief; or
- b. Damages for the loss caused by the breach; or
- c. In the case of a substantial default of a material provision of the Franchise, declare, subject to Section 10.6, herein, the Franchise to be revoked and order termination of all services in the City.

6. Revocation.

The City may revoke the Franchise in accordance with the following:

- a. The City shall give written notice pursuant to Section 2.10 to the Grantee of its intent to revoke the Franchise on the basis of a pattern of noncompliance or on the basis of a material breach by the Grantee. The notice shall set forth with specificity the exact nature of the noncompliance.
- b. The Grantee shall have sixty (60) Days from the receipt of such notice to object in writing and to state its reasons for such objection.
- c. In the event the City has not received a response from the Grantee or upon receipt of the response does not agree with the Grantee's proposed remedy, it may then seek termination of the Franchise at a public hearing.
- d. The City shall cause to be served upon the Grantee, at least ten (10) Days prior to such public hearing, a written notice specifying the time and place of such hearing and stating its intent to request termination of the Franchise.

- e. At the designated hearing, the City shall give the Grantee an opportunity to state its position on the matter, present evidence and question witnesses, and the City may present its own witnesses or evidence after which it shall determine whether or not the Franchise shall be terminated. The public hearing shall be on the record and a written transcript shall be made available to any party upon request at their own cost.
 - f. The Grantee may appeal such determination to an appropriate court pursuant to Mississippi law.
7. Penalties for Breach: Because it may be difficult to calculate the harm to the City in the event of a breach of this Franchise by Grantee the following penalties are established. To the extent that the City elects to assess penalties as provided in this Franchise, nothing in this Section is intended to preclude the City from exercising any other right or remedy. City in accordance with this section may charge to and collect from Grantee directly or via the letter of credit the following penalties:
- a. For failure to provide data, reports or information or to cooperate with City during a periodic evaluation or system review the penalty shall be Two Hundred Fifty and No/100 Dollars (\$250.00) per Day for each Day per violation, or part thereof, such failure occurs or continues.
 - b. Thirty (30) Days following notice from City of a failure of Grantee to comply with construction, operation or maintenance standards, the penalty shall be Two Hundred Fifty and No/100 Dollars (\$250.00) per Day for each Day, or part thereof, such failure occurs or continues.
 - c. For failure to follow any one of the Customer Service Provisions set forth in Section 5 herein the penalty shall be Two Hundred Fifty and no/100 Dollars (\$250.00) per Day. However, to the extent a period of time noted in the Customer Service Provisions is measured by Quarter then the failure to meet the standard for two consecutive quarters shall result in a fine of \$2,500.00 and a fine of \$2,500.00 for each quarter thereafter in which the violation is not cured.
 - d. For failure to meet service requirements to municipal buildings or schools outlined herein, Two Hundred Fifty and no/100 Dollars (\$250.00) per violation per calendar Day.
8. Separate Violations.

Each violation of any provision of this Franchise shall be considered a separate violation for which a separate penalty can be imposed.

9. Transfer of Cable System or Franchise or Control of Grantee .

Neither the Grantee nor any other Person may transfer the Cable System or the Franchise without the prior written consent of the City, which consent shall not be unreasonably withheld or delayed. No transfer of control of the Grantee, defined as an acquisition of fifty one percent (51%) or greater ownership interest in Grantee, shall take place without the prior written consent of the City, which consent shall not be unreasonably withheld or delayed. No consent shall be required, however, for (i) a transfer in trust, by mortgage, hypothecation or by assignment of any rights, title or interest of the Grantee in the Franchise or in the Cable System in order to secure indebtedness, or (ii) a transfer to an entity directly or indirectly owned or controlled by Comcast Corporation. Within thirty (30) Days of receiving a request for consent, the City shall, in accordance with FCC rules and regulations, notify the Grantee in writing of the additional information, if any, it requires to determine the legal, financial, and technical qualifications of the transferee or new controlling party. If the City has not taken final action on the Grantee's request for consent within one hundred twenty (120) Days after receiving such request, consent shall be deemed granted.

- a. Grantee may not abandon the System or any portion thereof without having first given Ninety (90) Days written notice to City. Grantee may not abandon the System or any portion thereof without compensating City for damages resulting from the abandonment, including all costs incident to removal of the System.
- b. No Franchise may be transferred if Grantee has been notified by the City of noncompliance of the Franchise unless an acceptable compliance program has been approved by City. The approval of any transfer of ownership pursuant to this section shall not be deemed to waive any rights of City to subsequently enforce noncompliance issues relating to this Franchise even if such issues predated the approval, whether known or unknown to City.

Sec. 6-3.12. PROTECTION OF INDIVIDUAL SUBSCRIBER RIGHTS

1. Discriminatory Practices Prohibited. Grantee shall not deny Cable Service, deny access, or otherwise discriminate against Subscribers or general citizens on the basis of race, color, religion, national origin, sex, age or disability. Grantee shall comply at all times with all other applicable federal, state, and City laws, and all executive and administrative orders relating to nondiscrimination.

2. Subscriber Privacy. The Grantee shall comply with all applicable federal and state privacy laws, including Section 631 of the Cable Act and regulations adopted pursuant thereto.

Sec. 6-3.13. UNAUTHORIZED CONNECTIONS AND MODIFICATIONS

1. Unauthorized Connections or Modifications Prohibited. It shall be unlawful for any firm, Person, group, company, corporation or governmental body or agency, without the express consent of the Grantee, to make, possess or assist anybody in making or possessing with the intent to divert, any unauthorized connection, extension or division, whether physically, acoustically, inductively, capacitive, electronically or otherwise, with or to any segment of the Cable System or receive Cable Services of the Cable System or to obstruct, injure, break, tamper with or destroy in any manner the Cable System without Grantee's authorization.
2. Prima facie evidence of intent to divert. The presence at any time on or about such wires, cables or cable television equipment of any device or wire resulting in the diversion of television, radio, audio or video signals shall constitute prima facie evidence of knowledge and intent to divert on the part of the Person having custody of the room or place where such signals are diverted and received and shall constitute prima facie evidence of the intention on the part of such Person to defraud and shall bring such person prima facie within the scope, meaning, and penalties of this section.
3. Removal or Destruction Prohibited. It shall be unlawful for any firm, Person, group, company or corporation to willfully or intentionally divert, interfere, tamper, remove, obstruct, damage or assist thereof, any part or segment of the Cable System for any purpose whatsoever.
4. Penalty. Any firm, Person, group, company or corporation found guilty of violating this section shall be guilty of a misdemeanor and, on such conviction shall be punished in accordance with Section 97-25-54 of the Mississippi State Code and may be fined up to one thousand dollars (\$1,000.00) and assessed the costs of the action for each and every subsequent offense. Each continuing Day of the violation shall be considered a separate occurrence.
5. Complaint. The City may, upon its own, exercise its police power to enforce this provision via proper law enforcement powers. The Grantee or the City may jointly or independently file an Affidavit against any Subscriber and chose to pursue the violation as a criminal misdemeanor.

Article II. CIVIL SERVICE*

Sec. 6-4. Civil Service - State code adopted.

Section 21-31-1 et al and any and all statues of this state as set forth in the Mississippi Code of 1972, Annotated as amended, are hereby made effective and in full force in the City of Hattiesburg, Mississippi.

**Editor's note.--The acts creating the commission were enacted by Chapter 208, Senate Bill No. 127 and Chapter 209, House Bill No. 821, Laws of Mississippi, 1944.*

ARTICLE II (I).CONTRACTOR REVIEW BOARD ESTABLISHED

Sec. 6-5. Board established; membership; duties.

- A. A Contractor Review Board is hereby established. The board shall consist of the Building Official of the City, or his official representative, and nine active members. Such members shall reside in the City of Hattiesburg, and shall be appointed by the Mayor and ratified by the City Council, and such members shall be from the following professions, to wit:
One licensed General Contractor; One licensed Residential Builder; One licensed Master Plumber; One licensed Master Mechanical Contractor; One Licensed Master Electrician; One Architect licensed in the state of Mississippi; One Engineer licensed in the state of Mississippi; two Representatives at Large actively serving the construction industry; and the Building Official, or his official representative, who shall be a permanent advisory, ex officio and nonvoting member of the board, by virtue of his office.
- B. Terms: The initial term of office of each member shall be three years, with all subsequent terms being two years each. Such members shall be eligible for appointment to succeed themselves. All vacancies in said board, because of resignation, death or removal prior to the expiration of the term of such member shall be filled by appointment of the mayor and ratified by the City Council at the next meeting of the governing authorities. All members shall be resident citizens of the City of Hattiesburg and shall maintain such residency during their term of office. In the event that there is no contractor in good standing with the City from one of the above listed professions who resides in the City, the board may recommend to the Mayor for appointment and ratification, an alternate Member at Large who resides in the City and who is a professional within the industry for which there is a vacancy.
- C. Meetings: Regular meetings of the board shall be held on the third Wednesday of each month at 3:00 PM at City Hall or at such time as the board may set. Special meetings may be called at any time by the chairman or vice chairman or a majority of the board. Five members of the board, plus the building official representative, present at any meeting shall constitute a quorum for the transaction of business, but any action taken at meeting shall require a majority vote. The chairman of the meeting of the board shall

vote. In the absence of a quorum present at the meeting, a maximum of two proxy votes shall be allowed. Said proxies shall be designated by the absent member(s) in writing via fax, e-mail, mail or hand delivered.

A maximum of two members may participate in meetings via teleconference. But in no case shall a meeting be conducted unless at least three active voting members are present at the meeting.

- D. Officers: The board shall select one of its members as chairman, who shall preside at all meetings, and a vice chairman who shall preside in the absence of the chairman.
- E. Removal of a Board Member: In the event that a board member shall be absent from three consecutive meetings without just cause, such member shall be removed from the board by the Mayor and City Council. Resulting vacancies shall be filled pursuant to Section 1A of this Ordinance.
- F. Duties:
 - 1. It shall be the duty of the Contractor Review Board to receive and approve or deny all applications from contractors, as defined in section 2 of this Ordinance, seeking to obtain a contractors license in the City; or to continue in business in the City after a license has been suspended or has not been renewed as required by this Ordinance. Said approval or denial for the issuance or renewal of a contractor's license shall be based on the criteria outlined in section 2 of this ordinance. Said approval or denial of a contractors license following a suspension period shall be based on criteria set forth by the board for that contractor based on the circumstances which caused the suspension;
 - 2. To formulate rules to govern its actions;
 - 3. To take testimony and proof concerning all matters within its jurisdiction, including but not limited to granting licenses, receiving complaints, conducting hearings, revoking licenses and making investigations;
 - 4. And to take action to suspend or revoke a contractor's license following a complaint if the board determines that such action is warranted after taking testimony and proof from a complainant.
- G. Compensation: Board members shall not be compensated but may be reimbursed reasonable amounts for expenses incurred while performing duties relative to functions of the board. Such expenses must be pre-approved by the City Administrator prior to expenditure.
- H. Liability: Board members acting in good faith and without malice in the discharge of duties required by this ordinance shall not be rendered liable personally. Any suit instituted against the board or a member in the lawful discharge of duties and under the provisions of this ordinance shall be defended by the legal representative of the City until final termination of the proceedings.

Sec. 6-6. License required

- A. Any person, firm or corporation performing work which requires a permit from the Land Development Division, including but not limited to building permit, demolition permit, building moving permit, sign permit, electrical permit, plumbing permit, mechanical permit, gas permit, tree-cutting permit, and grading permit shall be licensed by the City as a contractor in the appropriate trade for the scope of work to be covered by said permit.
- B. Classification of License: Contractor licenses shall be classified as follows:
 1. General Contractor: for the construction, alteration or repair of buildings, either residential or commercial, with the exception of electrical, plumbing, mechanical and gas work.
 2. Residential Builder: for the construction, alteration or repair of single- family residential buildings; multi-family residential buildings not to exceed forty-nine dwelling units and not to exceed two stories in height; and commercial buildings not to exceed seven thousand, five hundred square feet and not to exceed two stories in height; with the exception of electrical, mechanical, plumbing and gas work.
 3. Residential Remodeler: for the alteration or repair of one- and two-family dwellings where the project cost does not exceed fifty thousand dollars. Residential Remodelers shall not perform electrical, plumbing, mechanical or gas work.
 4. Master Electrician: for electrical installations, repairs and alterations. Journeyman electricians shall not be allowed to permit electrical work.
 5. Master Mechanical Contractor: for the installation, repair, and alteration of HVAC systems, ductwork, exhaust systems, gas appliances and piping and other systems covered by the currently adopted mechanical code. HVAC contractors shall be properly certified by the Environmental Protection Agency for the installation of freon. Journeyman mechanical contractors shall not be allowed to permit mechanical work.
 6. Master Plumber: for the installation, repair or alteration of plumbing systems covered by the currently adopted plumbing code and for the installation, repair and alteration of gas piping. Journeyman plumbers shall not be allowed to permit plumbing work.
 7. Roofing Contractor: for the installation, repair or alteration of residential and commercial roofing systems. Roofing contractors shall not perform remodeling or construction other than roofing.
 8. Moving Contractor: for the moving of residential and commercial buildings as well as the moving of other structures and items which require a moving permit.
 9. Demolition Contractor: for the demolition of buildings and other structures which require a demolition permit.

10. Sign Contractor: for the installation, erection, alteration or repair of commercial signs.
 11. Specialty Trades: for the installation, repair, or alteration of systems requiring a permit which are not specifically mentioned above, including but not limited to fire sprinkler contractors and commercial hood system contractors. In addition to approval by the Contractor Review Board, fire suppression contractors of all types, including but not limited to fire sprinkler contractors and commercial hood contractors, shall be approved by the City Fire Marshall.
- C. Exceptions: The following projects shall not require a licensed contractor:
1. The owner-occupant of a single-family dwelling may act as his/her own general contractor one time per calendar year. The residence must be occupied by the owner-contractor and cannot be constructed for resale or rent. The owner-contractor shall assume all liability and responsibility associated with the construction of the residence and shall be subject to the State Home Warranty Act. The owner-contractor shall certify to the City that he/she is in fact the owner/occupant of said residence and that he/she is qualified to act as his/her own contractor and that he/she is knowledgeable of all applicable building codes. If, after one or more inspections, the building official or his assigned representative determines that the owner is not qualified to construct the residence, the owner, after being given notice by the building official to do so, shall cease all construction activity until a duly licensed contractor has been retained and approved by the building official to complete the project.
 2. The owner-occupant of a single-family residence may act as his/her own contractor for the alteration or repair of said residence. The owner-contractor shall be subject to the same terms and conditions as outlined in number one (C-1) above.
 3. The owner of existing commercial and/or existing rental property may act as his/her own contractor for the alteration or repair of said existing commercial or rental property so long as the project cost of said alteration or repair does not exceed one hundred thousand dollars. The building official, at his option, may use cost data tables and formulas provided by the International Code Council or other nationally recognized cost data to determine the project cost of said alteration or repair projects. Owner-contractors shall be subject to the same terms and conditions as outlined in number one above (C-1).
 4. Volunteers, performing work on a strictly volunteer basis for a non-profit organization may qualify to perform said work without a license. A request for volunteer status shall be submitted in writing to the building official. Such request shall include a detailed description of the scope of work to be performed and the qualifications of the volunteer(s) to perform such work. The building official may approve said request, deny said request, or approve the request subject to project oversight by a duly licensed contractor. If the building official

denies said request, the volunteer(s) may appeal said denial to the Contractor Review Board by filing said appeal in writing, requesting a hearing before the board at its next regular meeting.

5. In no case shall an owner-contractor or a volunteer perform gas piping or electrical work. All such work shall be performed by contractors duly licensed with the City.

D. License Application Requirements: Applicants for a contractor's license shall be at least twenty-one years of age and shall make application on application forms furnished by the Land Development Division and provide supporting data required by said application, including but not limited to:

1. A valid copy of the applicant's current Mississippi State Certificate of Responsibility (State License). In lieu of a copy of the state certificate of responsibility, a contractor may qualify to transfer to the City from another city or county within the state by fulfilling all the requirements of Mississippi Code of 1972, Section 17-25-5. Said section 17-25-5 shall only replace the requirement for competency examination and shall not replace any other requirements for application. Said transferring contractors shall be limited in accordance with regulations of the Mississippi State Board of Contractors.

2. All applicants shall have at least five years proven experience in the trade governed by the license for which application is made. The applicant shall provide signed affidavit(s) prepared and signed by licensed contractor(s), other than the applicant, listing chronologically the active experience under said licensed contractor(s), supervision of the applicant, and dates of said employment.

With approval by the Contractor Review Board, applicants may substitute up to three years experience with a degree in the appropriate field of study from an accredited four-year College or University. The applicant shall have the College or University forward the applicant's transcript to the Board.

3. Valid and clear picture identification, such as drivers license.

4. A list of all projects completed by the applicant in the past twelve months. Such list shall be in spreadsheet format and shall include the project address; scope of the work; and name, address, and phone number of the client for which said work was performed. Any omissions from said list or any misrepresentation of facts shall be sufficient cause for revocation of license as well as legal action related to perjury.

5. Certificate of General Liability Insurance naming the City of Hattiesburg as a certificate holder. Said liability insurance shall be a minimum of one million dollars coverage for general contractors, a minimum five hundred thousand dollars coverage for residential builders, a minimum of fifty thousand dollars for residential remodelers, and a minimum of one hundred thousand dollars coverage for all other contractors. Moving contractors may substitute Cargo

Insurance with a coverage amount not less than the appraised value of the structure or item being moved for the liability insurance.

6. Proof of Workers Compensation Insurance when applicable.

- E. The building official may, at the building official's discretion, upon receipt of the above-mentioned documentation, issue the applicant permits prior to Board approval until the next regular meeting of the Board.
- F. Grandfather Clause: Any contractor licensed at the time of passage of this ordinance shall remain in effect with the condition that the contractor keeps his/her documentation, including but not limited to insurance and bond, current with the Land Development Division. Existing contractors who do not have a state certificate of responsibility are subject to the restrictions and regulations imposed by state law and the State Board of Contractors.
- G. Renewal: It shall be the contractor's responsibility to keep current all required documentation, including but not limited to insurance and bond renewals, and submit said documentation to the Land Development Division. If the contractor fails to renew documentation prior to expiration, the contractor is subject to reapplication to the Board and must comply with the requirements of this ordinance.
- H. Violations: Anyone who violates any portion of this ordinance shall be guilty of a misdemeanor and subject to fines and/or up to ninety days in jail as determined by the Municipal Judge. Each violation shall constitute a separate offense. Each day that a violation exists shall constitute a separate offense.
In addition to fines and/or jail sentence, a contractor shall be subject to disciplinary action by the Board, up to and including revocation of license.

I.

Sec. 6-7. Validity

- A. Validity: If any section, sub-section, sentence, clause or phrase of this Ordinance is for any reason held to be unconstitutional, such decision shall not affect the validity of the remaining portions of the ordinance. The governing authorities of the City of Hattiesburg, Mississippi, hereby declare that it would have passed this ordinance and each section, sub-section, sentence, clause, or phrase thereof, irrespective of the fact that nay one or more sections, sub-sections, sentences, clauses, or phrases be declared unconstitutional.

Secs. 6-8. Reserved.

Article III. Election Commission*

Secs. 6-9. Election Commissioners pay schedule.

A. The City of Hattiesburg Municipal Election Commissioners, appointed in accordance with Section 23-15-221, of Mississippi Code of 1972, annotated as amended, shall be entitled to receive a per diem in the amount provided for County Election Commissioners in Section 23-15-153, to be paid from the municipal general fund, for every day or period of no less than five (5) hours accumulated over two (2) or more days actually employed in the performance of their duties

for the necessary time spent in the revision of the registration books and poll books as required in Subsection 1 of Section 23-15-153, of Mississippi Code of 1972, annotated as amended, for a maximum of fifty (50) days per year. (Ord. 3042, sec. 1, 9-8-09; Ord. 2458, Sec. 1, 09-07-93)

B. The City of Hattiesburg Municipal Election Commissioners, appointed in accordance with Section 23-15-221, of Mississippi Code of 1972, annotated as amended, shall be entitled to receive a per diem in the amount provided for County Election Commissioners in Section 23-15-153 and Section 23-15-239, to be paid from the general fund, not to exceed ten (10) days, for every day or period of no less than five (5) hours accumulated over two (2) or more days actually employed in the performance of their duties for the necessary time spent in the revision of the registration books and poll books prior to any special election. For purposes of this section, the annual limitations as set forth in Subsection 2 of Section 23-15-153, of Mississippi Code of 1972, annotated as amended, shall not apply, and the regular special election day shall not be considered a special election, as set forth in Subsection 3 of Section 23-15-153, of Mississippi Code of 1972, annotated as amended. (Ord. 3042, sec. 1, 9-8-09; Ord. 2458, Sec. 2, 09-07-93)

C. The City of Hattiesburg Municipal Election Commissioners, appointed in accordance with Section 23-15-221, of Mississippi Code of 1972, annotated as amended, shall be entitled to receive a per diem in the amount provided for County Election Commissions, to be paid from the general fund, for every day or period of no less than five (5) hours accumulated over two (2) or more days actually employed in the performance of their duties in the conduct of an election, as set forth in Subsection 4 of Section 23-15-153, of Mississippi Code of 1972, annotated as amended, for a maximum of twenty-five (25) days per election. (Ord. 3042, sec. 1, 9-8-09; Ord. 2458, Sec. 3, 09-07-93)

D. The Municipal Election Commissioners shall be entitled to receive only one (1) per diem payment for those days when they discharge more than one (1) duty or responsibility on the same day. (Ord. 2447, secs. 1--4, 5-4-93)

Secs. 6-10 --- 6-11. Reserved.

**Editor's note-- Election commissioners are appointed in accordance with Section 23-15-221 of Mississippi Code of 1972, Annotated as Amended.*

Article IV. Electrical Board

Sec. 6-12. Reserved. Ord. 3034, sec. 1, 4-7-09

***Cross reference—see Ordinance 3034, abolishing the Construction Board of Examining, Adjustment and Appeal Board, Electric Board and Plumbing, Gas, Mechanical and Specialty Trades Examining Review and establishing Contractor Review Board. See chapter 6-8 and chapter 9.*

Secs. 6-13 --- 6-15. Reserved.

Article V. RESERVED

Sec. 6-16. Reserved. (Ord. 3034, 4-7-09)

**Cross reference--see Chapter 22 - Art. IV, fire prevention.*

Secs. 6-17 --- 6-19. Reserved.

Article VI. Reserved

Sec. 6-20. Reserved

**Amendment note.--Ord. 2345, Sec. 4, enacted 5-8-90, repealed Ord. 2276, Art. 2, Sec. 17, enacted 10-6-87 and Ord. 2078, Art. 4, Sec. D, enacted 6-8-82, and codified as Sec. 6-20, established the Flood Plain Management Board of Appeals, and set forth their duties. This section was reserved to maintain sequence.*

Sec. 6-21 -- 6-23. Reserved

Article VII. Reserved

Sec. 6-24 -- 6-29. Repealed (Ord. 2567, 09-17-96)

Secs. 6-30. Reserved.

**Amendment note.--Ord. 2567, enacted 9-17-96, repealed Ord.2282, enacted 11-17-87 and Ord. 2455, enacted 8-17-93, abolishing the Hattiesburg Commission of Disabled Citizens. This section was reserved to maintain sequence.*

Article VII.(1). Hattiesburg Convention Commission

Sec. 6-31. Hattiesburg Convention Commission--created, terms and membership established, authority and duties.

A. There is hereby created and established the Hattiesburg Convention Commission, whose purpose is the promotion of conventions and tourism jointly with the Hattiesburg Tourism Commission in the City of Hattiesburg.

B. The commission shall be domiciled in the City of Hattiesburg. It shall have the authority to promulgate and enact all rules and regulations necessary or advantageous to the purpose of the commission.

C. The commission shall be composed of seven (7) members who shall be known as commissioners. The commissioners shall serve without compensation and shall serve as follows:

1. Appointments shall be made by the Mayor and ratified by the Council of the City of Hattiesburg.
2. Terms shall be as follows:
 - a. Three (3) members shall be for a term of one (1) year;
 - b. Two (2) members shall be for a term of two (2) years;
 - c. Two (2) members shall be for a term of three (3) years;

Thereafter, all succeeding appointments shall be made for a term of two (2) years from the date of expiration of the initial appointment. Any vacancy which occurs shall be made for the unexpired term only. Each commissioner shall serve until his successor is appointed and qualifies. (Ord.2456, 8-20-93)

3. Any commissioner may be disqualified and removed from office for either of the following reasons:
 - a. Conviction of a felony; or
 - b. Failure to attend three (3) consecutive meetings without just cause.If a commissioner is removed for any of the above reasons, the vacancy shall be filled in the manner prescribed in this section and shall be made for the unexpired term.

4. Before assuming the duties of office, each commissioner shall take the oath prescribed by law and shall enter into and give bond, to be approved by the Secretary of the State and the State of Mississippi, in the sum of Twenty-five Thousand Dollars (\$25,000.00), conditioned upon the faithful performance of

his duties. Such bond shall be payable to the State of Mississippi, and, in the event of a breach thereof, suit may be brought by the State of Mississippi for benefit of the commission. The premiums on such bonds shall be paid from the funds received by the commission under the provisions of this section.

5. A quorum shall consist of three (3) members of the commission. The commission shall elect a chairman, vice-chairman and secretary, all of whom shall be members of the commission, and shall adopt such rules and regulations as may govern the time and place for holding meetings, regular and special, and other rules and regulations not inconsistent with the provisions of this section.

D. The commission shall have jurisdiction and authority over all matters relating to the establishment, development, construction, furnishing and equipping of convention and tourism-related facilities within the City of Hattiesburg, including the authority to enter into such contracts

and agreements as may be necessary to carry out the intent of this section. The commission shall adhere to the provisions of the public purchasing laws, public works contract laws and public bid laws as provided by the laws of the State of Mississippi. The commission is authorized to contract for the construction, furnishing, equipping and operation of any and all facilities necessary or useful in the promotion of tourism and conventions; to lease or rent such facilities; and to receive and expend, subject to the provisions of this section, revenues from any source.

E. The commission shall adopt its first budget of receipts and expenditures to cover the period beginning with the effective date of the tax and ending with the end of the City's fiscal year; and, thereafter, the budget shall be on the same fiscal basis as the budget of the City.

F. If it is deemed necessary for negotiable bonds of the City to be issued, the commission must provide a written request to the governing authorities requesting same. (Ord. 2382, secs. 1--6, 8-20-91)

Secs. 6-32. Reserved.

Article VIII. Hattiesburg Historic Conservation Commission

Sec. 6-33. Hattiesburg Historic Conservation Commission--purpose.

It is hereby declared as a matter of public policy that the protection, enhancement and perpetuation of properties of cultural, architectural, archaeological or historic merit is a public necessity and is required in the interest of the health, prosperity and welfare of the people. Therefore, pursuant to the Mississippi Local Government Historic Preservation Act of 1978 (Chapter 472, Laws of Mississippi, 1978), this article intends to:

- A. Effect and accomplish the protection, enhancement and perpetuation of landmarks, landmark sites and historic districts which represent distinctive elements of the city's cultural, social, economic, political and architectural history.
- B. Safeguard the city's historic, aesthetic and cultural heritage, as embodied and reflected in such landmarks, landmark sites and historic districts.
- C. Foster civic pride in the accomplishments of the past.
- D. Insure the harmonious, orderly and efficient growth and development of the city.
- E. Stabilize the economy of the city through the continued use and revitalization of its landmarks, landmark sites and historic districts.
- F. Protect and enhance the city's attractions to tourists and visitors and the support and stimulus to business and industry thereby provided.
- G. Promote the use of landmarks, landmark sites and historic districts for the education, pleasure and welfare of the people of the City of Hattiesburg. (Ord. 2193, sec. 1, 6-25-85)

Sec. 6-34. Same---Definitions.

Unless specifically noted otherwise, the following definitions are standard throughout article VIII:

Alteration: Any change because of construction, repair, maintenance or other means to a landmark site or to a building located within a historic district or designated as a landmark.

Applicant: The record owner of a landmark, landmark site or building or buildings within a historic district or the lessee thereof with the approval notarized by the owner of record, or a person holding a "bona fide" contract to purchase same who makes application for a Certificate of Appropriateness under this article.

Building: Any building or other structure built for shelter or enclosure of persons, animals or chattels, including fences, signs, paving and boundary walls, and any part of any such building or structure when subdivided by division walls or party walls extending to or above the roof and without openings in such separate walls. The terms "building" shall be construed as if followed by the words "or any part thereof".

Certificate of Appropriateness: A document evidencing the approval of the Commission for work proposed by an applicant.

City: The City of Hattiesburg as represented by its Local Governing Board. For all intents and purposes of this ordinance, the terms "City", "Board", and "Council" shall be interchangeable.

Commission: The Historic Conservation Commission created under this article, pursuant to Section 39-13-5 of the Mississippi Code 1972, Annotated as Amended.

Construction: The erection of any on-site improvement to a Landmark or to a building or any parcel of ground located within a Historic District or on a Landmark Site, whether the site is presently improved or unimproved, or hereafter becomes unimproved by "demolition", "demolition by neglect", or as a result of destruction of an improvement located thereon by fire, windstorm or other casualty, or otherwise.

Demolition: The complete or constructive removal of a building on any site.

Demolition by Neglect: Neglect is the maintenance of any building or structure which is a historic landmark or which is within a historic district which results in deterioration.

Earthworks: Any subsurface remains of historical, archaeological or architectural importance or any unusual ground formations or archaeological significance.

Exterior Features: The architectural style, general design and general arrangement of the exterior of a building or other structure, the kind and texture of the building material and the type and style of all windows, doors, light fixtures, signs and other appurtenant fixtures and natural features such as live trees.

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

- B. Live trees larger than six inches (6") in diameter at a point five feet (5') above the ground shall be considered as exterior features.

Conservation District*: An area designated by the Commission and approved by the City through an ordinance which contains a geographically definable area, urban or rural, possessing a significant concentration, linkage, or continuity of sites, buildings, structures, or objects united by past events or aesthetically by plan or physical development.

**Cross reference--Sec. 2-12 - Hattiesburg Historic Conservation District Number 1.*

Historic Resources: As recognized by the National Register of Historic Places, historic resources consist of separate and aggregate buildings, districts, structures, sites and objects, and are defined below:

- A. **Building**: A structure created to shelter any form of human activity, such as a house, barn, church, hotel or similar structure. Building may refer to a historically related complex such as a courthouse and jail or a house and barn.
- B. **District**: A geographically definable area, urban or rural, possessing a significant concentration, linkage, or continuity of sites, buildings, structures, or objects united by past events or aesthetically by plan or physical development.
- C. **Structure**: A work made up of interdependent and interrelated parts in a definite pattern of organization. Constructed by man, it is often an engineering project large in scale. Examples: bridges, lighthouses, water towers.
- D. **Object**: A material thing of functional, aesthetic, cultural historical, or scientific value that may be, by nature or design, movable yet related to a specific setting or environment. Examples: steamboats, dredges.
- E. **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 structures. Example: battlefields, Indian mounds.

For the intents and purposes of this article the definition of a National Register district corresponds as a "Conservation District"; buildings, structure or object correspond as a "Landmark"; and the definition of National Register site corresponds as a "Landmark Site".

Landmark: An improved parcel of ground with a building, structure or object designated by the Commission and approved by the city through an ordinance which possesses particular historic, architectural, or cultural significance by meeting at least one of the following criteria:

- A. Exemplifies or reflects the broad cultural, political economic or social history of the nation, state, county or city; or
- B. Is identified with historic personages or with important events in national, state or local history; or

- C. Embodies distinguishing characteristics of an architectural type or is a specimen inherently valuable for the study of a period, style, method of construction or use of indigenous materials or craftsmanship; or
- D. Is representative of the notable work of a master builder, designer or architect whose individual ability has been recognized or who influenced his age.

Landmark Site: An unimproved or improved parcel of ground designated by the Commission and approved by the city through an ordinance, which possesses particular historic, architectural or archaeological significance by meeting at least one of the following criteria:

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

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

Local Governing Board: (abbreviated as "Board") The duly elected or appointed foremost authority of the city, including but not limited to the Mayor, City Council, or City Planner. For all intents and purposes of this article, the terms "Board" and "City" shall be interchangeable.

Ordinary Repairs or Maintenance: Work done to prevent deterioration of a building or any part thereof by restoring the building as nearly as practicable to its condition prior to such deterioration, decay or damage.

Owner of Record: The owner of a historic resource reflected on the current county tax roll.

Secretary of the Interior's Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings: (abbreviated as "Secretary's Standards") A federal document delineating ten (10) standards and numerous guidelines for the sensitive rehabilitation and preservation of historic buildings. The Secretary's Standards shall be used as the guideline for judging all applications for Certificate of Appropriateness. (Ord. 2193, sec. 2, 6-25-85)

Sec. 6-35. Historic Preservation Commission--composition and terms.

A. By virtue of Section 39-13-5 of the Mississippi Code of 1972, Annotated as Amended, the Local Governing Board of the City of Hattiesburg has been authorized to establish a Historic Conservation Commission to preserve, promote and develop the historical resources of the City of Hattiesburg and to advise the Mayor and Council as to the designation of conservation districts, landmarks and landmark sites and to perform such other functions as may be provided by law.

B. The Commission shall consist of nine (9) members, all of whom shall be resident citizens of the City of Hattiesburg and qualified electors therein, with due regard to proper representation in the following fields and demonstrated interests such as history, architecture, architectural history, landscape architecture, archaeology, urban planning, law, real estate, and historic rehabilitation and construction. Four of the nine members will be residents of the Historic Conservation District(s). All members are to be appointed by the Mayor and ratified by the Council of the City of Hattiesburg, and the term of office of the resident citizens of the City of Hattiesburg to be so appointed, shall be as follows, to-wit:

- Two members to serve for one (1) year
- Two members to serve for two (2) years
- Two members to serve for three (3) years
- Two members to serve for four (4) years
- One member to serve for five (5) years, and

from the date of appointment; thereafter, upon subsequent appointments, each appointee shall be appointed for a period of five (5) years. Vacancies shall be filled by the Mayor and ratified by the Council and appointments to fill vacancies shall be for unexpired terms only. Each member shall be eligible for reappointment. All members of the Commission shall serve without pay. The continued absence of any member of the Commission from three (3) regularly scheduled meetings without excused absence of the Commission shall be just cause for the removal of said member from the Commission by the Mayor and Council. Upon receipt of written notice from the Chairman of the Historic Conservation Commission to the Mayor and Council of the City of Hattiesburg, stating that a member has been absent for three (3) meetings in any one year without a written and accepted excuse, the Mayor and Council may remove the absent member from the Commission and appoint a new member to fill the vacancy. (Ord. 2193, sec. 3, 6-25-85)

Sec. 6-36. Rules of Procedure.

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

- A. The Commission annually shall elect from its membership a Chairman and Vice-Chairman. If neither the Chairman nor the Vice-Chairman attends a particular meeting, the remaining members shall select an acting chairman from the members in attendance at such meeting. A quorum shall consist of five (5) members of the Commission.(Ord. 2696, sec. 1, 7-20-99)
- B. The Commission shall develop and adopt rules of procedure which shall govern the conduct of its business, subject to the approval of the Board. Such rules of procedure shall be a matter of public record.

- C. The Commission, prior to exercising its powers of review, further shall develop, adopt and publish criteria for determining appropriateness as set forth in Sec. 6-39. Such criteria shall be consistent with local, state and federal guidelines and regulations, including, but not limited to or less than, building safety and fire codes, Southern Building Code, and the Secretary of the Interior's Standards for Rehabilitation. Portfolios of illustrations, color charts, descriptions and other materials illustrating and interpreting its criteria shall be made available to the general public.

Cross reference--Chapter 22 - Art. I-Building Code and Art. IV- Fire Code.

- 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 appointment of a full Commission and regular meetings shall be scheduled at least once every three (3) months. The meeting place of said Commission shall be the Council Chamber of the City Hall, or such other place as the meeting may be adjourned to if a need to do so arises. The Chairman or any two (2) members may call a special meeting by given written notice to every other member of the Commission stating the date and time of such meeting either by hand deliver thereof at least five (5) days before the meeting date or by mailing such notice to each member, posted at least eight (8) days before the meeting date. (Ord. 2193, sec. 4, 6-25-85)

Sec. 6-37. Appropriations.

The City is authorized to make appropriations to the Commission necessary for the expenses of the operation of the Commission, and make additional amounts necessary for the acquisition, restoration, preservation, operation and management of historic properties. (Ord. 2193, sec. 5, 6-25-85)

Sec. 6-38. Title to property acquired.

All lands, buildings, structures, sites, areas or objects acquired by funds appropriated by the City shall be acquired in the name of the City unless otherwise provided by the City. So long as owned by the City, historic properties may be maintained by or under the supervision and control of the City. However, all lands, buildings, or structures acquired by the Commission from funds other than those appropriated by the City may be acquired and held in the name of the Commission, the City or both. (Ord. 2193, sec. 6, 6-25-85)

Sec. 6-39. Non restrictive clause.

Nothing in this article shall be construed to prevent the regulation or acquisition of historic buildings, structures, sites, areas or objects owned by the State of Mississippi or any of its political subdivisions, agencies or instrumentalities.

Furthermore, the Mississippi State Antiquities Act provides for the sensitive treatment of publicly owned buildings shown to possess certain architectural, historical or archaeological significance, and so designated by the Board of Trustees of the Mississippi Department of Archives and History as Mississippi Landmarks. Whenever a Mississippi Landmark is proposed for rehabilitation, alteration, enlargement, etc., the City Council submits its plans to the Mississippi Department of Archives and History (the "Department") for review and compliance. If the Department perceives the plans to be detrimental to the Mississippi Landmark, the Department will work with the governing body to bring the project into agreement with the Secretary's Standards. In this manner, Local Governing Boards that have designated publicly owned properties as landmarks or within a historic district may be assured that these Mississippi Landmarks will be maintained in a manner compatible with the Secretary's Standards, which is used as a rehabilitative guideline for all designated historic districts and landmarks. (Ord. 2193, sec. 7, 6-25-85)

Sec. 6-40. Powers of the Commission.

In order to preserve, promote, and develop the historic resources of the City of Hattiesburg and to accomplish the purposes set forth in the Mississippi Local Government Historic Preservation Act of 1978 and in this article:

- A. The Commission shall conduct or cause to be conducted a study and survey of architectural, archaeological, cultural and historic resources within the City of Hattiesburg, if such study has not already been conducted.
- B. The Commission shall recommend to the Board the adoption of ordinances designating landmarks, landmark sites and historic districts.
- C. The Commission shall review applications proposing erection, alteration, restoration, demolition or moving of any Landmark or building located on a Landmark site or within a Conservation District so designated by the Board and shall issue or deny Certificates of Appropriateness accordingly.
- D. The Commission shall not consider interior arrangements or use.
- E. The Commission shall promulgate and publish such standards and rules of procedure as are necessary to carry out the provisions of this article.
- F. The Commission is authorized to apply for, receive, hold and spend funds from private and public sources, in addition to appropriations made by the City for purpose of carrying out provisions of this article.
- G. The Commission is authorized to request from the Mayor 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. The management of such staff, equipment, and materials shall be the responsibility of the Director of the Department of Planning and Coordination.

- H. Solely in performance of its official duties and only at reasonable times, the Commission is authorized to enter upon private land for examination or survey thereof. No member, employee or agent of the Commission shall enter any private building or structure without the express consent of the owner of record or occupant thereof. (Ord. 2193, sec. 8, 6-25-85)

Sec. 6-41. Designation of landmarks, landmark sites and historic districts.

The City may establish by ordinance landmarks, historic resources, landmark sites and conservation districts within the area of its jurisdiction. No landmarks, historic resource, landmark sites or conservation districts shall be designated until the following requirements have been met:

- A. The Commission will initiate a thorough investigation of the historic, architectural, archaeological and cultural significance of the buildings, structures, features, sites and surroundings of such districts, landmarks and landmark sites, the findings collected in a cohesive printed format, made a matter of public record, and made available for public inspection.
- B. After investigation, if the Commission shall decide to recommend the designation of a historic district or landmark or landmark site, it shall prepare or cause to be prepared a proposed ordinance to make such designation.
- C. The Commission's recommendations to the City for designation of a conservation district shall be accompanied by complete documentation, including, but not limited to:
 - 1. A concise description of the extant historic resources in the district, offering a description of building types and architectural styles represented.
 - 2. A concise statement of the district's historical significance.
 - 3. Boundary description and justification.
 - 4. An inventory of all the buildings, with each building evaluated for its significance to the district.
 - 5. A map showing all historic resources in the district.
 - 6. Photographs of typical streetscapes in the districts as well as of major types of contributing and non- contributing buildings.
- C. No conservation district or districts shall be designated until the Mississippi Department of Archives and History, acting through such agent or employee as may be designated by its director, shall have made an analysis of and recommendations concerning the proposed district boundaries. Failure of the Department to submit its analysis and recommendations to the City within sixty days after a written request for such analysis has been mailed to it shall relieve the City of any responsibility for awaiting such analysis; and the City may at any time thereafter take any necessary action to adopt or amend its ordinance (this article).

- E. If a proposed ordinance is to designate a landmark or landmark site, it may be presented to the City with a recommendation that it be adopted without submission to the Mississippi Department of Archives and History.
- F. A public hearing will be had, after notice, specifying the boundaries of any proposed historic district and the location of proposed landmarks and landmark sites. Said notice shall be published once a week for at least three (3) consecutive weeks in at least one (1) newspaper published in the City. If a newspaper is not published in the City then the notice shall be published in a paper published in the County. The first publication of such resolution shall be made not less than twenty-one (21) days prior to the date fixed in such resolution for the public hearing and the last publication shall be made not more than seven (7) days prior to such date. Furthermore, a copy of said notice shall be mailed by first class, postage prepaid, to every property owner, as shown on the City tax assessment rolls, whose property is proposed to be included within a historic district or to be designated a landmark or landmark site. This notice shall be mailed to the addresses shown for said property owners on said City tax assessment rolls and shall be mailed at least fifteen (15) days before said hearing. A failure to receive a mailed notice shall not invalidate the actions of the City taken as a result of such hearing.
- G. Within sixty (60) calendar days after the public hearing held in connection herewith, the City shall adopt the ordinance as proposed, reject it entirely or adopt the ordinance with modifications wherein any modifications shall only be to reduce the scope of the ordinance as published.
- H. Furthermore, the Commission shall notify, as soon as is reasonably possible, 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. (Ord. 2193, sec. 9, 6-25-85)

Sec. 6-42. Certificates of Appropriateness.

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

- A. The Commission shall serve as a review body with the power to review and approve whether applications for certificates of appropriateness should be granted or denied, and if granted, what conditions, if any, should be provided in such certificate. The City, upon appeal, may impose conditions not recommended by the Commission.

- B. In making determinations, evaluations and decisions under this article, the Commission and City shall seek to accomplish the purposes of this article; in particular, to preserve and protect the architectural and historic integrity and character of any landmark site, landmark or historic district.
- C. A Certificate of Appropriateness shall not be required for ordinary maintenance, painting, or repair of any landmark, or building or structure upon a landmark site or within a historic district which does not involve a change in design, material, or other appearance thereof.
- D. All decisions of the Commission shall be in writing and shall state the findings of the Commission, its recommendations and the reasons thereof.
- E. The Commission shall not recommend disapproval of any plans without giving its recommendations for changes to be made before such plans can be reconsidered. These recommendations may be in general terms, and compliance therewith shall not ipso facto qualify such plans for approval--only for reconsideration by the Commission. (Ord. 2362, sec. 1, 11-20-90; Ord. 2193, sec. 10, 6-25-85)

Sec. 6-43. Disqualification of members by conflict of interests.

Any member of the Commission who has an interest in the property in question or the site in question, or who is employed with a firm that has been hired to aid the applicant in any manner whatsoever, or who has any proprietary, tenancy of personal interest in any case to be considered by the Commission shall be disqualified from participating in the consideration of any request for a permit. (Ord. 2193, sec. 11, 6-25-85)

Sec. 6-44. Criteria for issuance of certificates of appropriateness.

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

- A. General Factors:
 - 1. General appearance of the land, building or improvement under consideration;
 - 2. Structural condition of existing building or structure;
 - 3. Structural composition of existing building or structure or improvement and proposed alteration;
 - 4. Architectural design of existing building or structure or improvement and proposed alteration;
 - 5. Size of existing land parcel, building or structure or improvement and proposed alteration;
 - 6. Historical significance of existing land, building, structure or improvement;

7. Economic use of existing land, building, structure or improvement;
8. Relative cost of proposed project and alternatives;
9. The owner's legitimate right to earn a reasonable return from his investment in the site, building or structure; and
10. The relationship of the above factors to, and their effect upon the immediate surroundings and, if within a conservation district, upon the district as a whole and its architectural and historical character and integrity.

B. New Construction: (shall include additions to existing resources, structures moved onto vacant properties and new structures on vacant properties within the district {s})

1. The following aspects of new construction shall be visually compatible with the buildings and environment with which the new construction is visually related, via, 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, and materials used in the facade, the texture inherent in the facade, the pattern and trim used in the facade, and the design of the roof.
2. Existing rhythm created by existing building masses and spaces between them should be preserved.
3. The landscape plan should be sensitive to the individual building and its occupant and needs and should be visually compatible with the buildings and environment with which it is visually related.
4. A new street facade should blend directionally with other buildings with which it is visually related--which is to say, when adjacent buildings have a dominant horizontal or vertical expression, that expression should be carried over in the new facade.
5. New construction must be compatible with the original construction of the historic resources, and should be distinguishable from the original construction and should enhance the architectural characteristics of the conservation district.
6. No single architectural style shall be imposed.
7. The quality and excellence in design should be major determinants.

D. Exterior Alteration:

1. All exterior alterations to a building or structure should be compatible with the building itself and other buildings with which it is related, as is provided in sec. 6-44 (B-1) above and in applying these standards, and original design of the building or structure must be considered.

2. Exterior alterations shall not affect the architectural character or historic quality of the building.

D. Signs:

1. The scale and design of any sign should be compatible with the building and environment with which it is related.
2. The materials, style, size and patterns used in any sign should be compatible with the buildings and environment with which it is related.

E. Demolition and Movement:

In considering an application for the demolition permit or relocation or moving permit of a landmark or a resource within a historic district the following shall be considered:

1. The individual historical or architectural significance of the resource.
2. The importance or contribution of the resource to the aesthetics of the district.
3. The difficulty or impossibility of reproducing such a resource because of its texture, design, material or detail.
4. The proposed replacement structure and the future utilization of the site.

F. Reconstruction:

The reconstruction of a building destroyed by fire, storm or other act of God shall be governed by the provisions of the zoning ordinance except that the Commission shall regulate the exterior design of such buildings in accordance with the criteria set forth in Sec. 6-44 (C), above.

Cross reference--Chapter 13 - Land Development Code.

G. Denial of Application:

Denial of application for a Certificate of Appropriateness shall only be upon a determination that the proposed changes or project would cause one or more of the following:

1. Result in such disharmony of scale, materials, massing, spacing and/or style between the proposed project and its immediate surroundings and the historic district, landmark or landmark site as a whole so as to undermine the architectural integrity and character of the historic district, or landmark site or landmark and inhibit the accomplishment of the purposes of this article, or
2. Result in such a change in the architectural design or character of an existing building or improvement so as to undermine the architectural integrity or character of a historic district as a whole and inhibit the accomplishment of the purposes of this article, or

3. Result in the loss of or irreparable harm to an existing building or improvement of architectural or historical significance.

H. Stay of Demolition:

If an applicant for a Certificate of Appropriateness is for the demolition of a resource within a historic district or a landmark or landmark site, action upon such application shall be stayed for a period of 180 days, during which time the Commission and the applicant shall undertake meetings and continuing discussions for the purpose of finding a method to save such property. During such period, the applicant and the Commission shall cooperate in attempting to avoid demolition of the property. At the end of said 180 day period, the Commission shall meet again to discuss the application and if no mutually agreeable method of saving the property bearing a reasonable prospect of eventual success is underway, or if no formal application for funds from any governmental unit or nonprofit organization to preserve the property is pending, the Commission shall notify the City, and the building official, upon written notice of the City, may, but is not required to, issue a permit for demolition without a Certificate of Appropriateness having been issued. (Ord. 2193, sec. 12, 6-25-85)

Sec. 6-45. Demolition by neglect.

A. Any building or structure which is a landmark and all buildings or structures within a historic district shall be preserved by the owner or such other person or persons who 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 building or structure if it is found to have one or more of the following defects:

1. The deterioration of a building(s) to the extent that it creates or permits a hazardous or unsafe condition as determined by the Building Official.
2. The deterioration, as determined by the Code Enforcement Official, of a building(s) 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 foundation;
 - (c) Defective or deteriorated floor supports or floor supports insufficient to carry imposed loads with safety;
 - (d) Members of walls or other vertical supports that split, lean, list or buckle due to defective material 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 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 or deterioration; or
 - (I) Any fault, defect or condition in the building which renders the same structurally unsafe or not properly watertight.
3. Conditions which cause deterioration as described in Sec. 6-45 and determined by the Code Enforcement Officer and are violations of the Housing Code and the Standard Code for the Elimination or Repair of Unsafe Buildings.

Cross reference--see Chapter 22 - Art. VI-Housing Code and Art. X-Unsafe Building Abatement Code

B. If the Commission makes a preliminary determination that a building or structure which is a landmark or is located within a conservation district is being demolished by neglect it shall direct the Building Official or Housing Code Enforcement Officer to notify the owner or owners of the resource of this preliminary determination, stating the reasons therefore, and shall give the record owner or owners thirty (30) days from the date of mailing 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 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 involved.

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 Building Official or Housing Code Enforcement Officer to bring misdemeanor charges against the owner or owners if the necessary repairs are not completed within sixty (60) days of the determination by the Commission that the subject building or structure is being demolished by neglect. (Ord. 2193, sec. 13, 6-25-85)

Sec. 6-46. Public safety exclusion.

None of the provisions of this article shall be construed to prevent any measure of construction, alteration, or demolition necessary to correct or abate the unsafe or dangerous condition of any resource, other feature or part thereof, where such condition has been declared unsafe or dangerous by the Building Official, Housing Code Enforcement Officer or the Fire Department and where the proposed measures have been declared necessary, by such authorities, to correct the said condition; provided, however, that only such work as is reasonably necessary to correct the unsafe or dangerous condition may be performed pursuant to this section. In the event any structure or other feature shall be damaged by fire or other calamity, or by Act of God or by the public enemy, to such an extent that in the opinion of the aforesaid authorities it cannot reasonably be repaired and restored, it may be removed in conformity with normal permit procedures and applicable laws. (Ord. 2193, sec. 14, 6-25-85)

Sec. 6-47. Minimum maintenance requirements.

In order to insure the protective maintenance of landmarks, landmark sites and resources in the historic district, each building, whether a landmark or within the historic district shall be maintained to meet the requirements of the Minimum Housing Code and Building Code. (Ord. 2193, sec. 15, 6-25-85)

Cross reference--see Chapter 22 - Art. I, Building Code and Art. VI, Housing Code.

Sec. 6-48. Procedures for issuance of certificates of appropriateness.

Anyone desiring to take action requiring a Certificate of Appropriateness concerning a landmark, landmark site or resource within a historic district for which a permit, variance or other authorization from either the Building Official or the City is 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 Building Official shall be assured that the application is proper and complete. No building permit shall be issued by the Building Official which affects a resource in a historic district or a landmark or a landmark site without a Certificate of Appropriateness. Thereafter, such application shall be reviewed in accordance with the following procedure:

- A. When any such application is filed, the Building Official shall immediately notify the administrative staff person for the Commission of the application having been filed.
- B. When the application, including all information required by the administrative staff person for the Commission is deemed complete, the item shall be placed on the agenda for the next regular meeting of the Commission.
- C. The applicant shall, upon request, have the right to a preliminary conference with available members or staff of the Commission for the purpose of making any changes or adjustments to the application that might be more consistent with the Commission's standards.

- D. No later than eight (8) days before the date set for said hearing, the administrative staff for the Commission shall mail notice thereof to the applicant at the address in the application and to all members of the Commission, which shall serve as a call for a special meeting unless the hearing is set for a regularly scheduled meeting. However, the applicant may request that he be heard at the next meeting of the Commission and may therein waive the above notice.
- E. Notice of the time and place of said hearing shall be given at least five (5) days before such hearing by posting such notice on the bulletin board in the lobby of City Hall and on the affected property with a sign showing time, date and place of hearing.
- F. Within not more than twenty one (21) days after the hearing on an application, the Commission shall act upon it, either approving, denying or deferring action until the next meeting of the Commission, given consideration to the factors set forth in Sec. 6-39 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 Building Official. The Commission shall keep a record of its actions under this article.
- G. The Commission shall have the right to make such recommendations for changes and modifications as it may deem necessary in order to enable the applicant to meet the requirements of the Commission.
- H. If the applicant objects to the Commission's decision and desires a hearing before the City, he shall file a written request therefore with the City Clerk not more than ten (10) days after the Commission decides upon its recommendation. No action by the City shall be taken on the matter within the said ten (10) day period.
- I. If a request for a hearing before the City is timely filed, the City Clerk shall mail a notice to the applicant of a hearing date, time and place which shall be the first meeting of the City to be held more than eight (8) days after the filing of the request for hearing by the applicant. However, the applicant may request, in writing, that he be heard at the next meeting of the City's and may therein waive the above notice.
- J. Upon approval thereof by the Commission or by the City in the event of an appeal, the Commission administrative staff person shall issue a Certificate of Appropriateness and supply a copy to the Building Official. The issuance of a Certificate of Appropriateness shall not relieve an applicant for a building permit, special use permit, variance or other authorization from compliance with any other requirement or provision of the laws of the City concerning zoning, construction, repair or demolition unless such is in conflict with this article or action taken hereunder. If so, this article or action taken hereunder shall control.
- K. If no permit, variance, or other authorization from either the Building Official or the City is otherwise required and a Certificate of Appropriateness is required by the article then the applicant therefore shall file an application with the Commission administrative staff person. Thereafter the application shall be processed in the same

manner provided above. The application shall describe what the applicant proposes to do, how it is to be done, and such other information as the Commission or administrative staff person may require. (Ord. 2708, sec. 1, 11-16-99; Ord. 2362, sec. 2, 11-20-90; Ord. 2193, sec. 16, 6-25-85)

Sec. 6-49. Appeals.

The applicant who desires to appeal a decision by the City shall file an appeal to the Circuit Court or Court of like jurisdiction within thirty (30) days after the determination of the issue by the City. (Ord. 2193, sec. 17, 6-25-85)

Sec. 6-50. Enforcement and Penalties.

The performance of an act prohibited by either this article or by the Commission or the City as the case may be, acting under the provisions of this article, or the failure to perform an act required either by this article or the Commission or the City, as the case may be, is hereby declared to be unlawful and shall constitute a misdemeanor. The City shall enforce the provisions of this article by seeking an injunction or other legal or equitable relief, as it deems appropriate. (Ord. 2193, sec. 18, 6-25-85)

Secs. 6-51 --- Sec. 6-53. Reserved.

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Article IX. Hattiesburg Zoological Advisory Board*

Sec. 6-54 --- 6-55. (Repeal: Ord. 2577, 1/07/97)

Secs. 6-56 --- 6-58. Reserved.

**Amendment Note--Ord. 2577, enacted 1-7-97, and codified as Article IX of this chapter (Secs 6-54--6-55), repealed Ord. 2287, enacted 2-24-88, establishing Hattiesburg Zoological Advisory Board. This section was reserved to maintain sequence.*

**Cross reference--see Art. XIII, sec 6-69 -- 6-75 Kamper Pard Board*

Article X. Housing Authority Board*

Secs. 6-59 --- 6-61. Reserved.

**Editor's note-- Housing Authority Board appointed in accordance with section 43-33-7 of Mississippi Code of 1972, Annotated as Amended.*

Article XI. Housing Board of Adjustments and Appeals

Sec. 6-62. Board--established; duties*.

The Housing Board of Adjustments and Appeals was established and duties were set forth in the Standard Housing Code, by Southern Building Code Congress International, Inc.

Cross reference--see Chapter 22 - Art. VI, Standard Housing Code.

Secs. 6-63 --- 6-65. Reserved.

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Article XII. Industrial Park Commission*

Secs. 6-66 --- 6-68. Reserved.

**Editor's note--The Industrial Park Commissioners are appointed in compliance with Senate Bill No. 314 dated May 3, 1988, which established the Forrest County Industrial Park Commission.*

Article XIII. Kamper Park Board

Sec. 6-69. Board of park commissioners for Kamper Park ---Established.

The City Council of the City of Hattiesburg, Mississippi, does hereby find and determine that it is in the best interest of the City of Hattiesburg that the existing Board of Park Commissioners for Kamper Park be abolished and then reconstituted to reflect the recent change in the form of government so that each ward in the City of Hattiesburg might have representation on the Board of Park Commissioners for Kamper Park.

There shall be a Board of Park Commissioners for Kamper Park to consist of six (6) members, being the Mayor and one (1) member from each ward of the City of Hattiesburg who shall be appointed by the Mayor and ratified and confirmed by a majority vote of the Council of the City of Hattiesburg, Mississippi. (Ord. 2223, sec. 1--2, 4-22-86; Ord. 835, sec. 1, 3-21-29)

Sec. 6-70. Same---Appointment of members; term of office.

The initial Board of Park Commissioners for Kamper Park shall be selected at the first regular meeting of the Mayor and City Council following the adoption of this article and shall hold office for the remaining term of the Mayor. Thereafter, the Commissioners shall be selected at the first regular meeting of the Mayor and City Council after each regular municipal election and shall hold office for four (4) years commensurate with the term of the Mayor and the City Council, and the Mayor shall have the power to fill any vacancies in the Board of Park Commissioners for Kamper Park at any meeting to fill an unexpired term of any member. (Ord. 2223, sec. 2, 4-22-86; Ord. 835, sec. 1, 3-21-29)

Sec. 6-71. Same---Management of Kamper Park.

In the management and control of Kamper Park, the Board of Park Commissioners for Kamper Park shall act conjointly with a like number of persons who shall be chosen or selected for that purpose by the Hattiesburg Chapter of the United Daughters of the Confederacy as provided in the deed of conveyance from the trustees of the United Daughters of the Confederacy to the City of Hattiesburg which conveyed the land whereupon Kamper Park is located.(Ord. 2223, sec. 3, 4-22-86; Ord. 835, sec. 2, 3-21-29)

Sec. 6-72. Same.---Authorization to promulgate rules and regulations.

The Board of Park Commissioners for Kamper Park shall act only in an advisory capacity to the Mayor and City Council for the City of Hattiesburg and shall report to the Mayor and City Council as to any recommendations for the use of the lands and property comprising Kamper Park on at least an annual basis. (Ord. 2223, sec. 4, 4-22-86; Ord. 835, sec. 3, 3-21-29)

Cross reference.---For breaches of the peace and offenses against the city generally, see Chapter 16.

Sec. 6-73. Same---Powers and privileges reserved to United Daughters of Confederacy.

Nothing herein contained shall be construed to deprive the members appointed or selected from the Hattiesburg Chapter of the United Daughters of the Confederacy of the power and authority given to said members as contained and reserved by them in the deed of conveyance of the land for Kamper Park to the City of Hattiesburg, said deed being found of record in the Land Deed Book 1 at Page 118 in the office of the Chancery Clerk of Forrest County, Mississippi.(Ord. 2223, sec. 5, 4-22-86; Ord. 835, sec. 5, 3-21-29)

Secs. 6-74 --- 6-75. Reserved.

Article XIII (1). Keep Hattiesburg Beautiful Committee

Sec. 6-76. Keep Hattiesburg Beautiful Committee established.

A. The City Council of the City of Hattiesburg, Mississippi, desires to improve the physical quality of community life by establishing a Keep Hattiesburg Beautiful Committee. (Ord. 2554, sec 1, 05-07-96, Ord. 2367, sec. 3, 2-19-91)

B. In keeping with the design of the Keep America Beautiful System, Inc., the Mayor and City Council of the City of Hattiesburg do hereby establish the Keep Hattiesburg Beautiful Committee. Said committee shall consist of seventeen (17) members who shall be appointed by the Mayor and ratified and confirmed by the Council of the City of Hattiesburg, Mississippi. The initial members of the Keep Hattiesburg Beautiful Committee shall be selected following the adoption of this ordinance and the terms shall be as follows, to-wit:

- Six (6) members to serve terms that expire June 1, 2000
- Five (5) members to serve terms that expire June 1, 2000
- Four (4) members to serve terms that expire June 1, 1998
- Two (2) members to serve a term that expires June 1, 1997

from the date of appointment; thereafter, upon subsequent appointments, each appointee shall be appointed for a term of four (4) years. The Mayor shall have the power to fill any vacancies at any meeting to fill an unexpired term of any member subject to the ratification and confirmation by a majority vote of the Council of the City of Hattiesburg. Representation will be as follows; two (2) per ward; seven (7) representing business and community inters. (Ord. 2554, sec 1, 5-7-96, Ord. 2370, sec. 1, 5-7-91; Ord. 2367, sec. 2, 2-19-91)

C. The Keep Hattiesburg Beautiful Committee shall be responsible for organizing and securing the community in efforts to keep the City of Hattiesburg beautiful and in developing projects to improve waste handling practices in our community. The Committee shall elect officers on an annual basis to oversee said committee and provide leadership on all projects. The Committee shall prepare an annual report to be presented to the Mayor, outlining their progress of projects and projected goals. The Committee shall be provided necessary space and materials to effectively meet their goals, upon adequate notice to the City Neighborhood Improvement Projects Committee (NIP) Coordinator as to meeting dates and times. (Ord. 2554, sec.2, 5-7-96, Ord. 2367, sec. 3, 2-19-91)

Article XIV. Land Development Code Board of Adjustments

Sec. 6-77. RESERVED (Ord. 3041, sec.2, 9-8-09)

Cross reference.---See Chapter 13 - Land Development Code.

Secs. 6-78 --- 6-80. Reserved.

Article XV. Library Board*

Sec. 6-81 --- 6-83. Reserved.

**Editor's note.---The Library Board was established by an amended contract entered into on April 3, 1990, by the Mayor and Council at Minute Book 1990-2, pages 297-300. See Mississippi Code Section 39-3-15.*

Article XVI. Main Street Policy Board*

Sec. 6-84 --- 6-88. Reserved.

**Amendment note.--Ord. 2375, Sec. 1, enacted 6-4-91, repealed Ord. 2246, Secs. 1--5, enacted 11-4-86, and codified as Secs. 6-84--6-88, established the Main Street Policy Board, and set forth their terms and duties. This section was reserved to maintain sequence.*

Sec. 6-89 --- 6-91. Reserved.

ARTICLE XVII. Pine Belt Regional Airport Authority

Secs. 6-92 --- 6-94. Reserved.

Editor's note--Pine Belt Regional Airport Authority Commission was established by Resolution 4-10-67, by the governing authorities at Minute Book 24, pages 463 - 468.

Article XVIII. Planning Commission

Sec. 6-95. City planning commission.

The Hattiesburg Planning Commission and its guidelines are outlined in the Land Development Code.(Ord. 3041, sec. 2,9-8-09)

**Amendment note.—Ord. 1490, secs. 1-5, 5-13-64;Ord. 2354, sec. 1, 9-18-90 created a commission to be known as the City Planning Commission, hereinafter referred to as the Commission.*

**Cross reference--see Chapter 13 - Land Development Code.*

Article XIX. RESERVED.

Sec. 6-99. RESERVED. Ord. 3034, sec. 1, 4-7-09

Sec. 6 - 100. RESERVED. Ord 3034, sec 1, 4-7-09

Sec. 6 - 101. RESERVED. Ord 3034, sec 1, 4-7-09

***Cross reference—see Ordinance 3034, abolishing the Construction Board of Examining, Adjustment and Appeal Board, Electric Board and Plumbing, Gas, Mechanical and Specialty Trades Examining Review and establishing Contractor Review Board. See chapter 6-8.1*

**Amendments: (Ord. 2581, sec. 1, 1-21-97)*

Sec. 6 -102. Reserved.

**Cross reference--Plumbing and Gas Board known as Plumbing, Gas, Mechanical and Specialty Trade Examining Board. --see chapter 22 - Art. V, Gas, Art. VIII, Plumbing and Art XI, Specialty Trade Contractors.*

Article XX. Recreation Board

Sec. 6-103. Recreation Board members; terms.

The Board of Parks and Recreation shall be composed of fifteen (15) members appointed by the Mayor and ratified by an affirmative vote of a majority of the City Council present and voting at such meeting. Each ward at all times shall be equally represented on said Board and the Mayor shall appoint the membership of said Board in such a manner that no more than one representative from each ward shall be appointed for any staggered term other than in the case of a vacancy in office. The terms of membership of said Board are as follows: Five (5) members, one from each ward, for one (1) year terms; Five (5) members, one from each ward, for three (3) year terms; Five members, one from each ward, for five (5) year terms. On the expiration of any said term, the Mayor shall appoint a successor for a term of five (5) years in each instance. The members shall annually elect one of their own members to serve as chairman for a period of one (1) year. (Ord. 2281, sec. 1, 11-17-87)

Sec. 6-104. Same--vacancies.

In the case of a vacancy on said Board by death, resignation or other cause, other than the expiration of such member's term of office, the Mayor shall appoint a member to serve for the balance of the unexpired term which must be confirmed by an affirmative vote of a majority of the City Council present and voting at such meeting. (Ord. 2281, sec. 2, 11-17-87)

Sec. 6-105. Same--residency requirements.

Members of the Board shall be qualified electors of the City of Hattiesburg, and shall meet the ward residency requirements as set forth hereinabove. (Ord. 2281, sec. 3, 11-17-87)

Sec. 6-106. Same--meeting time and place.

The Board shall set its own meeting time and place as from time to time it deems necessary; however, it is provided that said Board must hold at least one (1) meeting each month, and said Board shall elect officers, other than a chairman, as it deems necessary. (Ord. 2281, sec. 4, 1-17-87)

Sec. 6-107. Same--duties.

The Board shall act in an advisory capacity to the Mayor with regard to the administration of the Hattiesburg recreational facilities and equipment located in the City of Hattiesburg. The Board shall make recommendations from time to time as it deems necessary to the Mayor as to all records, books, papers, equipment, supplies, lands, buildings and all other real and personal property now hereafter belonging to, being or becoming a part of said recreational facilities. The Board shall further make recommendations to the Mayor for the proper use, distribution, appropriations, rents, assessments and charges now and hereafter in possession, levied and collected, received or appropriated for the use, benefit, support and maintenance of said Hattiesburg recreational program. The Board shall make recommendations to the Mayor as to prescribing the rules and regulations governing all recreational facilities as a whole and any specific developments therein and thereto. All recommendations by the Board shall be subject to the authority of the Mayor. (Ord. 2281, sec. 5, 11-17-87)

Secs. 6-108 --- 6-110. Reserved.

Article XXI. Redevelopment Authority Board

Sec. 6-111. Hattiesburg Redevelopment Authority Board appointment; terms.

A determination is hereby made by the City of Hattiesburg to appoint an Urban Renewal Agency, designated as the Hattiesburg Redevelopment Authority Board. That said Board shall consist of five (5) members, appointed by the Mayor and ratified by the Council, each for terms of five (5) years. (Ord. 2279, secs. 1, 3, 11-17-87)

Sec. 6-112. Same--duties.

The aforesaid Hattiesburg Redevelopment Authority Board is hereby vested with all of the Urban Renewal Project Powers in the same manner and to the same extent as though said powers were conferred upon said Agency instead of upon the Mayor and Council of the City of Hattiesburg.

The aforesaid Hattiesburg Redevelopment Authority Board is hereby vested with all of the rights, powers, functions and duties granted to the City of Hattiesburg by Section 43-35-31 of the Mississippi Code of 1972, Annotated as Amended, as fully as the Mayor and Council are empowered so to do, excluding specifically, however, from said vesting those exceptions contained in Section 43-35-31(b), Mississippi Code of 1972, Annotated as Amended. (Ord. 2279, secs. 2--4, 11-17-87)

Secs. 6-113 --- 6-115. Reserved.

Article XXII. School Board*

Secs. 6-116 --- 6-118. Reserved.

**Editor's note--School Board appointed in accordance with Section 37-7-203 of Mississippi Code of 1972, Annotated as Amended.*

Article XXIII. Hattiesburg Tourism Commission

Sec. 6-119. Commission established; membership; duties.

There is hereby created and established the Hattiesburg Tourism Commission.

A. The Commission shall consist of the following seven (7) members appointed by the Mayor and ratified by the City Council:

1. Two (2) members of the hotel/motel industry;
2. One (1) member either of the Chamber of Commerce or the Economic Development Foundation;
3. One (1) member representing the University of Southern Mississippi; and
4. Three (3) members who serve at large

B. The Commission shall be appointed within sixty (60) days following the adoption of a resolution pursuant to passage of this act for the following terms:

- Two (2) members for a term of one (1) year;
- Two (2) members for a term of two (2) years;
- One (1) member for a term of three (3) years;
- One (1) member for a term of four (4) years; and
- One (1) member for a term of five (5) years;

Thereafter, appointments will be made on a staggered basis for a five (5) year period.

C. Members of the commission shall serve without compensation, shall elect officers and adopt rules and regulations, shall fix a regular meeting date, but may provide for special meetings. The commission shall keep minutes of its proceedings as are necessary to carry out its responsibilities. A quorum of the commission shall consist of four (4) members.

D. Any member of the commission may be disqualified and removed from office for any one (1) of the following reasons:

1. Conviction of a felony; or
 2. Failure to attend three (3) consecutive meetings without just cause.
- E. Before entering on the duties of the office appointed, each member of the commission shall enter into and give bond to be approved by the Secretary of the State of the State of Mississippi, in the sum of Fifty Thousand Dollars (\$50,000.00) conditioned on the satisfactory performance of his duties. This bond premium shall be paid from the Tourism Commission's funds and payable to the City of Hattiesburg in the event of a breach thereof. Suit may be brought by the city for benefit of the commission. (Ord. 2353, sec. 1--2, 9-4-90)

Sec. 6-120. Jurisdiction and authority.

The commission shall have jurisdiction and authority over all matters relating to establishing, promoting and developing tourism in the city and shall be authorized;

- A. To acquire, own, furnish, equip, staff and operate any and all facilities and equipment necessary or usable in the promotion of tourism for the City of Hattiesburg;
- B. To receive and expend revenues from any source, including, but not limited to, private enterprise and those revenues generated by House Bill Number 1717;
- C. To own, lease or contract for any equipment useful and necessary in the promotion of tourism and convention business for the City of Hattiesburg;
- D. To sell, convey and otherwise dispose of all or any part of its property and assets in accordance with the General Laws of the State of Mississippi; and
- E. To have and exercise all powers necessary or convenient to effect any and all of the purposes for which the commission is organized, including the appointment and employment of individuals acting on behalf of the commission. (Ord. 2353 sec. 3, 9-4-90)

Secs. 6-121 --- 6-125. Reserved.

Article XXIV. Hattiesburg Tree Board

Sec. 6-126. Intent and purpose of tree care and preservation for use by the Hattiesburg Tree Board in developing a City Tree Plan.

The intent of this article is to aid in the stabilization of soil by the prevention of erosion and sedimentation; to reduce storm water runoff and the costs associated therewith and replenish ground water supplies; to aid in the removal of carbon dioxide and generation of oxygen in the atmosphere; to provide a buffer and screen against noise pollution; to provide protection against severe weather; to aid in the control of drainage and restoration of denuded soil subsequent to

construction or grading; to provide a haven for birds which in turn assist in the control of insects; to protect and increase property values; to conserve and enhance the physical environment and aesthetics; and generally protect and enhance the quality of life and the general welfare of the citizens of the City of Hattiesburg. (Ord. 2374, sec. 1, 6-4-91)

Sec. 6-127. Definitions for use by the Hattiesburg Tree Board in developing a City Tree Plan.

Street Trees: are hereby defined as trees, shrubs, bushes and all other woody vegetation on land, lying between property lines on either side of all streets, avenues or ways within the City.

Park Trees: are hereby defined as trees, shrubs, bushes and all other woody vegetation in public parks having individual names, and all areas owned by the City, or to which the public has tree access as a park. (Ord. 2374, sec. 2, 6-4-91)

Sec. 6-128. City forester appointed.

This position will be filled by the Director of Public Services. The City Forester will coordinate, lead and supervise the Tree Board and administer the tree plan. (Ord. 2374, sec. 3, 6-4-91)

Sec. 6-129. Tree board created and established.

There is hereby created a board to be known as the Hattiesburg Tree Board for the City of Hattiesburg, Mississippi, hereinafter referred to as Board. The Board shall consist of seven (7) members, all of whom shall be resident citizens of the City of Hattiesburg, and qualified electors therein, who shall be appointed by the Mayor and ratified by the Council. The Board shall include one member/person from each ward of the City of Hattiesburg, and two (2) members-at-large. (Ord. 2868, sec. 1, 3-8-05; Ord. 2468, sec. 1,11-16-93; Ord. 2374, sec. 4, 6-4-91)

Sec. 6-130. Same--terms of office.

The terms of the Board members shall be: three (3) members shall be appointed for one (1) year, two (2) members shall be appointed for two (2) years, two (2) members shall be appointed for three (3) years from the date of appointment; thereafter, upon subsequent appointments, each appointee shall be appointed for a period of three (3) years with persons to serve until their successors are appointed and qualified. Vacancies shall be filled by the governing authorities and appointments to fill vacancies shall be for unexpired terms only. Each member shall be eligible for reappointment. All members of the board shall serve without pay. The continued absence of any member of the board from three (3) regularly scheduled meetings without excused absence of the board shall be just cause for the removal of said member from the board by the governing authorities. Upon receipt of written notice from the chairman of the Tree Board to the governing authorities of the City of Hattiesburg, stating that a member has been absent for three (3) meetings in any one year without a written and accepted excuse, the governing authorities may remove the absent member from the board and appoint a new member to fill the vacancy. (Ord. 2468, Sec. 2, 11-16-93; Ord. 2374, sec. 5, 6-4-91)

Sec. 6-131. Same--duties and responsibilities.

It shall be the responsibility of the Board, in coordination with the City Forester, to study, investigate, counsel and develop a written plan for the care, preservation, pruning, planting, re-planting, removal or disposition of trees and shrubs in parks, along streets and other public areas, and front yard setbacks, in accordance with the Land Development Code. This plan will consist of recommended trees for planting and their spacing and maintenance. Such plan, upon ratification by the Mayor and City Council, shall constitute the Official Comprehensive City Tree Plan of the City of Hattiesburg, Mississippi. The Board, when requested by the Mayor and Council, shall update the Plan as needed and shall consider, investigate, make findings, report and recommend upon any special matter or questions within the scope of this work. (Ord. 2374, sec. 6, 6-4-91)

Sec. 6-132. Same--operation.

The Board shall elect its own officers, make its own rules and regulations, and keep a record of its proceedings. The majority of its members shall be a quorum for the transaction of business. (Ord. 2374, sec. 7, 6-4-91)

Sec. 6-133. Same--Appeal from ruling.

Any person may appeal from any ruling or order of the City Tree Board, to the Mayor and Council, who may hear the matter and make the final decision. (Ord. 2374, sec. 8, 6-4-91)

Sec. 6-134 - 138. Reserved.

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