

DRAFT NOVEMBER 2002

MODEL HISTORIC PRESERVATION ORDINANCE

Authorizing the designation of local historic districts and the review of changes to property in the historic districts

AN ORDINANCE PERTAINING TO HISTORIC PRESERVATION IN THE CITY OF _____, SOUTH DAKOTA.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF _____, SOUTH DAKOTA AS FOLLOWS:

Section 1. Purpose.

Whereas the Legislature of the state of South Dakota has determined that the historical, architectural, archaeological, paleontological, and cultural heritage of this state is among its most important assets, it is hereby declared to be the purpose of this ordinance to enable the City of _____ to engage in a comprehensive program of historic preservation, to promote the use and conservation of historic properties and to help in the development of these properties for the education, inspiration, pleasure and enrichment of the citizens of this city and this state.

Section 2. Historic Preservation Commission Created.

(a) Pursuant to the authority granted by SDCL 1-19B-2, there is created for the city a historic preservation commission to be known as the _____ Historic Preservation Commission. The Commission shall consist of ten members, who shall be appointed by the City Council with due regard to proper representation of such fields as history, architecture, urban planning, archaeology, paleontology, and law.

(b) All members of the Commission shall reside within the City of _____ and shall serve for terms of three years and shall be eligible for reappointment. The terms of the original members shall be varied in order to assure that no more than one-third of the appointments shall be for a full three year term with the remaining appointments divided between one and two year terms. Persons appointed to fill an unexpired term shall serve for the remainder of the term. Any member who fails to attend three consecutive meetings without presenting an explanation accepted by the Commission may be deemed to have abandoned the office and may be replaced as provided herein.

Section 3. Procedures of the Commission.

(a) The Commission shall elect annually a chairman and vice-chairman from its own membership. In addition to other duties, the chairman shall be the spokesman for the Commission and shall represent the Commission in its work with other City departments. The Commission shall meet monthly at a regular time and place to be established by the Commission. A quorum shall consist of a majority of the commissioners in office and shall be required in order for the Commission to take action. In addition, a simple majority of the current membership shall be required for decisions involving buildings and structures and property in historic districts.

(b) The Commission shall prepare an annual report for the City Council, and it shall include information about any historic property that is threatened. The Commission may, subject to appropriation by the City, employ clerical assistants or consultants to help in carrying out its responsibilities under this ordinance. Other persons on the City staff may be asked to assist the Commission. The Commission may adopt rules and regulations not inconsistent with the provisions of this ordinance and state laws.

(c) No member of the Commission shall participate in the discussion about any matter or vote on any matter that may affect the property, income, or business interests of that member.

Section 4. Powers and Duties of the Commission.

In addition to the powers and duties stated elsewhere in this ordinance, the Commission shall take actions necessary and appropriate in order to accomplish the purposes of this ordinance. These actions may include, but are not limited to, the following:

- (1) To conduct surveys of local historic properties;
- (2) To participate in planning and land-use processes undertaken by the City;
- (3) To cooperate with the federal, state and county governments in the pursuance of the objectives of historic preservation;
- (4) To contract, with the approval of the City Council, with the state or the federal governments;
- (5) To promote and conduct an educational and interpretive program on historic properties and issues within the city;
- (6) To recommend ordinances and provide information for the purposes of historic preservation to the City Council;
- (7) To notify the Director of Equalization of the designation of any historic property by the City or by the U.S. Department of the Interior;
- (8) To adopt written guidelines for making exterior changes to historic property;

- (9) To negotiate with owners of historic property and other interested persons when the historic property may be demolished, materially altered, remodeled, relocated or put to a different use;
- (10) To assist the Historic District Study Committee when it investigates and reports on proposed historic districts;
- (11) To assist owners of historic property and buildings and structures in historic districts in preserving their buildings;
- (12) To assist in the review of projects on which review by the State Historic Preservation Office is required under SDCL 1-19A-11.1; and
- (13) To attend informational and educational programs covering the duties of the Commission and current developments in historic preservation.

Section 5. Coordination with Other City Departments.

(a) City departments shall give timely notice to the Commission of matters that will affect property on the National Register of Historic Places and the State Register of Historic Places and property within historic districts that have been designated by the City Council. The Commission shall be given this notice about proposed work as soon as the proposal is received by the other city department or a study is begun on work that would be done by the other city department.

(b) The Commission shall promptly prepare its comments on the proposed work so that its comments will be received prior to a decision by the other city department. The Commission shall obtain the comments of the Historic District Commission and transmit them to the city department in a single report. The coordination and comments under this section are separate from the reviews, negotiations, and approvals that are provided for, when owners and applicants submit proposed work directly to the Historic District Commission.

Section 6. Survey of Local Historic Properties.

In conducting a survey of local historic properties, the Commission shall comply with all applicable standards and criteria of the statewide survey undertaken by the South Dakota State Historical Society. The members of the Commission, its employees and its agents shall be authorized to enter upon private property for examination and survey solely in the performance of its official duties and only at reasonable times. No member, employee or agent of the Commission may enter any private property or building or structure without the express consent of the owner or occupant.

Section 7. Establishment of a Historic District Study Committee.

(a) The City Council may establish a Historic District Study Committee for the purpose of making an investigation of a proposed historic district. The Committee shall

consist of seven members appointed by the City Council with due regard to proper representation of fields such as history, architecture, architectural history, urban planning, archaeology, paleontology and law. Where possible, the members shall be selected from residents of the proposed district. Members of the Historic Preservation Commission may comprise all or part of the Historic District Study Committee. Nominations of a proposed district shall be made to the City Council and may be made by a member of the Commission, an owner of property in the proposed district, a member of the City Council, a neighborhood organization, or any other person or organization.

(b) The Study Committee shall make an investigation of the historical, architectural, archaeological, paleontological and cultural significance of the buildings, structures, sites or surroundings included in the proposed historic district. The Committee's investigation and recommendations shall comply with the criteria adopted by the State Historical Society Board of Trustees. The Committee shall report its findings to the Planning Commission, the Historic Preservation Commission and the State Historical Society Board of Trustees for their consideration and recommendations.

(c) Sixty days after transmittal of its findings, the Study Committee shall hold a public hearing on the proposed district. Due notice of the hearing shall be given including notice by publication and conspicuous posting in and around the proposed district. Written notice, postage prepaid, shall be given at least fourteen days before the hearing to the owners of all properties to be included in the proposed district. After the public hearing, the Committee shall submit to the City Council a final report with its recommendations and a draft of a proposed ordinance, where applicable.

Section 8. Establishment of a Historic District and Creation of a Historic District Commission.

(a) The City Council may establish by ordinance one or more historic districts. The City Council shall give written notification of the designation to the owners and occupants of the property in the historic district. The City Council shall file a copy of the designation ordinance in the office of the Register of Deeds for the county and shall notify the Director of Equalization of the county. An ordinance establishing a historic district may be amended by following the procedures of this ordinance and by having the Historic District Commission study and report on the proposed amendment.

(b) Whenever a historic district is established, the City Council shall also establish a Historic District Commission. The Historic District Commission shall consist of seven members appointed by the City Council with due regard to proper representation of fields such as history, architecture, architectural history, urban planning, archaeology, paleontology, and law. Where possible, the members shall be selected from residents of the proposed district. Members of the Historic Preservation Commission may comprise all or part of the Historic District Commission. The appointments to membership on the Historic District Commission shall be arranged so that the term of at least one member will expire each year, and their successors shall be appointed in like manner for terms of

three years. Persons appointed to fill an unexpired term shall serve for the remainder of the term. Any member who fails to attend three consecutive meetings without presenting an explanation accepted by the Historic District Commission may be deemed to have abandoned the office and may be replaced as provided herein.

(c) The Historic District Commission shall elect annually a chairman and vice-chairman from its own membership. In addition to other duties, the chairman shall be the spokesman for this Commission and shall represent this Commission in its work with other City departments. The Historic District Commission shall meet monthly at a regular time and place to be established by the Commission. The chairman may cancel a scheduled meeting when there is no business to transact. A quorum shall consist of a majority of the commissioners in office and shall be required in order for the Historic District Commission to take action. In addition, a simple majority of the current membership shall be required for decisions involving property in the historic district.

(d) The Historic District Commission shall prepare an annual report for the City Council, and it shall include information about any property in the historic district that is threatened. The Historic District Commission may, subject to appropriation by the City, employ consultants to help in carrying out its responsibilities under this ordinance. Persons on the City staff may be asked to assist the Historic District Commission including through the provision of clerical help that is needed. The Historic District Commission may adopt rules and regulations not inconsistent with the provisions of this ordinance and state law.

(e) No member of the Historic District Commission shall participate in the discussion about any matter or vote on any matter that may affect the property, income, or business interest of that member.

Section 9. Certificate of Appropriateness Required for Exterior Alterations in Historic Districts.

(a) After the designation of an historic district, no exterior portion of any building or other structure (including walls, fences, light fixtures, steps and pavement, or other appurtenant features) nor above-ground utility structure nor any type of outdoor advertising sign shall be erected, altered, restored, moved or demolished within the district until after the Historic District Commission has received and approved an application for a certificate of appropriateness for the proposed work on exterior features of the building or structure.

(b) The owner or applicant shall submit an application that provides information about the proposed work on exterior features of the building or structure. The application shall include the material that is requested by the Historic District Commission. The owner or applicant shall be required to post signs on the property describing the proposed work.

(c) The City shall require a certificate of appropriateness to be issued by the Historic District Commission prior to the issuance of a building permit or other permit granted for the purposes of demolishing, constructing, or altering a building or structure. A certificate of appropriateness shall be required whether or not a building permit is required.

(d) For purposes of this ordinance, “exterior features” shall include the architectural style, general design and general arrangement of the exterior of a building or other structure, including the kind and texture of the building material and the type and style of all windows, doors, light fixtures, signs, and other appurtenant features. In the case of outdoor advertising signs, “exterior features” shall be construed to mean the style, material, size, and location of all such signs. Changes in the exterior features of a building or structure shall include proposed new construction or demolition.

(e) The Historic District Commission shall not review plans that involve changes to the interior of a building or structure. As to exterior features, the Historic District Commission shall only act for the purpose of preventing the construction, reconstruction, alteration, restoration, moving or demolition of buildings, structures, appurtenant features, or outdoor advertising signs in the historic district which would be incongruous with the historical, architectural, archaeological or cultural aspects of the district.

(f) The Historic District Commission shall adopt guidelines to help in its review of proposed work. The guidelines shall include the U.S. Secretary of the Interior’s Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings, and they may include other guidelines appropriate for historic buildings and structures in the city. The Historic District Commission may expand or amend the guidelines it has adopted.

(g) Prior to the review of an application for a certificate of appropriateness, the Historic District Commission shall inform the owners of property likely to be materially affected by the application and shall give the applicant and such owners an opportunity to be heard. In cases where the Historic District Commission deems it necessary, it may hold a public hearing concerning the application.

(h) If the Historic District Commission determines that the proposed construction, reconstruction, alteration, moving or demolition is appropriate, it shall promptly approve the application and shall issue a certificate of appropriateness. If the Historic District Commission determines that a certificate of appropriateness should not be issued, it shall place in its records the reasons for this determination and shall promptly notify the applicant, furnishing the applicant an attested copy of its reasons and its recommendations, if any. The Historic District Commission shall act on the application within forty-five days, or it shall be deemed to have approved the application.

Section 10. Certificate of Appropriateness Issued in Case of Extreme Hardship.

The Historic District Commission shall approve an application for a certificate of appropriateness in any case where the owner would suffer extreme hardship, not including loss of profit, unless the certificate of appropriateness were issued promptly.

Section 11. Appeal to Circuit Court.

Any applicant aggrieved by a determination of the Historic District Commission may appeal to the Circuit Court.

Section 12. Ordinary Maintenance and Repairs. Correction of Unsafe Conditions.

Nothing in this ordinance shall be interpreted to prevent the ordinary maintenance or repair of any exterior feature of a designated property which does not involve a change in its design, material, or outer appearance. In any case where the building inspector determines that there are emergency conditions dangerous to life, health, or property involving a designated property, the building inspector shall order the remedying of these conditions without the approval of the Historic Preservation Commission or Historic District Commission. The building inspector shall promptly notify the chairman of the commission affected by the emergency action.

Section 13. Prevention of Demolition by Neglect.

Any owner of a property within a designated historic district shall be guilty of a Class 2 misdemeanor when the owner permits the deterioration of the property by intentional neglect and a building on the property is threatened with demolition because of this deterioration. Where appropriate, the Historic District Commission may request a meeting with the owner in order to discuss the condition of the property. Each day that a violation continues to exist shall constitute a separate offense.

Section 14. Conformity with the Approvals Given.

All work performed pursuant to an approval given under this ordinance shall conform to the provisions of the approval. It shall be the responsibility of the Historic District Commission to inspect, from time to time, any work being performed in order to ensure compliance with its approval. The City staff shall help with the inspections, and the City staff will take additional action that is needed, when work is being performed that is not in accordance with the approval given.

Section 15. Penalties.

Any person who performs work without following the provisions of this ordinance shall be guilty of a violation of this ordinance and shall be subject to a fine not exceeding one hundred dollars. Each day that a violation continues to exist shall constitute a separate offense.

Section 16. Definitions.

As used in this ordinance, the following terms shall mean:

- (1) "Alteration". Any construction on or change to the exterior of a building, structure, or site including, but not limited to, the changing of siding or roofing materials and the changing, eliminating or adding of doors, windows, steps, fences, railings, porches, balconies, signs or other ornamentation. Ordinary maintenance and repairs shall not be considered an alteration.
- (2) "Certificate of Appropriateness". The document, issued by the Historic District Commission, that gives its approval for work to be done on property within the historic district.
- (3) "Commission". The city's Historic Preservation Commission. The city's Historic District Commission is referred to by its full name.
- (4) "Committee" and "Study Committee". The city's Historic District Study Committee.
- (5) "Demolition". Any act that destroys in whole or in part a building or structure.
- (6) "Exterior features". The architectural style, general design and general arrangement of the exterior of a building or other structure, including the kind and texture of the building material and the type and style of all windows, doors, light fixtures, signs, and other appurtenant features. In the case of outdoor advertising signs, exterior features shall be construed to mean the style, material, size, and location of all such signs. Changes in the exterior features of a building or structure shall include proposed new construction or demolition.
- (7) "Extreme hardship". The inability of owners of a historic property to make reasonable use of their property. Extreme hardship occurs when a historic property cannot be used by the owner or a tenant because of its condition and the historic property cannot be rehabilitated for an amount of money that it would be reasonable for an owner to invest in a property.
- (8) "New construction". The act of making an addition to an existing building or structure or the erection of a principal or accessory building or structure.
- (9) "Ordinary maintenance and repairs". Work that corrects any deterioration or damage to a building or structure in order to restore it to its condition prior to the deterioration or damage. The work does not involve a change in the design, material, or outer appearance of the building or structure.

Section 17. Separability.

The provisions of this ordinance are declared to be separable. If any section of this ordinance shall, for any reason, be declared invalid or unconstitutional, the remaining provisions shall continue to have full force and effect.

Section 18. Effective Date.

This ordinance shall take effect immediately upon its passage and adoption by the City.