

Hanzel Sarah

From: Shawn Krull <shawnkrull@yahoo.com>
Sent: Monday, June 22, 2015 4:21 PM
To: Hanzel Sarah
Subject: Fw: Emailing: SHPORapidcityORD.doc
Attachments: SHPORapidcityORD.doc

Categories: Red Category

Sarah:

Please include this with correspondence...

Thank you

Shawn

Historic Preservation Commission
of Rapid City
300 Sixth St., Rapid City, S.D 57701

June 22, 2015

Mayor Sam Kooiker
City of Rapid City
300 Sixth Street
Rapid City, South Dakota 57701

Re: Proposed Historic Preservation Ordinance

Dear Mayor:

We, the Rapid City Historic Preservation Commission (HPC), are writing to express concerns regarding the proposed historic preservation ordinance. As you know on Friday, June 19, 2015, the Rapid City Historic Preservation Commission (HPC) unanimously agreed to oppose the ordinance as written and directly address the details in a letter to the planning commission and the mayor. This letter contains the HPC's reasons for concern followed by recommendations for changes to the ordinance that are necessary for effective local historic preservation.

As a matter of policy, it is a mistake to outsource SDCL 1-19A-11.1 reviews to the SHPO. As revealed by the recently 11.1 review which resulted in the removal of the historic track doors at Aby's Feed & Seed, there are inherent problems with performing 11.1 reviews remotely based on photographs. Had the HPC performed the review, it could have seen what was not visible from the photographs; that the property owner could have installed the desired overhead door while still preserving the historic integrity of the sliding track doors.

Localized 11.1 review is meant to allow the HPC and project applicants to negotiate just such win-win preservation solutions. Outsourcing 11.1 reviews to the state already has, and will continue, to be destructive of local history. It is also grossly inefficient to perform reviews from 200 miles away when they can be done more accurately and timely by the HPC locally.

As a policy matter, it is also a mistake to strip the HPC of any effective influence over local preservation and reconstitute the HPC as only an "education" board. The 1891 Price House would not be standing today if the HPC at that time had no more tools in its box than to try to educate the owner and beg him to preserve the house, and only if he requested it.

The Planning Director's effort to "streamline" the process has resulted in an ordinance rife with legal problems. Indeed, there is no legal means of "streamlining" a legislatively-mandated process by ordinance, resolution, agreement or otherwise. Since the 11.1 review process cannot be changed from what is legally required, what is being sold as "streamlining" is really just changing the entity that will perform the 11.1 review from the local HPC to the SHPO. Other than that, nothing has been "streamlined" out of the required process.

To the extent that the Planning Director has "streamlined" the process, he has done so in ways that are not legal under the statute and not conducive to effective local preservation. For one, he proposes a local HPC staffed only by two professional members when SDCL 1-19B-3 clearly requires that ALL members of an HPC have professional qualifications relevant in the field of historic preservation. For another, he proposes a system of "administrative review" which purports to exempt certain "minor" projects from 11.1 review. Projects considered "minor" include removal of historic siding, windows, an exterior features and the installation of egress windows. These are not "minor" but MAJOR changes to an historic property.

Even though the "administrative review" of these projects purports to be non-adverse because the historic material that is removed will be replaced with "material that matches the historic material in size, profile, scale, and texture," these "administrative reviews" are obviously illegal because removal of historic material is an adverse impact per se. Any adverse impact must be reviewed, and cannot legally be exempted from review. These "administrative reviews" are also illegal because they presuppose the necessity of the removal of the historic material, which is a matter that is, by law, meant to be determined during the 11.1 review process. Also, it may be that there is a feasible and prudent alternative to the proposed removal of historic material, which is an essential, predicate step in the 11.1 process that has been bypassed by these proposed "administrative reviews." The administrative reviews also purport to preapprove garages under certain loosely-defined conditions. A matter as significant as adding a garage, detached or attached, to an historic house cannot be administrative approved with 11.1 review. We believe the "administrative review" process proposed by the ordinance is blatantly illegal.

In view of these significant concerns with the policies and processes of the proposed ordinance, the HPC is proposing that it be amended in accordance with the attached draft. Language crossed out should be struck and the highlighted language added. This amended draft addresses past malfunctions in the 11.1 review process by specifically defining the process and duties of the local HPC. Procedural items that have, in the past, led to confusion in the process, friction between HPC members, and inefficiencies will be resolved in full accordance with the law in our revision. The HPC's amended draft is more compatible with the letter opinion of the Attorney General referenced in the fourth WHEREAS clause of the proposed ordinance. The amended draft also has the virtue of keeping preservation local, effective, and efficient. The HPC will be asking Planning Commission, Legal & Finance, and the Council to substitute these revisions to the proposed draft ordinance.

At a minimum, certain changes need to be made to the draft ordinance:

1. The language "When solicited by property owners" needs to be stricken from 17.54.010.E.2.h. In the past, property owners have welcomed unsolicited services from the HPC. Unsolicited proposals to list individual properties (Motor Service Company, Rapid City Laundry) have been accepted in the past by property owners. Unsolicited proposals to apply for restoration grant funding have been accepted in the past by property owners (1915 Firehouse, Crouch Line Depot/Hooky Jacks, Swander's Grocery/Four Front Design, Rapid City Laundry, AC Delco Building). The Lehe report praises these past, unsolicited, pro-active preservation efforts.
2. The language "When requested" needs to be stricken from 17.54.010.E.2.i for the same reasons as the language from 17.54.010.E.2.h. The HPC cannot function effectively waiting around for requests for assistance.
3. Though easements are arguably encompassed within the definition of property, easements should be specifically provided for in 17.54.010.E.2.k so that Rapid City will be properly positioned legally to implement a façade easement program modeled on Sioux Falls'.
4. Six commission members as provided in 17.54.010.E.3 are too few. A six-member commission might be appropriate for a small town, but a major city like Rapid City requires more. We currently have too few members to address all the public education needs alone. The ordinance should restore the HPC to ten members.
5. 17.54.010.E.3 must be amended to require that all or most HPC members have appropriate professional qualifications. The City's current draft ordinance gives no regard to the professional qualifications needed for the downtown and West Boulevard stakeholder members as is required by SDCL 1-19B-3.
6. You added a provision to 17.54.080.E.1 to allow HPC comment on administrative review projects. A similar comment provision is needed, and more important, for 17.54.080.E.2.a to allow the HPC to comment on any finding by the SHPO that a project does not have an adverse impact. Since the adverse impact finding is more important than administrative review findings, which are, in theory, non-adverse, it makes no sense to accept HPC comment on administrative reviews but not on the adverse impact finding.
7. The provision prohibiting demolition by neglect, 17.54.090.H is a welcome addition to local preservation tools. However, waiting until a building is threatened with demolition in order to act on the neglect may be waiting too long. Intervention in the case of neglect should be triggered by deterioration to the point that a property is threatened with demolition or its listing status on the National or State Registers of Historic Places is endangered.

8. Item 4 certainly, and Items 5, 9 and 10 probably, need to be removed from the administrative approval list. The administrative review process purports to exempt certain applications from 11.1 review. Since the activities described in Items 4 certainly and Items 5, 9 and 10 generally have an adverse impact per se, it is not legal to exempt them from 11.1 review. Administrative review presupposes that the project described is necessary and that no feasible or prudent alternative exists. These are findings that are first mandated by 11.1 review before the question of whether the adverse impact is appropriately mitigated is even reached. In every case under Item 4, the removal of historic material is adverse and need to be examined for necessity and alternatives. Further, the statute contemplates that the determination of whether a replacement material is "appropriate" is to be made by a professional HPC, not lay staff members. Administrative reviews as proposed for Item 4 certainly, and Items 5, 9 and 10 in most cases, is certainly illegal.

While the HPC agrees that certain provision of the proposed ordinance are welcome, such as the prevention of demolition by neglect and provisions for façade easements, the bad in the policies and processes provided in the ordinance vastly outweighs the good. The HPC would ask that due regard be given to its opposition to the ordinance and its reasons for it, and that the ordinance be amended in ways agreeable to the HPC and which provide for effective local preservation.

Sincerely,

A handwritten signature in black ink, appearing to read "Shawn Krull", written in a cursive style.

Shawn Krull
Chairman
Rapid City Historic Preservation Commission

Cc: Planning Commission

**AN ORDINANCE TO AMEND PROVISIONS CONCERNING HISTORIC PRESERVATION
BY REPEALING CHAPTER 2.68 OF THE RAPID CITY MUNICIPAL CODE, AMENDING SECTION 17.06.010 OF
THE RAPID CITY MUNICIPAL CODE, AND ADOPTING CHAPTER 17.66 OF THE RAPID CITY MUNICIPAL
CODE**

WHEREAS, the City has established the Historic Preservation Commission in Chapter 2.68 of the Rapid City Municipal Code (“R.C.M.C.”); and

WHEREAS, the City of Rapid City wishes to amend its ordinances to better preserve, promote and develop the historical resources of the municipality and to promote the use and conservation of historic properties for the education, inspiration, pleasure, and enrichment of its citizens; and

WHEREAS, the City wishes to adopt an ordinance concerning demolition by neglect that permits the City to take action to prevent deterioration of historic properties by intentional neglect; and

WHEREAS, a letter opinion from the State of South Dakota Office of the Attorney General provided guidance into the construction and application of SDCL 1-19A-11.1 as it applies to municipalities and to Historic Preservation Commissions; and

WHEREAS, the City’s review process for projects on historic properties had been set forth in a Memorandum of Understanding with the State of South Dakota, and

WHEREAS, that Memorandum of Understanding has now expired; and

WHEREAS, the City wishes to codify procedures for reviewing projects on historic properties, pursuant to SDCL 1-19A-11.1, to clarify the procedures and to ensure that citizens can more easily navigate the process; and

WHEREAS, as part of its efforts to consolidate and strengthen citizen boards within the City and to simplify the review procedures for building and development projects, the City wishes to relocate the provisions concerning the Historic Preservation Commission to the administrative zoning provisions found in R.C.M.C. Chapter 17.54 and remove them from R.C.M.C. Chapter 2.68; and

WHEREAS, the City wishes to ensure that the membership of the Historic Preservation Commission draws from stakeholders within the Rapid City West Boulevard Historic District and the Rapid City Historic Commercial District; and

WHEREAS, the Common Council believes it to be beneficial to the general health, safety, and welfare of the City to amend its ordinances concerning historic preservation by repealing Chapter 2.68, by adding provisions in Section 17.04, by amending Section 17.54.010, and by adopting Section 17.54.080 of the Rapid City Municipal Code.

NOW THEREFORE, BE IT ORDAINED by the City of Rapid City, that Chapter 2.68 of the Rapid City Municipal Code is hereby repealed in its entirety:

~~CHAPTER 2.68: HISTORIC PRESERVATION COMMISSION~~

~~Section~~

~~2.68.010 Created.~~

~~2.68.020 Members—Qualifications—Compensation.~~

~~2.68.030 Members—Appointment—Terms.~~

~~2.68.040 Vacancies.~~

~~2.68.050 Officers.~~

~~2.68.060 Powers and duties.~~

~~2.68.070 Meetings.~~

~~2.68.080 Reporting requirements.~~

~~2.68.010 Created.~~

~~There is created for the city a Historic Preservation Commission to be known as the Rapid City Historic Preservation Commission as authorized by SDCL § 1-19B-2.~~

~~2.68.020 Members—Qualifications—Compensation.~~

~~A. The Commission shall be composed of 7 members, all of whom shall be legal residents of the city and who shall serve without pay and shall be appointed to the Commission as hereinafter provided for. It is recommended that individual members be appointed to represent each of the following fields: history, architectural history, architecture, planning, urban planning, historic preservation, archaeology, American studies, American civilization, cultural geography, cultural anthropology, law, construction, and citizens-at-large. No more than 2 members shall be appointed from any specific field.~~

~~B. Alternate Members. There will also be appointed 2 alternate members to the Historic Preservation Commission. The alternate members shall be appointed in the same manner as the regular members and shall have the same qualifications. The alternate members should attend every meeting as though they were regular members of the Historic Preservation Commission. The alternate members can participate and vote at the meeting only when there is an absence at the meeting that results in less than 7 members being present. Each alternate member shall be designated as either the first or second alternate, with the first alternate participating to fill the first seat that is vacant, and the second alternate participating if there are any additional vacancies. If a regular member should leave during a meeting and the alternate members are not already participating, then the alternates may fill the seat in the same manner as previously described.~~

~~2.68.030 Members—Appointment—Terms.~~

~~The term of each Historic Preservation Commission member heretofore appointed by the Mayor with the approval of the City Council and currently serving shall be continued until expiration of the original term, or until the members shall have resigned or been removed for cause. Each member appointed to the Historic Preservation Commission, including alternate members, shall be appointed for a term of 3 years; provided that, upon organization of the Commission, 4 members shall be appointed for a 3-year term, 3 members for a 1-year term, provided, nonetheless, that the Mayor shall make such~~

appointments for shorter terms as shall be appropriate to establish a pattern whereby the terms of 2 members of the Commission expire on January 1 of each year.

2.68.040 Vacancies.

In case of any vacancy in membership of the Commission due to death, resignation, or otherwise, a successor shall be appointed to fill the unexpired portion of the term of the member he or she replaces. The Mayor with the confirmation of the Common Council shall after public hearing have authority to remove any member of the Commission for cause which cause shall be stated in writing and made a part of the record of the hearing.

2.68.050 Officers.

The Commission shall, at its first organizational meeting and at each first meeting in January of subsequent years, elect from its membership the officers it may deem necessary.

2.68.060 Powers and duties.

A. The Commission shall conduct a survey of local historic properties, complying with all applicable standards and criteria of the state wide survey undertaken by the cultural preservation office of the department of education and cultural affairs.

B. The Commission shall attempt to coordinate their activities with the conduct of land use, urban renewal and other planning process undertaken by the city.

C. The Commission shall be authorized to cooperate with the federal, state and local governments in the pursuance of the objectives of historic preservation.

D. The Commission established pursuant to this chapter shall be authorized to contract, subject to prior approval of the Common Council, with the state or the federal government, or any agency of either, or with any other organization.

E. The Commission shall promote and conduct an educational and interpretive program on historic properties within the city.

F. The Commission shall recommend ordinances and otherwise provide information for the purposes of historic preservation to the Common Council, including, but not limited to the formation of historic district committees and historic district commissions.

2.68.070 Meetings.

The Commission shall meet at least once a month at a regular time and place to be set by the Commission.

2.68.080 Reporting requirements.

The Commission shall make an annual report to the Common Council on or before July 1 of each year, and at such other times as the Council may direct.

NOW THEREFORE, BE IT ORDAINED by the City of Rapid City, that Section 17.04.024 is hereby added to read in its entirety:

17.04.024 ~~Adverse Effect~~ Definitions of SDCL 1-19A-11.1 Review Terms.

~~ADVERSE EFFECT.~~ A project has an adverse effect if it will encroach upon, damage, or destroy any Historic Property.

AFFECT. A project will affect Historic Property if it encroaches upon, damages, or destroys any Historic Property or Historic District.

ADVERSE EFFECT. A project has an adverse effect if any encroachment upon, damage to, or destruction of any Historic Property or Historic District does not meet the Secretary of Interior's Standards, State law or City ordinances concerning historic preservation, endangers its listing status on the National or State Registers for Historic Places, and/or is undertaken without full review as provided in 17.54.080.E.

ALTERNATIVE. An end use that is compatible with, a variation of, or different from the proposed project to which the Historic Property is adaptable, including sale or relocation.

FEASIBLE. Work that is capable of being done in light of technical, structural, engineering, or design considerations.

PRUDENT. Work that will result in any economically viable end use for the Historic Property without causing extraordinary financial hardship to the project applicant. A project applicant's neglect of Historic Property is not a factor contributing to hardship.

RELEVANT FACTORS. Any consideration supported by facts which makes the existence of any fact to be determined by this ordinance more or less likely.

NOW THEREFORE, BE IT ORDAINED by the City of Rapid City, that Section 17.04.044 is hereby added to read in its entirety:

17.04.044 Alteration to historic property.

ALTERATION TO HISTORIC PROPERTY. Any exterior change to a Historic Property that requires a building permit, demolition permit, or other construction permit, or any interior change to a non-residential Historic Property that the Director determines has the potential to adversely affect Historic Property, or any change to the interior space of any public building or commercial property whose interior has been designated historic by ordinance as provided in SDCL 1-19B-20. Such alterations include, but are not limited to, any changes to exterior building components, such as siding, roofing, and windows; new construction of additions; and demolition. Routine maintenance and repairs which correct any deterioration or damage to a building or structure in order to restore it to its condition prior to the deterioration or damage is not an alteration if a permit is not required and it does not involve a substantive change, as determined by the Director, in the design, material, or outer appearance of the building or structure.

NOW THEREFORE, BE IT ORDAINED by the City of Rapid City, that Section 17.04.356 is hereby added to read in its entirety:

17.04.197 Rapid City Historic Commercial District.

RAPID CITY HISTORIC COMMERCIAL DISTRICT. A commercial district listed on the National Register of Historic Places, a complete description of which is on file with the Community Planning and Development Services Department. This district includes both the original Rapid City Historic Commercial District and the Rapid City Commercial Historic District (Boundary Increase).

NOW THEREFORE, BE IT ORDAINED by the City of Rapid City, that Section 17.04.247 is hereby added to read in its entirety:

17.04.247 Environs.

ENVIRONS. The area surrounding Historic Property within which a project could have an impact upon that property. The environs include any property or portion thereof that adjoins a Historic Property and also includes any adjacent property or portion thereof that is within 50 feet of a Historic Property, exclusive of any street, alley, or other public rights-of-way.

NOW THEREFORE, BE IT ORDAINED by the City of Rapid City, that Section 17.04.356 is hereby added to read in its entirety:

17.04.356 Historic district.

HISTORIC DISTRICT. An area listed on the National or State Registers of Historic Places that contains Historic Properties.

NOW THEREFORE, BE IT ORDAINED by the City of Rapid City, that Section 17.04.357 is hereby added to read in its entirety:

17.04.357 Historic preservation design guidelines.

HISTORIC PRESERVATION DESIGN GUIDELINES. General design and technical recommendations adopted by resolution of the Common Council which encourage historic preservation and assist property owners in minimizing adverse effects to historic structures.

NOW THEREFORE, BE IT ORDAINED by the City of Rapid City, that Section 17.04.358 is hereby added to read in its entirety:

17.04.358 Historic project.

HISTORIC PROJECT. Any of the following undertakings, all of which are subject to historic preservation review under this Title:

1. An alteration to a Historic Property pursuant to 17.04.044 or any new construction conducted on Historic Property or within the environs thereof;

2. An undertaking that meets the conditions of state law, including SDCL 1-20-22, regarding projects endangering archaeological sites;
3. An alteration or new construction in a non-historic location but within a Historic Preservation Overlay Zoning District; or
4. Demolition of a Historic Property.

NOW THEREFORE, BE IT ORDAINED by the City of Rapid City, that Section 17.04.359 is hereby added to read in its entirety:

17.04.359 Historic property.

HISTORIC PROPERTY. Any property that is listed on the National or State Registers of Historic Places or located within a Historic District.

NOW THEREFORE, BE IT ORDAINED by the City of Rapid City, that Section 17.04.513 is hereby added to read in its entirety:

17.04.513 National Register of Historic Places

NATIONAL REGISTER OF HISTORIC PLACES. The register created by the National Historic Preservation Act of 1966, as amended.

NOW THEREFORE, BE IT ORDAINED by the City of Rapid City, that Section 17.04.627 is hereby added to read in its entirety:

17.04.627 Secretary of Interior’s Standards for the Treatment of Historic Properties.

SECRETARY OF INTERIOR’S STANDARDS FOR THE TREATMENT OF HISTORIC PROPERTIES. The Secretary of the Interior’s Standards for the Treatment of Historic Properties with Guidelines for Preserving, Rehabilitating, Restoring and Reconstructing Historic Buildings, 1995, National Park Service, U.S. Department of Interior, and any adopted amendments to the standards. These standards include the methods, policies, technical notes, preservation briefs, and guidelines used by the National Park Service, as well as guidelines established by the President’s Advisory Council on Historic Preservation (ACHP).

NOW THEREFORE, BE IT ORDAINED by the City of Rapid City, that Section 17.04.643 is hereby added to read in its entirety:

17.04.643 State Register of Historic Places.

STATE REGISTER OF HISTORIC PLACES. The State register of historic places that is prepared and maintained by the South Dakota Office of History, pursuant to SDCL 1-19A-5.

NOW THEREFORE, BE IT ORDAINED by the City of Rapid City, that Section 17.04.751 is hereby added to read in its entirety:

17.04.751 Rapid City West Boulevard Historic District.

RAPID CITY WEST BOULEVARD HISTORIC DISTRICT. A residential district listed on the National Register of Historic Places, a complete description of which is on file with the Community Planning and Development Services Department.

NOW THEREFORE, BE IT ORDAINED by the City of Rapid City, that Section 17.54.010 is hereby amended to read in its entirety:

17.54.010 Organization.

A. *Administration.* The provisions of this title shall be administered by the city's Building Official and the city's Community Planning and Development Services Department.

1. The city's Building Official shall:

- a. Issue all building permits and make and maintain records thereof;
- b. Issue all certificates of occupancy and make and maintain records thereof;
- c. Issue and renew where applicable all temporary use permits and make and maintain records thereof;
- d. Conduct inspections as prescribed by this title and such other inspections as are necessary to ensure compliance with the various provisions of the title; and
- e. Prepare reports and recommendations for applications to be reviewed by the Board of Adjustment.

2. The Director of the Community Planning and Development Services Department (Director) shall:

- a. Maintain and keep current zoning maps and records of amendments thereto;
- b. Maintain and keep current the comprehensive plan and amendments thereto;
- c. Direct Department staff and Development Review Team to prepare reports and recommendations for applications to be reviewed by the Planning Commission and City Council; and
- d. Perform the review and approval of applications for minor amendments and other administrative procedures as prescribed by this title.

3. The Development Review Team (DRT) is composed of city staff and representatives of outside agencies that have an interest in or would be affected by a proposed application. The Director of Community Planning and Development Services shall maintain a list of current members and may revise the list. The Director or designee within the department will select members from the DRT list and forward applications to the selected members for review and comment. Copies of the DRT list are available for inspection in the office of the Director.

B. *Board of Adjustment.*

1. *Established.* The Planning Commission as set forth in Section D below shall serve as the Board of Adjustment.

2. *Rules of conduct— meetings.* All meetings of the Board shall be open to the public. The Board shall keep minutes of its proceedings showing the vote of each member upon each question, or, if absent or failing to vote, indicating such fact, and shall keep records of its examinations and other official actions, all of which shall be immediately filed in the office of the Board and shall be a public record. It shall have power to call on any other city departments for assistance in the performance of its duties, and it shall be the duty of such other departments to render all such assistance as may be reasonably required.

3. *Powers of the Board of Adjustment.* The Board has the authority to compel the attendance of witnesses at hearings and to administer oaths and in furtherance of their duties shall have the following powers:

a. *Appeal.* The Board shall have the power to hear and decide appeals wherein it is alleged there is an error in any order, requirement, decision or determination made by an administrative official pursuant to this title;

b. *Special exception.* To hear and decide, in accordance with the provisions of any such ordinance, requests for special exceptions or for interpretation of the zoning map; and

c. *Variance.* Where there are practical difficulties or unnecessary hardship of carrying out the strict letter of this title, in any way, the Board shall have the power, in passing upon appeals, to authorize the variance from the terms of this title as will not be contrary to the public interest and so that the intent of the title shall be observed and substantial justice done.

4. *Voting.* Pursuant to state law, the concurring vote of at least two-thirds of the members of the Board is necessary to decide in favor of the applicant on an appeal, special exception, or variance. Accordingly, no such action may be taken unless two-thirds of the members of the Board are in attendance at the public hearing.

C. *Common Council.* The Common Council shall:

1. Establish such rules of procedure as are necessary to the performance of its functions hereunder;

2. Review and decide all applications for amendments to the city zoning map and comprehensive planning documents in accordance with § 17.54.040;

3. Study and report on all proposed amendments to this title; further, to review annually this title and, on the basis of the review, suggest amendments thereto; and

4. Hear appeals for denials by the Planning Commission of conditional use permits and planned development overlay districts, or other provisions of this title as applicable.

D. *Planning Commission.* The Planning Commission shall:

1. Review and approve conditional use permits, planned development overlay districts, and any other provisions designated by this title;
2. Review and make recommendations to the City Council on preliminary subdivision plans, zoning applications, zoning ordinance revisions, subdivision ordinances and amendments to the city comprehensive plan; and
3. Provide direction for the orderly growth of the city as prescribed by Chapter 2.60 of the Municipal Code; and
4. Serve as the Zoning Board of Adjustment, pursuant to SDCL 11-4-13.

E. *Historic Preservation Commission.*

1. *Established.* The establishment of the Rapid City Historic Preservation Commission, hereinafter referred to as Commission, is authorized in accordance with SDCL 1-19B-2.

2. *Powers and duties.* The Commission shall take actions necessary and appropriate in order to accomplish a comprehensive program of historic preservation that promotes the use and conservation of Historic Properties for the education, inspiration, pleasure, and enrichment of citizens of Rapid City and the state, consistent with SDCL Chapters 1-19A and 1-19B. These actions include, but are not limited to, the following responsibilities:

- a. To conduct surveys of local Historic Properties;
- b. To participate in planning and land use processes undertaken by the City that affect historic properties and historic areas;
- c. To participate in **or perform** historic preservation review as provided in this Code;
- d. To cooperate and contract with local, state or federal governments with the approval of the Common Council to further the objectives of historic preservation;
- e. To promote and conduct an educational and interpretive program on Historic Properties and issues within the City;
- f. To provide information for the purposes of historic preservation to the Common Council;
- g. 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;

h. ~~When solicited by owners, to~~ To assist owners of Historic Property and buildings and structures in Historic Districts in preserving, restoring or rehabilitating their buildings;

i. ~~When requested, to assist in the review of projects on which review by the State Historic Preservation Office is required under SDCL 1-19A-11.1;~~ To perform SDCL 1-19A-11.1 reviews pursuant to a Memorandum of Agreement with the State Historic Preservation Office (SHPO), or to assist SHPO in its review of projects as required by SDCL 1-19A-11.1;

j. To attend informational and educational programs covering the duties of the Commission and current developments in historic preservation;

k. To acquire and hold interests in Historic Properties, including protective easements, with Common Council approval and to preserve, restore, maintain and operate Historic Properties under the ownership or control of the Commission or City and to lease, sell, or otherwise dispose of such Historic Properties.; and

l. To further the objectives of historic preservation as allowed under these ordinances and state law.

3. *Members.* The Commission shall be composed of ~~six~~ **nine** members who are legal residents of the City or who own Historic Property **within the city**. The members shall serve without pay. The commission members shall be selected as follows:

a. Professional Members. ~~Two~~ **The nine** members ~~and one alternate~~ of the Commission shall be professionals within one of the following fields: history, architectural history, architecture, planning, urban planning, historic preservation, archaeology, American studies, American civilization, cultural geography, cultural anthropology, law, or construction.

b. Downtown Representatives. ~~Two~~ **At least two of the Commission's nine** members ~~and one alternate~~ shall be stakeholders in the Rapid City Historic Commercial District, such as property owners, merchants, business owners, developers, investors, active members of a downtown organization such as Destination Rapid City, and others with a direct stake in the vitality of Downtown Rapid City.

c. West Boulevard Representatives. ~~Two~~ **At least two of the Commission's nine** members ~~and one alternate~~ shall be resident owners of homes within the Rapid City West Boulevard Historic District or stakeholders in the neighborhood, such as active members of the West Boulevard Neighborhood Association, neighborhood property owners, residents of the West Boulevard neighborhood, and others with a direct stake in the conservation of this historic neighborhood.

4. *Alternate Members.* ~~An alternate member may participate and vote at the meeting only when there is an absence at the meeting of one of the regular members in the class from which the alternate was appointed.~~

4. *Appointment – Terms – Vacancies.* Upon passage of this ordinance, ~~nine~~ **six** members ~~and three alternates~~ as provided above shall be appointed. Commission membership shall be appointed by the Mayor with the approval of the Common Council. Each member shall be appointed for a term of three years; provided that, the Mayor may recommend appointments for shorter terms for the purpose of establishing a rotational pattern whereby the terms of one or more members expire on October 1 of each year. Members shall serve until expiration of their terms or until the members shall have resigned or been removed for cause; any member whose term has expired shall continue to serve until the appointment and qualification of a successor. In case of any vacancy in membership of the Commission due to death, resignation, or otherwise, a successor shall be appointed to fill the unexpired portion of the term. The Common Council may, after a public hearing, remove any member of the Commission for cause, which cause shall be stated in writing and made a part of the record of the hearing.

5. *Officers – Rules of Procedure – Annual Report.* The Commission shall elect from its membership the officers it may deem necessary. The Commission may adopt its own bylaws and rules of procedures, consistent with this Code and the laws of the State of South Dakota. The Commission shall make an annual report to the Common Council on or before July 1 of each year, and at such other times as the Council may direct.

6. *Voting.* A quorum of the Commission consists of ~~four~~ **five** or more members. A motion shall pass upon majority vote of the Commission members in attendance at the meeting. In the event of a tie vote, the motion fails.

NOW THEREFORE, BE IT ORDAINED by the City of Rapid City, that Section 17.54.080 is hereby added to read in its entirety:

17.54.080 Procedures for historic preservation.

A. Administration. The Common Council hereby appoints the Director of Community Planning and Development Services or his/her designee (“Director”) to administer these procedures.

B. Applicability. Any Historic Project as defined in 17.04.358 that requires a permit shall be subject to these procedures, except as otherwise provided. **The burden of meeting conditions for approval of a permit belongs to the project applicant.** No permit can be issued by the City unless the applicant has completed the following review process and the Director has first authorized the issuance of a permit in accordance with this Section. The Secretary of Interior’s Standards for the Treatment of Historic Property shall be applied to historic preservation review within this Section. Additionally, the Common Council or Commission may adopt by resolution or rule additional design guidelines for historic properties **not incompatible with the Secretary of Interior’s Standards.**

C. Pre-application Conference. The applicant shall confer with the Director regarding historic preservation review procedures and the project’s conformance with the Secretary of Interior’s Standards for the Treatment of Historic Property and with pertinent City ordinances and resolutions. The Director will provide information regarding grants and tax credits for historic properties, such as the Deadwood Fund Grant program, Federal Rehabilitation Tax Credit program, or State Property Tax Moratorium program. **If the Director concludes that a proposed project does not affect a Historic Property or Historic District, the historic review process discussed below will not be requisite to the Director’s issuance of a permit. If the Director determines that a proposed project affects a Historic**

Property or Historic District, the applicant must complete the review procedures of 17.54.080.E before the issuance of a permit.

D. Application. Following the pre-application conference, the applicant shall submit a complete application for Historic Preservation Review to the Director. The application must clearly depict the proposed project and its impacts on surrounding properties through the use of such means as building elevations, construction plans, drawings, illustrations, photographs, or other means necessary to allow the City to adequately assess the conformity of the proposed project with the Secretary of Interior's Standards for the Treatment of Historic Property and pertinent City ordinances and resolutions. The Director shall advise the applicant of required submissions and determine the completeness of an application. The Director may require additional materials necessary for the review.

E. Review. Upon receipt of a complete application, the Director shall determine the level of review required for approval.

~~1. Administrative review of certain projects. Administrative approval may be granted for projects which SHPO and City have agreed in writing do not constitute adverse effects; such projects for administrative approval shall be adopted by the Common Council by separate resolution. A draft resolution shall be presented to the HPC for its comment and recommendation; thereafter, the resolution and HPC's comments and recommendation shall be forwarded to the Council for its final decision. Such projects may include roofing, windows, siding, and minor exterior improvements such as installation of fences, construction of small sheds/outbuildings, or construction of small decks/patios. All other projects will be referred to SHPO for review per Section 2 below. The Director shall not administratively approve a demolition permit for a Historic Property. The Director reserves the right to withhold administrative approval of any application and to refer any project to SHPO for review and comment. Under this section, the Director may take the following actions:~~

~~a. Administrative determination of no adverse effect. The Director may approve an application if he or she determines that the project will have no adverse effect on Historic Property. In reviewing permits for interior changes, The Director shall consult the information within the National and/or State Registers for the property in determining whether the project may have an adverse effect. If the Director approves the application, the applicant may proceed with the improvements, provided the necessary permits have been approved by the City.~~

~~b. Administrative determination of adverse effect. Administrative approval cannot be issued if the Director determines the project may have an adverse effect on Historic Property. The Director shall notify the applicant in writing of his/her findings of potential adverse effect. The applicant may: (1) withdraw the application, (2) modify and resubmit the application, or (3) elect to continue with the review process as discussed below.~~

~~2. Initial SHPO review. Where the Director determines that a project has the potential for an adverse effect on Historic Property and where the applicant has not withdrawn or resubmitted the application, the Director shall prepare a summary report of the project that describes any potential adverse effects and send the project file, including the summary report and~~

application, to SHPO for an initial review. SHPO will review the project file and make a written determination to the Director, as follows:

- a. SHPO determination of no adverse effect. Where SHPO issues a written determination that the project will not have an adverse effect upon Historic Property, the Director shall approve the project. The applicant may then proceed with the improvements, provided the necessary permits have been approved by the City.
- b. SHPO determination of potential adverse effect. Where SHPO issues a written determination that the project has or may have an adverse effect upon Historic Property, the Director shall not approve the project, and the procedures discussed in Sections 3, 4, and 5 shall be followed.

3. Commission review and public hearing. The Director shall prepare a Case Report for the Commission and SHPO. The Director shall submit the project file, including the application, the Case Report, and the written SHPO determination of potential or actual adverse effect, to the Commission for a public hearing. The Commission shall:

- a. Comment on the Case Report by agreeing, disagreeing, or declining to comment on the Case Report's findings; and/or
- b. Determine, based upon all relevant factors, whether there are feasible and prudent alternatives to the proposed project and whether the project includes all possible planning to minimize harm to Historic Property, in compliance with the requirements of SDCL 1-19A-11.1. The Commission may also offer additional comments, including suggestions or alternatives to minimize any adverse effect to historic property.

4. Final SHPO review. After Commission review and public hearing, the Director shall send the project application, Case Report, and the Commission's determination, findings, and comments to SHPO for its final determination. SHPO will review the record and will issue any final comments to the City for approval or denial of the project application. SHPO may offer its opinion whether, based upon all relevant factors, there is no feasible and prudent alternative to the project and the project includes all possible planning to minimize harm to historic property. Any comments from SHPO under this Section will be in writing.

5. Final City action following case report. After receipt of the final written SHPO comments, as described in Section 4, the Director may take the following actions:

- a. Final Director approval. If at any time the Director receives a written determination of no adverse effect by SHPO, the Director may approve the project application and the applicant may proceed with obtaining required City permits. If the Director grants approval of the project application after Commission review, he/she shall promptly report approval of the project application to the Commission.

E. Review. Upon receipt of a complete application, the Director shall submit the project to Commission and/or SHPO review.

1. Administrative review of certain projects. Administrative approval may be granted for projects which SHPO, the HPC and City have agreed in writing do not constitute adverse effects; such projects for administrative approval shall be adopted by the Common Council by separate resolution. A draft resolution shall be prepared by the HPC; thereafter, the resolution shall be forwarded to the Council for its final decision. Such projects may include roofing and minor exterior improvements such as installation of fences, construction of small sheds or construction of small decks/patios on elevations not visible from the street. All other projects will be reviewed per Section 2 below. The Director shall not administratively approve a demolition permit for a Historic Property. The Director reserves the right to withhold administrative approval of any application and to refer any project for Section 2 review and comment. Under this section, the Director may take the following actions:

a. Administrative determination of no adverse effect. The Director may administratively approve an application determined to have no adverse effect by the agreement between SHPO, the HPC and City described above. In reviewing permits for interior changes, the Director shall consult the information within the National and/or State Registers for the property in determining whether the project may have an adverse effect. If the Director approves the application, the applicant may proceed with the improvements, provided the necessary permits have been approved by the City.

b. Administrative determination of adverse effect. Administrative approval cannot be issued if the Director determines the project may have an adverse effect on Historic Property. The Director shall notify the applicant in writing of his/her findings of potential adverse effect. The applicant may: (1) withdraw the application, (2) modify and resubmit the application, or (3) elect to continue with the review process as discussed below.

2. Local review pursuant to a Memorandum of Agreement between SHPO and the Commission. Because local oversight promotes efficient and effective preservation policy and planning, the Commission is directed, if possible, to perform SDCL 1-19A-11.1 reviews pursuant to a Memorandum of Agreement with SHPO:

a. Commission review. The Director will submit the project application to the Commission for review at a public hearing. The project applicant shall be entitled to notice of, and the opportunity to be heard at, the hearing.

b. Information Gathering. In addition to reviewing the project application, Commissioners, individually or in a group not constituting a quorum, may visit a project site and enter, solely in performance of official duties and only at reasonable times, upon the site for examination or survey. No Commissioner or agent of the Commission may enter any private building or structure without the express consent of the owner or occupant. The Director may deny a permit if the refusal of entry into a private building prevents the Commission from performing a full and appropriate review. The Commission may also consult outside resources, such as professional consultants and experts or SHPO and National Trust for Historic Preservation personnel.

c. Commission Findings. The Commission will review the project application and determine whether, and on what conditions, a permit will issue.

i. No adverse effect. The Commission will first determine whether the project has an adverse effect.

ii. Alternatives to adverse effect. If the Commission finds that the project has an adverse effect, it will make a determination, based on all relevant factors, whether there are feasible and prudent alternatives to the proposed project. To aid project applicants, the Commission may make suggestions for alternatives that eliminate the adverse effect. The Commission and applicant can negotiate and agree to project alternatives that, consistent with the Secretary of Interior Standards, eliminate its adverse effect, and modify the application in accordance with the agreed alternatives.

iii. No alternatives to adverse effect. If the Commission finds that a project has an adverse effect, but that there are no feasible or prudent alternatives, it will make a determination whether the project application has engaged in all possible planning to minimize harm to the Historic Property. To aid project applicants, the Commission may make suggestions for alternatives that minimize its harm. The Commission and applicant can negotiate and agree to measures that, consistent with the Secretary of Interior Standards, minimize harm to the Historic Property, and modify the application in accordance with the agreed measures.

iv. Report of Commission findings. The Commission will report its findings to the Director. If the Commission and applicant agree to project alternatives that eliminate its adverse effect, or measures which minimize its harm, the Commission will prepare a report for the Director describing the alternatives that it deems feasible and prudent, or describing measures that would minimize the harm, and authorizing the Director to approve the application as subject to the conditions agreed to. If the Commission and applicant cannot agree to project alternatives that eliminate its adverse effect or minimize its harm, the Commission will prepare a report for the Director describing the alternatives that it deems feasible and prudent, or describing measures that would minimize the harm, and directing the Director to deny the permit.

3. State SHPO review if Commission cannot enter a Memorandum of Agreement with SHPO. The Director must prepare a summary report of the project that describes any potential adverse effects and send the project file, including the summary report and application, to SHPO for an initial review. SHPO will review the project file and make a preliminary written determination of adverse effect or no adverse effect to the Director.

a. Commission review and public hearing. The Director will report SHPO's preliminary determination of adverse effect or no adverse effect and submit the project application to the Commission for review at a public hearing and notice the applicant of the hearing. Upon completing its review, the Commission shall:

i. Comment on SHPO's findings of adverse effect or no adverse effect and object if appropriate in its judgment; and

ii. Comment, based upon all relevant factors, whether there are feasible and prudent alternatives to the proposed project and whether the project includes all possible planning to minimize harm to Historic Property, in compliance with the requirements of SDCL 1-19A-11.1, and object to SHPO's findings if appropriate in its judgment.

iii. The Commission's comments may include suggestions or alternatives to eliminate the adverse effect or minimize the harm to Historic Property.

b. Final SHPO review. After Commission review and public hearing, the Director shall send the project application, Case Report, and the Commission's findings and comments to SHPO for its final determination. SHPO will review the record and will issue a final determination to the City for approval or denial of the project application. SHPO may comment on whether, based upon all relevant factors, there is no feasible and prudent alternative to the project and the project includes all possible planning to minimize harm to historic property. Any comments from SHPO under this Section will be in writing.

4. Final City action following Section 1 or Section 2 review. After receipt of the final written Commission and/or SHPO comments from the review completed pursuant to either Section F.1 or F.2, the Director may take the following actions:

c. Final Director approval. If the Director receives a written determination of no adverse effect, the Director may approve the project application and the applicant may proceed with obtaining required City permits.

d. Commission objection to Director Approval. If the Director approves a project over Commission objections made pursuant to Section F.2.a, the Director must give immediate notice thereof to the Commission and wait 7 days before issuing the permit. Before the end of these 7 days, any Commissioner may request Common Council review of the approval. No permit will issue pending Common Council review. If a Commissioner seeks review of the matter by the Common Council, the Director shall forward the following to the Council: the project application; Case Report; the Commission's and/or SHPO's comments, findings, or determinations. On review, the Common Council may affirm or reverse the approval, or remand the project application for Commission review and determination in accordance with the procedures in Section 1.

e. Final Director denial. Where the City Director has received a report directing denial from the Commission or a written determination of adverse effect by SHPO, the Director shall deny the project application and provide written notice to the applicant of denial. The applicant may (i) accept the denial, (ii) resubmit a revised application, or (iii) appeal to the Common Council within 30 days of the denial.

i. If the applicant seeks review of the matter by the Common Council, the Director shall forward the following to the Council: project application; Case Report; the Commission's determination, findings, and comments; and SHPO's determinations, findings, and comments.

ii. Common Council approval. If the Common Council determines that, based upon all relevant factors, there is no feasible and prudent alternative to the project and the project includes all possible planning to minimize harm to historic property, the application shall be approved. No permit may be issued by the City until ten business days after SHPO has received notice as required by state law of the Council's determination with a complete record of factors considered. Thereafter, the applicant may proceed with obtaining required City permits.

iii. Common Council denial. No permit shall be issued if the Common Council determines that the application shall be denied because feasible and prudent alternatives exist or because the project has not included all possible planning to minimize the harm to historic property. In this case, the Director shall timely provide notice of the denial to the applicant, the Commission and SHPO.

F. Conformity with the Approvals Given. All work performed pursuant to these historic preservation review approval procedures of this Section shall conform to the provisions of the approval.

G. Exemptions from historic preservation review. The following projects shall be exempt from historic preservation review:

1. A sign permit approved in accordance with the applicable ordinances and by the appropriate reviewing body;
2. Projects which do not require a building or demolition permit or other construction permit required by the City, including, but not limited to, some landscaping, fencing, and painting projects;
3. The routine maintenance and repairs of an exterior feature of a building, which does not involve a substantive change, as determined by the Director, in its design, material, or outer appearance;
4. The installation, replacement, and repairs and routine maintenance and repairs of public infrastructure, except for buildings, such as, traffic control devices, utilities, street lights, sidewalks, streets, alleys, public parking areas, driveways, drainage structures, and the like. Infrequent, large scale infrastructure improvements, however, that are exempt from these zoning provisions for historic preservation review may be subject to SHPO review in accordance with the requirements of SDCL § 1-19A-11.1; and
5. In any case where the Building Official determines that there are emergency conditions dangerous to life, health, or property, the Building Official shall order the remedying of these conditions without review approval.

H. Prevention of demolition by neglect. Any owner of a Historic Property shall not permit the deterioration of the property by intentional neglect, such that a building on the property may be threatened with demolition, or its listing status as a National or State Registers of Historic Places property endangered, because of this deterioration. Where appropriate, the Commission may request a meeting with the owner in order to discuss the condition of the property and the means to restore its

condition. Such neglect shall constitute a violation of this ordinance and be subject to penalties discussed in this Code, including the general penalty provision found in R.C.M.C. 1.12.010. Each day that a violation continues to exist shall constitute a separate offense. The City may take any other action to prevent deterioration by neglect permissible under state law and city ordinance.

CITY OF RAPID CITY

Mayor

ATTEST

Finance Officer

(seal)

First Reading:
Second Reading:
Published:
Effective: