

AN ORDINANCE TO PROMOTE HISTORIC PRESERVATION AND TO PROHIBIT DEMOLITION BY NEGLIGENCE BY REPEALING CHAPTER 2.68 OF THE RAPID CITY MUNICIPAL CODE AND ADOPTING PROVISIONS IN CHAPTERS 17.04 AND 17.54 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.

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

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. 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 subsequent Rapid City Commercial Historic District.

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 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 or eliminating 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; or
3. 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.

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 17.04.577 is hereby added to read in its entirety:

17.04.577 Rapid City West Boulevard Historic District

RAPID CITY WEST BOULEVARD HISTORIC DISTRICT. A residential district listed on the National Register of Historic Places and the State 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 17.04.627 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.

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 17.54.010 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.
5. The Board shall not have any oversight or review of historic preservation procedures within this Code.

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; and
5. Participate in procedures for historic preservation as provided in Section 17.54.080.

D. *Planning Commission.*

1. The Planning Commission shall:

- ~~1.~~a. Review and approve conditional use permits, planned development overlay districts, and any other provisions designated by this title;
- ~~2.~~b. 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.~~c. Provide direction for the orderly growth of the city as prescribed by Chapter 2.60 of the Municipal Code; and
- ~~4.~~d. Serve as the Zoning Board of Adjustment, pursuant to SDCL 11-4-13.

2. The Planning Commission shall not have any oversight or review of historic preservation procedures within this Code.

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 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. With consent of the owner, to assist owners of Historic Property and buildings and structures in Historic Districts in preserving 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;
 - j. To attend informational and educational programs covering the duties of the Commission and current developments in historic preservation;
 - k. To preserve, restore, maintain and operate Historic Properties under the ownership or control of the Commission, including historical easements, 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 members who are legal residents of the City or who own Historic Property. The members shall serve without pay. The commission members shall be selected as follows:
- a. Professional Members. Two 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 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 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.
5. Appointment – Terms – Vacancies. Upon passage of this ordinance, six members and three alternates as provided above shall be appointed. In these appointments, due regard shall be given to proper representation of such fields as history, architecture, urban planning, archaeology, paleontology, and law. 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.
6. 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.
7. Voting. A quorum of the Commission consists of four or more members. A motion shall pass upon majority vote of the Commission members in attendance at the meeting. In the event of 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. 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. Additional guidance concerning the standards can be found in 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). Additionally, the Common Council may adopt by resolution additional design guidelines for historic properties.

- 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.
- 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 review may be performed and approval 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. 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 may approve the project. If the Director approves 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, or if the Director believes that further review is appropriate, 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 applicant shall provide additional information to staff for inclusion in the Case Report, including information related to feasible and prudent alternatives and planning which has occurred to mitigate any adverse effect on Historic Property. The burden is on the applicant to show that approval should be granted. 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.
 - b. Final Director denial. Where the City has received 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 in writing submitted to the Director by close of business on the tenth full calendar day following mailing of written notice.
 - 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 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 deterioration by neglect. Any owner of a Historic Property or a property within an established historic district shall not allow the deterioration of the property by intentional neglect if the deterioration is damaging or destroying Historic Property. 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: