



# CITY OF RAPID CITY

RAPID CITY, SOUTH DAKOTA 57701-2724

## OFFICE OF THE CITY ATTORNEY


300 Sixth Street

Carla R. Cushman, Assistant City Attorney  
City web: [www.rcgov.org](http://www.rcgov.org)

Phone: 605-394-4140  
Fax: 605-394-6633  
e-mail: [carla.cushman@rcgov.org](mailto:carla.cushman@rcgov.org)

### MEMORANDUM

TO: Mayor Sam Kooiker  
Historic Preservation Committee

FROM: Carla Cushman, Assistant City Attorney 

DATE: May 7, 2015

RE: Historic Preservation ordinances revision and incorporation of HPC comments to Lehe Report.

A “Final Report and Analysis of Rapid City’s Historic Preservation Program” was compiled by consultant Jim Lehe and was submitted to the City in September 2014. Among other things, it included numerous recommendations for changes in the City’s historic preservation processes as well as a draft ordinance incorporating many of those changes. Thereafter, I worked with Brett Limbaugh and Sarah Hanzel, Long Range planner, to draft an ordinance. While we started from Jim Lehe’s recommendations, the ordinance today differs in many ways from Lehe’s proposed ordinance.

The Historic Preservation Commission has submitted comments in response to the “Final Report and Analysis of Rapid City’s Historic Preservation Program.” *See Agenda for April 9, 2015 Planning Commission meeting, Item 20; see also attached.* I have reviewed the HPC’s comments and compared them with the draft ordinance, and I offer the following comments.

#### **Administrative approval of minor exterior improvements**

Lehe recommends that the City adopt staff guidelines for administrative approvals of minor exterior improvements. In Comment #4, the HPC states that it has already adopted such a process for replacement of materials in-kind, and it recommends reviewing the existing process and amending the list “upon mutual agreement of staff and HPC.”

Section 17.54.080.E.1 of Ordinance No. 6032 concerns administrative review of certain projects. In response to the HPC's comment #4, the provision was amended to include the underlined sentence below:

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. . . .

*See Ordinance No. 6032, at 17.54.080.E.1.* With this change, administrative approval may be granted for a limited number of projects agreed to by SHPO and by the City, with the input of the HPC.

### **Historic preservation activities**

Nine of the 12 comments submitted by the HPC refer to activities which the HPC has already been performing. Specifically, the HPC's recommendations include the following comments:

- Recommendation to continue with design guidelines processes and hiring an external professional resource to complete the final draft guidelines (comment #3);
- Recommendation to implement professional-level training for staff and volunteers (comment #5 and #6);
- Recommendation to continue existing public education program and action programs and request for additional staff support (comment #7);
- Recommendation for continuing awards programs established by the HPC (comment #8);
- Support for establishing a Main Street Program (comment #9);
- Recommendation that downtown development groups be utilized to implement a Downtown Development Plan, with a HPC member as a liaison (comment #10);
- Response that a 2009 Comprehensive Preservation Plan eliminates the need for a West Boulevard Neighborhood Conservation Plan as recommended by Lehe (comment #11); and
- Statement that HPC already promotes existing financial incentives, support for creating additional financial incentives for historic preservation, and request for City and staff report to create financial incentives (comment #12).

Notably, Ordinance No. 6032 would permit the activities discussed above, and the adoption of this ordinance would not compromise the HPC's current or future work in any of these areas. Specifically, Section 17.54.010.E of the proposed ordinance states, in pertinent part (emphasis added):

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;  
[. . .]
  - 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;  
[. . .]
  - h. When solicited by owners, to assist owners of Historic Property and buildings and structures in Historic Districts in preserving their buildings;  
[. . .]
  - j. To attend informational and educational programs covering the duties of the Commission and current developments in historic preservation;  
[. . .]
  - l. To further the objectives of historic preservation as allowed under these ordinances and state law.

As this shows, Ordinance No. 6032 as written would allow for those activities described in 9 of 12 HPC comments. Therefore, the ordinance was not amended further in light of the HPC comments because nothing further was needed to ensure the HPC can continue such activities and initiate new ones to encourage historic preservation.

### **Memorandum of Understanding with SHPO**

In Comments to #1 and #2, the HPC agreed with the termination of the MOA but recommended that it be extended until Lehe's proposed ordinance "is reviewed for its impact on the West Boulevard Historic District." The MOA expired on December 31, 2014. To my knowledge, the HPC has not yet assessed the impact of Lehe's proposed ordinance on the West Boulevard Historic District.

Please feel free to contact me if you have any further questions.