

~CHAPTER 29~

HISTORIC PRESERVATION

Article I. Authority, Title, and Purposes.

Section 1. Authority.

Pursuant to the authority granted by SDCL 1-19B, the following rules and regulations pertaining to the creation, use, and maintenance of a historic preservation district, are hereby adopted by the Common Council of the City of Hot Springs, South Dakota.

Section 2. Jurisdiction.

These regulations shall govern any and all historic preservation districts or sites established within the corporate limits of the City of Hot Springs.

Section 3. Title.

These regulations shall be known and may be cited as “The City of Hot Springs’ Historic Preservation District Ordinance”.

Section 4. Purpose of Creation of Historical Districts and Sites.

The historic preservation districts and sites are established pursuant to a comprehensive program developed for the preservation of the historical, archaeological, architectural, and cultural heritage of the City of Hot Springs, and to promote the use and conservation of such property for the education, inspiration, pleasure, and enrichment of the citizens of Hot Springs, the State of South Dakota, and the United States.

Section 5. Purpose of Creation of Historical District Regulations.

To promote the economic, cultural, and general welfare of the people of the City of Hot Springs and to insure the harmonious, orderly, and efficient growth and development of the municipality, the Common Council deems it essential that the historic integrity of Hot Springs be preserved and the heritage of the City be maintained and protected in a sensitive and responsible manner. It is the purpose of this ordinance to insure the preservation of those buildings and areas within the Hot Springs Historic District

which possess cultural, historic, or esthetic significance to the district and to discourage alterations of existing structures or the construction of new structures, which detract from the esthetic harmony, style, form, color, proportion, texture, or materials of the district.

Section 6. Architecture of the District.

The predominant architecture of the buildings in the district contain various Victorian stylings that are often referred to as Richardson Romanesque Victorian. Generally, the buildings have a Romanesque feeling with the majority being two storied and containing roman arches or round headed windows. The sandstone utilized has a rough finish and is always coursed on the front facade. First floors may contain cast iron or steel I-beam lintels above large display windows; however, the main structural support is provided by masonry or wooden beams. Front entrances on the facade corner are common and are usually contained in a decorated pavilion that employs an arched doorway. Capitals, initials, and cornerstones are frequently found and, in every case, have been hand carved. Local applications of Henry Hobson Richardson’s designs can be found in the many-stepped gables and flat lintels, although the basic character of the district is Victorian, the architectural styling is more traditional in keeping with the tone of a Romanesque revival.

Section 7. State Regulation of Historic Properties.

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

Article II. Historic District.

Section 1. Description of District.

The Hot Springs Historic Preservation District shall encompass the area designated by the National Register of Historic Places at the time of adoption of this ordinance. Other district or individual sites that are hereafter recorded in the National Register of Historic Places, selected in accordance with the provisions of this ordinance or in accordance with the criteria adopted by the Board of Cultural Preservation pursuant to SDCL Chapter 1-19A may be added to an existing district, to newly established districts, or may be established as individual sites. The Hot Springs Historic District, at the time of the

adoption of this ordinance, shall contain the following legally described properties, to wit:

Original Town -

Blocks 1, 2, 19, 21, 22, 23, 31-37, 39 and 40

Lots 1-12 of Block 9

Lots 1-12 of Block 8

Lots 23-24 of Block 3

Western One-Half of Lots 1-6 of Block 18

Western One-Half of Lots 1-6 of Block 14

Stewart's Second Addition -

All with the exception of Blocks 1, 2, 8-13, and the Western One-Half of Block 7 including Lots 1-8

Supplemental Addition -

All with the exception of Lots 1-11 of Block 45 and All of Block 48

Minnekahta First Addition -

Blocks 4, 17, and 18

Lots 1, 2, 19, and 20 of Block 16

Lots 1-13 of Block 5

Northern One-Half of Block 3

Eastern One-Half of Block 6, Eastern One-Half of Lots 4-1

All of Lots 1 and 2 of Block 2; Northern One-Half of Lots

3-10 of Block 2

Minnekahta Second Addition -

Lots 52-27 of Block 37

Lots 1-6 of Block 28

Lots 1-6 of Block 24

Lots 1-12 of Block 26

Lots of 1-12 of Block 25

Lots of 6-17 of Block 32

All of Sulphur Springs Addition

Rose Hills Addition -

Lots 8-17 of Block 50

Lots 6-9 of Block 49

Moore's Addition -

Outlots 1 and 2

All of Central Addition

Area owned by Federal Government occupied by the V.A. Center, Hot Springs.

Section 2. Regulations Applying to Historic Sites.

Any historic district, site, or place so designated by this ordinance shall also be subject to the scope, rules, regulations, and uses permitted by the Hot Springs zoning ordinance. The designated historic places or sites shall be subject to all district regulations that apply to the zoning district in which the

historic place or site is located, in addition to all applicable rules and regulations contained in this ordinance.

Section 3. Signing of Historic Places and Sites.

All historic places, buildings, or sites so designated by this ordinance shall display an appropriate sign or marker, supplied by the owner, on or near the historic building or site indicating that said building or site has been designated a historic property.

Article III. Governing Body Powers.

Section 1. Governing Body's Power to Protect Historic Properties.

The Common Council of Hot Springs' is empowered to provide, by regulations, special conditions or restrictions, for the protection, enhancement, preservation, and use of designated historic properties. Such regulations, special conditions, or restrictions may include appropriate and reasonable control of the use and/or appearance of adjacent or associated private property within the public view, or both.

Section 2. Acquisition of Historic Easements.

The City of Hot Springs may acquire by purchase, donation, or condemnation, historic easements to any structure or site within the City, having first determined that such acquisition will be in the public interest. For the purpose of this ordinance, "historic easement" is defined as any easement, restriction, covenant, or condition running with the land designated to preserve, maintain, or enhance all or part of existing places of historical, architectural, archaeological, or cultural significance.

Section 3. Transfer of Development Rights.

The City of Hot Springs may establish procedures permitting the owners of designated historic properties to transfer the development rights in such amounts and subject to such conditions as the governing body may establish. For the purposes of this ordinance, "development rights" is defined as those rights granted under the City's zoning ordinance that regulate the permissible bulk and size of improvements erected upon the designated historic site.

Section 4. Appropriations for Acquisition, Management, and Operating Expenses.

The governing body of the City is empowered to make appropriations to the Historic Preservation

Commission in any amount that it may determine necessary for the expenses of the operation of the Historic Preservation Commission, and may make available any additional amounts necessary for the acquisition, restoration, preservation, operation, and management of historic properties. Said additional monies may be secured by the City through the levy of annual special purpose taxes and/or the issuance of revenue bonds. Said taxes and/or bonds shall have first been approved by the qualified voters of the City of Hot Springs.

Section 5. Title to Property Acquired.

All lands, buildings, structures, sites, areas, or objects acquired in the name of the City may be maintained by or under the supervision and control of the City.

Section 6. Exemption of Historic Properties - Health and Building Codes.

The Common Council of the City of Hot Springs, in order to promote the preservation and restoration of historic properties within its jurisdiction, may exempt a historic property from the application of such standards contained in the City or State health or building codes, or both, as the Common Council, upon recommendation of the Historic Preservation Commission, shall determine would otherwise prevent or seriously hinder the preservation or restoration of said historic property.

Article IV. Historic Preservation Commission.

Section 1. Authorization.

The Common Council of the City of Hot Springs hereby authorizes the establishment of a Historic Preservation Commission, hereinafter referred to as “the Commission”, to preserve, promote, and develop the historical resources of the City in accordance with the provisions of SDCL Chapter 1-19B.

Section 2. Composition of Historic Preservation Commission.

The Commission shall consist of not less than five (5) nor more than ten (10) members, who shall be appointed by the Mayor and approved by the Common Council. Commission members shall be appointed with due regard to proper representation of such fields as history, architecture, urban planning, archaeology, and law. All Commission members shall reside within Hot Springs and shall serve a term of three (3) years, except that when the Commission is first appointed, the lengths of the terms shall be varied in such a fashion as to assure that no more than one-third of the terms expire in

any given year. Thereafter, appointment of each member shall be for a full three (3) year term, unless the appointment is made to fill a vacancy. Said members shall be eligible for reappointment as specified by the Common Council. The Commission may employ such qualified staff personnel as it deems necessary.

Section 3. Historic Preservation Commission Officers.

The Commission shall elect officers from its membership to consist of a chairman, vice-chairman, and secretary who shall serve a term of one (1) year. The Commission shall hold an annual organization meeting for the purpose of electing officers.

Section 4. Historic Preservation Commission - Rules and Regulations.

The Historic Preservation Commission shall adopt bylaws and/or rules and regulations to govern the official proceedings to include the recording of minutes of all official proceedings of the Commission, provided that said rules and regulations are not inconsistent with the provisions of SDCL Chapter 1-19B.

Section 5. Powers and Duties of Historic Preservation Commission.

The Historic Preservation Commission established pursuant to Article IV, Section 1 of this ordinance shall be authorized to:

- a. Conduct a survey of local historic properties, complying with all applicable standards and criteria of the statewide survey undertaken by the cultural preservation office of the Department of Education and Cultural Affairs.
- b. Acquire fee and lesser interest in historic properties, including adjacent or associated lands, by purchase, bequest, or donation. All lands, buildings, or structures acquired by the Commission with funds other than those appropriated by the City may be acquired and held in the name of the Commission, the City, or both.
- c. Preserve, restore, maintain, and operate historic properties under the ownership or control of the Commission.
- d. Lease, sell, and otherwise transfer or dispose of historic properties subject to rights of public access and other covenants and in a manner that will preserve the property.
- e. Contract, with the approval of the Common Council, with the State or the Federal

Government, or any agency of either, or with any other organization.

- f. Cooperate with the federal, state, and local governments in the pursuance of the objectives of historic preservation.
- g. Participate in the conduct of land use, urban renewal, and other planning processes undertaken by the City of Hot Springs.
- h. Recommend ordinances and otherwise provide information to the Common Council for the purposes of historic preservation.
- i. Promote and conduct an educational and interpretative program on historic properties within the City of Hot Springs.
- j. Enter, solely in the performance of its official duties and only at reasonable times, upon private lands for examination or survey thereof, however, no member, employee, or agent of the Commission may enter any private building or structure without the express consent of the owner or occupant thereof.

Section 6. Notice to the Tax Assessor on Historic Properties.

Upon the adoption of this ordinance or any adequate amendments designating historic properties within the City, the Historic Preservation Commission shall give notice of such designation to the tax assessor of Fall River County. The designation and any recorded restrictions upon the property limiting its use for preservation purpose shall be considered by the tax assessor in appraising the property for tax purposes.

Article V. Demolition or Alteration of Historic Property.

Nothing in this ordinance in general nor specifically in this article shall be construed to prevent the ordinary maintenance or repair of any exterior feature in or on a historic property that does not involve a change in design, material, or outer appearance thereof, nor to prevent the construction, reconstruction, alteration, restoration, demolition, or removal of any such feature when the Building Inspector of the City of Hot Springs certifies to the Commission that such action is required for the public safety because of an unsafe or dangerous condition.

Section 1. Notice by Owner before Demolition.

No historic property designated by this ordinance or amendments thereto may be demolished, materially altered, remodeled, relocated, or put to a different use until the expiration of a one hundred eighty (180) day waiting period that commences with delivery to the Commission of written notice of the owner’s proposed action. During this one hundred eighty (180) day period, the Commission may negotiate with the owner and with any other parties in an effort to find a means of preserving the property.

Section 2. Waiver of Waiting Period.

The Commission shall have the discretionary authority to waive any portion or all of the one hundred eighty (180) day waiting period required by Article V., Section 1, provided that the alteration, remodeling, relocation, or change of use is undertaken subject to conditions agreed to by the Commission ensuring the continued maintenance of the historical, architectural, archaeological, or cultural integrity and character of the property.

Section 3. Reduction in Waiting Period - Extreme Hardship.

The Commission may reduce the waiting period required by Article V., Section 1, in any case where the owner would suffer extreme hardship unless a reduction in the required period was allowed. Mere loss of profit shall not be construed as extreme hardship for the purposes of this section.

Article VI. Historic District Commission.

The Historic District Commission shall administer historic preservation activities under the provisions of this ordinance and in compliance with SDCL Chapter 1-19B.

Section 1. Composition of Historic District Commission.

The Historic District Commission, hereinafter cited as “District Commission”, shall consist of not less than three (3) nor more than seven (7) members appointed by the Mayor and approved by the Common Council. The District Commission members shall be appointed with due regard to proper representation of knowledge such as history, architecture, architectural history, urban planning, archaeology, and law. Where possible, said members shall be selected from residents of the historic district or districts, and shall be residents of the City of Hot Springs. The appointments to membership

on the District Commission shall be for a period of three (3) years, provided, however, that when the District Commission is first appointed, the lengths of terms shall be varied in such a fashion as to assure that at least one member's term shall expire each year. District Commission members shall be eligible for reappointment as specified by the Common Council.

Section 2. Historic District Commission Officers.

The District Commission shall elect officers from its membership to consist of a chairman, vice-chairman, and secretary who shall serve a term of one (1) year. The District Commission shall hold an annual organization meeting for the purpose of electing officers.

Section 3. Historic District Commission - Rules and Regulations.

The Historic District commission shall adopt bylaws and/or rules and regulations to govern the official proceedings to include the recording of minutes of all official proceedings of the Commission, provided that said rules and regulations are not inconsistent with the provisions of SDCL Chapter 1-19B. The District Commission may, subject to appropriations by the Common Council, employ clerical and technical assistants or consultants and may accept and expend gifts of money for the express purpose of securing said services.

Section 4. Amendments of Historic Places or Site to District.

The historic properties subject to the provisions of this ordinance, may, from time to time, be increased in number. It shall be the duty of the Historic District Commission to study and report on such proposed amendments subject to the following provisions:

- a. The District Commission shall make an investigation of the historical, architectural, archaeological, and cultural significance of the buildings, structures, sites, or surroundings included in any proposed historic district amendments. The District Commission's investigation and recommendation shall comply with the criteria adopted by the Board of Cultural Preservation pursuant to SDCL 1-19A.
- b. The District Commission shall report its findings to the Hot Springs Planning Commission, the Hot Springs Historic Preservation Commission and the State Board of Cultural Preservation for their consideration and recommendations.
- c. Sixty (60) days after the transmittal of its findings as specified in Article VI, Section 4-a,

the District Commission shall hold a public hearing on the proposed amendments to the historic district. Notice of said hearing shall be advertised pursuant to the manner of normal corporate legal publications and in addition shall include written notice, postage prepaid, to the owners of all properties to be included in any proposed amendment to the historic district.

- d. The District Commission shall submit a final report with its recommendations and a draft of the proposed historic district amendments to the Common Council of the City of Hot Springs.
- e. The Common Council shall act upon the proposed historic district amendment.
- f. Upon the adoption of the amendment, the owners and occupants of each designated historic property shall be given written notification of such designation by the Common Council. An official copy of the adoption shall be provided to the Fall River County Register of Deeds to be registered as an addendum to the original ordinance. A copy of the adoption shall be provided to the Historic Preservation District Commission for inclusion in their records.

Article VII. Exterior Alterations.

Nothing in this article shall be construed to prevent the ordinary maintenance or repair of any exterior feature in a historic district which does not involve a change in design, material, color, or outer appearance thereof, nor to prevent the construction, reconstruction, alteration, restoration, or demolition of any such feature which the Hot Springs Building Inspector shall certify is required for public safety because of an unsafe or dangerous condition.

Section 1. Exterior Feature Defined.

For the purposes of this ordinance in general and this article specifically, “exterior features” shall include the architectural style, general design, and general arrangement of the exterior of the building or other structure, including the color, the kind and texture of the building material and the type and style of all windows, doors, light fixtures, signs, other appurtenant fixtures and natural features such as trees and shrubbery. In the case of outdoor advertising signs, “Exterior features” shall be construed to mean the

style, material, size, and location of all such signs.

Section 2. Certificate of Appropriateness - Exterior Alterations.

No exterior portion of any building or other structure (including walls, fences, light fixtures, steps and pavement, or other appurtenant features) nor above ground utility structure nor any type of outdoor advertising sign shall be erected, altered, restored, moved, or demolished within any historic district until an application for a certificate of appropriateness detailing exterior changes to be made has been submitted to and approved by the Historic District Commission. The Historic District Commission shall have a maximum of thirty (30) days in which to review an application for a certificate of appropriateness and to either approve or deny said application. The City of Hot Springs shall require such a certificate to be issued by the Commission prior to the issuance of a building permit or other permit granted for the purposes of constructing or altering structures. A certificate of appropriateness is required, whether or not a building permit is required to make the proposed exterior alterations.

Section 3. Interior Arrangement - Not Subject to Control.

The Historic District Commission shall not consider interior arrangement and shall take no action pursuant to Article VII, Section 2, except for the purpose of preventing the construction, reconstruction, alteration, restoration, moving, or demolition of buildings, structures, appurtenant fixtures, outdoor advertising signs, or natural features in the designated historical districts which would be incongruous with the historical, architectural, archaeological, or cultural aspects of the district.

Article VIII. Certificate of Appropriateness - Administration.

No exterior changes to any structure within a designated historic district shall be permitted until such time as the property owner shall have obtained a certificate of appropriateness from the Historic District Commission. Certificates of appropriateness shall be issued or denied pursuant to the provisions of this article.

Section 1. Notice and Hearing Prior to Issuance.

Prior to the issuance or denial of a certificate of appropriateness, the District Commission shall take such action as may reasonably be required to inform the owners of any property likely to be materially affected by application, and shall give the applicant and such owners an opportunity to be heard. In

cases where the Commission deems it necessary, it may hold a public hearing concerning the application.

Section 2. Issuance of Certificate - Appropriate Change.

Should the District commission determine that the proposed construction, reconstruction, alteration, moving, or demolition is appropriate, it shall forthwith approve such application and shall issue to the applicant a certificate of appropriateness.

Section 3. Denial of Certificate.

If the District Commission determines that a certificate of appropriateness should not be issued, it shall place upon its records, the reasons for such determination and shall forthwith notify the applicant of such determination, furnishing him an attested copy of its reasons thereof and its recommendations, if any, as appearing in the records of said Commission.

Section 4. Appeal of Certificate Denial.

Any applicant aggrieved by a determination of the Commission may appeal to the circuit court having jurisdiction in the City of Hot Springs.

Section 5. Certificate of Appropriateness Required - Change in Use.

No change in the use of any structure or property within a designated historic district shall be permitted until an application for a certificate of appropriateness has been submitted to and approved by the Historic District Commission. For the purposes of this section, the term "use" shall be defined to mean the specific purpose for which land and/or a structure is designed, arranged, intended to be used, or for which it is or may be occupied or maintained. The City of Hot Springs shall require said certificate to be issued by the Commission prior to the approval of any change of zoning classification within the designated historic district of districts.

Section 6. Certificate Issued - Extreme Hardship.

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

Section 7. Deterioration by Neglect.

In accordance with this ordinance, any property owner permitting deterioration by willful neglect of any designated historic property or any property within an established historic district shall be punished as provided in Section 1-7 of the Revised Ordinances of Hot Springs. Each day such violation is committed or permitted to continue, shall constitute a separate offense and shall be punishable as such hereunder.

Section 8. Validity.

Should any section, clause, or provision of this ordinance be declared by a court to be unconstitutional or invalid, this judgment shall not affect the validity of the ordinance as a whole or any other part, other than the part judged invalid.

Section 9. Conflicts with Other Laws.

In the interpretation and application of the provisions of this ordinance, these provisions shall be held to be minimum requirements adopted for the promotion of the public health, morals, safety, and the general welfare. Whenever the requirements of this ordinance are at variance with the requirements of other lawfully adopted rules, regulations or ordinances, the most restrictive, or the one imposing the higher standards, shall govern.

Section 10. Repealer.

Any ordinance or code in effect that conflicts with any provisions of this ordinance is hereby repealed, held to be invalid and of no effect.

Section 11. Effective Date.

This ordinance shall take effect and be in full force after its passage and publication according to law. This ordinance shall become effective on the 14th day of April, 1976.