

## ORDINANCE 1161

AN ORDINANCE AMENDING CHAPTER 22-19 OF THE REVISED ORDINANCES OF THE CITY OF HOT SPRINGS, SOUTH DAKOTA RELATING TO TRIMMING OF TREES OR SHRUBS WITHIN OR OVERHANGING THE PUBLIC RIGHT-OF-WAY.

BE IT ORDAINED by the Common Council of the City of Hot Springs, Fall River County, South Dakota:

**Section 1:** That Chapter 22, Section 22-19 of the revised ordinances of the City of Hot Springs, South Dakota, is hereby amended to read as follows:

### Section 22-19. Trimming of Trees or Shrubs Within or Overhanging the Public Right-of-Way

It is the responsibility of the property owner to keep all trees and shrubs that are within or protruding into the public right-of-way adjacent to his/her property properly trimmed for safe vehicle and pedestrian traffic. The following minimum heights and distances for trees and shrubs shall be followed:

1. Overhanging branches and shrubs shall be kept trimmed at least fourteen (14') above a public street or alley
2. Overhanging tree branches and shrubs shall be kept a minimum of eight feet (8') above all public sidewalks
3. On corner lots, no trees or shrubs shall be planted within a triangle established by measuring twenty-five (25') back from both streets along the curb line or edge of pavement
4. No tree shall obstruct the view of any roadway regulatory sign or street name sign
5. No tree, shrub or other vegetation shall obstruct a fire hydrant or other emergency service access point
6. No tree, shrub or other vegetation shall obstruct a handicap accessible access point

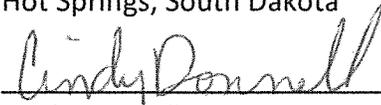
The Planning Administrator (also referred to as Code Enforcement Officer), or in his/her absence, the City Administrator reserves the right to determine if any tree or shrub within or adjacent to the public right-of-way is causing public safety or nuisance hazard and to order the obstructing, dead or dying tree or shrub trimmed or removed.

If any property owner shall fail or refuse to trim or remove any tree or shrub which has been determined by the City to be a public safety or hazard nuisance within a reasonable time following notification, the City may cause such tree or shrub to be trimmed or removed and the cost of such shall be assessed against the owner.



**Section 2:** That the parts of this ordinance that may be in conflict with any other ordinance of the City of Hot Springs hereby supersede any other ordinance.

Hot Springs Common Council  
Hot Springs, South Dakota

  
\_\_\_\_\_  
Cindy Donnell, Mayor

ATTEST:

  
\_\_\_\_\_  
Misty Summers-Walton, Finance Officer

First reading: Oct. 19, 2015

Second reading: Nov. 2, 2015

Published: Nov. 10, 2015



# CITY OF HOT SPRING SIDEWALK REPAIR AND REPLACEMENT POLICY

## Purpose and Intent:

It is the purpose of this policy to establish a clear process and common sense approach for the maintenance and repair of defective sidewalks within this city. Such policy is intended to protect the public safety, improve pedestrian travel. Per city ordinance, it is the responsibility of the landowner to which the sidewalk abuts to keep said sidewalk in good repair and clear of all obstructions.

## Definitions:

"Public Sidewalk" means a concrete walking path placed within the boulevard of a right-of-way and running parallel (more or less) with the street or roadway which purpose is to be used by the general public for pedestrian travel. This definition shall not include walkways between the public sidewalk and a private business or residence or a walkway running perpendicular to the street between the public sidewalk and the street or roadway.

"Defective sidewalk" means any public sidewalk exhibiting one or more of the following characteristics:

- A. Vertical separations equal to three-fourths inch (3/4") or more.
- B. Horizontal separations equal to three-fourths inch (3/4") or more.
- C. Holes or depressions three-fourths inch (3/4") or more.
- D. Spalling over fifty percent (50%) of the surface of a single square of the sidewalk.
- F. A single square of sidewalk cracked in such a manner that no part thereof has a piece greater than one square foot.
- G. A sidewalk with any part thereof missing to the full depth.
- H. A change from the design or construction grade equal to or greater than three-fourths inch (3/4") per foot.
- I. If the sidewalk has settled allowing water to pond to a depth of three-fourths inch (3/4") or more.

## Sidewalk Assessment:

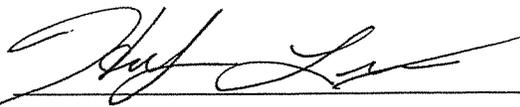
The City shall notify property owners of needed sidewalk repair or replacement pursuant to SDCL 9-46-3 and give reasonable opportunity to make repair or replacement. If repair or replacement is not made within the specified time the City shall take such action as allowed by SDCL 9-46-4 to cause the repair or replacement to occur. Such costs shall be assessed to the property pursuant to SDCL 9-46-5 and 9-46-6. (see reverse side for SDCL)

## Intersections and Alleys:

The costs of sidewalks crossing alleyways and Handicap Ramps at intersections shall be paid 100% by the City.

DATED this day 21<sup>st</sup> of October, 2013.

  
\_\_\_\_\_  
Don DeVries, Mayor

  
\_\_\_\_\_  
Harley Lux, City Administrator

## South Dakota Codified Laws Relating to Sidewalk Repairs and Assessments:

**9-46-2. Liability of adjoining property owner for failure to keep sidewalks in repair--Notification of nonresident owner.**  
Any owner of real property who fails to keep in repair the sidewalks in front of or along such property if he resides thereon, or if he does not reside thereon, to repair the same forthwith when notified, is liable to the municipality for any damage caused by such neglect. The duty of the municipality to notify the nonresident owner does not affect the liability of the owner for any injury proximately caused by the negligent construction or repair of the sidewalk. The failure of the municipality to notify the nonresident owner does not result in any liability on the part of the municipality for any injury proximately caused by the negligent construction or repair of the sidewalk.

**Source:** SL 1890, ch 37, art XVI, § 24; RPolC 1903, § 1312; RC 1919, § 6363; SDC 1939, § 45.1605; SL 1986, ch 80.

**9-46-3. Notice to adjoining property owners to construct or repair sidewalk--Service of notice--Contents.**  
If the governing body deems it necessary to construct, rebuild, or repair any sidewalk, it shall notify all owners of lots adjoining such sidewalk to construct, rebuild, or repair the sidewalk at their own expense within a time designated. Such notice shall be in writing and either be served personally or by return receipt mail, on each owner or by publication once in each week for two consecutive weeks. It shall set forth the character of the work and the time within which it is to be done. Such notice may be general as to the owners but shall be specific as to the description of such lots.

**Source:** SL 1890, ch 37, art XVI, § 20; SL 1901, ch 79, § 1; RPolC 1903, §§ 1308, 1541; SL 1913, ch 324; RC 1919, § 6360; SL 1929, ch 198; SDC 1939, § 45.1602; SL 1987, ch 80, § 1.

**9-46-4. Municipal construction or repair on failure by adjoining owner.**  
If such sidewalk is not constructed, reconstructed, or repaired in the manner and within the time prescribed pursuant to § 9-46-3, the governing body by resolution may cause the work to be done by day labor or by job. If the amount of the contract is less than the amount provided for in § 5-18A-14, it is not necessary to advertise for bids.

**Source:** SL 1890, ch 37, art XVI, § 21; SL 1901, ch 75, § 1; SL 1901, ch 79, § 2; RPolC 1903, §§ 1309, 1542; SL 1913, ch 324; SL 1915, ch 110; RC 1919, § 6361; SDC 1939, § 45.1603; SL 1955, ch 207; SL 1963, ch 282; SL 1987, ch 80, § 2; SL 2011, ch 2, § 119.

**9-46-5. Assessment of sidewalk costs against abutting property.**  
The cost thereof shall be assessed against the lots fronting or abutting upon the sidewalk so constructed, reconstructed, or repaired, as provided in this title or hereinafter provided. In estimating such assessment the entire cost of the improvement fronting on the property to be assessed shall be divided by the number of feet fronting or abutting on the same, and the quotient shall be the sum to be assessed per front foot against each lot so fronting or abutting.

**Source:** SL 1890, ch 37, art XVI, § 21; SL 1901, ch 75, § 1; SL 1901, ch 79, § 2; RPolC 1903, §§ 1309, 1542; SL 1913, ch 324; SL 1915, ch 110; RC 1919, § 6361; SDC 1939, § 45.1603; SL 1955, ch 207; SL 1963, ch 282.

**9-46-6. Filing of assessment roll for sidewalk construction or repair--Costs covered by assessment.**  
After the completion of the construction or repair of said sidewalk, the municipal engineer or such other person designated for that purpose shall file in the office of the city auditor or clerk, an assessment roll showing the amount to be assessed against each lot or parcel of ground which amount shall include the contract price or the cost of the work by day labor, engineering and any other costs entering into such construction or repair, the description of the property abutting upon said sidewalk which is to be assessed and the name of the owner or owners thereof as shown by the records in the office of the director of equalization.

**Source:** SDC 1939, § 45.1603 as added by SL 1955, ch 207; SL 1963, ch 282.

## CHAPTER 22

### Streets and Sidewalks

#### Section 22-1. Names of Streets and Avenues.

The names of the streets and avenues in the City of Hot Springs are hereby fixed and adopted in accordance with and as shown by the map of the City now on file in the office of the City Engineer.

#### Section 22-2. Street Grades.

The grades of the streets and avenues in the City of Hot Springs that have been established and set by the installation of concrete curb and gutter and hard top surfacing and as shown on the street profiles of said streets as recorded on file in the office of the City Engineer are hereby established and designated as the official grades of said streets. All existing and proposed streets and avenues within the City of Hot Springs that do not have concrete curb and gutter or hard top surfacing at the time of this ordinance shall be set, and recorded in, the Office of the City Engineer when such concrete curb and gutter and hard top surfacing are installed.

#### Section 22-3. Repealed.

#### Section 22-4. Designated Routes of Travel on City Streets for Commercial Motor Carriers, Trucks, and Buses.

The City may designate routes of travel on public streets and highways within and through the City of Hot Springs for commercial carriers, trucks, and buses. Such commercial carriers, trucks, and buses may deviate from any designated route only to the extent necessary to reach a necessary destination within the City. Any street which is not a designated route for commercial carriers, trucks, or buses may be posted with appropriate signs prohibiting such traffic.



Section 22-5. Width of Sidewalks.

All public sidewalks constructed within the City of Hot Springs shall be set on grade and location as approved by the City Engineer and shall meet the following minimum width requirements:

- A. four feet (4') wide for Residential Class A and B zoning areas;
- B. six feet (6') wide for Highway Service and Industrial Park zoning areas;
- C. eight feet (8') wide for General Commercial zoning areas.

Section 22-6. Material for the Construction of Sidewalks.

All public sidewalks constructed within the City of Hot Springs shall be constructed of Portland cement concrete having a minimum compressive strength of 3,500 pounds per square inch (psi) when tested in 6" x 12" cylinders at the age of twenty-eight (28) days in accordance with the standard test as outline by A.S.T.M. C39-56T. Sidewalks shall be constructed with a minimum of four inches (4") in thickness, have surface expansion strikes at intervals equal in width to the sidewalk, and have expansion joints placed at least every one hundred (100) linear feet.

Section 22-7. Repealed.

Section 22-8. Sidewalk Repairs.

It is the responsibility of the landowner to which the sidewalk abuts to keep said sidewalk in good repair and clear of all obstructions. Whenever any portion of an existing sidewalk in the city shall become dilapidated or unsafe, the City shall notify the abutting landowner in writing that said sidewalk shall be repaired or replaced within a given time and the cost of which is the sole responsibility of the abutting landowner. All such repairs or replacements shall be built in conformity with the provisions of this chapter.



Section 22-9. Failure to Make Sidewalk Repairs.

Whenever an abutting landowner shall fail to properly or promptly repair a dilapidated or unsafe sidewalk after having been given due notice as provided under Section 22-8, the City shall cause such repairs to be made and the cost of which, to include all labor, materials and administration, shall be assessed for immediate payment upon the abutting landowner. Said landowner shall also be liable to the City for any damage caused by such neglect.

Section 22-10. Permit Required to Build Sidewalks, Curbs, Gutters and Driveway

Approaches.

No person shall construct any sidewalk, curb, gutter, or driveway approach on any street or alley in the City of Hot Springs, without first obtaining a permit from the City Engineering Department, and such work shall be under the supervision of the City Engineer.

Section 22-11. Obstructions of Streets and Sidewalks Prohibited.

It shall be unlawful for any person, unless issued a permit by the City Engineer's Office, to obstruct any public street, alley, or sidewalk. To "obstruct" means rendering impassable without reasonable inconvenience or hazard.

It shall be unlawful for any person to loiter, stand, or sit upon any public street, alley, sidewalk so as to hinder or obstruct free passage or cause a safety hazard to others.

It shall be unlawful for any person to place any goods, wares, or merchandise for exhibition or sale upon any public street, alley, or sidewalk unless such temporary placement is approved by the City Engineer's Office. It shall also be unlawful for any person to place upon any public street, alley, or sidewalks any advertising sign, bicycle rack, trash container or any other moveable object unless permitted by the City Engineer's Office.

Section 22-12 thru 22-14. Repealed.



Section 22-15. Water Discharge from Eaves of Buildings on Sidewalks Prohibited.

No person shall place or maintain any pipes, downspouts, or roof drains that discharge rainwater off the roof or eaves of any building directly onto a public sidewalk.

Section 22-16. Removal of Snow and Ice from Public Sidewalks.

It shall be the duty of the abutting landowner to a public sidewalk to keep such sidewalk clear from snow and ice at all times. Snowfall shall be removed from public sidewalks within two (2) hours of the completion of the snowfall during daylight hours, or by 10:00 o'clock a.m. the following morning. If it is impossible to remove the snow and ice from the sidewalk, the owner shall use a deicer or sprinkle sand on the sidewalk to prevent the sidewalk from becoming slippery and dangerous to travel.

If the owner shall fail or refuse to remove the snow or ice from public sidewalks abutting his property within a reasonable time, the City may cause the snow and ice to be removed and assess the cost to the owner.

Section 22-17 thru 22-18. Repealed.

Section 22-19. Trimming of Trees or Shrubs Within or Overhanging the Public Right-of-

Way.

It is the responsibility of the property owner to keep all trees and shrubs that are within or protruding into the public right-of-way adjacent to his property properly trimmed for safe vehicle and pedestrian traffic. The following minimum heights and distances for trees and shrubs shall be followed:

(1) Overhanging tree branches and shrubs shall be kept trimmed at least fourteen feet (14') above a public street or alley.

(2) Overhanging tree branches and shrubs shall be kept a minimum of eight feet



(8') above all public sidewalks.

(3) On corner lots, no trees or shrubs shall be planted within a triangle established by measuring twenty-five feet (25') back from both streets along the curb line or edge of pavement.

(4) No tree or shrub shall obstruct the view of any highway regulatory sign or street name sign.

The City Engineer reserves the right to determine if any tree or shrub within or adjacent to the public right-of-way is causing public safety or nuisance hazard and to order the obstructing tree or shrub trimmed or removed.

If any property owner shall fail or refuse to trim or remove any tree or shrub which has been determined by the City Engineer to be a public safety or hazard nuisance within a reasonable time following notification, the City may cause such tree or shrub to be trimmed or removed and the cost of such shall be assessed against the owner.

#### Section 22-20. Trenching Contractor's License.

Persons trenching or excavating in the public right-of-way (streets, alleys, or other public places) are required to have a valid City of Hot Springs' Trenching Contractor's License. The license does not authorize the holder to place water or sewer pipe of any type.

Application forms may be obtained from the Building Inspector of the City of Hot Springs. The license fee shall be Ten Dollars (\$10.00) per year and will expire December 31<sup>st</sup> of each year. Each licensee must meet the bond and insurance requirements under Section 22-31 of this chapter. Each new license shall be reviewed and approved by the Common Council.

#### Section 22-21. Renewal of Licenses.

Trenching Contractor's Licenses may be renewed each year between January 1<sup>st</sup> and



March 1<sup>st</sup> by paying the Ten Dollar (\$10.00) fee and meeting the bond and insurance requirements of Section 21-31 of this chapter. Any license which has not been renewed by March 1<sup>st</sup> will be considered a new license and subject to Section 22-20 of this chapter.

Section 22-22. Revocation of License.

The Common Council may, upon notice and hearing, revoke any trenching contractor's license upon finding that the holder of such license has willfully violated any statute, ordinance, rule, or regulation pertaining to such license or has aided or abetted any unlicensed person in performing work which requires a trenching contractor's license or has demonstrated an inability or unfitness to perform the work, or has failed to renew, or has lost his bonding and insurance requirements.

Section 22-23 thru 22-29. Reserved.

Section 22-30. Permit Required for Excavation.

Except as hereinafter provided, no person shall make or cause to be made, any excavation in or under any street, alley or public ground or remove any earth, soil, paving, gravel, or any other material therefrom without first having obtained a permit from the office of the City Engineer. Any company which has a franchise from the City of Hot Springs permitting it to make excavations in the streets and alleys of said city shall not be required to obtain a permit but is instructed to coordinate its excavation activities with the City Engineer prior to making any such excavations.

Section 22-31. Bond and Insurance Required for Contractors.

No trenching contractor's license or excavation permit shall be issued until the contractor has filed with the City Finance Officer the following.

- (A) A surety bond in the sum of One Thousand Dollars (\$1,000.00) for faithful

*Amended  
Ord. 1080*

*see last page*



performance of all duties required by the City of Hot Springs and for repayment to the City for all damages done growing out of the carelessness or negligence of the contractor.

(B) A certificate of insurance showing that the applicant has in effect a statutory worker's compensation insurance policy including employer's liability coverage in the amount of One Hundred Thousand Dollars (\$100,000) and a liability policy covering business operations including coverage for explosion, collapse, and underground, commonly referred to as XCU coverage, and including coverage for owned and non-owned vehicles with limits of not less than Three Hundred Thousand Dollars (\$300,000) bodily injury for any one individual, and Three Hundred Thousand Dollars (\$300,000) for injury or destruction of the property of others. Such certificate shall contain a statement to the effect that the policy can not be canceled or substantially altered without ten (10) days prior written notice to the City of Hot Springs. Provided, however, the Common Council of the City of Hot Springs, South Dakota, may waive or modify said worker's compensation insurance requirement under such circumstances and conditions as the Council may deem appropriate.

Section 22-32. Excavation Permit Fees.

Fees to be paid at the time the excavation permit is applied for are as follows:

- (A) 0 to 100 square feet - \$10.00;
- (B) 101 to 250 square feet - \$15.00;
- (C) 251 to 1,000 square feet - \$25.00;
- (D) each additional 100 square feet or part thereof - \$1.00.

Fees shall be determined as one cut, or excavation, provided that it is one continuous trenching operation or under one contract and within a four hundred foot (400') radius.

All street surfacing, sidewalks, curb and gutter, alleys, and anything else destroyed or



damaged in excavating will be restored to its original condition or better before the excavation took place.

Section 22-33. Liability.

If any settlement occurs in or under the surface or pavement, within one (1) year, it shall be presumed that the project was not done properly. The City of Hot Springs will send a notice by certified mail to the person, firm, or corporation having obtained the permit for said work. The permittee shall have ten (10) days upon receipt of the notification to correct the deficiencies, or the City shall have the work done and the permittee shall be assessed a fee of one and one-half (1½) times the cost incurred. This assessment shall be paid prior to issuance of any additional permits and in no case later than thirty (30) calendar days after the project completion.

Section 22.34. Guarding Excavations.

Any person doing any excavating in, under or upon any street, alley, sidewalk, or other public ground shall erect and maintain around the same both day and night, suitable guards, fences, signals and lights so as to prevent injury to persons, animals, or vehicles on account of such excavations. Warning lights shall be kept lit from sundown to sunrise.

Section 22-35. Refilling Excavations.

Any person making such excavation shall, when the same has been completed, promptly and without delay, refill the same as herein provided. All materials used for backfill shall be free from frozen materials, rocks, and foreign materials, that may decompose, and other materials that may affect the stability of the backfill. Chunks of asphalt or concrete from the street, sidewalk, curb and gutter, etc. will not be used in the backfill. Backfill shall be compacted at near optimum moisture content in layers not to exceed six inches (6") in compacted thickness, by pneumatic tampers, or other approved means of compaction. Tamping with the bottom or sides



of an excavating bucket will not be acceptable. Compaction in lifts thicker than six inches (6") may be done provided the City Engineer approves the use of a thicker layer when it is to be accomplished with an approved mechanical tamper capable of adequately compacting the additional thickness. Water flooding for the consolidation of backfill will not be acceptable. The addition of water will be limited to the amount needed to obtain optimum moisture content for maximum density consolidation. Ninety-five percent (95%) compaction or better will be required under streets and alleys and areas under structural loading. All other areas will require a minimum of ninety percent (90%) compaction.

Section 22-36. Reserved.

Section 22-37. Excavations Near Streets, Alleys, Etc..

Property owners shall be responsible for securely guarding and adequately protecting all open excavations on their property so as to prevent collapse and endangerment to adjacent property and structures, and to prevent the injury of any person or animal passing upon or along the same.

Section 22-38. Repealed.

Section 22-39. Street Improvement Policy.

Be it ordained by the City of Hot Springs that a City street paving policy is hereby adopted as follows:

(A) The cost for installation of curb and gutter adjacent to private property shall be paid entirely by the adjoining property owners. No street paving project will be undertaken without requiring curb and gutter installation.

(B) Curb, gutter and paving costs for street and alley intersections will be paid entirely by the City.

*Amended  
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Sec  
last page*



(C) The cost of paving alley approaches will be paid entirely by the City.

(D) Corner lots will be assessed for street paving improvements on a front foot basis. In addition to paying the cost of curb and gutter installation along the front of said lot, owners of corner lots shall also pay the cost of curb and gutter installation along the side of said lot for a distance of twenty-five feet (25').

(E) Other than the cost allocations provided hereinbefore in this section, the remainder of the cost of any street paving project will be shared by the City and the property owners on a fifty-fifty (50-50) sharing basis unless decided otherwise by the City Council.

(F) The Council shall annually budget such amount as the council determines available in order to encourage future street improvement projects. In the event the City has more applications for matching fund street paving projects than the City has funds to complete in any given year, such applications shall be assigned a priority for future years.



ORDINANCE NO. 1080

AN ORDINANCE AMENDING CHAPTER 22 OF THE REVISED ORDINANCES OF THE CITY OF HOT SPRINGS, SOUTH DAKOTA, BY INCREASING THE PERFORMANCE BOND REQUIREMENT AND ADDING AN EXEMPTION FOR THE PERFORMANCE BOND REQUIREMENT.

BE IT ORDAINED by the Common Council of the City of Hot Springs, Fall River County, South Dakota:

That Chapter 22 of the revised ordinances of the City of Hot Springs, South Dakota, is hereby amended to read as follows:

Section 22-31. Bond and Insurance Required for Contractors.

(A) A surety bond in the sum of Five Thousand Dollars (\$5,000.00) for faithful performance of all duties required by the City of Hot Springs and for repayment to the City for all damages done growing out of the carelessness, negligence or omissions of the contractor.

Exemption: Contractors who have been licensed with the City for three (3) or more consecutive years, and have not had a bond claim against them in that time, shall have the option of posting a \$100.00 Contractor's Cash Performance Bond on a form provided by the City.

Hot Springs Common Council  
Hot Springs, South Dakota

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Don DeVries, Mayor

ATTEST:

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Cheryl Wait, Finance Officer

Passed first reading: April 6, 2009  
Passed second reading: April 20, 2009  
Published: April 28, 2009



ORDINANCE NO. 1114

AN ORDINANCE AMENDING CHAPTER 22 OF THE REVISED ORDINANCES OF THE CITY OF HOT SPRINGS, SOUTH DAKOTA, BY AMENDING SECTION 22-39 RELATING TO THE CITY STREET IMPROVEMENT POLICY.

BE IT ORDAINED by the Common Council of the City of Hot Springs, Fall River County, South Dakota:

Section 1. That Section 22-39 of Chapter 22 of the revised ordinances of the City of Hot Springs, South Dakota shall hereby read as follows:

Section 22-39. Street Improvement Policy.

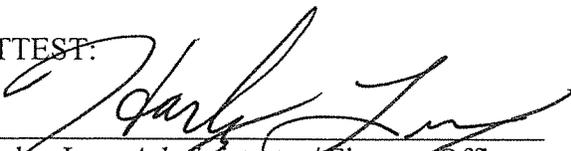
Be it ordained by the City of Hot Springs that a City street paving policy is at the discretion of the City of Hot Springs Common Council:

Section 2. That the parts of this ordinance that may be in conflict with any other ordinance of the City of Hot Springs hereby supersede any other ordinance.

Hot Springs Common Council  
Hot Springs, South Dakota

  
\_\_\_\_\_  
Don De Vries, Mayor

ATTEST:

  
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Harley Lux, Administrator/ Finance Officer

Passed first reading: March 19, 2012  
Passed second reading: March 26, 2012  
Published: April 3, 2012

