

Ordinance No. 09-03

CHAPTER 46 HISTORIC PRESERVATION

AN ORDINANCE AMENDING Chapter 46 of the Revised Code of Ordinances of the City of Brookings, South Dakota, and pertaining to historic preservation in the City of Brookings, South Dakota.

BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF BROOKINGS, SOUTH DAKOTA as follows, to-wit:

Section 10-90. Purpose.

Whereas, the Legislature of the State of South Dakota has determined that the historical, architectural, archaeological, and cultural heritage of this state is among its most important assets and has authorized cities to adopt regulations and restrictions for the protection of such places and areas, the purpose of this article is to allow the city to engage in a comprehensive program of historic preservation to promote the inspiration, pleasure, and enrichment of the citizens of this city and to preserve, promote and develop the historical resources of the city. The city adopts this chapter pursuant to the authority of SDCL 1-19B and by incorporating provisions therefrom in this chapter.

Section 10-91. Definitions

As used in this ordinance, the following terms shall mean:

- (1) "Alteration". Any construction on or change to the exterior of a building, structure, or site including, but not limited to, the replacement of siding or roofing materials and the changing, eliminating or adding of doors, windows, steps, railings, porches, balconies, signs or other ornamentation. Ordinary repairs and maintenance including changes in paint color shall not be considered an alteration.
- (2) "Appurtenant feature". Any construction or object that is accessory to a building or structure. An object would be one that is installed for a period of more than six months.
- (3) "BHPC". The Brookings Historic Preservation Commission.
- (4) "Certificate of Appropriateness." The document that gives approval for work to be done on property within a designated local historic district.
- (5) "CLG. Certified Local Government". A city with a municipal historic preservation program that meets the requirements contained in the National Historic Preservation Act of 1966 as amended. This certification enables the city to apply for matching grants for its preservation activities.
- (6) "Commission". The Brookings Historic Preservation Commission
- (7) "Dangerous and Unsafe". The condition of a building or structure that requires immediate action in order to protect the health and safety of the public. The City building inspector may make that determination.
- (8) "Demolition". Any act that destroys in whole or in part a building or structure.
- (9) "Demolition delay laws". A local historic preservation ordinance that requires, for designated historic properties, that there be notification of intent to demolish and that there be the provision of time for the review of the proposed demolition and the preparation of an alternative that would preserve the property.

- (10) “Development rights”. The rights granted under zoning regulations concerning the permissible bulk, size and placement of buildings or structures on a site.
- (11) “Exterior features”. The architectural style, general design and general arrangement of the exterior of a building or structure, including the kind and texture of the building material and the type and style of all windows, doors, light fixtures, signs, and other appurtenant features. In the case of outdoor advertising signs, “exterior features” shall mean the style, material, size, and location of these signs. Changes in the exterior features of a site, building or structure shall include demolition or proposed new construction.
- (12) “Extreme hardship”. The inability of owners of a historic property to make reasonable use of their property. Extreme hardship occurs when a historic property cannot be used by the owner or a tenant because of its condition and the historic property cannot be rehabilitated for an amount of money that it would be reasonable for an owner to invest in a property. In reaching a decision on whether extreme hardship exists, the BHPC or the local Historic District Commission shall evaluate the information that the applicant submits including some or all of the following: the current occupants of the building and their ability to make reasonable use of it, its present condition and cost of operation each year, the cost of any repairs that are needed, the present income from the building and the projected income from the building after repairs.
- (13) “Historic Preservation”. The research, protection, restoration and rehabilitation of districts, sites, buildings, structures and objects significant in the history, architecture, archaeology, paleontology or culture of the community, state, or the nation.
- (14) “Historic Properties”. Any building, structure, object, district, area or site that is significant in the history, architecture, archaeology, paleontology or culture of the community, the state or the nation.
- (15) “Historic easement”. Any easement, restriction, covenant or condition running with the land, designated to preserve, maintain or enhance all or part of the existing state of places of historical, architectural, archaeological or cultural significance.
- (16) “Intentional Neglect”. The failure of owners to maintain their building or structure leading to the deterioration of their property. One element of intentional neglect would be the repeated failure to correct problems called to the attention of the owner by the City Building Inspector.
- (17) “Local designation”. The action of the City Council in declaring one or more individual properties as historic and the action of the City Council in declaring one or more districts as historic. A local designation will lead to a local review of proposed exterior changes to designated individual properties and proposed exterior changes to buildings and structures within designated historic districts.
- (18) “Local historic district”. An historic area determined by the City Council as having historical, architectural, archaeological and or cultural value to the city and designated as such in order to protect its historic character and to guide any changes that may affect its historical qualities.
- (19) “Local Historic District Commission”. A city commission composed of members of the BHPC including property owners of the local historic district, where possible.
- (20) “Materially Alter”. A change in the design, material or appearance of the exterior of a building or structure.
- (21) “National Register Historic District”. An historic area on the National Register of Historic Places, an official list created and maintained by the National Park Service in order to identify the properties and areas that should be protected and preserved.
- (22) “New construction”. The act of making an addition to an existing building or structure or the erection of a principal or accessory building or structure.
- (23) “Ordinary maintenance and repairs”. Work that corrects or prevents any deterioration or damage to a building or structure in order to preserve it or restore it to its condition prior to any

deterioration or damage. The work does not involve a change in the design, material, or outer appearance of the building or structure.

(24) “Register”. The Brookings Register of Historic Properties.

(25) “Rehabilitation”. Returning property to a state of utility, through expansion, addition, repair or alteration, which makes possible an efficient contemporary use while retaining those portions of the property, which qualify such property for placement on the Local, State or National Register of Historic Places.

(26) “Restoration”. The repair or replacement of historically significant features which qualify a structure or object for recognition by the Local, State or National register of Historic Places.

(27) “Secretary of the Interior’s Standards for Rehabilitation”. The following standards are to be applied to specific rehabilitation projects in a reasonable manner, taking into consideration economic and technical feasibility.

1. A property shall be used for its historic purpose or be placed in a new use that requires minimal change to the defining characteristics of the building and its site and environment.
2. The historic character of a property shall be retained and preserved. The removal of historic materials or alteration of features and spaces that characterize a property shall be avoided.
3. Each property shall be recognized as a physical record of its time, place and use. Changes that create a false sense of historical development, such as adding conjectural features or architectural elements from other buildings, shall not be undertaken.
4. Most properties change over time; those changes that have acquired historic significance in their own right shall be retained and preserved.
5. Distinctive features, finishes, and construction techniques or examples of craftsmanship that characterize a historic property shall be preserved.
6. Deteriorated historic features shall be repaired rather than replaced. Where the severity of deterioration requires replacement of a distinctive feature, the new feature shall match the old in design, color, texture, and other visual qualities and, where possible, materials. Replacement of missing features shall be substantiated by documentary, physical, or pictorial evidence.
7. Chemical or physical treatments, such as sandblasting, that cause damage to historic materials shall not be used. The surface cleaning of structures, if appropriate, shall be undertaken using the gentlest means possible.
8. Significant archeological resources affected by a project shall be protected and preserved. If such resources must be disturbed, mitigation measures shall be undertaken.
9. New additions, exterior alterations, or related new construction shall not destroy historic materials that characterize the property. The new work shall be differentiated from the old and shall be compatible with the massing, size, scale, and architectural features to protect the historic integrity of the property and its environment.
10. New additions and adjacent or related new construction shall be undertaken in such a manner that if removed in the future, the essential form and integrity of the historic property and its environment would be unimpaired.

(28) “State Historic Preservation Office (SHPO)” The South Dakota State Historical Society located in the Department of Tourism. The office that has the responsibility for administering the state’s historic preservation program authorized by state law and carried out according to the guidelines of the United States Department of the Interior.

(29) “State Register of Historic Places”. An official list authorized by SDCL 1-19A-5 and prepared and maintained by the South Dakota Office of History. The list identifies the properties

and areas that are significant to South Dakota's historical, architectural, archeological, and cultural landscape and therefore should be protected and preserved.

Section 10-92 Historic Preservation Commission Created.

Pursuant to SDCL 1-19B, there is created an historic preservation commission for the city. The historic preservation commission will be referred to as the Brookings Historic Preservation Commission, hereinafter referred to in this chapter as the *BHPC*.

Section 10-93. Manner of Appointment, Composition, terms.

a. All members of the *BHPC* shall be appointed by the Mayor with the advice and consent of the Council for three (3) year terms that commence in January and may be appointed for additional terms not exceeding three (3) years each.

b The *BHPC* shall consist of not less than seven (7) nor more than ten (10) members who shall be appointed with due regard to proper representation of such fields as history, architecture, urban planning, paleontology, archaeology and law. All members of the *BHPC* shall reside within the city, and where possible property owners from each historic district shall be sought.

Section 10-94. Vacancies.

Any vacancy in the membership of the *BHPC* shall be filled for the unexpired term in the same manner as provided for appointment.

Section 10-95. Meetings.

The *BHPC* shall meet at such times and places as may be determined by the *BHPC*.

Section 10-96. Powers and Authorities.

Pursuant to SDCL 1-19B, the *BHPC* may exercise the following powers, duties and responsibilities in addition to the powers, duties and responsibilities stated elsewhere in this ordinance:

- (1) To preserve, promote and develop the historical resources of the City;
- (2) To conduct a survey of local historic properties complying with all applicable standards and criteria of the statewide survey undertaken by the Office of History of the South Dakota Department of Tourism;
- (3) To participate in the conduct of land use, urban renewal, and other planning processes undertaken by the city;
- (4) To acquire fee and lesser interests in historic properties including adjacent to or associated lands by purchase, bequest or donation, with consent of the City

Council. All lands, buildings, structures, sites, areas, or objects acquired by funds appropriated by the city shall be acquired in the name of the city unless otherwise provided by the City Council. These properties may be maintained by or under the supervision and control of the city. If acquired by funds other than those appropriated by the city, the lands, buildings or structures may be held in the name of the BHPC, the city or both;

- (5) To preserve, restore, maintain, and operate historic properties which are under the ownership or control of the BHPC the city or both;
- (6) To acquire, with the consent of the City Council, by purchase, donation, or condemnation, historic easements in any area within the city provided that the city determines that the acquisition will be in the public interest. For the purpose of this section, "historic easement" means any easement, restriction, covenant or condition running with the land, designated to preserve, maintain or enhance all or part of the existing state of places of historical, architectural, archaeological or cultural significance;
- (7) To lease, sell and otherwise transfer or dispose of, with the consent of the City Council, historical properties subject to rights of public access and other covenants that will preserve the historical qualities of such properties and in a manner that will preserve the properties within the city;
- (8) To promote and conduct an educational and interpretive program on historic properties within the city;
- (9) To recommend ordinances and otherwise provide information for the purpose of historic preservation to the City Council;
- (10) To recommend to the Board of Appeals exemptions from the currently adopted Building Code or other building-related regulations pertaining to exterior features of historic property;
- (11) To contract with the state or the federal government, or any agency of either government, and to contract with other organizations and individuals;
- (12) To cooperate with the federal, state and other local governments in the pursuance of the objectives of historic preservation;
- (13) To investigate and report on the historical, architectural, archaeological, or cultural significance of a property under consideration for local designation by the City Council;
- (14) To adopt written guidelines based on the Secretary of the Interior's Standards for Rehabilitation in order to assist owners who are making exterior changes to their historic properties;
- (15) To negotiate with owners of historic properties and other interested persons when the designated property may be demolished, materially altered, remodeled or

relocated;

- (16) To assist the Local Historic District Study Committee when it investigates and reports to the City Council on proposed local historic districts; and
- (17) To attend informational and educational programs covering the duties of the BHPC and current developments in historic preservation.

Section 10-97. Coordination with the Planning Commission, Board of Adjustment, Board of Appeals and City Departments. Comments to be given to State Historic Preservation Office.

a. The Planning Commission, the Board of Adjustment, the City Building Official and city departments shall, through the City Manager, notify the BHPC of matters pertaining to property on the Local Register, the National Register of Historic Places, and the State Register of Historic Places. The BHPC shall be given this notice about proposed work as soon as the matters pertaining to property on the local, state and national registers are received by the foregoing city officials.

b. The BHPC shall then investigate and prepare its comments on the proposed work. The BHPC's comments shall be considered and adopted at the BHPC regular meeting unless the chair determines that a special meeting shall be called. The BHPC shall promptly submit its comments to the City Manager and to all affected departments so that the comments will be received prior to the time a decision on proposed work is made by the city department.

c. The City Manager shall give timely notice to the BHPC of all projects on which review by the State Historic Preservation Office is required under SDCL 1-19A-11.1, and the BHPC may conduct research and prepare comments on the project.

Section 10-98 Ordinary Maintenance and Repairs. Correction of Unsafe Conditions.

(1) Nothing in this ordinance shall be interpreted to prevent the ordinary maintenance or repair of any exterior feature of a designated property which does not involve a change in its design, material, or outer appearance.

(2) In any case where the City Building Inspector determines that there are emergency conditions dangerous to life, health, or property, the Building Inspector shall order the remedying of these conditions without the approval of the BHPC or the local Historic District Commission. Utmost consideration shall be given to adequate means of preserving the historical qualities of the property and selecting a means of stabilization that would allow for the future restoration or rehabilitation of the property. The needed work may involve the construction, reconstruction, alteration, restoration or demolition of any such feature that the Building Inspector has certified as required for the safety of the public because of an unsafe or dangerous condition. The Building Inspector ordering the emergency work shall promptly notify the City Manager who shall notify the BHPC.

Section 10-99. Prevention of Deterioration by Neglect.

It is unlawful for an owner of a designated state, local or national historic property or a property within any established historic district to permit the deterioration of the property by intentional neglect. Each day that a violation continues to exist shall constitute a separate offense. Where appropriate, the BHPC or the Historic District Commission may request a meeting with the owner in order to discuss the condition of the property.

Section 10-100. Modification of Building Code to Help the Preservation of a Historic Property.

In order to promote the preservation and restoration of a historic property, the City may modify the application of the provisions of the city's building code to that historic property. The BHPC and the local Historic District Commission shall meet with the city's building inspector before making its recommendation. The City Manager, as designed by the City Council, shall act upon the recommendation of the BHPC or the local Historic District Commission. The City Manager shall make a determination that the provisions of the code would otherwise prevent or seriously hinder the preservation or restoration of that historic property.

Section 10-101. Brookings Local Register of Historic Properties .

Pursuant to SDCL 1-19B-20, the City of Brookings hereby creates the Brookings Local Register of Historic Properties, hereinafter referred to as "the register."

Section 10-102. Criteria for Local Designation for Individual Properties, Buildings, Structures and Historic Districts.

Districts, sites, buildings, structures, and objects that possess integrity of location, design, setting, materials, workmanship, feeling, and association are eligible for inclusion on the Brookings Local Register of Historic Places if they satisfy at least one of the following criteria:

- (1) The property is associated with events that have made significant contributions in the broad patterns of local, regional, or state history, including settlement, agriculture, commerce, and transportation;
- (2) The property is associated with the lives of persons significant in the past of this city or state or the past of a region of this state;
- (3) The property represents distinctive types, periods, or methods of construction; they represent the work of a master; they possess high artistic values; or they represent cultural or regional building patterns;
- (4) The property is associated with prehistoric or historic archaeology;
- (5) The property has historical, architectural, archaeological and cultural significance;
- (6) The property is suitable for preservation or restoration;
- (7) The property has educational value;

And, in addition, the following items shall be considered:

- (8) The property's cost of acquisition, restoration, maintenance, operation or repair; and,

(9) The administrative and financial responsibility of any person or organization willing to underwrite all or a portion of such costs.

Section 10-103 Nomination of individual structures to the local register.

Nominations of individual properties, buildings or structures shall be made to the BHPC on a form approved by the BHPC and may be submitted by a member of the BHPC, owner of record of the nominated property or structure, the City Council, or any other person or organization.

Section 10-104 Notification of nomination of individual structures.

The BHPC shall notify the owners and occupants of all individual property nominated to the local register of the date on which the BHPC will hear the nomination. Written notification will be at least ten (10) days prior to the meeting. The city shall also publish a notice of the time and place of the meeting in the official newspaper of the city at least ten (10) days prior to the meeting of the BHPC.

Section 10-105. Determination of the BHPC on nomination of individual structures.

The BHPC shall adopt by resolution a recommendation that the nominated site, structure, property or building does or does not meet the criteria for designation specified in section 10-102. The resolution shall be accompanied by a report and these documents shall be provided to the City Manager for the City Council's consideration. The report shall contain an explanation of the significance of the nominated site, structure, property, or building as it relates to the criteria for designation.

Section 10-106. Notification of determination sent to Owners.

A notice of the determination on individual structures shall be sent by certified mail to the owner of record of all property nominated to the local register. The notice shall include a copy of the report sent to the City Council concerning the nomination and shall be sent within ten (10) days of the BHPC's adoption of a resolution.

Section 10-107. Appeal.

A determination by the BHPC that the nominated property does not meet the criteria for a designation shall be a final decision unless the applicant files a written appeal with the City Manager within twenty (20) days of the postmarked date of the notice of determination.

A determination by the BHPC that the nominated property does meet the criteria for a designation shall be a final decision unless the property owner files a written appeal with the City Manager within twenty (20) days of the postmarked date of the notice of determination.

Section 10-108. Action by City Council on Nomination of Individual Structures.

The City Council shall hold a public hearing on the proposed local designation of an individual site, structure, property or building, after giving written notice to the owners of the property ten (10) days before the hearing and after giving public notice ten (10) days prior to the hearing in the official newspaper. The City Council shall, within sixty (60) days after receiving from the City Manager the BHPC's Resolution or the appeal from the owner, take one of the following actions:

- (a) accept the BHPC recommendation and designate the property; or
- (b) reject the BHPC's recommendation ; or
- (c) reject the property owner's written appeal against designation and designate the property ;or
- (d) accept the property owner's written appeal against designation; or
- (e) reject the applicant and/or property owners written appeal for designation; or
- (f) accept the applicant and/or property owners written appeal for designation and designate the property .

Section 10-109. Notification of Designation.

The City Council shall give written notice to the owners of each local designated individual structure, property or building. Within 60 days, to meet the requirements of SDCL 1-19B-23, a permanent marker developed and approved by the BHPC and provided by the property owner, shall be placed on or near the property indicating that the property has been designated.

Section 10-110. Consideration in Assessment.

The City Clerk shall file an original of the ordinance in the office of the Register of Deeds for the county. After the designation of a property as historic by the City Council, the City Clerk shall notify the Director of Equalization of the county. The designation and any recorded restrictions upon the property limiting its use for preservation purposes shall be considered by the Director of Equalization in assessing it for tax purposes.

Section 10-111. Demolition and House Moving of Individually Listed Local Register Properties.

- (1) Waiting Period. The ordinance making an individual local designation shall require that a one hundred eighty (180) day waiting period be observed prior to the demolition or removal of the designated property. Every application for a demolition permit or a house moving permit for a property individually listed on the local register shall be forwarded within 24 hours to the City Manager who shall notify the BHPC immediately following receipt of the application by the office of the City Engineer.

- (2) Notice of intent to demolish or move. The owner of any building or structure individually listed on the local register, upon application for a demolition or house moving permit, shall be required to post one sign conspicuously placed stating the intent to demolish or move the building or structure. The sign shall be provided by the BHPC and placed prominently in the front yard of the property. The sign must be posted within seven (7) days of the date of application and must remain posted for hundred eighty (180) days or until approval is received from the BHPC
- (3) Delay of demolition or house moving. A permit to demolish or move a building or structure individually listed on the local register may not be obtained for a period of one hundred eighty (180) days from the date the BHPC receives a copy of the application from the office of the City Engineer unless approval is given by the BHPC at an earlier date. During this period, the BHPC may attempt to preserve the property in any way allowed by SDCL 1-19B. An earlier approval may be given by the BHPC when the plans ensure the continued maintenance of the historical, architectural, archaeological or cultural integrity and character of the property or when the owner would suffer extreme hardship, not including the loss of profit, unless a reduction in the required period were allowed.

Section 10-112. Moving Structures to a Local Individually Designated Property.

Before a building or structure can be relocated to and erected on an individually designated property on the local register, the procedure described in section 10-111 must be followed. If the building or structure proposed for the site does not meet the approval of the BHPC, a permit shall not be issued for one hundred eighty (180) days from the date the BHPC receives a copy of the application from the office of the City Engineer. During this period, the BHPC may negotiate with the property owner to attempt to find a reasonable alternative to any adverse effects on the individually designated property. An earlier approval may be given by the BHPC under the provision of Section 10-111 (3).

Section 10-113. Alteration or Exterior Remodel of Individual Local Register Properties, Buildings or Structures.

- (1) Waiting Period. The ordinance making a local designation shall require that a one hundred eighty (180) day waiting period be observed prior to the material alteration or remodeling of the individually designated property.
- (2) Notice of intent. The owner of any building or structure individually listed on the local register, upon application for a material alteration or exterior remodeling shall be required to give written notice of the proposed action to the BHPC.
- (3) Posting of Signs. The owner of any building or structure individually listed on the local register shall be required to post a sign on the property indicating the intent to materially alter or remodel the building's exterior. The sign must be posted within seven (7) days of the date of application and must remain posted for one hundred eighty (180) days or until approval is received from the BHPC.

- (4) Delay of Alteration or Exterior Remodeling. The owner of any building or structure individually listed on the local register may not materially alter or remodel the exterior during the period of one hundred eighty (180) days from the date the BHPC receives written notice of the owner's proposed actions unless approval is given by the BHPC at an earlier date. During this period, the BHPC may attempt to preserve the property in any way allowed by SDCL 1-19B. An earlier approval may be given by the BHPC when the plans conform to the Secretary of the Interior Standards for Rehabilitation and ensure the continued maintenance of the historical, architectural, archaeological or cultural integrity and character of the property or when the owner would suffer extreme hardship, not including the loss of profit, unless a reduction in the required period was allowed.

Section 10-114. Compliance with Ordinance Required

It is a violation of this ordinance for any person to materially alter or remodel the exterior of a building or structure individually listed on the local register without following the provisions of this chapter. It is also a violation of this ordinance for any person to demolish, relocate, remove, construct or erect a building or structure on individually listed property on the local register without following the provisions of this chapter. Such persons shall be subject to the penalty imposed by the Code of Ordinances as provided in Chapter 1.

Section 10-115. Governing Body's Power.

The City Council may provide by regulations, special conditions, or restrictions for the protection, enhancement, preservation and use of historic properties. Such regulations, special conditions and restrictions may include appropriate and reasonable control of the use or appearance of adjacent or associated private property within the public view.

Section 10-116 Process for Nomination of a Local Historic District

After all property owners and residents of the proposed local historic district have been contacted and evidence is provided that property owners have interest in developing a local historic district, that information shall be presented to the City Council.

Section 10-117. Establishment of a Local Historic District Study Committee.

The City Council may establish a Local Historic District Study Committee for the purpose of making an investigation of a proposed local historic district. The committee shall consist of seven members appointed by the local governing body with due regard to proper representation of fields such as history, architecture, architectural history, urban planning, archaeology, paleontology and law. Some members of the BHPC shall serve on the committee. Where possible, members of divergent opinions shall be selected from property owners of the proposed district. The study committee shall make an investigation of the historical,

architectural, archaeological, paleontological and cultural significance of the buildings, structures, sites and surroundings and the amount of property owner support for the proposed designation included in the proposed local historic district. The committee's investigation and recommendations shall comply with the criteria contained in section 10-102 which includes the criteria adopted by the State Historical Society Board of Trustees.

Section 10-118. Report of Findings and Public Hearing by Local Historic District Study Committee.

The Local Historic District Study Committee, established under Section 10-117, shall report its findings to the BHPC, the Planning Commission and the State Historical Society Board of Trustees for their consideration and recommendations. Sixty (60) days after transmittal of its findings, the local historic district study committee shall hold a public hearing on the proposed district. Due notice of the hearing shall be given as provided in Section 10-104, and it shall include written notice, postage prepaid, to the owners of all properties to be included in the proposed local historic district. After the public hearing and consultation with the BHPC, the district study committee shall submit to the City Council a final report with its recommendations and a draft of a proposed ordinance, where applicable.

Section 10-119. Action by the City Council on Nomination of a Local Historic District.

The City Council may, within 60 days after receiving the report from the Local District Study Committee, establish by ordinance one or more local historic districts. The City shall notify all property owners within the nominated local district of the date on which the City Council will hear the first reading of the ordinance. Written notification will be at least ten (10) days prior to the meeting. The city shall also publish a notice of the time and place of the meeting ten (10) days prior to the second reading of the ordinance.

The City Council may exempt owner-occupied properties from inclusion in a local historic district, however, such properties shall be included in a local historic district upon the change of ownership.

Section 10-120. Notification of Determination Sent to Owners

A notice of the determination on the local historic district shall be sent by the BHPC to owners of record of all property nominated to the local register district.

Section 10-121. Establishment of a Local Historic District and Creation of a Local Historic District Commission.-

Whenever a local historic district is established, the City Council shall also establish a local Historic District Commission within one month of the establishment of the local district. An ordinance establishing a local historic district may be amended by the City Council by following the procedures of this ordinance and by having the local Historic District Commission study and report on the proposed amendment.

Section 10-122. Composition of Local Historic District Commission, Its Officers, and Its Rules and Regulations.

The local Historic District Commission shall consist of seven members appointed by the Mayor with the advice and consent of the City Council with due regard to proper representation of fields such as history, architecture, architectural history, urban planning, archaeology, paleontology, and law. If possible, the members shall be selected from residents of the proposed district. Members of the Historic Preservation Commission shall constitute the membership of the local Historic District Commission. The appointments to membership on the district commission shall be arranged so that the term of at least one member will expire each year, and their successors shall be appointed in like manner for terms of three years. The district commission shall elect annually a chairman and vice-chairman from its membership. The district commission may adopt rules and regulations not inconsistent with this ordinance and related state laws. The district commission may, subject to appropriation, employ consultants.

Section 10-123. Certificate of Appropriateness Required for Exterior Alterations in Designated Local Historic Districts.

After the designation of a local historic district, no exterior portion of any building or other structure (including walls, 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 the local district and no building or structure can be relocated to and erected on a property in a local historic district until after an application for a certificate of appropriateness as to the proposed work has been submitted to and approved by the local Historic District Commission. Applicants shall supply information about their plans using a form approved by the local Historic District Commission. The city shall require such a certificate to be issued by the local Historic District Commission prior to the issuance of a building permit or other permit granted for purposes of constructing or altering a building or structure. A certificate of appropriateness shall be required whether or not a building permit is required.

Section 10-124. Exterior Features That Are Subject to Control. Interior Arrangement Not Subject to Control.

For purposes of this ordinance, “exterior features” shall include the architectural style, general design and general arrangement of the exterior of a building or other structure, including the kind and texture of the building material and the type and style of all windows, doors, light fixtures, signs, and other appurtenant features. In the case of outdoor advertising signs, “exterior features” shall be construed to mean the style, material, size, and location of all such signs. The Secretary of the Interiors Standards for Rehabilitation shall be the guidelines for the Commissions actions. The local Historic District Commission shall only act for the purpose of preventing the construction, reconstruction, alteration, restoration, moving or demolition of buildings, structures, appurtenant features, outdoor advertising signs in the local historic district which would be incongruous with the historical, architectural, archaeological or cultural aspects of the district. The local Historic District Commission shall not review plans that involve changes to the interior of a building or structure.

Section 10-125. Certificate of Appropriateness Issued in Case of Extreme Hardship.

The local Historic District Commission shall approve an application for a certificate of appropriateness in any case in which the owner would suffer extreme hardship, not including loss of profit, unless the certificate of appropriateness were issued promptly.

Section 10-126. Notice before Action on Certificate of Appropriateness.

Prior to the issuance or denial of a certificate of appropriateness, the local Historic District Commission shall give notice by mail to the owners of any property likely to be materially affected by the application to include properties within 250 feet of the proposed project and shall give the applicant and such owners an opportunity to present their views by a letter to the Commission. In cases in which the local Historic District Commission deems it necessary, it may hold a public hearing concerning the application. Notice of such hearing shall be made 10 days prior to the meeting.

Section 10-127. Issuance or Denial of Certificate of Appropriateness.

If the local Historic District Commission determines that the proposed construction, reconstruction, alteration, moving or demolition would preserve the essential historical qualities of the property and district, it shall promptly approve such application and shall issue a certificate of appropriateness. If the commission fails to act within forty-five (45) days, the application shall be deemed to be approved. If the local Historic District Commission determines that a certificate of appropriateness should not be issued, it shall place on its records the reasons for such determination and shall promptly notify the applicant, furnishing the applicant an attested copy of its reasons and its recommendations, if any. The City Clerk shall maintain an official file containing the certificates of appropriateness and the denials by the local Historic District Commission. The City Clerk shall also maintain a file of actions taken by the BHPC relating to designated historic property. Both files shall be available to the public.

Section 10-128. Appeal to Circuit Court.

Any applicant aggrieved by a determination of the local Historic District Commission concerning a certificate of appropriateness may appeal to the circuit court.

Section 10-129. Compliance with Ordinance Required.

It is a violation of this ordinance for any person to materially alter or remodel the exterior of a building or structure within a local historic district without following the provisions of this chapter. It is also a violation of this ordinance for any person to demolish, relocate, remove, construct or erect a building or structure within a local historic district without following the provisions of this chapter. Such persons shall be subject to the penalty imposed by the Code of Ordinances in Chapter 1.

Section 10-130. Severability.

The provisions of this ordinance are declared to be severable as provided in section 1-9 of the city code. If any section of this ordinance shall, for any reason, be declared invalid or unconstitutional, the remaining provisions shall continue to have full force and effect.

All sections and ordinances in conflict herewith are hereby repealed.

FIRST READING: April 15, 2003
SECOND READING: April 22, 2003
PUBLISHED: April 25, 2003

CITY OF BROOKINGS

Virgil H. Herriott, Mayor

ATTEST:

Shari Thornes, City Clerk