

17.54.080 Procedures for historic preservation.

A. *Administration.* The Common Council hereby appoints the Director or his or her designee (collectively the “Director”) to administer these procedures.

B. *Applicability.* Any historic project as defined in §17.04.358 that requires a permit shall be subject to these procedures, except as otherwise provided. No permit can be issued by the city unless the applicant has completed the following review process and the Director has first authorized the issuance of a permit in accordance with this section. The Secretary of Interior’s Standards for the Treatment of Historic Property shall be applied to historic preservation review within this section. Additional guidance concerning the standards can be found in the methods, policies, technical notes, preservation briefs, and guidelines used by the National Park Service, as well as guidelines established by the President’s Advisory Council on Historic Preservation (ACHP). Additionally, the Common Council may adopt by resolution additional design guidelines for historic properties.

C. *Pre-application conference.* The applicant shall confer with the Director regarding historic preservation review procedures and the project’s conformance with the Secretary of Interior’s Standards for the Treatment of Historic Property and with pertinent city ordinances and resolutions. The Director will provide information regarding grants and tax credits for historic properties, such as the Deadwood Fund Grant program, Federal Rehabilitation Tax Credit program, or State Property Tax Moratorium program.

D. *Application.* Following the pre-application conference, the applicant shall submit a complete application for historic preservation review to the Director. The application must clearly depict the proposed project and its impacts on surrounding properties through the use of such means as building elevations, construction plans, drawings, illustrations, photographs, or other means necessary to allow the city to adequately assess the conformity of the proposed project with the Secretary of Interior’s Standards for the Treatment of Historic Property and pertinent city ordinances and resolutions. The Director shall advise the applicant of required submissions and determine the completeness of an application. The Director may require additional materials necessary for the review.

E. *Review.* Upon receipt of a complete application, the Director shall determine the level of review required for approval.

1. *Administrative review of certain projects.* Administrative review may be performed and approval granted for projects which SHPO and city have agreed in writing do not constitute adverse effects; such projects for administrative approval shall be adopted by the Common Council by separate resolution. A draft resolution shall be presented to the HPC for its comment and recommendation; thereafter, the resolution and HPC’s comments and recommendation shall be forwarded to the Council for its final decision. All other projects will be referred to SHPO for review per subsection E.2. below. The Director shall not administratively approve a demolition permit for a historic property. The Director reserves the right to withhold administrative approval of any application and to refer any project to SHPO for review and comment. Under this subsection, the Director may take the following actions:

a. *Administrative determination of no adverse effect.* The Director may approve an application if he or she determines that the project will have no adverse effect on historic property. In reviewing permits for interior changes, the Director shall consult the information within the National and/or State Registers for the property in determining whether the project may have an adverse effect. If the Director approves the application, the applicant may proceed with the improvements, provided the necessary permits have been approved by the city.

b. *Administrative determination of adverse effect.* Administrative approval cannot be issued if the Director determines the project may have an adverse effect on historic property. The Director shall notify the applicant in writing of his or her findings of potential adverse effect. The applicant may: (1) withdraw the application, (2) modify and resubmit the application, or (3) elect to continue with the review process as discussed below.

2. *Initial SHPO review.* Where the Director determines that a project has the potential for an adverse effect on historic property and where the applicant has not withdrawn or resubmitted the application, the Director shall prepare a summary report of the project that describes any potential adverse effects and send the project file, including the summary report and application, to SHPO for an initial review. SHPO will review the project file and make a written determination to the Director, as follows:

a. *SHPO determination of no adverse effect.* Where SHPO issues a written determination that the project will not have an adverse effect upon historic property, the Director may approve the project. If the Director approves the project, the applicant may then proceed with the improvements, provided the necessary permits have been approved by the city.

b. *SHPO determination of potential adverse effect.* Where SHPO issues a written determination that the project has or may have an adverse effect upon historic property, or if the Director believes that further review is appropriate, the Director shall not approve the project, and the procedures discussed in subsections E.3., 4., and 5. shall be followed.

3. *Commission review and public hearing.* The Director shall prepare a case report for the Commission and SHPO. The applicant shall provide additional information to staff for inclusion in the case report, including information related to feasible and prudent alternatives and planning which has occurred to mitigate any adverse effect on historic property. The burden is on the applicant to show that approval should be granted. The Director shall submit the project file, including the application, the case report, and the written SHPO determination of potential or actual adverse effect, to the Commission for a public hearing. The Commission shall:

a. Comment on the case report by agreeing, disagreeing, or declining to comment on the case report’s findings; and/or

b. Determine, based upon all relevant factors, whether there are feasible and prudent alternatives to the proposed project and whether the project includes all possible planning to minimize harm to historic property, in compliance with the requirements of SDCL 1-19A-11.1.

The Commission may also offer additional comments, including suggestions or alternatives to minimize any adverse effect to historic property.

4. *Final SHPO review.* After Commission review and public hearing, the Director shall send the project application, case report, and the Commission's determination, findings, and comments to SHPO for its final determination. SHPO will review the record and will issue any final comments to the city for approval or denial of the project application. SHPO may offer its opinion whether, based upon all relevant factors, there is no feasible and prudent alternative to the project and the project includes all possible planning to minimize harm to historic property. Any comments from SHPO under this section will be in writing.

5. *Final city action following case report.* After receipt of the final written SHPO comments, as described in subsection E.4., the Director may take the following actions:

a. *Final Director approval.* If at any time the Director receives a written determination of no adverse effect by SHPO, the Director may approve the project application and the applicant may proceed with obtaining required city permits. If the Director grants approval of the project application after Commission review, he or she shall promptly report approval of the project application to the Commission.

b. *Final Director denial.* Where the city has received a written determination of adverse effect by SHPO, the Director shall deny the project application and provide written notice to the applicant of denial. The applicant may (i) accept the denial, (ii) resubmit a revised application, or (iii) appeal to the Common Council in writing submitted to the Director by close of business on the 10th full calendar day following mailing of written notice.

i. If the applicant seeks review of the matter by the Common Council, the Director shall forward the following to the Council: project application; case report; the Commission's determination, findings, and comments; and SHPO's determinations, findings, and comments.

ii. *Common Council approval.* If the Common Council determines that, based upon all relevant factors, there is no feasible and prudent alternative to the project and the project includes all possible planning to minimize harm to historic property, the application shall be approved. No permit may be issued by the city until 10 business days after SHPO has received notice as required by state law of the Council's determination with a complete record of factors considered. Thereafter, the applicant may proceed with obtaining required city permits.

iii. *Common Council denial.* No permit shall be issued if the Common Council determines that the application shall be denied because feasible and prudent alternatives exist or because the project has not included all possible planning to minimize the harm to historic property. In this case, the Director shall timely provide notice of the denial to the applicant, the Commission and SHPO.

F. *Conformity with the approvals given* All work performed pursuant to these historic preservation review approval procedures of this section shall conform to the provisions of the approval.

G. *Exemptions from historic preservation review.* The following projects shall be exempt from historic preservation review:

1. A sign permit approved in accordance with the applicable ordinances and by the appropriate reviewing body;
2. Projects which do not require a building permit or other construction permit required by the city, including, but not limited to, some landscaping, fencing, and painting projects;
3. The routine maintenance and repairs of an exterior feature of a building, which does not involve a substantive change, as determined by the Director, in its design, material, or outer appearance;
4. The installation, replacement, and repairs and routine maintenance and repairs of public infrastructure, except for buildings, such as, traffic control devices, utilities, street lights, sidewalks, streets, alleys, public parking areas, driveways, drainage structures, and the like. Infrequent, large scale infrastructure improvements, however, that are exempt from these zoning provisions for historic preservation review may be subject to SHPO review in accordance with the requirements of SDCL § 1-19A-11.1; and

5. In any case where the Building Official determines that there are emergency conditions dangerous to life, health, or property, the Building Official shall order the remedying of these conditions without review approval.

H. *Prevention of deterioration by neglect.* Any owner of a historic property or a property within an established historic district shall not allow the deterioration of the property by intentional neglect if the deterioration is damaging or destroying historic property. Where appropriate, the Commission may request a meeting with the owner in order to discuss the condition of the property and the means to restore its condition. Such neglect shall constitute a violation of this section and be subject to penalties discussed in this code, including the general penalty provision found in § 1.12.010. Each day that a violation continues to exist shall constitute a separate offense. The city may take any other action to prevent deterioration by neglect permissible under state law and city ordinance.