

## Ordinance 1243

AN ORDINANCE REVISING TITLE III ADMINISTRATION, CHAPTER 32: HISTORIC PRESERVATION; §32.01-32.08

**WHEREAS**, the City of Hot Springs pursuant to SDCL §9-19-3 may amend and revise ordinances as may be necessary; and

**WHEREAS**, the City of Hot Springs has previously adopted ordinances regulating Historic Preservation within the City; and

**WHEREAS**, the City of Hot Springs, with the recommendation of the Historic Preservation Commission has identified the need to amend the existing ordinance in Chapter 32; §32.01-32.08;

**THEREFORE BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF HOT SPRINGS**, that Title III, Chapter 32; §32.01-32.08 ; be revised as follows:

### **§32.01 AUTHORITY, TITLE AND PURPOSES**

(A) Authority. Pursuant to the authority granted by SDCL Chapter 1-19B, the following rules and regulations pertaining to the creation, use and maintenance of a historic preservation district, are hereby adopted by the City Council. (SDCL Chapter 1-19B-1)

(B) Jurisdiction. These regulations shall govern any and all historic preservation districts or sites established within the corporate limits of the city. (SDCL Chapter 1-19B-2)

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

(D) 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, and to promote the use and conservation of such property for the education, inspiration, pleasure and enrichment of the citizens of the city, the state and the United States.

(E) Purpose of creation of historical district regulations. To promote the economic, cultural and general welfare of the people of the city and to insure the harmonious, orderly and efficient growth and development of the municipality, the City Council deems it essential that the historic integrity of the city be preserved and the heritage of the city be maintained and protected in a sensitive and responsible manner. It is the purpose of this chapter to ensure the preservation of those buildings and areas within the city’s 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.

(F) Architecture of the District. The predominant architecture of the buildings in the district contains various Victorian stylings that are often referred to as Richardsonian 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.

(G) State regulation of historic properties. Nothing in this chapter 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.

(Prior Code, §29-1)

### **§32.02 HISTORIC DISTRICT**

(A) Description of District.

(1) The city's Historic Preservation District shall encompass the area designated by the National Register of Historic Places.

(2) Other district or individual sites that are hereafter recorded in the National Register of Historic Places, selected in accordance with the provisions of this chapter or in accordance with the criteria adopted by the State 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.

(3) The city's Historic District, shall include all properties and legal descriptions contained within the boundaries of attached map (Attachment A)

(B) Regulations applying to historic sites. Any historic district, site or place so designated by this chapter shall also be subject to the scope, rules, regulations and uses permitted by the city zoning ordinance (Chapter 155 of this code of ordinances). 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 chapter.

(C) Signing of historic places and sites. All historic places, buildings or sites so designated by this chapter 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.

(Prior Code, §29-2)

### **§32.03 CITY COUNCIL POWERS**

(A) The City Council 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.

(B) Acquisition of historic easements. The city 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 chapter, 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.

(C) Transfer of development rights. The city 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 chapter, 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.

(D) 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.

(E) 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.

(F) Exemption of historic properties; health and building codes. The City Council, 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 City Council, upon recommendation of the Historic Preservation Commission, shall determine would otherwise prevent or seriously hinder the preservation or restoration of said historic property.

(Prior Code, §29-3)

#### **§32.04 HISTORIC PRESERVATION COMMISSION**

The purpose of the Historic Preservation Commission is to preserve the quality of life and natural environment of the community and enhance the economic vitality and diversity of the community through preservation and restoration of historically and/or architecturally significant buildings and sites.

(A) Authorization. The City Council 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.

(B) Composition of Historic Preservation Commission. The Commission shall consist of not less than five nor more than ten members, who shall be appointed by the Mayor and approved by the City 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 serve a term of three 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-year term, unless the appointment is made to fill a vacancy. Said members shall be eligible for reappointment as specified by the City Council (SDCL Chapter 1-19B-3). The Commission may employ such qualified staff personnel as it deems necessary. (SDCL Chapter 1-19B-4)

(C) Historic Preservation Commission officers. The Commission shall elect officers from its membership to consist of a Chairperson, Vice-Chairperson and Secretary, who shall serve a term of one year. The Commission shall hold an annual organization meeting, at the February meeting, for the purpose of electing officers.

(D) 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.

(E) Powers and duties of Historic Preservation Commission. The Historic Preservation Commission established pursuant to division (A) above shall be authorized to:

(1) 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; (SDCL Chapter 1-19B-8)

(2) 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; (SDCL Chapter 1-19B-14)

(3) Preserve, restore, maintain and operate historic properties under the ownership or control of the Commission; (SDCL Chapter 1-19B-15)

(4) 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; (SDCL Chapter 1-19B-17)

(5) Contract, with the approval of the City Council, with the state or the federal government, or any agency of either, or with any other organization; (SDCL Chapter 1-19B-12)

(6) Cooperate with the federal, state and local governments in the pursuance of the objectives of historic preservation; (SDCL Chapter 1-19B-11)

(7) Participate in the conduct of land use, urban renewal and other planning processes undertaken by the city; (SDCL Chapter 1-19B-10)

(8) Recommend ordinances and otherwise provide information to the City Council for the purposes of historic preservation; (SDCL Chapter 1-19B-19)

(9) Promote and conduct an educational and interpretative program on historic properties within the city; and (SDCL Chapter 1-19B-18)

(10) 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. (SDCL Chapter 1-19B-9)

(F) Notice to the tax assessor on historic properties. Upon the adoption of this chapter 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 the county. The designation and any recorded restrictions upon the property limiting its use for preservation purposes shall be considered by the tax assessor in appraising the property for tax purposes.

(Prior Code, §29-4)

### **§ 32.05 DEMOLITION OR ALTERATION OF HISTORIC PROPERTY**

Nothing in this chapter in general nor specifically in this section 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 certifies to the Commission that such action is required for the public safety because of an unsafe or dangerous condition.

(A) Notice by owner before demolition. No historic property designated by this chapter or amendments thereto may be demolished, materially altered, remodeled, relocated or put to a different use until the expiration of a 180-day waiting period that commences with delivery to the Commission of written notice of the owner's proposed action. During this 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. (SDCL Chapter 1-19B-27)

(B) Waiver of waiting period. The Commission shall have the discretionary authority to waive any portion or all of the 180-day waiting period required by division (A) above, 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. (SDCL Chapter 1-19B-29)

(C) Reduction in waiting period; extreme hardship. The Commission may reduce the waiting period required by division (A) above, 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. (SDCL Chapter 1-19B-30)

(Prior Code, §29-5)

### **§ 32.06 HISTORIC DISTRICT COMMISSION**

(A) The Historic District Commission shall administer historic preservation activities under the provisions of this chapter and in compliance with SDCL Chapter 1-19B. The Historic Preservation Commission assumes all duties of the Historic District Commission.

(B) Composition of Historic District Commission. The Historic District Commission, hereinafter cited as "District Commission," shall consist of not less than five nor more than ten members appointed by the Mayor and approved by the City 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. The appointments to membership on the District Commission shall be for a period of three 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 City Council.

(C) Historic District Commission officers. Historic Preservation Commission officers shall assume the roles and duties of the Historic District Commission officers.

(D) 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 City Council, employ clerical and technical assistants or consultants and may accept and expend gifts of money for the express purpose of securing said services.

(E) Amendments of historic places or site to district. The historic properties subject to the provisions of this chapter, 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.

(1) 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 State Board of Cultural Preservation pursuant to SDCL§1-19A.

(2) The District Commission shall report its findings to the city's Planning Commission, the City Historic Preservation Commission and the State Board of Cultural Preservation for their consideration and recommendations.

(3) Sixty days after the transmittal of its findings as specified in §32.06(D) (1), 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.

(4) The District Commission shall submit a final report with its recommendations and a draft of the proposed historic district amendments to the City Council.

(5) The City Council shall act upon the proposed historic district amendment.

(6) 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 City Council. An official copy of the adoption shall be provided to the 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.

(Prior Code, §29-6)

### **§ 32.07 EXTERIOR ALTERATIONS**

Nothing in this section 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 City Building Inspector shall certify is required for public safety because of an unsafe or dangerous condition.

(A) Exterior feature defined. For the purposes of this chapter in general and this section 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.

(B) 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 30 days in which to review an application for a certificate of appropriateness and to either approve or deny said application. The city 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.

(C) Interior arrangement; not subject to control. The Historic District Commission shall not consider interior arrangement and shall take no action pursuant to division (B) above, 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.

(Prior Code, §29-7)

### **§32.08 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 section.

(A) 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.

(B) 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.

(C) 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 or her an attested copy of its reasons thereof and its recommendations, if any, as appearing in the records of said Commission.

(D) Appeal of certificate denial. Any applicant aggrieved by a determination of the Commission may appeal to the circuit court having jurisdiction in the city.

(E) 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 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 or districts.

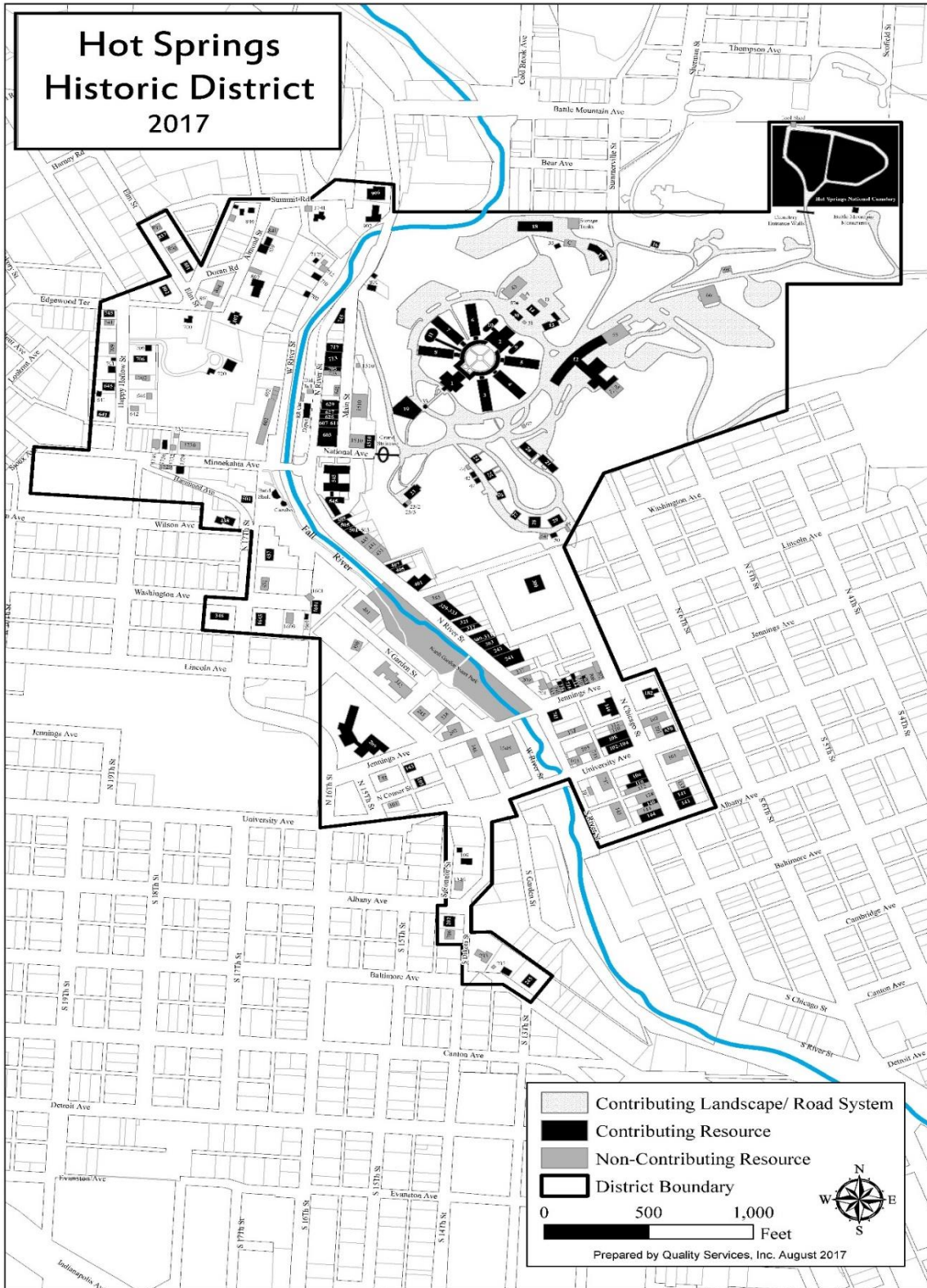
(F) Certificate issued; extreme hardship. The Historic District Commission may approve an application for a certificate of appropriateness in any case where the owner would suffer extreme hardship, not including loss of profit, unless the certificate of appropriateness be issued forthwith.

(G) Deterioration by neglect. As determined by the City of Hot Springs Building Inspection Department (SDCL Chapter 1-19B-52) In accordance with this chapter, 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 § 10.99 (SDCL 22-6-2). Each day such violation is committed or permitted to continue, shall constitute a separate offense and shall be punishable as such hereunder as a Class 2 misdemeanor.

(H) Conflicts with other laws. In the interpretation and application of the provisions of this chapter, 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 chapter 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.

(Prior Code, §29-8)

Attachment A





**Severability.** The provisions of this ordinance are severable. If any provision of this ordinance or the application thereof to any person or circumstance is held to be invalid, such invalidity shall not affect other provisions or applications of this ordinance which can be given effect without the invalid provision or application.

**Effective Date.** This Ordinance will become effective 20 days following publication, which will occur after the ordinance receives second and final reading by the City Council and is signed by the Mayor.

Dated this 21<sup>st</sup> day of November, 2022

APPROVED:

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Bob Nelson, Mayor

ATTEST:

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Misty Summers-Walton, Finance Officer

(SEAL)

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