

CHAPTER 28A.

HERITAGE PRESERVATION.

Article I. Heritage Preservation Commission.

- § 28A-1. Declaration of public policy and purpose.
- § 28A-2. Definitions.
- § 28A-3. Heritage preservation commission established.

**Article II. Powers and duties of the
Heritage Preservation Commission.**

- § 28A-4. Designation of heritage preservation sites and districts by the heritage preservation commission.
- § 28A-5. Review of construction and demolition activity.
- § 28A-6. Additional powers and duties of the commission.
- § 28A-7. Violations.
- § 28A-8. Filing of documents.
- § 28A-9. Recording of heritage preservation sites.

Article I. Heritage Preservation Commission.

Sec. 28A-1. Declaration of public policy and purpose.

The council of the city of Duluth hereby declares as a matter of public policy that the preservation, protection, perpetuation and use of areas, places, buildings, structures, lands, districts and other objects having a special historical, cultural or aesthetic interest or value is a public necessity, and is required in the interest of public health, prosperity, safety and welfare of the people of the city of Duluth. The purposes of this Chapter are to:

- (a) Safeguard the heritage of the city of Duluth by preserving sites and structures which reflect elements of the city's cultural, social, economic, political, engineering or architectural history;

(b) Protect and enhance the city of Duluth's attractions to residents, tourists and visitors, and serve as a support and stimulus to business and industry;

(c) Enhance the economic viability of heritage preservation landmarks and districts through the protection and promotion of their unique character;

(d) Enhance the visual and aesthetic character, diversity and interest of the city of Duluth;

(e) Foster civic pride in the beauty and notable accomplishments of the past; and

(f) Promote the use and preservation of historic landmarks and districts for the educational and general welfare of the people of the city of Duluth. (Ord. No. 8938, 4-17-1989, § 1.)

Sec. 28A-2. Definitions.

(a) Heritage preservation district. A contiguous collection or group of lands, parcels, sites, structures, buildings or objects that is determined to be historically, culturally or architecturally significant as a whole and has been locally designated as a heritage preservation district pursuant to Section 28A-4 of this Chapter;

(b) Heritage preservation guidelines. The established criteria by which any proposed changes, including architectural or site modifications, shall be judged;

(c) Heritage preservation landmark. Any individual property, parcel, place, building, structure, work of art or other object that has been determined to be historically, culturally or architecturally significant and has been locally designated as a heritage preservation landmark pursuant to Section 28A-4 of this Chapter;

(d) National register of historic places. The nation's official list of properties worthy of preservation designated by the United States department of the interior, national park service. Nominations of properties within Minnesota to this list are made through the auspices of the state historic preservation officer, Minnesota historical society. (Ord. No. 8938, 4-17-1989, § 1.)

Sec. 28A-3. Heritage preservation commission established.

Pursuant to Minnesota Statute 471.193, there is hereby created and established a city of Duluth heritage preservation commission, hereinafter called the "commission." The commission shall have the responsibility of recommending to the city council the adoption of ordinances designating areas, places, building structures, works of art or other objects having special historical, cultural or architectural interest for the community as heritage preservation landmarks or districts.

(a) Membership. The commission shall consist of seven voting members, all of whom are to be citizens of the city of Duluth, of whom five will be appointed by the mayor with the approval of the city council; one to be appointed by the St. Louis County historical society, and one to be appointed by the city planning commission. Members shall be persons who have demonstrated an interest in the historical, cultural or architectural development of the city or who own property within a heritage preservation district. At least two of the five members appointed by the mayor shall be preservation-related professionals;

(b) Term. Of the five commission members initially appointed by the mayor, three appointees will serve a term of two years and two appointees will serve a term of three years. All other and subsequent appointments shall be for a term of three years. In the event of a vacancy, the vacancy for the unexpired term shall be filled in the same manner as the appointment was originally made. Members shall serve without compensation and shall continue to hold office until their

successors have been appointed and confirmed;

(c) Organization. The commission, when formed, shall select from among its members such officers as it may deem necessary. The commission shall have the power to designate and appoint from its members various committees with powers and duties equivalent to and not inconsistent with the powers and duties of the commission. The commission shall make such rules and regulations as it may deem advisable and necessary for the conduct of its affairs, for the purpose of carrying out the intent of this ordinance, which are not inconsistent with the laws of the city of Duluth and the state of Minnesota. The commission shall make an annual report, containing a statement of its activities. The city of Duluth shall provide the commission with staff to perform the duties prescribed under this ordinance;

(d) Records. Minutes of all meetings shall be kept and all records and meetings of the heritage preservation commission shall be open to the public. Archives of the minutes shall be kept pursuant to Minnesota Statute 138.17. (Ord. No. 8938, 4-17-1989, § 1.)

Article II. Powers and Duties of the Heritage Preservation Commission.

Sec. 28A-4. Designation of heritage preservation sites and districts by the heritage preservation commission.

(a) Report. Prior to recommending a site or district to the city council for designation, amending a designated site or district or nominating a site or district to the national register of historic places, an investigation and report on the historical, cultural and architectural significance of the buildings, structures, sites or object proposed for designation shall be made. Such report shall also attempt to determine the economic status of the property or properties by providing such information as assessed value, recent real estate transactions and other appropriate data;

(b) Criteria for designation. The commission shall recommend heritage preservation landmarks and districts only when the property or properties are found to meet at least one of the following criteria:

(1) It has character, interest or value as part of the development, heritage or cultural characteristics of the city of Duluth, state of Minnesota or the United States;

(2) Its location was a site of a significant historical event;

(3) It is identified with a person or persons who significantly contributed to the culture or development of the city of Duluth, state of Minnesota or the United States;

(4) It embodies a distinguishing characteristic of an architectural type;

(5) It is identified as the work of an architect or master builder whose individual work has influenced the development of the city of Duluth or state of Minnesota;

(6) It embodies elements of architectural design, detail, materials or craftsmanship which represents significant architectural innovation;

(7) Its unique location or singular physical characteristics represents an established and familiar visual feature of a neighborhood, community or the city as a whole;

(c) Planning commission review. The commission shall receive the comments of the city planning commission regarding any proposed heritage preservation district prior to forwarding its recommendation to the city council for adoption. In its review and recommendation, the city planning commission shall consider any such designation's potential effects on the surrounding neighborhood, economics, environment and other planning considerations. Said comments shall become part of the official record and be submitted as part of the commission's report to the mayor and city council;

(d) Communication with the state historical society. A copy of the commission's report on any proposed designation for a heritage preservation landmark or district, including boundaries, shall be sent to the state historic preservation officer for review and comment in accordance with Minnesota Statutes 1985, Section 471.193, Subdivision 6. The maximum review period for the state is 60 days. Any comments made by the state historic preservation officer regarding a proposed designation must be received and forwarded to the city council prior to final designation;

(e) Heritage preservation commission hearings. Prior to the commission recommending to the mayor and the city council any heritage preservation landmark or district, the commission shall hold a public hearing and seek the recommendation of all concerned citizens. Prior to such hearing the commission shall cause to be published in a newspaper of general circulation notice of said hearing at least ten days prior to the date of the hearing, and notice of the hearing shall be sent to all owners listed on the current city assessor's records of property proposed to be designated a heritage preservation landmark or district;

(f) Communication with the city council. If the commission recommends to the city council that a landmark or district be designated for heritage preservation, the commission shall transmit to the city council a complete report on the recommended heritage preservation landmark or district. Such communication shall include the initial investigative report, comments made by the planning commission, required comments by the state historic preservation officer and the proposed heritage preservation guidelines;

(g) Council designation. The city council may by ordinance designate a heritage preservation landmark or district. Prior to such designation, the city council or one of its committees may hold a public hearing, notice of which shall have been published in a newspaper of general circulation at least ten days prior to the day of the hearing, and the notice of the hearing shall be sent to the owners of all property proposed to be designated as a heritage preservation landmark or district. (Ord. No. 8938, 4-17-1989, § 1.)

Sec. 28A-5. Review of construction and demolition activity.

(a) Type of activity. The commission shall review and approve or disapprove of construction and demolition activities, including all street and utility activities, within any heritage preservation landmark or district. In addition, the commission shall review and approve or disapprove the issuance of city permits to do any of the following in a heritage preservation landmark or district in the city of Duluth:

- (1) Remodel, repair or alter in any manner which will change the exterior appearance;
- (2) New construction, including parking facilities;
- (3) Move a building;
- (4) Change the nature or appearance of a designated heritage preservation landmark or district, including landscape features;
- (5) Demolition;

(b) Permit application and plans. Every application for any type of permit in relation to a property designated as a heritage preservation landmark or district in the city shall be accompanied by detailed plans for the proposed work to be done. A copy of the application and plans submitted therewith shall be immediately referred by the city building official to the commission. The division of building inspection shall not issue permits in regard to an application until receiving written approval from the commission, subject, however, to paragraphs 3, 5 and 6 of this Section;

(c) Commission review. The commission, upon receipt of the application for a permit and plans, shall determine if the work to be performed would adversely affect the heritage preservation landmark or district based on the adopted heritage preservation guidelines per Section 28A-6, paragraph 6. The commission may, by rule, delegate to a subcommittee of the commission, or to a designated city official, its power to review and approve permit applications. If the subcommittee or

designated official determines that the work to be performed pursuant to the permit application complies with the adopted heritage preservation guidelines, the application shall be approved and the division of building inspection shall be notified in writing.

If the application is not approved, the full commission shall conduct a public hearing for the purpose of determining whether the work to be performed adversely impacts the heritage preservation landmark or district. Notice of the public hearing shall have been published in a newspaper of general circulation and sent to the permit applicant at least ten days prior to the date of the hearing. The commission shall review the permit and such plans as were submitted therewith and, after receiving comments from concerned citizens, shall render its decision thereon as a written order to the division of building inspection. The division of building inspection shall not issue any required permits until after the ten day appeal period, as provided for in paragraph 8 of this Section. In the case of a denial, the commission shall furnish the applicant with a copy of the commission's written order and decision, together with a copy of any recommendations for changes necessary to be made before the commission will reconsider the applicant's permit application;

(d) Findings. All decisions of the commission with respect to this Section shall be based on explicit findings which are in accordance with the adopted heritage preservation guidelines for each individual heritage preservation landmark or district and the secretary of the interior's standards of rehabilitation;

(e) Appeal to city council. The commission, in any written order denying a permit application, shall advise the applicant of his right to appeal to the city council and shall include this paragraph in all such orders. The permit applicant or any party aggrieved by the decision of the commission shall, within ten days of the date of the commission's written order and decision, have a right to appeal such order and decision to the city council. Such appeal shall be addressed to the city council and submitted to the division of building inspection. Two copies of a notice of appeal and statement of reasons setting forth the grounds for the appeal shall be submitted by the appealing party. The division of building inspection shall transmit one copy of the notice of appeal and statement to the city council and one copy to the heritage preservation commission. The city council may modify or overrule the commission's decision but only if the project is found to be consistent with the U.S. secretary of interior's recommended standards for preservation projects;

(f) Limitations. If, within 60 days of receipt of the permit application by the commission, it has neither approved nor denied the building permit application, the plans and permit application shall be deemed to have been approved by the commission; and if all other requirements of the city have been met, the division of building inspection shall authorize a permit for the proposed work. No permit shall be issued and no work shall be commenced in the event the commission disapproves the application in accordance with this ordinance;

(g) Emergency repair. In emergency situations where immediate repair is needed to protect the safety of the structure and its inhabitants, the city building official may without commission action, approve the repair of only those items needed to insure safety. Such repairs shall be limited to those necessary to correct the safety emergency. In the case of a permit issued pursuant to this paragraph, the city building official shall require that such repairs be made in conformance with the U.S. secretary of interior's recommended standards for historic preservation projects and adopted heritage preservation guidelines for the landmark or district to the extent possible. In addition, the division of building inspection shall immediately notify the heritage preservation commission of the action and specify the facts or conditions constituting the emergency situation;

(h) Building code enforcement. One purpose of this ordinance is to encourage the sensitive rehabilitation, restoration, stabilization and/or preservation of historic buildings throughout the city. These rehabilitation and preservation efforts should provide for the upgrading and maintenance of the safety features of the building or structure to provide a practical level of safety to the public and surrounding properties. While ensuring this increased level of public safety, the enforcement authorities are encouraged to be open to acceptable alternative solutions and alternative compliance concepts, where practical, that will permit the continued use of existing buildings and structures without creating overly restrictive financial burdens on owners or occupants. Nothing in this ordinance shall be construed to prevent the ordinary maintenance or repair of any exterior elements of any building or structure required by city ordinance. (Ord. No. 8938, 4-17-1989, § 1.)

Sec. 28A-6. Additional powers and duties of the commission.

The commission shall have the following powers and duties in addition to those otherwise specified in this Chapter:

(a) The commission shall conduct a continuing survey of all areas, places, buildings, structures or similar objects in the city of Duluth which the commission, on the basis of information available or presented to it, has reason to believe are or will be eligible for designation as heritage preservation landmarks or districts;

(b) The commission shall work for the continuing education of the citizens of the city of Duluth with respect to the historic and architectural heritage of the city. It shall keep current and public an official list of designated heritage preservation landmarks and districts;

(c) The commission may retain the services, on a permanent or part-time basis of technical experts and other persons as may be required to perform the commission's duties;

(d) The commission shall have authority to solicit gifts and contributions to be made to the city and to assist in the preparation of applications for grant funds to be made to the city for the purpose of heritage preservation;

(e) The commission may recommend to the city council, after review and comment by the city planning commission, that certain properties eligible for designation as heritage preservation landmarks or districts be acquired by gift, by negotiation or other legal means;

(f) Upon final designation of a heritage preservation landmark or district by the mayor and city council, the commission shall adopt heritage preservation guidelines specific to the landmark or district. Such guidelines shall detail allowable architectural and/or site modifications, essential features to be retained, and any other criteria by which future proposals for modifications shall be judged. These guidelines are intended to provide assurance to owners of properties within heritage preservation landmarks or districts that any permit review process, per Section 28A-5, will be based on clear and objective standards rather than the taste of individual commission members;

(g) The commission may nominate a heritage preservation landmark or district to the national register of historic places, but only with the consent of the mayor and the city council;

(h) The commission shall make an annual report to the state historic preservation officer by October 31 of each year. (Ord. No. 8938, 4-17-1989, § 1.)

Sec. 28A-7. Violations.

An owner or occupant of any area, place, building, structure or other object within a locally designated historical preservation landmark or district who violates the provision of this Chapter shall be guilty of a misdemeanor. Any person or corporation who assists in the commission of a violation of this Chapter shall be guilty of a misdemeanor. Each day an owner or occupant of any area, place, building, structure, or object within a duly designated heritage preservation landmark or district allows any work to be performed on any area, place, building, structure or other object in violation of this Chapter shall constitute a separate violation of this Chapter and will be punishable as such. Any remodeling, repairing, altering or construction activity of a heritage preservation landmark or district in violation of this Chapter, is hereby declared a nuisance. The imposition of the penalties herein prescribed shall not prevent the city of Duluth from taking appropriate action or proceeding to prevent unlawful alteration of the building district and/or site in question. Such action may include restraining, correcting and abating the violation(s). (Ord. No. 8938, 4-17-1989, § 1.)

Sec. 28A-8. Filing of documents.

(a) The office of the city clerk shall keep at least one copy of all studies, reports, recommendations, decisions and

heritage preservation guidelines developed by the commission and city council. In addition, the clerk shall distribute an official list of all locally designated heritage preservation landmarks and districts to the division of building inspection and the Minnesota state historic preservation officer. The clerk shall also provide the division of building inspection an up-to-date copy of the U.S. secretary of interior's recommended standards for historic preservation projects;

(b) The heritage preservation commission is designated as the repository for at least one copy of all plans and reports required under Article II, sections 28A-4, 28A-5 and 28A-6 of this ordinance. This information shall be available to the public, in the department of planning and development office for inspection during normal business hours. (Ord. No. 8938, 4-17-1989, § 1.)

Sec. 28A-9. Recording of heritage preservation sites.

The office of the city clerk shall record or file with the St. Louis County recorder the legal description of all properties designated as heritage preservation landmarks or district by the city of Duluth, and shall transmit a copy of said legal description to the division of building inspection. (Ord. No. 8938, 4-17-1989, §1.)