

BILL NO. 87-17

ORDINANCE NO. 10572-17

**AN ORDINANCE INITIATED BY THE COMMON COUNCIL OF THE CITY OF
SOUTH BEND, INDIANA, AMENDING CHAPTER 21 OF THE SOUTH BEND
MUNICIPAL CODE, ARTICLE 13 HISTORIC PRESERVATION COMMISSION IN
CONNECTION WITH THE TRANSITION OF HISTORIC PRESERVATION STAFF
TO THE CITY OF SOUTH BEND UNDER AN INTERLOCAL AGREEMENT
BETWEEN THE CITY OF SOUTH BEND AND ST. JOSEPH COUNTY.**

STATEMENT OF PURPOSE AND INTENT

Pursuant to the Interlocal Agreement dated December 12, 2017, by and between the City of South Bend (the “City”) and St. Joseph County (the “County”), as approved by the executive and legislative bodies of the City and the County in accordance with law, the City and the County have agreed to transfer management responsibility for historic preservation matters related to the Historic Preservation Commission of South Bend and St. Joseph County (the “Commission”), including the transfer of the employment of certain staff members from the County to the City. Such transfer will be effective on January 1, 2018. Consistent with the City’s acceptance of such responsibilities and staff members, various changes to Chapter 21, Article 13, of the South Bend Zoning Ordinance are necessary and appropriate. It is desirable, advantageous, and in the public interest of the City and its residents to amend the Zoning Ordinance as set forth herein.

NOW THEREFORE BE IT ORDAINED by the Common Council of the City of South Bend, Indiana as follows:

SECTION I. Chapter 21, Zoning, of the *South Bend Municipal Code*, Article 13 Historic Preservation Commission, Section 21-13.01(a) is hereby amended to read as follows:

~~There is hereby established and perpetuated an~~ The Historic Preservation Commission originally established in 1973 is perpetuated with the membership and powers and duties as set forth in this article the Interlocal Agreement between St. Joseph County and the City of South Bend, dated December 12, 2017, as the same may be amended from time to time in accordance with the law, a copy of which is available for public inspection in the office of the South Bend City Clerk, and on the City’s website.

SECTION II. Chapter 21, Zoning, of the *South Bend Municipal Code*, Article 13 Historic Preservation Commission, Section 21-13.01(b) is hereby amended to read as follows:

~~Reserved~~ (b) Membership:

(1) ~~Not later than thirty (30) days after the effective date of Ordinance No. 5565-73, a-A~~ nonpartisan *Historic Preservation Commission* of nine (9) members shall continue to be

appointed, all of whom shall be interested and knowledgeable in *historic preservation* in the local area. The membership shall be appointed as follows:

~~(A)~~ (1)

(A) The Mayor and the Common Council of the City of South Bend and the St. Joseph County Council and Board of Commissioners of St. Joseph County shall each appoint two (2) at-large-members, designating not more than one (1) member from any major political party and giving consideration to persons residing in areas having historic significance; and

(B) The eight (8) members appointed above shall in turn appoint the ninth member, who shall be an architectural historian.

(2) ~~The~~ Each members of the *Historic Preservation Commission* shall serve without compensation for a terms of three (3) years; which terms shall continue to be staggered in accordance with the original provisions for appointment in effect in 1973 which was then as follows: ~~provided, however, that the initial appointments shall be made for staggered terms, as follows:~~

(A) The Mayor and the Common Council of the City of South Bend and the Council and the Board of Commissioners of St. Joseph County shall each make one appointment for a term of one (1) year and one appointment for a term of two (2) years; and

(B) The ninth member shall be appointed for a term of three (3) years.

(3) If a vacancy occurs by resignation or otherwise, the unexpired term shall be filled within thirty (30) days of such vacancy by the appropriate appointing body.

(4) Whenever a Commissioner fails to attend four (4) consecutive, regularly scheduled meetings, the *Historic Preservation Commission* may determine the position to be vacant and certify to the appropriate appointing body that the position is vacant. Within a reasonable time after receiving such certification, ~~and the appropriate appointing body shall, within thirty (30) days after receipt of notice from the Commission,~~ appoint another and different Commissioner for the remainder of the unexpired term.

(5) Each member of the Historic Preservation Commission will serve at the pleasure of his or her appointing body, and may be removed at any time for any reason or no reason.

SECTION III. Chapter 21, Zoning, of the *South Bend Municipal Code*, Article 13 Historic Preservation Commission, Section 21-13.02 is hereby renamed “Section 21-13.02 – Procedures and responsibilities” and amended as follows:

The *Historic Preservation Commission* shall have the following powers and duties responsibilities within the corporate boundaries of the City of South Bend:

- (a) Reserved. ~~Adopt bylaws for carrying out the powers and duties set forth in this section.~~
- (b) Reserved.

(c) ~~Reserved. The Commission shall hold at least four (4) advertised public hearings to provide the public with an opportunity of becoming aware of Commission business and to make their views known.~~

(d) Survey, identify, plan for and advise the Common Council and the Area Plan Commission concerning the establishment of *Historic Preservation Districts*. Survey, identify, plan for and advise the Common Council concerning the designation of *historic landmarks*.

(1) The *Historic Preservation Commission* shall recommend the designation of *historic landmarks* and the establishment of *Historic Preservation Districts* on the basis of historical and cultural significance, educational value and suitability for preservation.

(2) *Historic landmarks* shall be designated and *Historic Preservation Districts* shall be established by the Common Council through the passage of an ordinance. Said ordinance shall be initiated in the usual manner: By the Common Council; by a petition of the owners of fifty (50) percent or more of the subject area; or by the Area Plan Commission.

(3) If any proposed ordinance is introduced to the Common Council for the purpose of creating a new *Historic Preservation District* , or repealing, altering, or modifying an established *Historic Preservation District* , then prior to referral to the Area Plan Commission, the proposed ordinance shall be referred by the Common Council to the *Historic Preservation Commission* which shall hold a public hearing within ninety (90) days of the referral, unless such public hearing was conducted by the *Historic Preservation Commission* prior to introduction of the proposed ordinance which shall satisfy this requirement of a public hearing. The public hearing before the *Historic Preservation Commission* shall be for the purpose of hearing comments on the proposed ordinance and for the purpose of delivering either a favorable or unfavorable recommendation to the Common Council. Notice of such hearing shall be given to all owners of property in the affected *Historic Preservation District*. Failure of the *Historic Preservation Commission* to deliver a recommendation within ninety (90) days following referral by the Common Council shall be considered a favorable recommendation.

(4) If any proposed ordinance is introduced to the Common Council for the purpose of creating a new *historic landmark* , or repealing, altering, or modifying an established *historic landmark* , then prior to the Common Council's public hearing, the proposed ordinance shall be referred by the Common Council to the *Historic Preservation Commission* which shall hold a public hearing within ninety (90) days of the referral, unless such public hearing was conducted by the *Historic Preservation Commission* prior to introduction of the proposed ordinance which shall satisfy this requirement of a public hearing. The public hearing before the *Historic Preservation Commission* shall be for the purpose of hearing comments on the proposed ordinance and for the purpose of delivering either a favorable or unfavorable recommendation to the Common Council. Notice of such hearing shall be given to all owners of the affected *historic landmark*. Failure of the *Historic Preservation Commission* to deliver a recommendation within ninety (90) days following referral by the Common Council shall be considered a favorable recommendation.

(5) (A) Upon the earlier of the reading of a proposal for a *historic landmark* before the *Historic Preservation Commission* or upon the filing of an ordinance before the

Common Council for the purpose of creating a new *historic landmark*, the Commission may declare such proposed new *historic landmark* to be under interim protection.

(B) Not more than two (2) working days after declaring a building, structure, or site to be under interim protection under this section, the *Historic Preservation Commission* shall provide the owner of the building, structure or site with a written notice of declaration by personal delivery or certified mail. The *Historic Preservation Commission* shall also notify the Common Council and the St. Joseph County/South Bend Building Department. In the event the owner cannot be located after due diligence, the *Historic Preservation Commission* or the City Department of Code Enforcement which shall affix a notice of interim protection to the building, structure, or site. Written notice under this subsection b. must:

- i. Cite the authority of the *Historic Preservation Commission* to put the building, structure, or site under interim protection under this section;
- ii. Explain the effect of putting the building, structure, or site under interim protection; and
- iii. Indicate that the interim protection is for a maximum period of six (6) months.

(C) A building or structure put under interim protection under subsection a. remains under interim protection for a period of six (6) months, or until an ordinance designating the landmark is approved or rejected by the Common Council, whichever occurs first.

(D) While a building, structure, or site is under interim protection under this section;

- i. The building, structure, or site may not be demolished or moved; and
- ii. The exterior appearance of the building, structure, or site may not be conspicuously changed by:
 - (a) Addition;
 - (b) Reconstruction; or
 - (c) Alteration.

(E) The Commission may approve a Certificate of Appropriateness at any time during the period of interim protection, provided the proposed change meets the criteria for considering effect of actions on historic buildings in subsection 21-13.02(e) of this section and any proposed preservation guidelines prepared by the *Historic Preservation Commission* for the affected building, structure, or site.

(e) Within "HP" *Historic Preservation Districts*, or as to *historic landmarks*, the *Historic Preservation Commission* shall have the following ~~powers and duties~~ responsibilities:

- (1) The *Historic Preservation Commission* shall issue a certificate of appropriateness before any one of the following actions is taken: the construction, reconstruction, alteration, demolition or moving of any exterior feature of any building, structure, or use. Certificates of appropriateness shall be issued in accordance with the stipulations of this article, and the submission of a certificate of appropriateness shall be accompanied by

fees as prescribed by the *Historic Preservation Commission*. A listing of such fees shall be kept on file in the Office of the *Historic Preservation Commission* and the City Clerk's Office. Such listing shall be kept current and shall be available for public inspection during regular business hours of said offices.

- (2) Nothing in this article shall be construed to prevent the ordinary maintenance and repair of any building, structure or use which will not involve a change in any exterior features or to prevent the construction, reconstruction, alteration, demolition, or moving of any building, structure or use which the Building Commissioner or other official having such power may certify as required by the public safety because of an unsafe or dangerous condition.

Where the *Historic Preservation Commission* deems it necessary, the Commission may petition the Common Council for a temporary delay in the issuance of the required permit(s) for proposed construction, reconstruction, alteration, demolition or moving of a designated *historic landmark* for the purpose of preparing a preservation plan for said landmark. Such petition shall be for a specified period of time. The Common Council shall grant the Commission's petition when it finds:

- (A) That such action will not cause the owner of the subject property to suffer hardship; and
- (B) That such delay will not be injurious to the public health, safety or welfare; and
- (C) That in keeping with the intent of this article, such action is necessary and appropriate.

In no case may the delay granted by the Common Council exceed one (1) year, but the Commission may petition the Common Council for a continuation of any such delay granted by the Common Council in accordance with the same procedures set forth above for the initial petition.

- (3) An application for a building permit, demolition permit, sign permit or moving permit shall also be deemed to be an application for a certificate of appropriateness. Within five (5) working days of receipt of such application relative to a building, structure or use in said district, the Building Commissioner shall forward the application to the *Historic Preservation Commission* for review and action pursuant to section 21-13.02(e)(5), below.
- (4) Where no other permit is required, an application for a certificate of appropriateness shall be filed with the *Historic Preservation Commission* on the form prescribed by the Commission. Said applicant shall include the following information:
- (A) Name, address and telephone number of the applicant
 - (B) Location of the subject building, structure or use;
 - (C) Structural drawings and specifications, floor plans, elevations, cross-sectional plans, renderings, diagrams or other such plans;
 - (D) Samples of materials to be used, including colors;

- (E) Where the proposed change includes a sign, a scale drawing showing the location of the sign on the structure or property, the type of lettering, and the method of illumination; and
 - (F) Other such information as the *Historic Preservation Commission* may require under the provisions of this article.
- (5) The *Historic Preservation Commission* shall consider the application within forty-five (45) days following its receipt of the application for a certificate of appropriateness, and shall either:
- (A) Issue a certificate of appropriateness stating that the proposed construction, reconstruction, alteration, demolition, or moving is in conformance with the provisions of this article and authorize the Building Commissioner to issue a building permit, demolition permit, sign permit or moving permit if required; or
 - (B) Deny the application, stating in writing the reason(s) for such denial. Upon such denial, the applicant may appeal said denial to the Common Council which shall make a final determination of the application. Failure of the *Historic Preservation Commission* to take such action within sixty (60) days after receipt of the application by the Commission shall constitute approval of the application.
- In making such determination, the *Historic Preservation Commission* shall consider the following:
- i. Appropriateness of the proposed construction, reconstruction, alteration, demolition or moving to the preservation of the *historic landmark*, specifically, and/or the *Historic Preservation District*, generally;
 - ii. The detriment to the public welfare if the proposed construction, reconstruction, alteration, demolition or moving is permitted even though it is not deemed appropriate; and
 - iii. The potential hardship that the denial of a certificate of appropriateness would cause the applicant.
- (6) Reserved.
- (7) The *Historic Preservation Commission* may petition the Building Commissioner or his or her designee and the Department of Code Enforcement to cause the maintenance and/or repair of any *historic landmark* or property in *Historic Preservation District(s)*. All appropriate legal remedies at the state and local levels shall be utilized by such officials when seeking compliance with standards established for preserving and protecting *historic landmarks* and *Historic Preservation Districts* as further addressed in subparagraph (f) herein, which are in accordance with the intent of this article.
- (8) Within each of the *Historic Preservation Districts* established in accordance with the provisions of this article, the *Historic Preservation Commission* shall establish Neighborhood Development Committees to advise the *Historic Preservation Commission* in matters relative to the district which the Committee represents.
- (f) Establish reasonable and just standards for the preservation of *historic landmarks* and *Historic Preservation Districts*, including architectural treatment, site development

requirements, and provisions concerning construction, reconstruction, alteration, demolition or removal of any building or structure, or parts thereof. Provided, however, that:

- (1) The *Historic Preservation Commission* may adopt only those standards necessary to prevent such construction, reconstruction, alteration, demolition, or removal which is not in keeping with the purpose and intent of this article; and
 - (2) Such standards shall be applicable only to the exterior features of *historic landmarks* and of buildings or structures within *Historic Preservation Districts*.
- (g) Develop *historic preservation* plans for *historic landmarks* and districts and, together with other public or private agencies or officials, assist in the administration and implementation of such plans.
- (h) Promote public interest in *historic preservation* by initiating and carrying on a public relations and community education program.
- (i) Advise and assist owners of *historic landmarks* in the preservation of those landmarks.
- (j) Accept, in the name of the City of South Bend, through gift, grant, legacy, bequest or endowment, monies and preservation easements in real property for the purpose of the preservation of *historic landmarks* and *Historic Preservation Districts*. Expenditures of such money, regardless of the source, must be deposited in a special *Historic Preservation Commission* account, and receive prior approval from the Common Council before expenditures may be made.
- (k) The provisions of this article shall be enforced as provided by Article 10 of this chapter.
- (l) The *Historic Preservation Commission*, as the local government certified by the Indiana State *Historic Preservation Officer* and the Secretary of the Interior of the United States, shall process National Register of Historic Places Inventory—Nomination Forms in accordance with regulations established by the *Historic Preservation Commission* consistent with the Indiana Certified Local Government Regulations.
- (m) The *Historic Preservation Commission* shall receive and accept preservation easements, determined by the Commission to be appropriate and acceptable, as follows:
- (1) The preservation easements shall be created and conveyed in accordance with the provisions of IC 32-23-5-1 et seq. ("Act");
 - (2) The Commission shall receive, accept, administer, monitor and enforce the preservation easements in accordance with the provisions of the Act and rules and regulations adopted by the Commission;
 - (3) The Commission may charge any person granting a preservation easement to the Commission a filing and administration fee reasonably related to the Commission's costs of processing, recording and periodically reviewing and monitoring the preservation easement;
 - (4) The Commission may enforce the terms and provisions of the documents creating any preservation easement and may collect from the person or persons against whom such enforcement is sought the Commission's costs of enforcement, including without limitation court costs and attorneys' fees, and the document creating any preservation

easement accepted by the Commission shall provide for the payment of such enforcement costs;

(5) The Commission may accept a preservation easement only if all persons with an interest in the subject real property at the time that the easement is granted join in the grant and conveyance of the easement to the Commission; and

(6) As used in this subsection (m), "preservation easement" means a nonpossessory interest of the *Historic Preservation Commission* in real property imposing limitations or affirmative obligations for the purpose of preserving the historical, architectural, archeological, or cultural aspects of such real property.

SECTION IV. This Ordinance shall be in full force and effect from and after its passage by the Common Council and approval by the Mayor.

Passed on January 8, 2018 by the Common Council of the City of South Bend, Indiana.
Presented to approved and signed by Mayor Peter Buttigieg on January 11, 2018.
Approved: Tim Scott, President of the Common Council
Kareemah Fowler, City Clerk