

ORDINANCE NO. 3767

AN ORDINANCE AMENDING CHAPTER 12.20 OF THE RAPID CITY MUNICIPAL CODE BY ADDING THERETO NEW SECTIONS 12.20.200, 12.20.210, 12.20.220, 12.20.230, 12.20.240, 12.20.250, AND 12.20.260 TO ALLOW FOR PERMITS ALLOWING ENCROACHMENT INTO RIGHT-OF-WAY.

BE IT ORDAINED by the City of Rapid City that Chapter 12.20 of the Rapid City Municipal Code be amended by adding Sections 12.20.200, 12.20.210, 12.20.220, 12.20.230, 12.20.240, 12.20.250, and 12.20.260 to read as follows:

12.20.200 Encroachment defined.

Encroachments shall be considered as any object above ground or below belonging to a private owner which has been or caused to be constructed or located within streets, public rights-of-way or other property dedicated to a public use.

12.20.210 Permit required.

Any person desiring to construct an encroachment on a public right-of-way or any other property dedicated to a public use shall apply for an encroachment permit to the director of public works or his designee.

12.20.220 Removal of unauthorized encroachments.

Unauthorized encroachments shall be subject to immediate removal by the owner upon being given notice by the municipality. Notice shall consist of a written letter, sent by certified mail, return receipt requested, explaining the violation and allowing 20 calendar days to remove the encroachment. If the owner does not remove the encroachment after being given proper notice, the municipality shall remove the encroachment and the person encroaching shall reimburse the municipality for all costs incurred.

12.20.230 Existing encroachments.

Any encroachment of a private nature without a permit may be removed in accordance with this Chapter or may be granted a permit allowing such encroachment to remain if such encroachment meets the approval of the director of public works or his designee. The individual, upon signing the permit, agrees to indemnify the municipality against any and all claims to persons or property which may grow out of or arise in connection with such encroachment within, on over or under any property owned by the municipality, a public right-of-way or other property dedicated to a public use. The passage of this ordinance shall not be deemed to authorize or approve any existing encroachment existing as of the date of the effect of this ordinance.

12.20.240 Appeals.

Any revocation, suspension, or denial of an encroachment permit may be appealed to the zoning board of adjustment by filing a written notice of appeal with the secretary of that board and stating the grounds for such appeal. The appeal notice must be filed within ten days after the effective date of the revocation, suspension, or denial from which the appeal is taken.

12.20.250 Fee.

A permit fee of \$500 shall be charged for encroachment permits.

12.20.260 Applicability of chapter to persons doing construction or excavation work.

The provisions of this chapter do not change or alter the requirements set forth for obtaining licenses and permits for construction or excavation work in public rights-of-way. In the event the encroachment needs to be removed or destroyed to perform work on public utilities in the right of way, such removal or destruction may be performed by the entity performing the utility work. The landowner shall be responsible for any costs incurred in removing or destroying the encroachments, as well as any cost of reconstruction. In no event shall the City or any public utility be responsible for any cost associated with moving, removing, destroying, or reconstructing any encroachment.

CITY OF RAPID CITY

Mayor

ATTEST:

Finance Officer

(SEAL)

First Reading:

Second Reading:

Published:

Effective:

PROS AND CONS STRUCTURES IN RIGHT OF WAY

PROS:

1. **Legitimacy.** As you know, people currently ask Council permission to place structures in the right of way. While the Council has authorized this in the past, such authorization is not technically legal. The creation of a permitting system eliminates this awkward position by specifically authorizing the encroachments in certain cases.
2. **Standards.** As a part of the permitting process, Public Works will be able to review designs for the proposed encroachments. In this review process, Public Works will be able to identify obvious hazards (sight triangle violations, solid columns) and make sure the applicant does not erect the most unsafe types of structures.

CONS:

1. **Liability.** As you will note from proposed Section 12.20.230, we require the applicant to indemnify the City upon acceptance of the encroachment permit. While the indemnification is a good idea in the abstract, the City Attorney's office does not like to use indemnification agreements under any circumstances. Essentially, when someone gets hurt, an indemnification agreement is a red flag that says, "The City knew this was dangerous but allowed it to be installed anyway." Nevertheless, it is the advice of the City Attorney's office that this agreement be in place, so that at least marginal protection will exist. This gives rise to the question, "Why do we want to permit something that is so dangerous we require indemnification?"
2. **Workers Compensation.** The ordinance is based on the ordinance from Anchorage, Alaska. I talked to a Mr. Wheeler from the City Attorney's office there, and Mr. Wheeler said that their biggest issue with encroachments was damage to snowplows and plow drivers. Mr. Wheeler indicated that encroachments presented a significant enough problem in Anchorage to warrant the indemnification clause. Don Brumbaugh from our Streets department indicated that, although we have not had a recent case of injury to a plow driver, they hit mailboxes somewhat regularly, and it is only a matter of time before they hit one that is solid enough to injure the plow driver.
3. **Sight Triangles and Signs.** The new ordinance specifically states that the sight triangle and sign codes trump the encroachment ordinance. This being the case, very few encroachments will be eligible for permits. Most people put their mailboxes right by the driveway, which will almost certainly violate the sight triangle.
4. **Liability.** It is unclear whether the City will be liable for an accident injuring a motorist when a vehicle hits an encroaching structure. The outcome seems to depend on the specific facts of the case. However, we can say with certainty that there are instances in which municipalities have been held liable for injuries to motorists when they crash into encroaching structures. It is our duty to make you aware of that fact.