



CITY OF RAPID CITY

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MEMORANDUM

TO: Common Council

FROM: Allison Marsland, Assistant City Attorney

DATE: April 27, 2012

RE: Code Enforcement Board of Appeals and the Attendant Ordinance Amendments

Before the Council is a new ordinance, Rapid City Municipal Code (“RCMC”) Chapter 8.01, which creates a Code Enforcement Board of Appeals (the “CEBA”). At the direction of the Mayor, the Code Enforcement Division has met with the City Attorney’s Office over the last several months to draft an ordinance to create a CEBA. If passed, appeals of certain Code Enforcement determinations would be heard by the CEBA, rather than the Developmental Appeals and Review Board (the “DARB”). Certain matters were coming before the DARB that really would have been better suited for a board with the specific purpose of hearing appeals from Code Enforcement action. In addition, creation of the CEBA will provide the citizens of Rapid City with a board specifically tasked with hearing complaints regarding code violations within the territorial jurisdiction of the City of Rapid City, and within the subject matter jurisdiction of the CEBA.

Ordinance revisions of RCMC Sections 8.16.035, 8.16.050, 8.28.030, 10.56.060, and 10.56.065 are also before the Council. It was necessary to make changes to multiple ordinances in order to provide for proper reference to the CEBA, and to bring references to appeal time-frames in line with the appeal time-frame provided for in the CEBA ordinance.

An additional change regarding the definition of junk motor vehicles is also being brought forward at this time. The amendment to RCMC 10.56.010 amends the definition to include broken windows and/or windshields, in certain instances. This will allow the Code Enforcement Division to enforce the junk motor vehicle ordinances in instances where broken glass would pose safety issues to the public.

Staff recommendation is to adopt Chapter 8.01 to create a Code Enforcement Board of Appeals, and to adopt the ordinance revisions necessitated by the adoption of the CEBA.

ORDINANCE NO. 5827**AN ORDINANCE TO ESTABLISH A CODE ENFORCEMENT BOARD OF APPEALS
BY ADDING CHAPTER 8.01 TO THE RAPID CITY MUNICIPAL CODE.**

WHEREAS, SDCL 9-29-1 grants municipalities the power to promote the health, safety, morals, and general welfare of the community, and to enforce its ordinances and resolutions relating thereto; and

WHEREAS, the City's Code Enforcement Division, created by Rapid City Municipal Code § 2.24.060, is directly responsible for the enforcement of the Rapid City Municipal Code other than those functions assigned to the Police Department; and

WHEREAS, the Common Council of the City of Rapid City desires to grant citizens the opportunity to appeal certain determinations of the Code Enforcement Division, and in certain circumstances provide an avenue for citizens to bring complaints regarding potential code violations; and

WHEREAS, the Common Council of the City of Rapid City deems the creation of a Code Enforcement Board of Appeals is the best means by which to accomplish this desire; and

WHEREAS, the Common Council of the City of Rapid City has determined it is in the best interests of the City to establish a Code Enforcement Board of Appeals by adding Chapter 8.01 to the Rapid City Municipal Code.

NOW, THEREFORE, BE IT ORDAINED, by the City of Rapid City that Chapter 8.01 is hereby added to the Rapid City Municipal Code to read as follows:

8.01.010 Creation.

The establishment of the Rapid City Code Enforcement Board of Appeals, hereafter referred to as the CEBA, is authorized.

8.01.020 Purpose, function, and jurisdiction.

A. The CEBA shall preside over and hear appeals filed with it concerning determinations made by the City of Rapid City Code Enforcement Division. The CEBA shall hear appeals from persons cited for code enforcement violations issued and regulated under the current codes adopted by the City of Rapid City, except that the CEBA shall not have jurisdiction to hear any of the following:

1. Rapid City Municipal Code violations issued by the Rapid City Police Department, or any of its officers;
2. Code Enforcement Division determinations under chapters 15 and 17 of this Code;

3. Matters regarding City assessment(s) levied upon any property; and
4. Code Enforcement action taken to prevent any imminent threat or danger to the public welfare, health, and safety.

The CEBA shall have jurisdiction to hear appeals from Code Enforcement actions including but not limited to determinations of nuisance, noxious weeds, and abatement. The CEBA shall render its decision on any such appeal, and may affirm, modify, or reverse the Code Enforcement determination at issue. All decisions of the CEBA are final.

B. The CEBA shall further have jurisdiction to hear citizen complaints related to alleged violations under this Code, provided the following requirements are met:

1. The alleged code violation complained of falls under one or more of the code sections for which the CEBA has jurisdiction, as enumerated above; and
2. The complaint is made in writing to the Community Resources Director, or his or her designee, and outlines the then existing facts and circumstances that give rise to the alleged code violation.

Provided the foregoing requirements have been met, within 5 business days from the date the written complaint is received, the Community Resources Director, or his or her designee, will make a determination regarding such citizen-conveyed code violation allegations, and may, in his or her discretion, determine the allegations warrant any of the following: Code Enforcement Division investigation and/or citation(s); a CEBA hearing; or no action. The decision of the Community Resources Director, or his or her designee, is final.

C. The CEBA may also provide advice and make recommendations regarding code enforcement related issues for the Common Council's consideration.

D. The Board shall not have the authority to waive any requirements of federal, state or local law. The Board may make inquiries as it deems expedient.

8.01.030 Membership requirements.

A. The CEBA shall consist of 5 members and 2 alternates appointed by the Mayor and confirmed by the Common Council, and shall consist of one or more member(s) and alternate(s) appointed from the following groups and associations:

1. Multi-housing Rental Managers Association;
2. Single family rental management;
3. Any Rapid City neighborhood watch organization;
4. Rapid City Beautification Committee;
5. City of Rapid City Planning Commission;
6. Any one of the Building Code boards, including but not limited to the Development Appeals and Review Board;
7. Scenic Rapid City;

8. Destination Rapid City; or
9. Citizens of Rapid City as members at large.

B. Initially, three members shall be appointed for terms of 1 year, two members for terms of 2 years, and two members for terms of 3 years; thereafter, all terms shall be for 3 years and vacancies shall be filled for the unexpired term only. No CEBA member may serve on the board for more than 2 consecutive terms. Each member shall be a citizen of Rapid City. No current city employee, elected city official or paid city consultant shall be allowed to serve as a voting member of the CEBA. The CEBA shall adopt bylaws and shall elect from among its membership a Chairperson and a Vice Chairperson, who shall be entitled to vote.

C. If not otherwise prevented under federal, state, or local law, nothing in this section shall be construed as precluding a member or alternate serving on the CEBA from serving on any other City board, commission, or committee.

8.01.040 Conduct of meetings, quorum.

A. The CEBA shall prescribe rules for the conduct of its affairs, and shall meet at the call of the Chairperson, and at such other times as the CEBA may determine, at a fixed time and place. All meetings of the CEBA shall be open to the public. Four members of the CEBA shall constitute a quorum for the transaction of business, and an affirmative vote of the majority of the members of the CEBA shall be required to authorize any action or determination of the Board. The CEBA shall keep minutes of its proceedings showing the vote of each member upon each question, or, if absent or failing to vote, indicating such fact, and shall keep records of its official actions, all of which shall be a public record. It shall have the power to call on any of the city departments for assistance in the performance of its duties, and it shall be the duty of such city departments to render all such assistance as may be reasonably required.

B. The alternate members should attend every meeting as though they were regular members of the CEBA. The alternate members can participate and vote at the meeting only when there is an absence at the meeting that results in less than 5 members being present. Each alternate member shall be designated as either the first or second alternate, with the first alternate participating to fill the first seat that is vacant, and the second alternate participating if there are any additional vacancies. If a regular member should leave during a meeting and the alternate members are not already participating, then the alternates may fill the seat in the same manner as previously described. The foregoing shall also apply should a regular member abstain from voting.

8.01.050 Procedure to Appeal.

Any appeal stemming from a determination made by the City of Rapid City Code Enforcement Division, concerning Rapid City Municipal Code violations within the jurisdiction

of the CEBA may be taken to the Board upon written notice served upon the Manager of the Code Enforcement Division, or his or her designee. The appeal must be served within 5 calendar days of the date of the decision or action appealed, excluding the date of mailing. The Chairperson of the Board shall give notice to all interested parties, including the Code Enforcement Manager and Community Resources Director, and shall convene the Board to hear the appeal within 10 calendar days of receipt of the notice of appeal, excluding the day of receipt.

8.01.060 Stay of enforcement.

Appeals of notice and orders, other than those posing an imminent threat or danger to the public welfare, health, and safety, shall stay the enforcement of the notice and order until the appeal is heard by the CEBA. However, nothing in this chapter shall be construed as effecting a stay on any criminal or civil action brought by the city for violation(s) of the Rapid City Municipal Code.

8.01.070 Place of hearing.

Any hearing or deliberation conducted by the CEBA may be held at such city facilities as may be made available.

8.01.080 Determinations.

The determinations, proposals and recommendations of the CEBA shall be made upon the majority vote of its members. In the event of a tie, the appeal, proposal or recommendation at issue shall fail.

8.01.090 Remuneration.

The CEBA shall consist of volunteers who shall not be entitled to any remuneration for their services as members of the Board. However, the Board may, at the discretion of the Common Council, be reimbursed for its reasonable and actual out-of-pocket expenses incurred in furtherance of its purposes and functions as outlined above. Requests for remuneration of the expenses shall be made in advance, in writing, and submitted to the Finance Officer, who shall present such requests to the Council.

CITY OF RAPID CITY

Mayor

ATTEST:

Finance Officer

(SEAL)

First Reading:

Second Reading:

Published:

Effective: