



# CITY OF RAPID CITY

RAPID CITY, SOUTH DAKOTA 57701-2724

## OFFICE OF THE CITY ATTORNEY

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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. 5828****AN ORDINANCE TO REDUCE CERTAIN ABATEMENT NOTICE TIME-FRAMES BY AMENDING SECTION 8.16.035 OF THE RAPID CITY MUNICIPAL CODE.**

WHEREAS, the Common Council of the City of Rapid City has approved the creation of a Code Enforcement Board of Appeals (the “CEBA”); and

WHEREAS, the time allowed to make an appeal to the CEBA is within 5 calendar days of the date of the decision or action appealed, excluding the date of mailing; and

WHEREAS, by a vote of approval of a September 14, 2011, memo from the Community Resources Director, the Common Council of the City of Rapid City has previously approved a reduction of time granted for correction for certain code violations when Code Enforcement issues a notice to abate; and

WHEREAS, granting a 5-day time period upon notice in which to abate nuisances would be consistent with the aforementioned September 14, 2011, memo; and

WHEREAS, granting a 5-day time period upon notice in which to abate nuisances would bring the time-frame in line with the 5-day time to appeal an abatement notice under Chapter 8.01 of the Rapid City Municipal Code; and

WHEREAS, the Common Council of the City of Rapid City deems it is in the best interests of the health, safety, and general welfare of the City to amend the time from notice to abate nuisances to 5 days.

NOW, THEREFORE, BE IT ORDAINED, by the City of Rapid City that Section 8.16.035 of the Rapid City Municipal Code is hereby amended to read as follows:

**8.16.035 Notice.**

A. *Initial notice.* The Community Resources Director or his or her designee, is authorized and empowered to notify, in writing, the owner of any lot, place or area within the city, or the agent of the owner, or the occupant of the premises, to remedy or abate a public nuisance on the property and to prevent future violation of this chapter. The notice may be hand delivered or sent by first-class mail addressed to the owner of record, agent or occupant at his or her last known address, and said notice shall notify the owner, agent, or occupant to remedy or abate a public nuisance within ~~14~~5 days of the date the notice was delivered or mailed.

B. *Subsequent notices.* Upon any subsequent violation of this chapter in the same calendar year after notice has been given as provided above, notice of a second or subsequent violation of the same or similar nature as the first violation, shall require the owner to remedy the nuisance within 3 days of delivery or mailing.

CITY OF RAPID CITY

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Mayor

ATTEST:

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Finance Officer

(SEAL)

First Reading:

Second Reading:

Published:

Effective: