



# CITY OF RAPID CITY

RAPID CITY, SOUTH DAKOTA 57701-2724

## OFFICE OF THE CITY ATTORNEY

300 Sixth Street

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### MEMORANDUM

TO: Planning Commission

FROM: Carla Cushman, Assistant City Attorney

DATE: April 7, 2016

RE: 16OA002 – An Ordinance to Amend Certain Provisions Concerning Digital Signs, Sign Credits, and Spacing of Off-Premises Signs by Amending Sections 17.50.080 and 17.50.090 of the Rapid City Municipal Code

I provide this memo to provide background into the proposed changes in Ordinance No. 6013, before you today as 16OA002.

On March 7, 2016, the Common Council authorized the Mayor to sign a settlement agreement with Lamar Advertising of South Dakota, L.L.C. and TLC Properties, Inc. This agreement settles two lawsuits filed by Lamar concerning the initiated ordinances in 2011. In signing the agreement, the Common Council has agreed to make three major changes to the sign code.

- Repeal the ban on digital/LED off-premises signs found in RCMC 17.50.080.D.20 and 17.50.090.C;
- Amend the spacing provisions in RCMC 17.50.090.B.5 to reduce the minimum radial distance between off-premises signs from 1,500 feet to 1,000 feet and reduce the minimum linear distance between off-premises signs along the same roadway from 2,000 feet to 1,500 feet; and
- Amend RCMC 17.50.090.D.6 to acknowledge that the sunset provision for sign credits will not apply retroactively to sign credits issued before passage of the 2011 initiative on June 9, 2011.

These three changes that Council has committed to make are before you today in 16OA002, along with a few other clarifications to the sign code that don't substantively change any provision. Regardless of your recommendation on this application, the ordinance will proceed to Council for its review and decision.

I attach here a memo written by Joel Landeen to the Council that accompanied the settlement agreement. The agreement itself is also attached to this agenda item.

If you have any further questions on this matter, please feel free to give me a call at any time. My number is 394-4140, and my email is [carla.cushman@rcgov.org](mailto:carla.cushman@rcgov.org).

**SETTLEMENT AGREEMENT BETWEEN THE CITY OF RAPID CITY, LAMAR  
ADVERTISING OF SOUTH DAKOTA L.L.C., AND TLC PROPERTIES, INC., D/B/A  
LAMAR TLC PROPERTIES, INC.**

This Settlement Agreement (“Agreement”) is made and entered into on this \_\_\_ day of March, 2016, by and between the City of Rapid City, a municipal corporation of the State of South Dakota, located at 300 Sixth Street, Rapid City, South Dakota 57701, herein after referred to as the “City,” Lamar Advertising of South Dakota, L.L.C., a South Dakota limited liability company, located at 3839 Sturgis Road, Rapid City, South Dakota 57702, and TLC Properties, Inc. d/b/a Lamar TLC Properties, Inc., a Louisiana corporation, located at 5321 Corporate Blvd., Baton Rouge, LA 70808, herein after collectively referred to as “Lamar.”

**SECTION ONE: PURPOSE**

This Agreement is made between the City and Lamar to memorialize the terms of a settlement reached between the parties for the complete and final disposition of their claims, differences, and causes of action arising out of *Lamar Advertising of South Dakota, L.L.C. & TLC Properties, Inc. d/b/a Lamar TLC Properties Inc. v. Rapid City*, filed in Federal District Court for the District of South Dakota, File No. 11-5068; and *Lamar Advertising of South Dakota, L.L.C. & TLC Properties, Inc. d/b/a Lamar TLC Properties Inc. v. Rapid City* filed in the Seventh Judicial Circuit and venued in Pennington County, South Dakota, Case No. 51CIV15-001522.

**SECTION TWO: TERMS OF THE AGREEMENT**

The City and Lamar wish to resolve all matters, known and unknown, discovered or discoverable by them, which may be in controversy between the parties and resolve all claims that were made, or could have been made, in the legal actions described in Section One of this Agreement. This settlement and release extends to the individual employees, elected officials,

shareholders, officers, directors, agents, affiliates and assigns of the parties in their official and individual capacities as well as to their respective insurers. Each party specifically denies any liability whatsoever to each other on these claims, but specifically express their desire to settle all current disputes between them fully and finally. It is the intent of the parties that this Agreement shall release and discharge all claims that were brought, or that could have been brought, in the above described litigation. It is not the intent of this Agreement to release any claims, demands, damages or causes of action for acts or omissions that occur after the date of this Agreement or for breaches of this Agreement.

In consideration of the mutual covenants set forth herein, the City and Lamar agree as follows:

1. Within one-hundred and twenty (120) days of this Agreement being approved by the City, the City agrees to repeal Section 17.50.080(D)(20) and the portion of Section 17.50.090(C) of the Rapid City Municipal Code (RCMC) which prohibit off-premises signs which are internally illuminated or which operate to display electronic variable messages through light emitting diodes, liquid crystal displays, plasma image displays or any other light emitting mechanism. The parties acknowledge that this Agreement applies only to the City repealing the language of the above identified sections of the City Code as they currently exist and does not prohibit the City from adopting any reasonable regulations related to off-premises signs, including signs which are internally illuminated or which operate to display electronic variable messages through light emitting diodes, liquid crystal displays, plasma image displays or any other light emitting

mechanism, in the future. Conversely, this Agreement does not prevent Lamar from challenging any such future regulations at the time they are adopted.

2. Within one-hundred and twenty (120) days of this Agreement being approved by the City, the City agrees to amend Section 17.50.090(B)(5) of the RCMC to reduce the minimum radial distance between off-premises signs from 1,500 feet to 1,000 feet and reduce the minimum linear distance between off-premises signs along the same roadway from 2,000 feet to 1,500 feet. The parties acknowledge that this Agreement does not prohibit the City from adopting or amending its ordinances in the future to establish reasonable regulations related to the spacing between off-premises signs. Conversely, nothing in this Agreement prevents Lamar from challenging any future spacing regulations adopted by the City.
3. The City agrees to pay Lamar a total of \$100,000. The City will pay \$25,000 of this amount and the City's insurer will pay the balance. Full payment will be made within sixty (60) days of this Agreement being approved by the City.
4. The City acknowledges that the "sunset" provision contained in Section 17.50.090(D)(6) of the RCMC will not be applied retroactively to any off-premises sign credits issued to Lamar before the provision was adopted as part of an initiated ordinance on June 9, 2011.
5. The Parties agree to bear their own costs and attorney's fees in connection with the litigation and with the negotiation of this Agreement.
6. Within ten (10) days of this Agreement being executed by the City and Lamar, Lamar and the City will give their respective attorneys permission to sign a

Stipulation for the Court to enter a Judgment of Dismissal of the claims they each have made against the other in the pending lawsuits identified in Section One of this Agreement. The Parties agree to execute and deliver any additional papers, documents and other assurances, and take all acts that are reasonably necessary to carry out the intent of this Agreement.

### **SECTION THREE: EFFECT OF AGREEMENT**

The City and Lamar agree and warrant that no promises, inducements, or representations have been made or offered except as herein set forth. The parties further agree that this Agreement is executed without reliance upon any statement or representation by any of the parties, their attorneys, or representatives, concerning the nature and extent of damages, or legal liability therefore, or the strength, weakness, or merit of any claims as part of this settlement. Both parties and their attorneys have made their own determination as to the law and facts and assume any and all risk in that regard. The consideration identified in this Agreement is not a mere recital. All agreements and understandings between the parties are embodied and expressed in this Agreement or otherwise excluded.

Each entity executing this Agreement represents that it has full legal authority to do so. Each party assumes the risk of any mistake of fact, whether the fact, or facts, be present, past, or future, including the extent of any injuries, damages, or losses that may have been incurred or may be incurred in the future. This Agreement shall be binding on and inure to the benefit of Lamar and the City and their respective legal representatives, successors, and assigns. Lamar and the City hereby represent that they have carefully read the foregoing Agreement, have consulted with their attorneys, know the contents thereof, and sign this Agreement of their own volition.

#### **SECTION FOUR: CHOICE OF LAW AND VENUE**

The parties' rights and obligations under this Agreement shall be governed by, and construed in accordance with, the laws of the State of South Dakota. Any dispute concerning this Agreement shall be venued and litigated in the Circuit Court for the Seventh Judicial Circuit, or the Federal District Court for the District of South Dakota, Western Division, which are both located in Rapid City, Pennington County, South Dakota.

#### **SECTION FIVE: WAIVER**

Failure of a party to insist upon adherence to any term of this Agreement on any occasion shall not be considered a waiver, or deprive that party of the right thereafter to insist upon adherence to that term, or any other term, of this Agreement.

#### **SECTION SIX: CONSTRUCTION, SEVERABILITY AND MERGER**

The parties acknowledge that they have each contributed to the making of this Agreement. The parties further acknowledges that they have had an adequate opportunity to consult with their own legal counsel in the negotiation and preparation of this Agreement. In the event of a dispute between the parties over interpretation of this Agreement, ambiguities shall not be attributed to either party. If any provision or term of this Agreement is held to be unconstitutional, invalid, or unenforceable by any court or tribunal having jurisdiction over the parties, the remainder of this Agreement shall remain in full force and such invalidity shall not affect any other provision of this Agreement if the remaining sections or provisions can be given effect without the invalid section or provision. This document constitutes the entire agreement of the parties. No other promises or consideration form a part of this Agreement. All prior discussions and negotiations are merged into this document or intentionally omitted.

**SECTION SEVEN: EXECUTION IN COUNTERPARTS**

This Agreement may be executed in one or more counterparts which, taken together, shall constitute but a single agreement. Signatures exchanged by facsimile or electronically shall be considered binding.

CITY OF RAPID CITY

\_\_\_\_\_  
Steve Allender, Mayor

ATTEST:

\_\_\_\_\_  
Pauline Sumption, Finance Officer

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**CITY OF RAPID CITY**  
RAPID CITY, SOUTH DAKOTA 57701-2724  
**OFFICE OF THE CITY ATTORNEY**  
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**MEMORANDUM**

TO: Mayor and City Council

FROM: Joel P. Landeen, City Attorney

DATE: 2-26-2016

RE: Explanation of potential Settlement Agreement with Lamar

The City and Lamar have come to terms on a potential settlement of two lawsuits arising out of the initiated ordinances approved in 2011. The first lawsuit was filed in federal court in 2011. The second lawsuit was filed in state court at the end of 2015. Currently, the federal case is on appeal to the 8th Circuit Court of Appeals. The state lawsuit was brought as a result of rulings in the federal case. While the claims in Lamar's state court filing are similar to the claims in the federal case, there are some significant differences. Lamar has not pled as many constitutional violations and focuses on the temporary taking of six signs which the City denied prior to adoption of the initiated ordinances. The South Dakota Supreme Court has previously ruled that the City improperly denied those 6 signs. Our insurance does not cover inverse condemnation claims so the City's insurer has denied coverage and will not be providing a defense on the state court claims. As a result, the cost of defending this claim and any judgments awarded will be borne solely by the City.

In order to settle this matter and dismiss its claims, Lamar has agreed to accept the following:

- 1) The City and its insurer will pay Lamar \$100,000;
- 2) The City will repeal the ban on digital/LED billboards;
- 3) The City will reduce the radial distance between billboards from 1,500 feet to 1,000 feet and the linear distance from 2,000 feet to 1,500 feet;
- 4) The City will acknowledge in writing that the "sunset" provision on off-premises sign credits will not be applied retroactively to take the credits issued to Lamar prior to adoption of the initiated ordinance.

To put these requests in perspective, Lamar has been seeking millions in damages. If successful on its claims for the temporary taking of the 6 signs which were improperly denied, the damages with interest are likely to exceed \$200,000. The federal judge initially ruled that the ban on digital billboards was illegal under state law, but later vacated his decision and said the issue should be addressed in state court. The reduction in spacing distances makes the spacing between signs more restrictive than it was prior to adoption of the initiated ordinances and still makes Rapid City's spacing distances some of the most restrictive in the state. For comparison:

State of SD: 500 feet (Linear)

Sioux Falls: 600 feet (Radial and Linear)

Brookings: N/A

Watertown: 500 feet (Radial)

Aberdeen: N/A

Pennington County 1,500 feet (Radial)

The City has already acknowledged in federal court that the "sunset" provision on sign credits would not be applied retroactively to credits that were issued prior to adoption of the initiated ordinance. Application of the "sunset" provision to credits issued before the provision was adopted would likely be a taking for which the owner of the credit would need to be compensated.

The specific wording of the actual agreement is still being finalized between the attorneys involved and the City's insurer. There are deadlines pending in federal court which necessitate that we keep this matter moving forward even though the language of the actual agreement has not been finalized. The only changes we are working on are related to the specific language and not to the substantive terms identified above. As soon as the language is finalized we will distribute the agreement and link it to the agenda.

**AN ORDINANCE TO AMEND CERTAIN PROVISIONS  
CONCERNING DIGITAL SIGNS, SIGN CREDITS, AND SPACING  
OF OFF-PREMISES SIGNS BY AMENDING SECTIONS 17.50.080  
AND 17.50.090 OF THE RAPID CITY MUNICIPAL CODE**

WHEREAS, the Common Council finds that regulating the occurrences of off-premises signs, including electronic and/or digital signs, is necessary to protect the health, safety and welfare of the citizens of Rapid City and is essential to protect the aesthetic quality of its natural setting and is in the interest of the general welfare of the citizens of Rapid City; and

WHEREAS, accordingly the City of Rapid City has adopted regulations concerning signage, including off-premises digital and/or electronic signs, in Sections 17.50.080 and 17.50.090 of the Rapid City Municipal Code; and

WHEREAS, the ban on digital and/or electronic signs currently found in these provisions was held to violate state law by the District of South Dakota, Federal District Court; and

WHEREAS, accordingly, the Common Council wishes to remove the ban on digital and/or electronic signs currently found in the Code; and

WHEREAS, the City entered into a settlement agreement with Lamar Advertising of South Dakota, L.L.C. to settle two lawsuits filed by Lamar concerning the digital ban, the spacing requirements, and the sunset provision for sign credits found in Sections 17.50.080 and 17.50.090 of the Rapid city Municipal Code; and

WHEREAS, the Common Council wishes to amend provisions concerning spacing of off-premises signs found in R.C.M.C. 17.50.090.A.5; and

WHEREAS, the Common Council wishes to amend 17.50.090.D.6 to clarify that the 20-year sunset date for sign credits shall only apply to sign credits issued after June 9, 2011; and

WHEREAS, the Common Council wishes to make other minor corrections to R.C.M.C. 17.50.080 and 17.50.090; and

WHEREAS, the Common Council believes it to be in the best interests of the health, safety, and general welfare of its citizens to amend certain provisions in R.C.M.C. Section 17.54.080 and 17.54.090 to adopt certain regulations related to off-premises signage.

NOW THEREFORE, BE IT ORDAINED by the City of Rapid City that Section 17.50.080 of the Rapid City Municipal Code is hereby amended to read in its entirety as follows:

**17.50.080 Signage.**

A. *Definitions.* For the purpose of this section, §§ 17.50.090 and 17.50.100, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

**ABANDONED SIGN.** An on-premises or off-premises sign which meets 1 or more of the following:

- a. No longer correctly directs or exhorts any person, advertises a bona fide business, lessor, owner, product or activity conducted or product available on or off the premises where such a sign is displayed;
- b. The business it advertises has discontinued business in the city of Rapid City;
- c. Any sign declared unlawful by the Building Official;
- d. Any sign not properly maintained or which no longer displays an advertising message.

**ADVERTISING MESSAGE.** The copy on a sign which advertises goods, products, services, persons, or public messages.

**ANIMATION.** Any sign which includes moving graphics, symbols, designs, pictures, or animated creations produced on a digital display, plasma display, LCD display, or other similar technology. For purposes of this code, this item does not refer to flashing, which is separately defined.

**AWNING.** A shelter supported entirely from the exterior wall of a building.

**AWNING SIGN.** Any sign attached or incorporated into an awning.

**BANNER.** A sign composed of lightweight material either enclosed or not enclosed in a rigid frame, secured or mounted so as to allow movement of the sign caused by movement of the atmosphere.

**BUILDING FACE OR WALL.** All window and wall area of a building in 1 plane or elevation.

**BUILDING OFFICIAL.** The officer or other designated authority charged with the administration and enforcement of this code.

**CANOPY.** See *AWNING* .

**CHANGEABLE COPY SIGN.** A sign on which copy is changed manually in the field.

**CITY.** The city of Rapid City.

**COMMON COUNCIL.** The Common Council of Rapid City.

**COPY.** The message on a sign surface either in permanent, temporary or removable form.

**COUNTY.** Pennington County, South Dakota.

**DIRECTIONAL SIGN.** Any sign which serves solely to designate the location or direction to a place or area.

**DISPLAY SURFACE.** The area made available by the sign structure for the purpose of displaying the advertising message.

**EARTH TONE.** A color such as tan or light brown as approved by the Building Official.

**ELECTRICAL SIGN.** Any sign containing electrically illuminated utilization equipment with words or symbols designed to convey information or attract attention.

**ELECTRONIC MESSAGE CENTER.** An on-premises sign capable of displaying words, symbols, figures or images that can be electronically or mechanically changed by remote or automatic means.

**ERECTED.** Attached, altered, built, constructed, reconstructed, enlarged or moved, and shall include the painting of wall signs, but does not include changing the copy on any sign.

**EXEMPT SIGN.** A sign for which a permit is not required.

**FLAG.** A piece of cloth or other similar material, usually rectangular, of distinctive color and design which is used as a symbol, a standard, a signal, or an emblem.

**FLASHING SIGN.** Any sign displaying a pattern of rapidly changing light illumination where the illumination on the sign alternates suddenly between high and low intensity for the purpose of drawing attention to the sign.

**FRONTAGE.** The length of the front property line or lines of any premise, which is/are parallel to and along each street right-of-way it borders.

**GROUND SIGN.** A sign erected on a foundation, free-standing frame, mast or pole which is not attached to any building or other structure.

**HEIGHT OF SIGN.** The vertical distance from the top of the sign or sign structure, whichever is greater, to the ground directly below, measured from a point equal distance from the sides or edges of the sign.

**ILLUMINATED SIGN.** Any sign which emanates light either by means of exposed tubing or lamps on its surface, or by means of illumination transmitted through the sign faces.

**INDEXING SIGNS.** A multi-face sign capable of showing multiple advertising messages in the same area through the manual rotation of vertical or horizontal sections of the sign face.

**LAWFUL NONCONFORMING SIGN.** A sign or sign structure which does not comply with all provisions of this code, but which was legal at the time it was constructed.

**LOT.** A parcel of land which is or may be occupied by a building, group of buildings, their accessory buildings, signs, or uses customarily incidental thereto, together with such yards or open spaces within the lot lines.

**MAINTAIN.** To allow a sign to exist or remain, or to repair or refurbish a sign in order to prevent decay or deterioration.

**MARQUEE.** A permanent roofed structure attached to and supported by the building and projecting out from a building or structure.

**MARQUEE SIGN.** Any sign attached to or constructed in or on a marquee.

**MESSAGE.** A communication through written words, symbols, signals, or pictures.

**OFF-PREMISES SIGN.** Any sign identifying or advertising a business, person, activity, goods, products or services located off the premises from where the business, person/activity, goods, products, or services are located.

**ON-PREMISES SIGN.** Any sign identifying or advertising a business, person, activity, goods, products or services which are located on the premises where the sign is installed and maintained.

**ORIGINAL TOWN.** Blocks 71-76, 81-86, 91-96, 101-106 and 111-116 of the original town plat of Rapid City.

**OUTLINE LIGHTING.** An arrangement of incandescent lamps or electric-discharge lighting to outline or call attention to certain features such as the shape of a building or the decoration of a window.

**OWNER.** Any person(s), agent(s), firm(s) or corporation(s) having a legal or equitable interest in the property or premises.

**PARAPET or PARAPET WALL.** That portion of a building wall that rises above the roof level.

**PEDESTRIAN SIGN.** A sign that advertises to pedestrian traffic as regulated by § 17.50.080S.

**PERSON.** A person, heirs, executors, administrators or assigns, and also includes a firm, partnership or corporation, or their successors or assigns, or the agent of any of the aforesaid.



**PREMISES.** A legally described parcel of land where a sign is physically located.

**PROJECTING SIGNS.** A sign other than a wall sign which is attached to and projects from a building, structure, or building face.

**PUBLIC SERVICE INFORMATION SIGN.** See **CHANGEABLE COPY SIGN** .

**RAPID CITY SIGN CODE.** Sections 17.50.080, 17.50.090 and 17.50.100 of the Rapid City Municipal Code.

**REAL ESTATE or PROPERTY FOR SALE, RENT OR LEASE SIGN.** Any sign pertaining to the sale, lease or rental of land or buildings.

**ROOF LINE.** The top edge of the roof or the top of the parapet, whichever forms the top line of the building silhouette.

**ROOF SIGN.** Any sign erected upon, against or directly above a roof or on top of or above the parapet of a building.

**ROTATING SIGN.** Any sign or portion of a sign which moves in a revolving or similar manner.

**SCROLLING.** The horizontal and/or vertical movement of an advertising message across the face of an electric messaging center sign.

**SIGN.** Any identification, description, illustration or device illuminated or non-illuminated, which is visible from any public place or is located on private property and exposed to the public, and which directs attention to a product, service, place, activity, person, institution, business or solicitation, including any permanently installed or situated merchandise, or any emblem, painting, banner, pennant, placard or temporary sign designed to advertise, identify or convey information, with the exception of window displays and sign structures; however, for the purpose of removal, signs shall also include all sign structures.

**SIGN AREA.** The total area or areas of all signs within the outer edges of the sign or advertising message.

**SIGN STRUCTURE.** Any structure which supports, has supported, or is capable of supporting a sign, including a decorative cover.

**STREET.** A public or private right-of-way which affords the principal means of access to abutting property.

**STRUCTURAL ALTERATION or STRUCTURAL CHANGE.** Any change, modification or alteration of a sign or sign structure, except changing the copy or advertising message on a sign, painting the sign, changing light bulbs, performing routine maintenance and upgrades on a sign's

wiring or electrical systems, or installing energy saving technology or maintaining or replacing the digital components or digital modules on existing digital signs up to and including replacing the entire digital cabinet and adjusting the mounting methods as necessary, so long as the change does not require any other changes or modifications to the sign structure in addition to the device being installed.

**TEMPORARY SIGN.** A sign which is not permanently erected or affixed.

**UNLAWFUL SIGN.** A sign or sign structure which is unlawfully erected or is unlawful for reasons of inadequate maintenance, dilapidation, obsolescence, fire hazard, disaster, damage, or abandonment as declared by the Building Official.

**USE.** The specific purpose for which land or a building is designed, arranged, intended, or for which it is or may be occupied or maintained.

**WALL.** Any wall or element of a wall, or any member or group of members which defines the exterior boundaries or courts of a building and which has a slope of 60 degrees or greater with the horizontal plane.

**WALL SIGN.** A sign painted directly on the surface of a building, fence, awning or marquee; or a sign attached to or erected against the wall of a building, fence, awning or marquee, with the face in a parallel plane to the plane of the building wall.

B. *Administration.* The provisions of this section apply to the Rapid City Sign Code.

1. The Building Official is authorized and directed to enforce all the provisions of this code.
2. The Building Official shall have the power to render interpretations of this code and to adopt and enforce rules and supplemental regulations in order to clarify the application of its provisions. The interpretations, rules and regulations shall be in conformance with the intent and purpose of this code.
3. The Building Official may deputize inspectors or employees as may be necessary to assist in carrying out the administration and enforcement of this code.
4. When it is necessary to make an inspection to enforce the provisions of this code, or when the Building Official has reasonable cause to believe that there exists a sign or a condition which is contrary to, or in violation of this code, the Building Official may enter the premises at reasonable times to inspect or to perform duties imposed by this code, provided credentials be presented to the occupant and entry requested, if premises are occupied. If premises are unoccupied, the Building Official shall make a reasonable effort to locate the owner or other person having charge or control of the premises and request entry. If entry is refused, the Building Official shall have recourse to the remedies provided by law to secure entry.
5. Whenever the work is being done in contrary to the provisions of this code, or other pertinent laws or ordinances implemented through the enforcement of this code, the Building

Official may order the work stopped by notice in writing served on any persons engaged in doing or causing the work to be done. Work must then be stopped until otherwise authorized by the Building Official.

6. This code shall not be construed to relieve from or lessen the responsibility to any person owning, operating or controlling any sign or sign structure for any damages to persons or property caused by defects, nor shall the city be held as assuming any such liability by reason of the inspections authorized by this code or any permits issued under this code.

7. All provisions of the laws and ordinances of the city and the state shall be complied with, whether specified herein or not. In the event that portions of this section conflict with other portions, or portions of this section conflict with state or federal law, the more restrictive requirement shall apply. In addition, compliance with this code does not presume to give authority to violate, cancel or set aside any of the provisions of the building code, municipal code or other local law, or ordinance regulating construction or the performance of construction in the city.

*C. Enforcement.*

1. The Building Official may declare any sign unlawful if it is not properly maintained, if it is not structurally sound, if it has been abandoned, if it was erected without a proper permit, if it does not qualify as a legal non-conforming sign and violates some provision of this code, or if it is in violation of any other provision of the city code, state law or federal law.

2. Upon determining that a sign is unlawful, the Building Official shall prepare a written notice and order which shall describe the sign and specify the violation involved and shall state that if the sign is not removed, or the violation is not corrected within a specified period of time as determined by the Building Official, the sign shall be removed in accordance with the provisions of this section. The owner of the building, structure, premises, or sign shall be responsible for the cost of removing the sign or sign structure.

3. Service of the notice and order shall be made upon all persons entitled thereto either personally or by mailing a copy of the notice and order by certified mail, postage prepaid, return receipt requested, to each such person at their address as it appears on the last equalized assessments roll of the county or as known to the Building Official. If no address of any such person so appears or is known to the Building Official, then a copy of the notice and order shall be mailed, addressed to the person, at the address of the premises where the unlawful sign is located. The failure of any such person to receive the notice and order shall not affect the validity of any proceedings taken under this section. Service by certified mail in the manner herein provided shall be effective on receipt of mailing.

4. Notwithstanding any other provision of this code, an unlawful sign is declared a nuisance and may be abated as such under applicable state laws and city ordinances.

*D. Prohibited signs.* The following types of signs are expressly prohibited, except as otherwise provided by this code:

1. Off-premises or public purpose signs incorporating animation, graphics, pictures or video which is in motion.
2. Signs incorporating noise, blasts, vibration or dust;
3. Signs incorporating flashing, blinking or traveling lights;
4. Any sign or portion of a sign which moves or assumes any motion constituting a non-stationary position, except barber poles and signs attached to or placed upon a motor vehicle;
5. Abandoned signs or unlawful signs;
6. A sign attached to, or painted on, a motor vehicle or trailer that is parked on, or adjacent to, property for more than 24 consecutive hours, the principal purpose of which is to serve as a stationary advertising device and to attract attention to a good service, business or product, not including vehicle sales. A logo or business name on a motor vehicle or on equipment, shall not be prohibited unless the motor vehicle or equipment is being used as a stationary advertising device. However, this prohibition shall not include trailer-mounted signs when the gross weight of the sign and the trailer is less than 1,000 pounds;
7. Signs located in the public right-of-way unless otherwise allowed by another provision of city ordinance, state law or federal law;
8. Banners, pennants, search lights, streamer, twirling signs, sandwich board signs, sidewalk or curb signs, balloons, air and gas-filled figures shall be prohibited except when permitted pursuant to § 17.50.080S.1.;
9. Flags displaying an advertising message, excluding flags of any nation, state, political subdivision, or corporate flag;
10. Projecting signs, except pedestrian-oriented signs that do not exceed 8 square feet;
11. Off-premises roof signs;
12. On-premises roof signs;
13. Off-premises wall signs;
14. Indexing signs, as defined herein;
15. Signs advertising words or pictures of obscene or pornographic material, signs that emit sound, odor, visible matter or which are similar to traffic control signs or signals and which advertise words such as "Stop," "Go," "Danger," "Warning"; or signs that obstruct the vision of traffic control signs or signals or lights in the public right-of-way;

16. Off-premises sign constructed with more than 1 display surface per side;
17. Off-premises sign in a position or shape other than horizontal whose height is greater than its width;
18. Off-premises ground signs with faces constructed at any angle greater than 20 degrees as measured by any angle between the 2 faces;
19. Off-premises signs with a face width greater than 30 feet or a face height greater than 15 feet;
20. ~~Off-premises signs with internal illumination or displaying electronic variable messages are prohibited. Any new off-premises sign is prohibited if it is internally illuminated or operates to display electronic variable messages through light emitting diodes or any other light emitting mechanism. An existing off-premises sign may not be converted to a sign that is internally illuminated or operates to display electronic variable messages through light emitting diodes, liquid crystal display, plasma image display, or any other light emitting mechanism.~~

E. *Off-premises sign license.*

1. Every off premises sign shall have an off-premise sign license issued by the Building Official. The Common Council shall establish the fee for each off-premises sign license by resolution. One license shall be required per structure.
2. Off-premises sign licenses expire on December 31 of the year in which the license is purchased.
3. Any off-premises sign that does not have an off-premises sign license by February 1 of any year is an unlawful sign as defined under this code and is subject to removal under the provisions of § 17.50.080C.
4. No off-premises sign license shall be issued for a new off-premises sign unless the owner of the sign shall surrender to the Building Official 2 off-premise sign credits which have been previously issued pursuant to this code or under the provisions of earlier versions of this code.
5. All funds paid to the city pursuant to this section shall be deposited in a separate fund designated the Sign Code Enforcement Fund. The Building Official shall use the funds in this account to enforce the provisions of §§ 17.50.080, 17.50.090 and 17.50.100 of the Rapid City Municipal Code.
6. No sign shall be deemed unlawful for being unlicensed under this section until 90 days after the enactment of this section. Any off-premise sign that is not licensed within 90 days of enactment of this section is a prohibited sign subject to removal under the provisions of § 17.50.080C. of this code.

F. *Sign contractor license required.* No person shall engage in the business of constructing signs without obtaining the required contractor license(s) issued by the Building Official.

G. *Sign building permits.*

1. Except as otherwise provided in this code, it shall be unlawful for any person to erect, construct, enlarge, move or convert any sign in the city, or cause the same to be done, without first obtaining a sign building permit from the Building Official as required by this code.

2. Every sign building permit issued by the Building Official shall expire and become null and void if construction of the sign does not commence within 60 days from the date the permit is issued. All sign building permits shall expire 120 days from the date the permit is issued. For good cause, the Building Official may extend the time limitations for up to an additional 120 days. Any extension granted shall be accompanied by a fee equal to one-half of the original permit fee paid to the city.

3. No new off-premise sign shall be permitted unless the applicant has first obtained an off-premise sign license as required by §17.50.080E. of this code.

H. *Exemptions.* The following types of signs and activities are exempt from the provisions of § 17.50.080G.:

1. So long as structural changes are not made, changing the advertising copy or message; painting, maintaining and/or repairing an existing lawful sign; changing light bulbs; performing routine maintenance and upgrades on a sign's wiring or electrical systems; or installing energy saving technology or maintaining or replacing the digital components or digital modules on existing digital signs up to and including replacing the entire digital cabinet and adjusting the mounting methods as necessary, so long as the change does not require any other changes or modifications to the sign structure in addition to the device being installed.

2. One construction sign shall be allowed per lot. The sign shall not exceed 32 square feet in area, and shall not be erected until a building permit has been issued. The sign shall be removed within 14 days after the issuance of a certificate of occupancy;

3. Directional signs entirely on the premises where the sign is located. Directional signs under this provision shall not exceed 5 square feet in area;

4. Corporate flags or emblems limited to a maximum of 1 per premises;

5. Flags of any nation or political subdivision with a maximum number of one flag type per premises, per street frontage;

6. Traffic control devices and other similar signs placed by the city or state, directional signs placed by the city, state or authorized by the city or state and signs authorized by the City's Traffic Engineer pursuant to the authority granted to him or her by the city code;

7. Signs located within the interior of any building, or within any enclosed lobby or court of any building, or signs located within the inner or outer lobby, court or entrance of any theater, or within any sports field, stadium; or ice rink; provided such signs are not intended or designed to be viewed from any public property or to other adjacent property. Determination of intent and design shall be based upon the size, location, orientation and legibility of such signs, and whether they are reasonably suited to convey a message to patrons of the property upon which they are located, rather than to persons viewing the sign from any public property or from adjoining property, and the extent to which reasonable measures have been taken to limit the conveying of a message to persons viewing the sign from any public property or from adjoining property. Specifically, design and intent shall be determined by a good faith standard and with an intent that this exemption shall not be used as a subterfuge to allow off-premises advertising under a pretext of conveying a message to patrons of the premises upon which such sign is located. Nothing herein shall be construed as exempting the signs from any other provision of this code or any other ordinance, law, rule or regulation;

8. “No trespassing” or “no dumping” signs;

9. Plaques or name plate signs, not more than 2 square feet in area, which are fastened directly to the building and which do not contain an advertising message;

10. Window signs covering up to 25% of the area per window;

11. Temporary political signs are allowed so long as they are not located within the public right of way, a required sight triangle or a required parking stall or parking area. Temporary political signs are limited to 32 total square feet and a maximum height of 8 feet;

12. Identifying logos on municipally owned water storage reservoirs, when directed by the City Council;

13. Real estate signs, subject to the following restrictions:

a. *Residentially zoned lots or parcels.*

i. *Less than 1 acre.* One sign per street frontage not to exceed 6 square feet per sign.

ii. *At least 1 acre but not greater than 5 acres.* One sign per street frontage not to exceed 32 square feet per sign.

iii. *Greater than 5 acres but less than 10 acres.* Two signs not to exceed 32 square feet per sign, or 1 sign not to exceed 64 square feet.

iv. *Ten acres or more.* Three signs not to exceed 32 square feet per sign, or 2 signs not to exceed 48 square feet, or 1 sign not to exceed 96 square feet.

b. *All other zoned lots or parcels.*

- i. *Less than 1 acre.* One sign per street frontage not to exceed 32 square feet per sign.
  - ii. *At least 1 acre but not greater than 5 acres.* One sign per street frontage not to exceed 64 square feet per sign.
  - iii. *Greater than 5 acres but less than 10 acres.* Two signs not to exceed 64 square feet per sign, or 1 sign not to exceed 128 square feet.
  - iv. *Ten acres or more.* Three signs not to exceed 64 square feet per sign, or 2 signs not to exceed 128 square feet per sign.
- c. *Real estate signs, removal.* Real estate signs are to be removed as required by the provisions of state law which regulate real estate listings.
- d. *Directional real estate signs.* These signs are intended to be used for the advertising of vacant lots that need traffic to be directed to the lot for sales purposes. One sign not exceeding 20 square feet shall be allowed per vacant lot of 1 acre or less upon which the sign is erected. One sign not exceeding 32 square feet shall be allowed per vacant lot of more than 1 acre upon which the sign is erected. Signs are to be removed within 24 hours of the expiration of the listing. Landowner permission is required for sign erection.
- e. *Model complex signs.* These signs shall be located on the project site and conform to the following requirements:
- i. One sign per complex not to exceed 32 square feet;
  - ii. One sign per model not to exceed 6 square feet;
  - iii. Two traffic direction signs, not to exceed 4 square feet each; and
  - iv. Signs are to be removed when complex ceases to be model home complex.
- f. *Off-premises open house signs.* Off-premises open house signs are permitted, subject to the following criteria:
- i. A maximum of 4 signs are allowed per open house;
  - ii. Signs may be put up 1 hour before opening and must be removed 1 hour after closing the open house;
  - iii. Landowner permission is required before a sign may be placed on their -property; and
  - iv. Signs may not be placed in the public rights-of-way or medians.
- I. *Sign permit application, fees, and inspection requirements.*



1. Application for a sign permit shall be made in writing upon forms furnished by the Building Official. The following information shall be provided:

- a. Name and address of owner of the sign and licensed sign contractor if applicable;
- b. Name and address of owner or the person in possession of the premises where the sign is located or to be located if not the same as the sign owner;
- c. Clear and legible drawings drawn to scale with description showing the location of the sign which is the subject of the permit and all other existing signs whose construction requires permits;
- d. Site plan of premises; and
- e. Other such data and information as may be required by the Building Official.

2. The fees for sign building permits shall be based on the most recent building code fee tables adopted by the City Council by resolution. The permit fee for electrical signs or outline lighting shall be identical to the fees established in the State Wiring Bulletin, as adopted by the City Council by resolution.

3. All signs and sign structures shall be subject to inspection by the Building Official for compliance with the city code.

*J. Construction specifications.*

1. Supports for signs and sign structures shall be built to conform to the requirements of the current building codes as adopted by the city for wind loads, seismic loads, and other combined loads.

2. Signs shall be constructed to a minimum standard of quality as specified by the city municipal code for non-combustibility, steel, smoke density, ignition properties, and classification of plastics.

3. The Building Official may require an applicant for a sign permit to submit a stamped set of engineered drawings for any sign in accordance with the adopted building codes.

*K. Electrical signs.*

1. Electrical signs shall be constructed in accordance with the provisions of the Administrative Rules of South Dakota (ARSD) 20:44:22, the National Electrical Code and the city's Municipal Code. Signs constructed in a UL shop must be energized by a licensed electrician. If a sign is constructed in a shop that is not UL, then wiring of the sign and energizing of the sign must be done by a licensed electrician.

2. Electrical permits are required for electrical installations serving outdoor signs. Electrical wiring requiring a permit shall be installed by a licensed electrical contractor. The minimum permit fee shall be identical to the fees established by the State Wiring Bulletin, as adopted by the City Council by resolution. Electrical signs and outline lighting shall be listed and labeled in accordance with ARSD 10:44:22:02, 20:44:22:03 and 20:44:22:04 and the National Electrical Code 600-3.

3. Electrical signs and outline lighting shall be marked with the manufacturers name, voltage input, and current rating. The marking required by this section and the label of a recognized testing lab, shall be located in a visible location and readable from both grade and the sign's electrical disconnect.

4. All metal parts of electrical signs and outline lighting shall be grounded in accordance with the National Electrical Code.

5. Each electrical sign or outline lighting system shall have an externally operable disconnect means located within sight of the sign or outline lighting transformer.

6. Electrical signs may be illuminated internally or externally so long as all lighting is directed away from the public right-of-way and adjacent residential areas. In addition, off premise signs must comply with the requirements of § 17.50.080N.

L. *Maintenance.* All signs and sign structures shall be in good repair, and shall be maintained so as to protect from deterioration, damage, decay and/or abandonment.

M. *Advertising message required.* All signs shall display an advertising message. If any sign fails to display a full face advertising message for 30 consecutive days, the Building Official shall notify the owner of the sign that the sign is in violation of this section, and that if the violation is not corrected within 60 days (the cure period), the sign will be subject to immediate removal pursuant to §17.50.080C. of this code.

N. *Sign brightness.*

1. Any sign that is internally illuminated, or which displays electronic variable messages through light emitting diodes, liquid crystal display, plasma image display, or any other light emitting mechanism must be equipped with automatic dimming technology that automatically adjusts the display's brightness based upon ambient light conditions. The brightness level for signs shall not exceed a brightness level of 0.3 foot candles above ambient light as measured using a foot candle (Lux) meter at a preset distance depending on sign area, measured as follows:

<i>Area of Sign Sq. ft.</i>	<i>Measurement Distance (ft.)</i>
10	32
15	39
20	45
25	50

30	55
35	59
40	63
45	67
50	71
55	74
60	77
65	81
70	84
75	87
80	89
85	92
90	95
95	97
100	100

2. For signs with an area in square feet other than those specifically listed in the table (i.e., 12 sq. ft., 400 sq. ft., etc.), the measurement distance may be calculated with the following formula: The square root of the product of the sign area and 100.

Example using a 12-square-foot sign:

$$\text{Measurement Distance} = \sqrt{12 \text{ sq. ft.} \times 100} = 34.6$$

3. The brightness measurement shall be performed as follows:

a. At least 30 minutes after sunset or 30 minutes before sunrise, the Building Official shall measure and determine the sign’s brightness by aiming a foot-candle meter directly at the sign. The measurement will be taken as close as possible to the above prescribed distance from the sign face being measured.

b. After the sign brightness has been determined, the Building Official shall contact the sign owner or the owner’s agent to schedule a time to measure and determine the ambient light conditions with the electronic messaging center off or while displaying all black copy. The ambient light reading shall be taken with the same foot-candle meter at the same location used to establish the sign’s brightness.

c. Once the 2 light readings have been determined, the second measurement reading shall be subtracted from the first measurement reading. To be in compliance with this standard, the difference of the two readings shall be 0.3 foot-candles or less.

O. *Existing digital, LED or video type signage.* Existing off-premises signs and public purpose signs displaying variable messages through the use of internal illumination technology

or through light emitting diodes, liquid crystal displays, plasma image displays, or any other similar light emitting technology may only display static messages. Full motion images, graphics or video are prohibited. Static copy on these signs may be changed at a minimum interval of 8 seconds.

P. *Sign benches.* Sign benches displaying off-premises advertising may be located only on commercial premises. The display area on any sign bench shall not exceed 12 square feet. No more than 3 sign benches shall be located on any premises. Sign benches must be located within a 50-foot radius of each other.

Q. *Historic sign requirements.*

1. *Purpose.* The purpose of this section is to create historic sign districts. The boundaries of the historic sign districts shall correspond to the same boundaries as any historic district or property listed and regulated by the National Register of Historic Places.

2. *Historic Sign Review Committee approval.* Approval for any sign located within a historic sign district shall be granted by the Historic Sign Review Committee. This Committee shall consist of 5 persons and include a member of the Historic Preservation Commission. The Historic Preservation Commission shall nominate 1 of their members to serve on the Historic Sign Review Committee as the standing member. The Historic Preservation Commission shall also nominate an alternate from their membership to serve in the absence of the standing member. The remaining 4 members shall be appointed by the Mayor and should include individuals with knowledge and experience in historic preservation, architecture, sign industry, and/or be a property owner or business owner within the historic district.

3. *Length of term.* Members shall be appointed by the Mayor and approved by the Common Council for terms of 3 years. The Committee shall elect a Chairperson from its membership to serve for a term of 1 year.

4. In considering sign permits within historic districts, the Historic Sign Review Committee shall consider the following criteria: size and position, projection, color, message, texture, materials, illumination and lettering style for the historic era for which the building or structure was constructed. In order to adequately review these factors, the applicant for a sign permit must, in addition to the requirements of § 17.50.080I., submit the following: a photograph of the property and structure, a photograph or scaled drawing of the property or structure with the proposed sign sketched on it, color chips or color samples of the same colors that are to be used for the sign, and a scaled drawing of the proposed sign depicting the sign fonts and other attributes as they will actually appear on the sign.

5. The Historic Sign Review Committee may adopt rules in accordance with this section. Meetings of the Committee shall be held at the call of the Chairperson and/or the Building Official. All meetings of the Committee shall be open to the public. The Committee shall keep minutes of its proceedings, showing the vote of each member upon each question; or if absent or failing to vote, indicating the fact, and shall keep records of its examinations and other official actions. A majority of the voting members of the Review Committee shall constitute a quorum.

6. If the Historic Sign Review Committee approved an application for a sign which meets the criteria established by this section, then a sign permit may be issued. In order to ensure compliance with the provisions of this section, the Committee may approve applications with stipulations that must be met before a sign permit may be issued by the city. If the Historic Sign Review Committee denies an application for a sign which does not meet the criteria established by this section, the applicant shall be notified in writing as to the reasons for denial. Decisions of the Historic Sign Review Committee may be appealed to the City Council.

R. *Shopping center entrance signs.*

1. The provisions of this section apply to shopping center entrance signs. A shopping center entrance sign is a sign placed at the entrance of a community shopping center that is part of a Planned Development Overlay District or Planned Unit Development of at least 25 acres. For the purposes of this section, a community shopping center must consist of a grouping of retail shops and stores planned and designed as an integrated unit which provide goods and services for people within a 30-minute drive.

2. Shopping center entrance signage may be on-premises or off-premises so long as it is located within 2,500 feet of the exterior boundaries of the development it is part of.

3. Shopping center entrance signage can only identify the shopping center and/or the businesses and shopping center tenants that are located within the development.

4. Shopping center entrance signs shall be ground mounted, monument style signs. Signs that are raised off of the ground or are mounted on poles or pylons are not allowed.

5. Shopping center entrance signs shall not exceed 15 feet in height and 200 total square feet in area per sign.

6. The location and design of any shopping center entrance sign must be reviewed and approved as part of a Planned Development Overlay District or Planned Unit Development. Specific attention should be paid to the location of the proposed shopping center entrance sign in relation to other off-premises and on-premises signs in the vicinity. Any alteration of the sign other than the changing of names located on the sign shall follow the planned development overlay amendment process § 17.50.050G. or planned unit development amendment process amendment process § 17.50.060F. and G.

7. Shopping center entrance signs shall not be located within any clear sight triangle as set forth in the Rapid City Municipal Code.

8. Shopping center entrance signs are exempt from the following provisions of the Rapid City Municipal Code:

- a. Section 17.50.080E.4.;

- b. Section 17.50.090B.; and
- c. Section 17.50.100B.

S. *Miscellaneous signs.* The following sign requirements are intended to provide exceptions or qualify and supplement the other requirements of this code:

1. A permit may be issued to a business, public entity, or a civic, charitable or fraternal organization for a temporary banner, pennant, sandwich board sign or air gas filled figure. A temporary sign shall not exceed 15 feet in height. A permit may be issued up to twice a year to the same business or organization and shall be issued for a maximum duration of 30 days. The permit may authorize temporary signage at multiple locations throughout the city. The fee for this permit will be calculated in the same manner as the permit fee for on on-premises sign permit.

2. The City Council may authorize the placement of banners on public light poles and structures which promote the city, any educational institutions within the city, or which promote community events, activities and celebrations. Such banners may not convey a commercial message, but may identify sponsors. The City Council may impose conditions upon which its authorization to mount banners under this section has been given, including the length of time the banner(s) may be located in the authorized location. The City Council may also establish rules and administrative procedures for the mounting of banners under this section and may further enter into agreements with public or private groups to mount and maintain banners on light poles or other public structures within the city.

3. Public or private institutions, school, nonprofit membership organizations, and philanthropic institutions that are educational, cultural, religious or recreational in nature and located in a zoning district that does not otherwise provide for on-premises signage may display on-premises signs. However, such sign or part thereof shall not contain a commercial advertising message. The signs shall comply with the following:

a. One on-premises ground sign shall be allowed per street frontage. The maximum height and area of the sign shall be based on its distance from the street frontage based on the following table:

<i>Distance from Street Frontage</i>	<i>Maximum Height</i>	<i>Maximum Area</i>
0 to 50 ft.	8 ft.	32 sq. ft.
50 to 200 ft.	15 ft.	64 sq. ft.
Over 200 ft.	20 ft.	120 sq. ft.

b. One on-premises wall sign shall be allowed per street frontage. The maximum area for the signs is based on the distance from the street frontage and is identical to the area allowed for on-premises ground signs. The height of the wall sign is dependent on the height of the building and is not subject to the restrictions on height for on-premises ground signs. If a wall sign is

directly adjacent to a walking or other paved surface, it must be at least 8 feet from the lowest part of the sign to the surface grade;

- c. Signs shall not be placed within a required sight triangle or a required parking area; and
- d. Electric signs shall comply with § 17.50.080K.

4. For home businesses or occupations located in residential zoning districts, the total area of wall signs or ground signs is 1 square foot for each dwelling unit. Wall signs or ground signs for all residential entities on the premises must also meet the following:

- a. A maximum of 1 such sign per street frontage is allowed;
- b. The maximum height of the sign shall be 5 feet; and

5. Wall signs or ground signs for a commercial use in a residential district or a home occupation may be 1 square foot in size per commercial use or home occupation.

6. Miscellaneous signs shall not be located within any clear sight triangle as set forth by city's Municipal Code.

7. In addition to any applicable requirements of § 17.50.080N., the light from any light source intended to illuminate a miscellaneous sign, or emanating from an internally illuminated miscellaneous sign, shall be so shaded, shielded, directed or of such an intensity that the brightness shall not adversely affect surrounding or facing premises, nor adversely affect safe vision of pedestrians or operators of vehicles moving on public or private streets, driveways or parking areas. If a miscellaneous sign is located in a residential zoning district, any illumination will be turned off from 10:00 p.m. to 6:00 a.m.

T. *Joint identification signs.*

1. A **JOINT IDENTIFICATION SIGN** is defined as a sign designed to identify multiple business located in a specific area that has been designated as a development complex by the Director of Community Planning or their designee regardless of whether said establishments occupy separate structures or are under separate ownership.

2. A **DEVELOPMENT COMPLEX** is defined as a shopping center or 3 or more businesses in close proximity to each other that are part of a common development where joint identification signs will be allowed. The factors to consider in determining if a shopping center or 3 or more businesses in close proximity to each other are part of a common development are the layout of the site, the ownership of the land and whether or not the businesses share access, customer parking areas or other common areas. It is not required that the lots within a development complex be under common ownership if other factors which support the finding that a shopping center or grouping of 3 or more businesses are part of a common development are present. If the area being designated as a development complex for purposes of allowing a

joint identification sign contains lots that are under separate ownership, all the lot owners must consent to the designation.

3. In addition to a sign permit, an applicant requesting to designate an area as a development complex must submit information relating to the factors described in § 17.50.080T.2. The Director of Community Planning or their designee will review the information submitted and in addition to determining whether or not the proposed joint identification sign is in compliance with the requirements of the code pertaining to joint identification signs, will determine whether or not to designate the requested area as a development complex. Any person or group aggrieved by the decision of the Director of Community Planning or their designee to designate an area as a development complex may appeal such decision to the City Council. The time for appealing this determination shall be limited to 7 days. The Building Official cannot issue a sign permit until the time for appeal has expired.

4. Joint identification signs will be treated as on-premises signs for all businesses located within the development complex whether or not they are located on the same legally described parcel as the sign. Joint identification signs can only identify those businesses or activities that are located within the development complex.

5. Each development complex shall be permitted 1 monument sign per public street frontage. For purposes of this section, a **MONUMENT SIGN** is defined as a freestanding sign not erected on 1 or more poles or other similar supports but erected to rest on the ground or on a base designed as an architectural unit with the sign. Individual on-premises ground signs will not be allowed for business located within the development complex. There shall be a minimum distance of 100 feet between joint identification signs. Each business will be allowed to have on-premises wall signs as allowed under this code.

6. Joint identification signs will be allowed to have a maximum area of 100 square feet or 1 square foot of sign for each 2 linear feet of street frontage of the development complex, whichever is greater. Provided that the total area of all signs on each frontage shall not exceed 200 square feet.

7. The maximum height of a joint identification sign shall be 15 feet.

8. Joint identification signs must be located on property that has been designated as part of the development complex. No joint identification sign can be located closer than 10 feet from any external boundary of the development complex.

U. *Non-conforming signs.* Any sign which was legal at the time it was constructed is a legal non-conforming sign. A legal non-conforming sign which is moved, relocated, structurally altered, or damaged by more than 50% of the sign's value at the time the damage occurs, must be brought in to full compliance with all requirements of the Rapid City Municipal Code. Any legal non-conforming sign which is structurally altered and is not brought into compliance with all requirements of the Rapid City Municipal Code shall be deemed unlawful by the Building Official and removed in accordance with § 17.50.080C. of this Rapid City Municipal Code or any other applicable regulations related to unlawful signs.



V. *Severability*. If any section, sentence, clause, phrase or other portion of this section is held invalid or unconstitutional by any court of competent jurisdiction, it shall in no way affect the validity of any remaining portions of this section.

W. *VariANCES*. Applications for variances for sign height, sign area, sign setback, sign spacing, and total number of signs within this section, §§ 17.50.090 and 17.50.100 are subject to the review and approval process requirements outlined in §§ 17.50.050, 17.50.060, 17.50.070, and 17.54.020 as applicable.

X. *Replacement of condemned signs*. Notwithstanding any other provision of this section, any off-premise sign which is removed under the eminent domain authority of any governmental unit as a part of a publicly funded construction project may be replaced in accordance with the following requirements:

1. Prior to removal, the governmental unit proposing to relocate the off-premise sign shall make an application to the Building Official for permission to relocate an off-premise sign. The governmental unit applying for permission to relocate an off-premise sign shall provide on its application its certification that the sign is being removed pursuant to its eminent domain authority for the purpose of undertaking the construction of a publicly funded construction project, the location, size, and a description of the existing off-premise sign, and all information required for applications for new off-premise signs for the proposed location of the new sign. The governmental unit is not required to supply off-premise sign credits to make the application under this section.

2. Upon receipt of the application from a governmental unit, the Building Official shall review the application for completeness. The Building Official shall have the request placed upon the next available Public Works agenda.

3. Prior to the next available Public Works agenda, the Building Official shall make an on-site inspection of the off-premise sign. If the Building Official determines that the off-premise sign that is the subject of the application for relocation is an illegal sign, he or she shall proceed in accordance with the provisions of this section regarding the removal of illegal signs. No illegal sign may be relocated. If the Building Official determines that the sign is not an illegal sign, he or she shall report that fact to the Public Works Committee.

4. Upon receipt of the application for relocation of the off-premise sign and the report of the Building Official, the Public Works Committee shall recommend to the Council whether to authorize the relocation of the off-premise sign.

5. Upon receipt of the recommendation of the Public Works Committee, the Council may authorize the removal and relocation of the off-premise sign. The decision of the Council is final.

6. Any off-premise sign relocated under the authority of this section shall be constructed in such a manner as to comply with the requirements of this section pertaining to the size, height,

and all structural requirements of this section and all other provisions of the Rapid City Municipal Code regulating the construction of structures.

7. Upon the approval of the application for relocation, the governmental unit or the owner of the relocated sign may apply for a conditional use permit as required by Title 17 of the Rapid City Municipal Code. No sign authorized to be relocated under the provisions of this section shall be constructed until all the requirements of Title 17 are met.

Y. *Substitution of noncommercial speech for commercial speech.* Notwithstanding any other provision of this section to the contrary, any lawfully erected off-premises or other sign displaying a commercial message may, at the option of the owner, display a noncommercial message. The noncommercial message may occupy the entire sign face or any portion thereof. The sign face may be changed from commercial to noncommercial messages, or from 1 noncommercial message to another, as frequently as desired by the owner of the sign, in compliance with the rest of this section, provided that the sign is not a prohibited sign or sign-type and provided that the size, height, setback, dimensional and other criteria contained in this section are satisfied.

Z. *Penalty.* In addition to any administrative actions or remedies authorized by this code, a violation of this section shall be subject to the city's general penalty provision, § 1.12.010 of this code.

NOW THEREFORE, BE IT ORDAINED by the City of Rapid City that Section 17.50.090 of the Rapid City Municipal Code is hereby amended to read in its entirety as follows:

**17.50.090 Off-premises signage.**

A. *Off-premises signage.*

1. Off-premises signs, where permitted, shall be regulated by the requirements of this section and, §§ 17.50.080 ~~and 17.50.090~~ of the Rapid City Municipal Code, as well as any other applicable requirements found in the Rapid City Municipal Code.

2. The owner of an off-premises sign is required to obtain a sign building permit pursuant to § 17.50.080 prior to building a new off-premises sign or making structural alterations to an existing off-premises sign.

3. If any zoning district requires a conditional use permit for an off-premises sign, prior to a sign building permit being issued pursuant to § 17.50.080, approval of the conditional use permit must be obtained.

4. Approval of a conditional use permit is required any time a new off-premises sign is erected or a structural alteration as defined by this code is made to an existing off-premises sign prior to a sign permit being issued pursuant to § 17.50.080.

5. Approval of a conditional use permit is required for the conversion of an on-premises sign to an off-premises sign as defined by this section and § 17.50.090GF. and prior to a sign permit being issued pursuant to § 17.50.080.

B. *Size, height and spacing regulations for off-premises signage.* Off-premises signs shall be constructed in accordance with the following regulations:

1. Off-premises signs shall be ground signs only. Off-premises wall or roof signs are prohibited. Off-premises ground signs shall have no more than 1 structural support or pole. Off-premises sign structures shall be earth tone.

2. Off-premises signs shall have no more than 2 faces. Each face of an off-premises sign may have a maximum area of 250 square feet. The faces on an off-premises sign may be mounted parallel to each other, or may be angled to each other up to a maximum angle of 20 degrees.

3. The maximum height of an off-premises sign is 30 feet. Off-premises signs with a minimum clearance of less than 10 feet from grade shall be setback at least 10 feet from all public rights of way and property lines. Off-premises ground signs with a minimum clearance of 10 feet or more from grade may be setback 0 feet from all public rights of way or property lines. The lowest point of an off-premises sign which extends over an area intended for pedestrian use shall not be less than 8 feet above the finished grade below it. The lowest point of an off-premises sign which extends over an area intended for vehicular use shall not be less than 14 feet above the finished grade below it.

4. Electrical service to all off-premises signs shall be provided by an underground service lateral. In no case shall overhead wires be attached in any manner to an off-premise sign.

5. New off-premises signs shall not be located less than ~~4,500~~1,000 feet from any other off-premises sign. The distance between off-premises signs shall be measured from the base of the sign in all directions (radial feet). No off-premises sign shall be located nearer than ~~2,000~~1,500 feet from the nearest off-premises signs as measured by the distance over a public road between a line that extends from the base of each sign to the nearest mid-point of any public road from which the sign is intended to be viewed.

6. All off-premises signs shall be at least 50 feet from any on-premises sign. This subsection shall not prevent the construction of an on-premises sign within 50 feet of a previously existing off-premises sign.

7. Off-premises signs shall be identified by a label, nameplate, or trademark identifying the owner of the sign, except those signs which are exempt under § 17.50.080H. of this code.

8. Off-premises signs shall not be placed in any railroad right-of-way.

9. Off-premises signs shall not be located within any clear sight triangle as set forth by the city's Municipal Code, Design Criteria Manuals or standard specifications.

10. Off-premises signs shall not be placed on any property without written consent of the property owner or the owner's authorized agent. Applicants for an off-premises sign building permit shall provide the city with a copy of an easement or other legally binding document before receiving a permit. The city is not responsible for verifying the legality of the document, but will maintain a copy for its files.

C. *Lighting of off-premises signs.* In addition to any applicable requirements of § 17.50.080N., the light from any light source intended to illuminate an off-premises sign, shall be so shaded, shielded, directed or of such an intensity that the brightness shall not adversely affect surrounding or facing premises, nor adversely affect safe vision of pedestrians or operators of vehicles moving on public or private streets, driveways or parking areas. ~~No off-premises sign is permitted that is internally illuminated or operates to display electronic variable messages through light emitting diodes, liquid crystal display, plasma image display, or any other light emitting mechanism.~~

D. *Off-premises sign credit system.*

1. *Off-premise sign credit system.* After the March 22, 2013, off-premises sign credits shall be issued by the city's Building Official to those owners of off-premises signs who have completely removed a previously existing, lawfully erected off-premise sign and all associated structures. Any outstanding sign credits issued by the city prior to adoption of this section will remain valid and can be used in an identical manner to sign credits that are issued under this section. All sign credits, including those previously issued are subject to the provisions of this section, §§ 17.50.080 and 17.50.090 of this code.

2. *Requirements prior to issuance of credit.* The process for issuance of off-premise sign credits is as follows:

- a. The owner of the sign completes an application for an off premises sign credit.
- b. The owner of the sign provides proof to the Building Official that the sign for which a credit is sought was lawfully erected and in existence prior to the adoption of this section.
- c. The Building Official determines the sign is not currently a prohibited sign as defined by this code and otherwise conforms to all applicable federal, state or local laws and regulations.
- d. If the Building Official is satisfied that the first 3 requirements are met, a certificate of eligibility for an off-premises sign credit shall be issued. Certificates of eligibility for off-premise sign credit shall expire and become null and void 21 days after they are issued.
- e. The Building Official, or their designee, confirms by on-sight inspection that the off-premises sign has been completely removed and that the certificate of eligibility for off-premise sign credit has not expired. No request for inspection shall be made to the Building Official until the structure has been completely removed. The Building Official, or their designee, shall make an inspection within 2 working days of a request for inspection.

f. An off-premise sign credit may not be issued if there are more than 20 sign credits outstanding.

3. *Off-premise sign credit basis.* The number of off-premises sign credits that may be issued for removal of an existing off-premises sign is determined as follows:

a. For any existing off-premises sign which complied with § ~~17.50.100B.5~~17.50.090.B.5, the Building Official may issue 1 off-premises sign credit. For any existing off-premises sign which did not comply with § ~~17.50.100B.5~~17.50.090.B.5, the Building Official may issue 2 off-premises sign credits. If the face of the existing off-premises sign being removed is smaller than the maximum size for sign faces established in this code, the sign credit will only authorize construction of a new off-premises sign which is the same size as the one which is removed. In all other situations, an off-premises sign credit will authorize construction of an off-premises sign with a face as large as the maximum size legally allowed at the time the credit is used.

b. The square footage permitted by 1 off-premise sign credit may not be transferred or added to the square footage of another off-premise sign credit.

4. *Transferability of sign credits; notice of transfer required.* Off-premise sign credits are freely transferable through legal means; however, a transferee shall provide written notice of the transfer to the city by registered mail, return receipt requested, within 90 days following the transfer of the credit(s) or the sign credit(s) shall be void.

5. *Usage.* Off premise sign credits may only be used to erect a new off-premise sign if the proposed new sign is in full compliance with all requirements of the Rapid City Municipal Code and all applicable federal, state or local laws and regulations. The city has no obligation to guarantee that a sign credit may be utilized within the city during the life of the credit.

6. *Sunset date for sign credit.* An off-premises sign credit shall not exist in perpetuity. An off-premises sign credit shall terminate 2 decades after it has been issued unless utilized within 20 years from the date of issuance by the Building Official or unless the same has become void by operation of the provisions of this section. This section shall not apply to sign credits issued prior to June 9, 2011.

7. The city shall maintain a list of all unused off-premises sign credits and their expiration dates.

E. *Alteration of existing off-premises signs.*

1. Notwithstanding any other provision of this code, any legal non-conforming off-premise sign may be reconstructed by the current permit holder in the same location as it currently exists so long as the alterations or reconstruction of the sign bring it into compliance with all of the provisions of the City Code with the exception of any spacing requirements between signs. A sign building permit is required to make the alterations allowed by this subsection.

2. Whenever any off-premise sign is structurally altered, the current permit holder of the sign shall be eligible for off-premise sign credits as follows:

a. The current permit holder of the sign completes an application for an off-premise sign credit;

b. The current permit holder of the sign provides proof to the Building Official that the sign for which a credit is sought was lawfully erected and in existence prior to the adoption of this section;

c. The Building Official determines the sign is currently not a prohibited or unlawful sign as defined in this code;

d. The Building Official issues a certificate of eligibility for off premise sign credit. Certificates of eligibility for off-premise sign credit shall expire 21 days after it is issued;

e. The Building Official confirms, by on-sight inspection, that the sign has been brought into compliance with all the provisions of the city's Sign Code with the exception of any spacing requirements between signs and that the certificate of eligibility for off-premise sign credit has not expired. No request for inspection shall be made to the Building Official until the alterations to the sign have been fully completed. The Building Official shall make an inspection within 2 working days of a request for inspection; and

f. Upon compliance with all provisions of this subsection, the Building Official shall issue 2 off-premise sign credits to the current permit holder of the sign.

F. *Conditional use permit requirements for off premises signs.*

1. *Submittal requirements.* In addition to the requirements set forth in §§ 17.50.080, 17.50.100, and 17.54.030 of this code, all applications for conditional uses for off-premises signage shall include the following:

a. Site plan drawn to scale showing proposed sign location, adjacent property lines, distance to nearest surrounding off-premise signage, and other such data and information as may be required by the Planning Director or his or her designee;

b. If necessary, the applicant shall submit a drawing prepared by a professional land surveyor identifying the proposed sign location and distances to the nearest adjacent off-premise signs;

c. If applicable, a letter from the South Dakota Department of Transportation indicating that all state requirements are being met;

d. A site-specific, engineered stamped drawing for the sign structure; and

e. An elevation drawing of the sign showing all sign features, including, but not limited to the post, sign structure, sign face and lightning.

2. *Criteria for review.* The following criteria shall be considered in considering applications for conditional uses for off-premise advertising:

- a. The minimum requirements of the city's Sign Code;
- b. The standard requirements for all conditional uses set forth in § 17.54.030;
- c. Size of the proposed off-premise sign;
- d. Spacing from adjacent off-premise signs;
- e. Density of off-premise signs in the neighborhood;
- f. Height of the off-premise sign;
- g. Proposed lighting;
- h. Impacts upon significant urban or natural viewsheds;
- i. Impacts upon nearby residences;
- j. Location with respect to any major community entryways, historic property, parks, schools, churches, playgrounds or similar public and recreational uses;
- k. The City's comprehensive plan; and
- kl. Other criteria deemed pertinent to the review of the conditional use.

CITY OF RAPID CITY

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Mayor

ATTEST

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Finance Officer

(seal)

First Reading:  
Second Reading:  
Published:  
Effective: