



# CITY OF RAPID CITY

RAPID CITY, SOUTH DAKOTA 57701-2724

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### MEMORANDUM

TO: City Council Members

FROM: Carla Cushman and Kinsley Groote, Assistant City Attorneys

DATE: March 31, 2021

RE: Sidewalk ordinance amendments and 2020 Senate Bill 137

In 2020, the South Dakota legislature passed Senate Bill 137, which revised provisions for the repair, replacement and construction of sidewalks within a municipality. The South Dakota Municipal League was involved with proposing the amendment, and myself and Kinsley Groote worked with other municipal attorneys to draft the amendment to achieve two goals: (1) to clarify that damaged or dangerous sidewalks may be treated as nuisances under state laws and city ordinances, and (2) to clarify the procedure municipalities may use to construct new sidewalks via sidewalk assessments.

After the passage of SB 137, we worked with Code Enforcement and Public Works staff to draft Ordinance No. 6464 to incorporate the amendments to state law into the City's ordinances. In this memo, we are providing further information about the ordinance and the changes to the City's ordinances and procedures for addressing damaged/dangerous sidewalks and for "ordering in" new sidewalks when no sidewalk currently exists.

### ORDERING THE INSTALLATION OF SIDEWALKS

Council frequently considers sidewalk variance requests from property owners and/or developers. These requests ask for the Council to excuse the owner from the ordinance requirement that he/she construct a sidewalk in conjunction with a building permit on property which is missing some or all of its required sidewalk. *RCMC 12.08.060.B*. Sometimes, Council's consideration of a variance request includes discussion about the Council's option to "order in" sidewalks if or when they are needed in the future. In actuality, the City has not historically ordered the

installation of sidewalks after Council granted a sidewalk variance, with a few possible exceptions.

Prior to the passage of SB 137, the statutes in SDCL 9-46 were unclear as to the mechanism by which the City would require property owners to build and pay for sidewalks on property which did not have sidewalks. While there was never doubt in the statutes about who is responsible for sidewalks – the property owner – the statutes were less clear about the process by which cities could enforce that responsibility against the property owners. The 2020 bill clarified that cities must use the formal assessment process found in SDCL 9-43 to “order in” sidewalks when no sidewalks exist.

Generally, SB 137 adopts the following process for ordering the installation of sidewalks:

1. The City mails notice of a hearing on a proposed resolution of necessity (for the sidewalk to be constructed) to those property owners whose property is affected by the resolution. *SDCL 9-46-2.2 and 2.3*. The notice is also published in the newspaper.
2. The Council considers a proposed resolution of necessity for the sidewalk to be constructed at a public hearing. The resolution includes the location of the sidewalk and the date by which the construction is to be completed, among other things. *SDCL 9-46-2.1*.

The resolution may provide that:

- a. The property owner shall construct the sidewalk at his/her/its cost on a certain timeline;
  - b. The owner shall be assessed all or some of the City’s cost to construct the sidewalk; or
  - c. The City shall construct the sidewalk and pay all or a portion of the cost to construct the sidewalk.
3. If the Council adopts the resolution, the property owners have the opportunity to construct the sidewalk. If the property owners do not construct the sidewalk before the time set forth in the resolution of necessity, then the City may construct the sidewalk and make assessments against the affected properties for the cost of the sidewalk. *SDCL 9-46-4*. In placing these assessment on the properties, the City is to use the assessment process in SDCL 9-43 which applies to assessments for water, sewer, and street improvements. These provisions allow for such due process as a petition to challenge an assessment, public hearings and notices after the construction concerning the amount of the assessment for applicable properties, and other rules related to payment of the assessments.

While the change to state law in SB 137 may alter somewhat the ease with which the City may order property owners to install sidewalks, it still permits the City to give notice to the property owners of their expectation to construct the sidewalk, or the City will construct the sidewalk and

recoup some or all of the cost from the property owners via an assessment, similar to other public infrastructure. SB 137 settled some uncertainty about the mechanism to assess the City's costs to install the sidewalk (if the owner does not), and that certainty is helpful. The change in law also means that the City must utilize the lengthy and time-consuming assessment process it would use to assess street or utility improvements when it wants to order in new sidewalks.

### **DAMAGED SIDEWALKS MAY CONSTITUTE NUISANCES**

SB 137 also clarified that cities may treat damaged sidewalks, or sidewalks in disrepair, as nuisances. Thus, damaged sidewalks are subject to the City's authority to regulate, abate, and assess the costs for such nuisances. Ordinance 6464 would establish Chapter 8.40 Nuisance Sidewalks to adopt the nuisance provisions enacted through SB 137 for sidewalks and would enable the City to treat damaged sidewalks as nuisances. The creation of Chapter 8.40 would give the City authority to issue notice to property owners of the need to repair the sidewalk, whereby the property owners could either repair the sidewalk at their own costs or appeal the determination to the Community Development Director. If the property owner fails to take such action, the City may abate the nuisance by repairing the sidewalk and placing a special assessment on the property to recover the City's costs to do so. This procedure mimics the way the City treats other nuisances in Chapter 8.16 of the Municipal Code.

If you have any questions or concerns about the nuisance portion of SB 137 and proposed Ordinance 6464, please contact either Carla or Kinsley at 394-4140.