

**AN ORDINANCE ESTABLISHING CHAPTER 8.40 REGARDING NUISANCE
SIDEWALKS AND AMENDING CHAPTER 12.08 REGARDING SIDEWALK
CONSTRUCTION AND REPAIR**

WHEREAS, in 2020, the Legislature of the State of South Dakota passed Senate Bill 137, which went into effect on July 1, 2020; and

WHEREAS, 2020 Senate Bill 137 amended SDCL 9-46-2 to provide that “[a]ny owner of real property who fails to keep the sidewalks abutting or adjoining the property in repair creates or maintains a public nuisance and the owner is liable to the municipality for any damage or injury caused by neglect and responsible for the costs of abating the public nuisance pursuant to § 21-10-6”; and

WHEREAS, 2020 Senate Bill 137 also amended SDCL 21-10-1 to specifically add acts or omissions that render any sidewalk dangerous for passage, unlawfully interfere with the passage on a sidewalk, obstruct passage on a sidewalk, or tend to obstruct passage on a sidewalk as acts and omissions that constitute a nuisance; and

WHEREAS, 2020 Senate Bill 137 amended SDCL 21-10-6 to specifically state that any municipality may defray the cost of abating a sidewalk nuisance by taxing the cost thereof by assessment against the real property abutting or adjoining the unrepaired sidewalk or by a civil action against the real property owner; and

WHEREAS, SDCL 9-29-13 also provides that “[e]very municipality shall have power to declare what shall constitute a nuisance and prevent, abate, and remove the same”; and

WHEREAS, the City of Rapid City has adopted provisions concerning nuisances in various chapters of the Rapid City Municipal Code, including, but not limited to Chapter 8.16, 8.28, 10.56, 12.12, and 12.32, and has also adopted processes for notifying property owners about the owners’ duty to abate such nuisances and that failure to do so may result in the City abating the nuisance and assessing the costs of such abatement to the property owners; and

WHEREAS, the Common Council of the City of Rapid City deems it to be in the City’s best interests to create a new process for notifications and abatements specific to sidewalk nuisances; and

WHEREAS, 2020 Senate Bill 137 amended SDCL Chapter 9-46 concerning City action to require property owners to construct new sidewalks; and

WHEREAS, Rapid City Municipal Code Chapter 12.08 discusses a process to provide notice to property owners if the Common Council deems it necessary to build a sidewalk and to construct the sidewalk if the property owner fails to do so; and

WHEREAS, the City wishes to repeal Section 12.08.010, which discusses liability of a property owner for failure to repair a sidewalk, in favor of adoption of similar language into Chapter 8.40 concerning nuisance sidewalks; and

WHEREAS, the Common Council of the City of Rapid City deems it to be in the City's best interests to otherwise amend RCMC Chapter 12.08 to incorporate the newly-adopted provisions in 2020 Senate Bill 137 concerning the City's procedures to construct new sidewalks when the Common Council determines that such sidewalk is necessary; and

WHEREAS, the City of Rapid City has adopted provisions concerning sidewalks in Chapter 12.08 of the Rapid City Municipal Code and desires to modify those provisions.

NOW THEREFORE, BE IT ORDAINED by the City of Rapid City that Chapter 8.40 of the Rapid City Municipal Code is hereby established:

CHAPTER 8.40: NUISANCE SIDEWALKS

8.40.010 Liability of property owner for failure to repair sidewalk.

8.40.020 Notice to repair sidewalk.

8.40.030 Appeals.

8.40.040 Abatement by City – Authority.

8.40.010 Liability of property owner for failure to repair sidewalk.

A. Any owner of real property who fails to keep the sidewalks abutting or adjoining the property in repair creates or maintains a public nuisance and the owner is liable to the municipality for any damage or injury caused by neglect and responsible for the costs of abating the public nuisance pursuant to SDCL § 21-10-6. Failing to keep a sidewalk in repair includes, but is not limited to, allowing the sidewalk to:

1. Have one or more cracks that are one inch or more in width;
2. Have one or more longitudinal cracks that are more than 1/2 inch;
3. Have a vertical change of 3/4 inch or more at any crack or panel joint;
4. Have 15% or more of a panel missing from the sidewalk;
5. Contain spalling of 50% or more of a single panel of the sidewalk with one or more depressions equal to 1/2 inch or more;
6. Contain spalling with one or more depressions equal to 3/4 inch or more; or
7. Pose an unsafe condition for a person utilizing the sidewalk because of the condition of the sidewalk and/or a material connected to the sidewalk.

8.40.020 Notice to repair sidewalk.

Code Enforcement is authorized and empowered to notify, in writing, the owner of any property within the jurisdiction of the City to repair a sidewalk abutting or adjoining the owner's property. The notice shall be hand-delivered or sent by first-class mail addressed to the owner of record at his or her last known address. Said notice shall notify the owner of the requirement to repair the sidewalk within 60 calendar days of the date the notice was hand-delivered by Code Enforcement or postmarked.

8.40.030 Appeals.

Any owner of property to whom a notice to repair a sidewalk has been delivered or sent may appeal such notice to repair to the Community Development Director by submitting a written appeal within 14 calendar days of the date that the initial notice was postmarked or hand-delivered by Code Enforcement. Such written appeal must be submitted to the Community Development Director, or his or her designee, at 300 6th Street, Rapid City, South Dakota 57701 and include the owner's current mailing address.

Within 7 calendar days from the date the appeal is heard, the Community Development Director, or his or her designee, will make a written determination regarding the appeal. The written determination shall be hand-delivered or sent by first-class mail addressed to the owner at his or her last known address. The decision of the Community Development Director, or his or her designee, may be appealed to the Common Council by submitting a written appeal to the Rapid City Common Council at 300 6th Street, Rapid City, South Dakota 57701 within 14 calendar days of the date that the written determination was postmarked or hand-delivered.

An appeal of Code Enforcement's notice to repair or an appeal of the Community Development Director's written determination stays the requirement to repair the sidewalk while the appeal is pending.

8.40.040 Abatement by City – Authority.

Upon the failure of an owner to comply with the notice provided for in § 8.40.020, Code Enforcement is authorized and empowered to provide for the repair of the sidewalk. The City may defray the cost of abating the nuisance sidewalk, including administrative costs, by taxing the cost thereof by special assessment against the real property abutting or adjoining the sidewalk.

BE IT FURTHER ORDAINED by the City of Rapid City that Section 12.08.010 of the Rapid City Municipal Code is hereby repealed:

~~12.08.010 — Liability of property owner for failure to repair.~~

~~—Any owner of real property who shall fail to keep in repair the sidewalks in front or along the property if he or she resides thereon, or if he or she does not reside thereon, to repair the same forthwith when notified, shall be held liable to the city for any damage caused by the neglect.~~

BE IT FURTHER ORDAINED by the City of Rapid City that Section 12.08.020 of the Rapid City Municipal Code is hereby amended to read in its entirety as follows:

12.08.020 When required – Notice to property owners.

~~Whenever~~If the Common Council shall deems it necessary that any sidewalk be constructed, rebuild or repair any sidewalk, the Council shall follow the process as provided in SDCL Chapter 9-46.~~it shall notify all owners by return receipt mail of lots adjoining the sidewalk to construct, rebuild or repair the same at their own expense within a time designated. The notice shall be in writing and either be served personally on each owner or by publication once each week for 2 consecutive weeks. It shall set forth the character of the work and the time within which it is to be done. The notice may be general as to the owners, but must be specific as to the description of the lots.~~

BE IT FURTHER ORDAINED by the City of Rapid City that Section 12.08.030 of the Rapid City Municipal Code is hereby repealed:

~~**12.08.030 Work by City.**~~

~~If a sidewalk is not constructed, reconstructed or repaired in the manner and within the time prescribed in the notice given pursuant to § 12.08.020, the Common Council, by resolution, may cause the same to be done and the cost thereof assessed against the lots, plots or parcels of land fronting or abutting upon the sidewalk so constructed, reconstructed or repaired, as provided in SDCL Chapter 9-46.~~

CITY OF RAPID CITY

Mayor

ATTEST:

Finance Officer

(seal)

First Reading:
Second Reading:
Published:
Effective: