

Ordinance No. 6112

AN ORDINANCE TO AMEND PROVISIONS CONCERNING ZONING APPLICATIONS BY THE CITY BY AMENDING SECTION 17.54.040 OF THE RAPID CITY MUNICIPAL CODE

WHEREAS, state law gives a municipality the authority and power to adopt a zoning ordinance and to zone property within its municipal boundaries; and

WHEREAS, the City of Rapid City has adopted zoning regulations in Title 17 of the Rapid City Municipal Code (R.C.M.C.); and

WHEREAS, adoption and amendment of that zoning ordinance requires a public hearing of the Common Council prior to adoption, with advance notice published in the newspaper pursuant to SDCL 11-4-4 and provided pursuant to open meetings laws found in SDCL Chapter 1-25; and

WHEREAS, per R.C.M.C. 17.54.040.B, the City must advertise rezone applications in the newspaper twice prior to any amendment to the zoning ordinance;

WHEREAS, SDCL 11-4-4 provides that an interested person shall be given a full, fair, and complete opportunity to be heard at the public hearing; and

WHEREAS, if the Common Council adopts the zoning ordinance or amendment, a written protest signed by at least forty percent of the owners of equity in the lots included in any proposed district and the lands within 250 feet from any part of the proposed district may be filed with the City; and

WHEREAS, if such a protest is filed, the ordinance does not become effective unless it is approved by two-thirds of the Common Council, pursuant to SDCL 11-4-5; and

WHEREAS, a referendum may also be invoked regarding a zoning ordinance amendment, pursuant to SDCL 9-20-6 *et seq.*; and

WHEREAS, SDCL 11-4-9 also permits a City to adopt an ordinance that requires that subsequent zoning ordinance amendments require the written consent of the owners of not more than 60 percent of the area having the right to protest as described above; and

WHEREAS, R.C.M.C. 17.54.040 concerns zoning and rezoning procedures; and

WHEREAS, 17.54.040.A imposes additional requirements for rezone applications submitted by the City or the Planning Commission; and

WHEREAS, 17.54.040.A provides that the City may only submit a rezone application for property if, for each property owner within the rezone area, either consent in writing to the

rezone was received or if two attempts by first class mail were made to obtain the written consent of the property owners and no response was received; and

WHEREAS, the provisions in 17.54.040.A are not required by state law; and

WHEREAS, state law and City ordinance ensures that interested parties are provided with notice of proposed changes, and these parties are given an opportunity to be heard at the public hearing on the zoning amendment; and

WHEREAS, the provisions in 17.54.040.A are unnecessary, duplicative to state law, and overly burdensome when large-scale annexations and rezones occur; and

WHEREAS, R.C.M.C. 17.54.040.E requires that signs be posted on property to be rezoned unless the zoning amendments are instituted by the City's Planning Commission; and

WHEREAS, the exception for posting signs should also apply to zoning amendments instituted by the City to accommodate large scale annexations and rezones; 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 R.C.M.C. 17.54.040 to amend the consent and notice provisions when a rezone application is initiated by the City or the Planning Commission.

NOW THEREFORE, BE IT ORDAINED by the City of Rapid City that Section 17.54.040 of the Rapid City Municipal Code is hereby amended to read in its entirety as follows:

17.54.040 Zoning, rezoning, zoning ordinance, and comprehensive plan amendments.

The regulations, restrictions, boundaries and options set forth in this title may be amended, supplemented, revised or repealed from time to time as conditions warrant, subject to the following conditions:

A. *Application.* An application for a proposed zoning or comprehensive plan amendment shall be filed with the city's Planning Commission. Amendments may be instituted by the property owner or his or her designated representative, by an appropriate governmental agency, or by the city's Planning Commission. For rezone applications submitted by the eCity or the eCity's Planning Commission, the following additional application requirements shall apply to any rezoning other than an initial designation of property as no use district:

1. Public notice shall be sent to all owners of property within the area to be rezoned and to all property within 250 feet from any part of the proposed rezone. Notice shall be sent by first class mail at least 14 days prior to the Planning Commission hearing on the rezone application. When adjacent property is owned by a subdivision or condominium association, notification may be sent to the management company or board of such association. The public notice shall provide the following information:

- a. The area subject to the proposed rezoned;

- b. The date, time, and location of the Planning Commission hearing;
- c. A summary of the purposes of the rezone and the changing conditions that support the rezone;
- d. Information regarding the existing zoning district and the proposed zoning district; and
- e. Any other information the Director deems relevant and necessary.

2. The Director may convene a neighborhood meeting to present and discuss a proposed rezone.

~~—1. The property owner’s signature as set forth on the Director of Equalization’s records must be included on a disclosure statement provided by the city informing the property owner(s) of the property proposed for rezoning.~~

~~—2. The disclosure statement shall provide a written accounting of the estimates for any costs of subsequent zoning applications included but not limited to:~~

~~— a. Application fees for any subsequent rezoning, conditional use permit, planned development, comprehensive plan or variance applications including the mailing costs;~~

~~— b. A statement of any requirement for a professional to complete drawings, plans or studies necessary to submit such subsequent applications and shall advise the property owner(s) to seek information regarding the costs of such possible professional fees from said professionals;~~

~~— c. The sign deposit fees;~~

~~— d. The time frames for processing any subsequent applications, the requirement for public hearings and a disclosure that the property owner(s) may not prevail in such applications or hearings; and~~

~~— e. A statement of the current use of the property, whether or not that use will be allowed under the zoning district regulations for the proposed district, any provisions for the existing use being a legal non-conforming or “grandfathered” use and the circumstances that result in the legal non-conforming status being lost.~~

~~—3. The city shall make a good faith effort to obtain the signatures on the disclosure statement as provided above by sending such disclosure statement to the property owner(s) by first class mail at least twice with a minimum of 21 business days between the 2 mailings. If the property owner(s) do not respond within 21 business days of the second mailing, the city or the city’s Planning Commission may proceed with submitting the application. For the purposes of this section, the lack of a response within the described time frame shall be deemed the same as signing the disclosure statement. Nothing herein shall preclude the governing body from taking~~

~~such action on the application as deemed appropriate once the required notification procedures described herein have been met.~~

B. *Public hearings.* Upon application, the city's Planning Commission shall hold a public hearing thereon, subject to the same notice requirements as set forth herein for the Common Council, and then submit its report to the Common Council. The proposed amendment shall be adopted as other ordinances, except that the city's Finance Officer shall cause to be published once a week for at least 2 successive weeks prior to the date of the adoption of the ordinance, a notice of the time and place when and where all persons interested shall be given a full, fair and complete hearing.

C. *Time limit and notification.* All proposed amendments shall be decided by the Common Council within 60 days of the public hearing.

D. *Standards for amendments.* A proposed amendment shall be considered on its own merits using the following criteria as a guide:

1. *Text or map amendments.* The following conditions shall be met for all amendments:

a. The proposed amendments shall be necessary because of substantially changed or changing conditions of the area and districts affected, or in the city generally.

b. The proposed amendments shall be consistent with the intent and purposes of this title.

c. The proposed amendment shall not adversely affect any other part of the city, nor shall any direct or indirect adverse effects result from the amendment.

d. The proposed amendments shall be consistent with and not in conflict with the development plan of Rapid City including any of its elements, major road plan, land use plan, community facilities plan and others.

2. *Corrections.* Errors or oversights as may be found in this title as originally adopted shall be corrected under the normal amendment procedure.

E. *Rezoning—posting and maintenance of signs.* In addition to the preceding requirements, the petitioner for rezoning, or his or her agent or agents, shall be required to post and maintain an approved sign or signs on the property included in the rezoning petition, the sign or signs to be posted at least 7 calendar days prior to the Planning Commission meeting at which the petition shall be considered and to be maintained continuously until the rezoning petition has been finally approved or rejected by the Common Council or withdrawn by petition. Approved signs shall be secured from the Department of Community Planning and Development Services who shall require a reasonable deposit sufficient to cover the cost of replacement of the sign or signs and who shall determine the number and location of the sign or signs to be posted on the property included in the rezoning petition. This section shall not apply to zoning amendments instituted by the eCity's Planning Commission or by the City if the notice provisions in Section A.1 are met.

F. *Rezones—adjacent property owner notification.* Public notice shall be sent to all owners of property adjacent to or within 250 feet of the perimeter of the property inclusive of public right-of-way. Notice shall be sent by first class mail at least 7 days prior to the public hearing. When adjacent property is owned by a subdivision or condominium association, notification may be sent to the management company or board of such association. The city may require the applicant to sign a certified affidavit prior to the public hearing as evidence to document compliance with the requirements of this section. The city may decide to perform the adjacent property owner mailing and shall notify the applicant in writing prior to scheduling the public hearing.

G. *Fees.* A fee shall be paid at the time of filing any application for a zoning amendment. The fee shall be set by resolution of the Common Council.

CITY OF RAPID CITY

Mayor

ATTEST

Finance Officer

(seal)

First Reading:
Second Reading:
Published:
Effective: