

AN ORDINANCE AMENDING SECTIONS OF THE RAPID CITY MUNICIPAL CODE RELATING TO NUISANCES

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

WHEREAS, the Common Council of the City of Rapid City deems it to be in the City's best interests to add additional enumerated nuisances to Section 8.16.030 in order to protect the City's easements and protect the comfort, repose, health, and safety of others and their property; and

WHEREAS, the Common Council of the City of Rapid City desires to modify the notice provisions and appeal process applicable to nuisances, considering that nuisances endanger the comfort, repose, health, and/or safety people and/or their property, and issues regarding nuisances should be handled in an expedient manner; and

WHEREAS, the Common Council of the City of Rapid City desires to clarify, better define, and update the applicability of City ordinances relating to nuisances; and

WHEREAS, in the cases of repeat nuisance abatements, the Common Council of the City of Rapid City desires to more completely recover its administrative costs involved in the abatement of nuisances; and

WHEREAS, Section 8.16.020 already provides that the remedies against a public nuisance, in addition to those provided within the Rapid City Municipal Code, are those remedies prescribed by state law (which includes a civil action pursuant to SDCL 21-10-5), thus making Section 8.28.070 duplicative and unnecessary, the Common Council desires to eliminate this unnecessary code section.

NOW THEREFORE, BE IT ORDAINED by the City of Rapid City that Section 2.24.065 of the Rapid City Municipal Code is repealed.

BE IT FURTHER ORDAINED by the City of Rapid City that Section 8.16.010 of the Rapid City Municipal Code is hereby amended to read in its entirety as follows:

8.16.010 Designated–Prohibited.

A. No person or persons, owner, occupant or person in charge of any ~~house~~structure, building, or lot (all as defined in Chapter 17.04 of the Rapid City Municipal Code) or premises, shall create, maintain or commit, or permit to be created, maintained or committed, any public nuisance as defined in subsection B. of this section, or as enumerated in subsection C. of this section.

B. Within the meaning of this section, a public nuisance consists in doing an act without lawful authority, or omitting to perform a duty, within the corporate limits of the city, or within 1 mile of the corporate limits of the city not within another municipality, or in any public grounds, or parks belonging to the city, which act or omission either:

1. Annoys, injures or endangers the comfort, repose, health or safety of others;
2. Offends contemporary community moral standards;
3. Unlawfully interferes with, obstructs or tends to obstruct, or renders dangerous for passage any lake or river, bay, stream, canal or basin, or any public park, square, street, right-of-way or highway; or
4. In any way renders other persons insecure in life, or in the use of property and which affects at the same time an entire community or neighborhood or any considerable number of persons, although the extent of the annoyance or damage inflicted upon the individuals may be unequal.

C. Nuisances shall include, but are not limited to, the following enumerations, which are deemed and declared nuisances:

1. Waste, including, but not limited to, items such as paper, rags, trash, garbage, discarded clothing, shoes, curtains, linen and other apparel, tin cans, aluminum cans, boxes, bales or baled items, plastic containers, glass containers, plastic wrap, cleaning utensils, cooking utensils, and discarded household fixtures, when the items are stored, collected, piled or kept on private or public property, and in view of adjacent properties or public right-of-ways;
2. Used building materials and waste, including, but not limited to such items as lumber, lath, gypsum board, pallets, plaster, old iron or other metal, concrete, brick and tile, piles of rock, sand, dirt or gravel when not used for landscaping purposes, doors, windows, and scrap or salvage building materials, when such items are stored, collected, piled or kept and are not stored inside a building; except for building materials that are temporarily stored for work on the premises authorized by a valid building permit obtained for the premises and in compliance with Rapid City Municipal Code Chapter 15.04§ 15.44.010; provided that, the used or waste building materials shall not remain on the premises more than 30 days after the expiration of the building permit;
3. Appliances, electronic equipment, fixtures and furniture including, but not limited to items such as stoves, refrigerators, freezers, sinks, cabinets and other kitchen appliances, computers, printers, speakers, bedroom furniture, mattresses, tables, chairs, clothes washing and drying machines, bathroom appliances and fixtures, light fixtures, washtubs, lawn mowers, tillers, chainsaws, snowblowers and garden equipment when such items are stored, collected, piled or kept and are not stored inside a building; except that patio furniture and other furniture designed for outdoor use shall not constitute a nuisance when kept in any district and in view of adjacent properties or public right-of-ways;

4. Dismantled motor vehicles, motor vehicle bodies and disassembled parts thereof, disassembled bicycles and bicycle parts, and other mechanical machines or motors or parts thereof when the items are stored, collected, piled or kept and are not stored inside a building in compliance with §§ 10.56.010 and 10.56.020;

5. Carcasses of animals and hides-all carcasses of animals remaining exposed 1 hour after death, excepting legally caught and tagged game, which shall be 24 hours; and all green or salted hides left deposited in any open place;

6. Liquid refuse-all slop, foul or chemically polluted water, liquor or beer washings, all filth, refuse or offal, grease, lard, discharged through drains or spouts or otherwise thrown or deposited in or upon any street, alley, sidewalk, public way, lot, park, public square, public enclosure or any pond or pool of water;

7. Vegetables or vegetable matters emitting noxious odors. All vegetables, vegetable matters, or other articles that emit or cause an offensive, noxious or disagreeable smell or odor; and any compost pile which is of such a nature as to spread or harbor disease, emit unpleasant odors or harmful gas, or attract rodents, vermin or other disease carrying pests, animals or insects, except that the presence of earthworms in a compost pile shall not constitute a nuisance; and

8. Any structure that the Building Official has ordered to be demolished, unless that order was overturned by the Building Board of Appeals;

9. Any obstruction in a city easement that is not allowed per the terms of the easement;

10. Any pond, pool of water, or stormwater conveyance element that emits unpleasant odors or harmful gas, except a drainage system as defined in § 8.46.010M that is located on public land or within a public easement or a wetland; and

11. Any oil, grease, fat, or hazardous material, that is not properly contained and covered; and

12. Any ground area, including but not limited to concrete, asphalt, dirt, or rocks, that has been covered by or otherwise negatively impacted by oil, grease, fat, or a hazardous material; and

13. Any other condition the Common Council shall deem and declare to be a nuisance.

BE IT FURTHER ORDAINED by the City of Rapid City that Sections 8.16.030 to 8.16.035 of the Rapid City Municipal Code are hereby amended to read in their entirety as follows:

8.16.030 Abatement.

A public nuisance may be abated without civil action by the city or ~~its designee~~officer authorized thereto by law. Any private person may likewise abate a public nuisance which is specially injurious to him or her or any private nuisance injurious to him or her in any manner by removing or, if necessary, destroying that which constitutes the nuisance, without committing a breach of the peace or doing unnecessary injury. If a private nuisance results from a mere omission of the wrongdoer, and cannot be abated without entering upon his or her land, reasonable notice shall be given to him or her before entering to abate it. The city may defray the cost of abating a public nuisance, including administrative costs, by taxing the cost thereof by special assessment against the real property on which the nuisance occurred. Administrative costs shall be set by resolution and are applicable to any public nuisance that is abated by the city or its designee. The administrative costs for a third or subsequent abatement in one calendar year, based upon the date of the abatement, may be set at a higher amount than administrative costs for a first or second abatement in one calendar year.

8.16.035 Notice.

A. *Initial notice.* ~~The Community Resources Director or his or her designee, Code Enforcement or Building Services~~ is authorized and empowered to notify, in writing, the owner of any lot, place or area within the city, or the agent of the owner, or the occupant of the premises, to remedy or abate a public nuisance on the property and to prevent future violation of this chapter. The notice may be hand delivered or sent by first-class mail addressed to the owner of record, agent or occupant at his or her last known address, and said notice shall notify the owner, agent, or occupant to remedy or abate a public nuisance within 57 calendar days of the date the notice was hand delivered by Code Enforcement/Building Services or mailed postmarked.

B. *Subsequent notices.* Upon any subsequent violation of this chapter in the same calendar year after notice has been given as provided above, notice of a second or subsequent violation of the same or similar nature as the first violation, shall require the owner to remedy the nuisance within 3 calendar days of delivery or mailing, the date the notice was hand delivered by Code Enforcement/Building Services or postmarked. Any appeal of a subsequent notice must be appealed to the Community Development Director by submitting a written appeal within 3 calendar days of the date that the subsequent notice was postmarked or hand delivered by Code Enforcement/Building Services.

BE IT FURTHER ORDAINED by the City of Rapid City that Section 8.16.050 of the Rapid City Municipal Code is hereby amended to read in its entirety as follows:

8.16.050 Appeals.

Any person aggrieved by any order issued by Code Enforcement or Building Services regarding a public nuisance pursuant to the terms of §§ 8.16.010 through 8.16.040, may be appealed such order to the Community Resources Development Director, by submitting a written appeal in writing, and within 7 calendar days of the date that the initial notice was postmarked or hand delivered by Code Enforcement/Building Services 10 calendar days of the decision or action being appealed, excluding the date of mailing. Such written notice of appeals must shall be submitted to the Community Resources Development Director, or his or her designee, at 300 6th Street, Rapid City, South Dakota, 57701. Appeals shall be taken up by the Community Resources Director in accordance with the provisions of § 2.24.065 of this code.

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 decision of the Community Development Director, or his or her designee, may be appealed to the Common Council.

BE IT FURTHER ORDAINED by the City of Rapid City that Sections 8.28.040 to 8.28.070 of the Rapid City Municipal Code are hereby amended to read in their entirety as follows:

8.28.040 Notice to abate.

A. *Initial notice.* ~~The Community Resources Director, or his or her designee,~~ Code Enforcement or Building Services is authorized and empowered to notify, in writing, the owner of any lot, place or area within the city, or the agent of the owner, or the occupant of the premises, to cut, destroy or remove any grass and weeds or other noxious matter found growing, lying or located on the property or upon the sidewalk abutting same and stabilize the area to prevent future violation of this chapter. The notice shall be hand-delivered or shall be submitted by first-class mail addressed to the owner of record at his or her last known address, and shall notify the owner to cut, destroy or remove any grass and weeds or other noxious matter within 57 calendar days of the date the notice was ~~delivered or mailed~~ postmarked or hand delivered by Code Enforcement/Building Services.

B. *Subsequent notices.* Upon any subsequent violation of this chapter in the same calendar year after notice has been given as provided above, notice of a second or subsequent violation shall require the owner to remedy the nuisance within 3 calendar days of delivery or mailing, the date the notice was hand delivered by Code Enforcement/Building Services or postmarked. Any appeal of a subsequent notice must be appealed to the Community Development Director by submitting a written appeal within 3 calendar days of the date that the subsequent notice was postmarked or hand delivered by Code Enforcement/Building Services.

8.28.050 Abatement by city–Authority.

Upon the failure, neglect or refusal of any owner to comply with the notice provided for in § 8.28.0340, ~~the Community Resources Director or his or her designee~~Code Enforcement or Building Services is authorized and empowered to provide for the cutting, destroying or removal of the grass and weeds or other noxious matter and stabilize the soil if necessary. The city may defray the cost of abating the nuisance, including administrative costs, by taxing the cost thereof by special assessment against the real property on which the nuisance occurred in accordance with § 8.16.030.~~the work, including administrative costs, by special assessment against the property as set out in § 8.28.060.~~

~~**8.28.060 Abatement by city Cost Assessment.**~~

~~—The Community Resources Director or his or her designee shall cause an account to be kept against each lot upon which work is done pursuant to § 8.28.040 and have the same certified to the Finance Officer or his or her designee upon the completion of the work. The Finance Officer shall thereupon certify the account, showing the amount, the description of the property, and the owner thereof, to the City Assessor, who shall thereupon add the assessment to the general assessment against the property and certify the special assessment, together with the regular assessment, to the County Auditor to be collected as municipal taxes for general purposes. The assessment shall be subject to review and equalization the same as assessments for taxes for general purposes.~~

~~**8.28.070 Abatement by city Cost collection by suit.**~~

~~—In lieu of the procedure prescribed in § 8.28.050, the costs incurred by the city under this chapter may, in the discretion of the Common Council, be recovered in a civil action against the owner or occupant of the property.~~

BE IT FURTHER ORDAINED by the City of Rapid City that Sections 10.56.050 through 10.56.080 of the Rapid City Municipal Code are hereby amended to read in their entirety as follows:

10.56.050 Presence on private property–Prohibited.

No person owning, in charge of, or in control of any real property within the city, whether as owner, tenant, occupant, lessee or otherwise, shall allow any abandoned or junk motor vehicle of any kind to remain on the property longer than ~~15~~14 days.

10.56.060 Presence on private property–Notice to remove.

Whenever it comes to the attention of the Police Department, ~~or ordinance~~Code eEnforcement, ~~or Building Services that any person has an abandoned or junk motor vehicle on his or her property, a notice in writing shall be served by first class mail to the record owner of the property and such other of the persons referenced in § 10.56.050 as can be ascertained, ordering the removal of such motor vehicle in the time specified in this chapter. The notice shall be deemed~~

complete ~~upon the postmarked date for mailing~~ to the last known address of the record owner. The notice shall contain the request for removal within ~~15~~14 days after the ~~mailing~~postmarking of such notice, and the notice shall state that failure to comply with the notice to remove shall be a violation of this chapter. ~~The recipient of such notice shall have 10 calendar days from the date of the decision or action being appealed, excluding the date of mailing. The notice of appeal must be in writing and filed with the Community Resources Director, or his or her designee. All appeals shall be heard and decided by the Community Resources Director, in conformance with § 2.24.065 of the Rapid City Municipal Code.~~

10.56.065 Appeals.

Any person aggrieved by an order issued pursuant to §§ 10.56.050 through 10.56.080 may appeal such order to the Community Development Director by submitting a written appeal within 10 calendar days of the date that the initial notice was mailed. 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.

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 decision of the Community Development Director, or his or her designee, may be appealed to the Common Council.~~Any order issued by code enforcement pursuant to §§ 10.56.050 through 10.56.080, may be appealed to the Community Resources Director, in writing, and within 10 calendar days of the date of the decision or action being appealed, excluding the date of mailing. Such written notice of appeal shall be submitted to the Community Resources Director, or his or her designee, 300 6th Street, Rapid City, South Dakota, 57701. Appeals shall be taken up by the Community Resources Director in accordance with the provisions of § 2.24.065 of this Code.~~

10.56.070 Racing or antique vehicles.

No owner or occupant of private property shall have an uncovered motor vehicle in operable condition specifically ~~adapted~~ or designed for operation on drag strips or raceways or an uncovered motor vehicle retained on private property for antique collection purposes, all as defined by § 10.56.020.

10.56.080 Removal by city—Notice to owner.

A. *Towing by removal agency.* ~~The Police Department, or duly authorized ordinanceCode eEnforcement, or Building Services personnel~~ may abate the nuisance by causing the motor vehicle to be towed from the property by a removal agency. The Police Department, Code Enforcement, or Building Services ~~or ordinance enforcement personnel~~ shall then notify, by first class mail, the registered owner, and if encumbered, the lienholder, of the removal, storage and present location of any motor vehicle removed under the provisions of this chapter and that the vehicle can be recovered by payment of costs incident to its removal and storage.

B. *Disposal.* Additionally, the Police Department, ~~or duly authorized ordinanceCode eEnforcement, or Building Services personnel~~ may abate the nuisance by removing the junk motor vehicle or parts thereof and disposing of them.

C. *Cost.* The city may defray the cost of abating the public nuisance, including administrative costs, by taxing the cost thereof by special assessment against the real property on which the nuisance occurred in accordance with § 8.16.030.

BE IT FURTHER ORDAINED by the City of Rapid City that Section 12.12.090 of the Rapid City Municipal Code is hereby amended to read in its entirety as follows:

12.12.090 Sidewalks–Snow and ice removal.

It shall be the duty of the owner or person in possession or in charge of any lot, parcel or plot of ground fronting or abutting upon any sidewalk to keep the sidewalk free from snow and ice at all times. When it is impossible to take the snow and ice from the walk by reason of its being frozen to the sidewalk the owner or occupant shall sprinkle or spread some suitable material upon the same to prevent the walk from becoming slippery and dangerous to travel. Sidewalks that are not kept free from snow and ice are declared a nuisance, and upon the failure, neglect or refusal of any owner or person in possession or in charge of any lot, parcel or plot of ground fronting or abutting any sidewalk to comply with the provisions of this section, ~~the Community Resources Director or his or her designee,~~ Code Enforcement or Building Services is authorized and empowered to cause such work as may be necessary to provide for compliance, and may defray the cost of abating the nuisance, including administrative costs, by taxing the cost thereof by special assessment against the real property on which the nuisance occurred in accordance with § 8.16.030.~~the work, including administrative costs, by special assessment against the property.~~ In addition to the abatement remedies provided in this section, any person violating this section shall be subject to the general penalty provision as set forth in § 1.12.010 of the Code.

BE IT FURTHER ORDAINED by the City of Rapid City that Section 12.32.110 of the Rapid City Municipal Code is hereby amended to read in its entirety as follows:

12.32.110 Requirement for removal of mountain pine beetle infested trees.

Trees infested with mountain pine beetle are declared a public nuisance. If a property contains trees infested with mountain pine beetle the city shall notify the owner in writing. Infested trees must be removed by the property owner within 60 days after notification. Upon written request, the Director of Parks and Recreation or his or her designee may provide an extension not to exceed an additional 30 days. Infested trees identified between June 1 and September 1 of any year shall be removed as soon as possible. The city's urban forester shall have discretion to impose a time frame for removal that is less than 60 days for infested trees that are discovered between these dates. If the tree(s) are not removed within the timeframe allowed, the trees may be abated or otherwise removed pursuant to state law and/or Chapter 8.16 of the Rapid City Municipal Code (RCMC). The city may defray the cost of abating the nuisance, including administrative costs, by taxing the cost thereof by special assessment against the real property on which the nuisance occurred in accordance with § 8.16.030.~~or removing this nuisance by taxing the cost thereof by special assessment against the real property on which the nuisance occurred.~~ Any person violating this provision may also be subject to the general penalty provision as set forth in § 1.12.010 of the RCMC.

CITY OF RAPID CITY

Mayor

ATTEST

Finance Officer

(seal)

First Reading:

Second Reading:

Published:

Effective: