

LAKE COUNTY ORDINANCE # 00-35

AN ORDINANCE FOR THE DECLARATION AND ABATEMENT OF PUBLIC NUISANCES

PURSUANT to SDCL 7-8-33 and consistent with the purpose of creating and maintaining a safe and healthy environment for the public welfare of Lake County residents and their posterity; and,

WHEREAS, the County believes a general definition of, and a non-exhaustive list of enumerated conditions declared to be public nuisances will serve to clarify potential public nuisance situations in unincorporated areas; this ordinance is designed as a revision and amendment to Ordinance # 95-23 and hereby supercedes and replaces the original Ordinance # 95-23; then therefore,

BE IT ORDAINED BY THE LAKE COUNTY COMMISSION AS FOLLOWS:

Section 1. Definitions.

Clean Fill: Any concrete, rock, gravel, sand, dirt, or clay, which has not been used as an absorbent for a regulated substance. Articles that contain chrome, are petroleum based such as asphalt, are **compactable** or burnable materials such as but not limited to, paper, wood or plastic are prohibited.

Public Nuisance: Unlawfully doing an act, or omitting to perform a duty, which act or omission: (1) annoys, injures, or endangers the comfort, repose, health, or safety of others; (2) in any way renders other persons insecure in life, or in the use of property; (3) renders the ground, the water, the air, or food a hazard or an injury to human health; and in addition, (4) the specific acts, conditions, and things listed in Section 2 are hereby declared to constitute public nuisances, however, such additional enumeration is not deemed to be exclusive.

Manure: Animal excreta and other materials such as bedding, straw, soil, hair, feathers and other debris normally included in animal waste handling operations.

Stockpiling: In this context, it is an unhealthful accumulation of a substance which causes a noxious odor, provides for infestation of flies, mosquitoes, rodents or other pests or is present in such concentrations that potential exists to cause contamination of water or soil by leaching, lateral transport, absorption, or other movement.

Section 2. The following are hereby declared to constitute public nuisances:

- A. Abandoned property: Any deteriorated, wrecked, dismantled or partially dismantled, inoperable and/or abandoned property in unusable condition having no value other than nominal scrap or junk value, which has been left unprotected outside of a permanent structure from the elements. Without being so restricted, this shall include deteriorated, wrecked, dismantled, or partially dismantled, inoperable, abandoned and/or unlicensed motor vehicles, abandoned mobile homes, trailers, boats, machinery, refrigerators, washing machines and other appliances, plumbing fixtures, furniture, building materials and any other similar articles in such condition. This shall not include any item, which may be reasonably recognized as an antique by dealers in those types of items.
- B. Breeding places for flies, rodents and/or pests: The unhealthful accumulation or stockpiling of manure, garbage, tires, debris or discarded items.
- C. Combustible materials: Any dangerous accumulation upon any property of combustible refuse matter such as papers, sweepings, rags, grass, dead trees, tree branches, wood shavings, wood, magazines, cardboard, etc.
- D. Garbage and refuse: Household 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, plastic containers, glass containers, cleaning utensils, cooking utensils, and discarded household fixtures, when such items are stored, collected, piled or kept on private or public property, and in view of adjacent properties or public right-of-ways.
- E. Fill: Filling a gravel pit or other **hydrologically** or environmentally sensitive area with something other than clean fill.
- F. Impure water: Any well or supply of water which is not in compliance with or is in violation of sanitary sewer district regulations, state water regulations, or state waste laws or county ordinances.
- G. Manure Disposal: Any unspread accumulation of manure, which has been transported from the point of generation. Any manure deposited within 300 feet of a residence, without benefit of incorporation into the soil.
- H. Polluting River: Depositing any dead animal, decayed animal, vegetable matter, garbage, discarded items, manure or any slops or filth whatever, either solid or fluid, into any water body designated or undesignated as a source of water supply, or allowing such material to

be deposited or remain in an area where runoff from such material may end up on such water body.

- I. Transport of Materials: Deposition, permitting deposition or negligent deposition on any road, highway or public right-of-way of any manure, **septage**, garbage, rubbish, fill, fuel, fertilizers, wastes, chemicals, or wood while engaged in handling or removing any such substances.
- J. Vegetation: Weeds and grass, exclusive of crops and pasture land, growing to a height of greater than eighteen (18) inches.
- K. Obstructing Road and Alley Right of Ways: Allowing vehicles, garbage, waste, refuse, or any discarded items or debris to accumulate within the road right of way, so that said items obscure the view of traffic at any intersection or block the passage of emergency vehicles on any public roadway or alley.

Section 3. Enforcement Procedures

A. Complaint Received:

- 1. On-site investigation- no trespassing on private land, inspections via right-of-way only, or from neighboring property if permission granted.
- 2. If nuisance(s) exist- Research property owner. Make a determination as to whether purported violation is a part of an exempted farming operation, pursuant to SDCL 21-10-25.1 to 21-10-25.6 inclusive.
- 3. Send property owner and resident a Courtesy Note asking for voluntary compliance- 10-15 days given to comply, depending on the clean-up required. Planning and Zoning are notified. They do not issue permits to persons with outstanding violations.
- 4. On-site recheck for compliance at end of given time period.
- 5. If nuisances are removed, thank you letter is sent.

B. No Action Taken by Owner, No Contact:

- 1. Certified, **Notice of Violation** is sent to last known address of property owner with formal request to comply within fifteen (15) days, clearly stating **remedial action will be taken at owners expense.**

2. If client cooperates and accomplishes, client may have extension(s) until compliance is achieved. If no contact is made/no accomplishments, **Abatement Notice** is mailed, certified, to last known address of property owner(s) notifying them; **Nuisances mentioned in previous correspondence will be removed at the owner's expense** on a specific date. This office will keep an open file of qualified persons to perform abatements on a random basis (or Bid process if over a certain dollar amount). Abatement is conducted by qualified persons accompanied by Zoning Officer and member(s) of the Sheriff's Department.
3. Abatement costs are paid from County funds, and property owner is billed. If not paid within thirty (30) days, special assessment is made against the real property, or a civil action is brought against the property owner, pursuant to SDCL 21-10-6.

Section 4. Public Nuisance Penalty and Remedy.

- A. Any person who maintains, commits, or fails to abate a public nuisance as required under the provisions of this ordinance shall be subject to a maximum penalty of thirty (30) days in jail or a two hundred dollar (\$200.00) fine, or both. A separate offense shall be deemed committed on each day during or on which a violation occurs or continues.
- B. In addition, the County may also use the remedies of civil action and abatement as set forth in SDCL 21-10-5 through SDCL 21-10-9.

Section 5. Notwithstanding any provision of this Ordinance to the contrary, it is expressly declared that a person shall not be charged with a violation of this Ordinance and no relief can be sought against the person under the provisions of this Ordinance when the conduct or activity which is alleged to violate this Ordinance is conduct or activity which is authorized by permit, license, authorization, or approval issued by the United States of America, the State of South Dakota, Lake County, or any municipality within the County, and any agency or department of those governmental entities. In addition, SDCL 21-10-25.1 to 21-10-25.6 inclusive shall limit the circumstances under which a normal agricultural operation may be deemed a nuisance.

Section 6. Severability. If any provision of this Ordinance shall be held invalid, it shall not effect any other provisions of this Ordinance that can be given effect without the invalid provision, and for this purpose the provisions of this Ordinance are hereby declared to be severable.

Approved this 17th day of October, 2000.

LAKE COUNTY COMMISSION

__Ron Jorgensen_____
Chairperson

ATTEST:

_Kay Schmidt_____
County Auditor

First Reading: _10-10-00_____

Second Reading: _10-17-00_____

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