

ORDINANCE # 2009-02

AN ORDINANCE PROVIDING FOR THE AMENDMENT AND REVISION OF ORDINANCE #2001-02, AN ORDINANCE FOR THE DECLARATION AND ABATEMENT OF PUBLIC NUISANCES

WHEREAS, BROOKINGS COUNTY PURSUANT to SDCL 7-8-33 and consistent with the purpose of creating and maintaining a compatible relationship of land uses, deems it necessary to establish certain standards to protect the public health and safety, adjacent property values and preserve aesthetic values, 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;

WHEREAS, BROOKINGS COUNTY has previously adopted the 2001 Ordinance For The Declaration And Abatement Of Public Nuisances; and

WHEREAS, the Brookings County, South Dakota, Board of County Commissioners deems it necessary, for the purpose of promoting the health, safety, and the general welfare of the County, to Revise And Amend The 2001 Ordinance For The Declaration And Abatement Of Public Nuisances.

THEREFORE, BE IT ORDAINED BY BROOKINGS COUNTY, SOUTH DAKOTA, that ORDINANCE #2001-02 the Ordinance For The Declaration And Abatement Of Public Nuisances Be Revised And Amended in total as follows:

SECTION I. What is a Public Nuisance?

- A. 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 IV are hereby declared to constitute public nuisances; however, such additional enumeration is not deemed to be exclusive.

SECTION II. Definitions

- A. Agricultural Operation: The term "agricultural operation" includes any facility used in the production or processing for commercial purposes of crops, timber, livestock, swine, poultry, livestock products, swine products, or poultry products
- B. Approved Container: A concrete, steel or other noncombustible container located, constructed, maintained and used to minimize fire hazard.
- C. Bonfire: The recreational burning of materials other than rubbish where fuel being burned is not contained in an incinerator, burn barrel, outdoor fireplace, barbecue grill or barbecue pit and with a total fuel area of 5 feet or less in diameter and 3 feet or less in height for pleasure, religious, ceremonial, cooking or similar purposes.
- D. Campfire: The recreational burning of materials other than rubbish where fuel being burned is contained in an approved fireplace and with a total fuel area of 4 feet or less in diameter and 1 foot or less in height for pleasure, religious, ceremonial, cooking or similar purposes.
- E. 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, petroleum based materials such as but not limited to asphalt and compactable or burnable materials such as but not limited to paper, wood or plastic are prohibited.
- F. Manure: Animal excreta and other materials such as bedding, straw, soil, hair, feathers and other debris normally included in animal waste handling operations.
- G. Occupied Structure: Any structure:
1. Which is the permanent or temporary habitation of any person, whether or not any person is actually present; or
 2. Which at the time is specially adapted for the overnight accommodation of any person, whether or not any person is actually present; or
 3. Which is a business structure and regularly has persons present, whether or not any person is actually present.
- H. Open Burning: The intentional burning of any substance, whether natural or manmade, or the intentional casting off of any burning substance, whether natural or manmade.

Exceptions: the following are exceptions to the definition of Open Burning for the purposes of this Ordinance:

1. The burning of any such substance in an approved container sufficient so as to prohibit the escape of any of the burning substance, or any sparks, flames or hot ashes from the container. The escape of any of such burning substance, or the escape of any sparks, flames or hot ashes from any such container shall be deemed prima facie evidence that the container was insufficient so as to meet the exception from the definition of an open burning set forth herein. Such container must be located such that the smoke from the fire does not travel to any occupied structure not owned by the person starting the fire

2. The maintaining of a fire in any interior fireplace, stove or furnace.

3. Campfires and bonfires which are used solely for recreational purposes, for ceremonial occasions, or for outdoor preparation of food; provided that such campfire or other fire is started and maintained so as to prevent the escape of any burning substances, sparks, flames or hot ashes and so as to prevent the smoke from such campfire or other fire from traveling to any occupied structure not owned by the person starting the fire.

4. Campfires and bonfires on land owned by the Department of Game, Fish and Parks.

I. Person: A person means any one or more of the following:

1. An owner, occupant or agent,

2. An assignee or collector rents,

3. A contract for deed vendee,

4. A mortgagor in possession,

5. A receiver, executor or trustee,

6. A lessee,

7. A mortgagee in possession,

8. Other person, firm or corporation exercising apparent control over a property.

J. Prior Written Permit: A written permit specifically authorizing an Open Burning obtained from the local Fire Chief having authority for such area. Such permit shall be on a form approved by the Brookings County Firefighter's Association.

K. 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 IV are hereby declared to constitute public nuisances; however, such additional enumeration is not deemed to be exclusive.

L. Residential Development Area: An area of land that is located in a residential zoning district or an area consisting of three or more dwelling units within five hundred foot radius.

M. Running at large: The term "running at large" shall mean intentionally left outside of the enclosure of a legal fence, and off of the lands owned or controlled by the owner of such animal.

N. Stockpiling: In this context, it is the 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, advection or other movement.

SECTION III. Open Burning Restrictions

A. Prior Notification Required

No person shall start an Open Burning without first notifying the Brookings County/City Dispatch at 692-2113 and provide the burner's name, address, phone number and location of the burn.

B. Authority to Declare Fire Danger Emergency

1. When weather or other conditions shall exist which may make the Open Burning of any substance unduly hazardous and a danger to public safety, the Brookings County Board of Commissioners may by resolution declare a "Fire Danger Emergency".

2. If a "Fire Danger Emergency" be declared, all Open Burning of any substance without a Prior Written Permit shall be prohibited within any or all of the unincorporated areas of Brookings County until such time as the resolution declaring the "Fire Danger Emergency" shall have been rescinded by appropriate action of the Brookings County Board of Commissioners; and

3. Any person who shall create, commit, maintain or permit to be created, committed or maintained an Open Burning without a Prior Written Permit in violation of a resolution declaring a "Fire Danger Emergency" shall be deemed to have committed a public nuisance in violation of this Ordinance, and subject to all criminal and civil penalties provided for herein.

4. No Fire Danger Emergency Declaration shall be deemed to apply to campfires or bonfires on land owned by the Department of Game, Fish and Parks.

C. Prior Written Permits Required

No person may receive and burn on such person's property any material, including trees, owned by, produced or grown by any other person without obtaining a Prior Written Permit to do so.

SECTION IV: Public Nuisances

Whoever shall create, commit maintain, or permit to be created, committed or maintained

1. any of the enumerated conditions, specific acts, things, and situations or
2. otherwise violates the general provisions of this ordinance is guilty of a public nuisance and the place, contents, area, thing or all of the foregoing, are declared a public nuisance and shall be enjoined and abated as provided by state law and/or county ordinance.

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 place for flies, rodents and/or pests: The unhealthful accumulation or stockpiling of manure, garbage, tires, debris or discarded items which is a potential harboring place and breeding area for flies and/or rodents,

C. Burning: The following burning shall be considered a public nuisance:

1. Burning of any excrement, chemical or plastic substances, or any liquid or substance in violation of Federal or State dischargeable substances statutes or County Ordinances on any property. This includes the burning of any tires, rubber products, asphalt shingles, plastic, tarpaper or any substance, which may cause a black, hydrocarbon, toxic, or noxious plume of smoke.

2. The burning of insecticide, fertilizer or chemical containers except in accordance with SDDOA administrative rule 12:56:02(2) which does not allow open burning of pesticide or pesticide containers; except the open burning of small quantities of combustible containers on open fields, which shall not exceed more than one day's accumulation, but no more than 50 pounds of combustible containers, formerly containing organic or metallo-organic pesticides, except organic mercury, lead, cadmium, beryllium, selenium or arsenic compounds.

3. Any Open Burning which:

a. Is started prior to dawn or left burning after dusk,

b. Is not kept under control,

c. Is not attended until completely extinguished;

d. Produces smoke, which travels to any Occupied Structure not owned by the person starting the fire;

e. Is allowed to smolder without flame;

f. Is started without prior notification as required in Section III-C; or

g. Is started without a Prior Written Permit if required in Section III-A or III-B.

D. 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.

E. Dead animals: For the owner of a dead animal not to DISPOSE of it within thirty-six (36) hours.

F. Disposal or dumping: The accumulation of garbage, refuse, waste, trash, rubbish of building materials or inoperable automobiles upon any property outside an approved landfill,

G. Driveways: Building a driveway or road upon any county road, county highway or county right-of-way without a valid permit, which has been obtained from the Brookings County Highway Superintendent.

H. Encroachment: Encroaching or permitting the encroachment of any county road, county highway or county right-of-way, which includes allowing a significant amount of soil to be blown onto any county road, county highway or county right-of-way, such that the amount of soil interferes with the operation of the road or the drainage in the right-of-way.

I. Fill: Filling a gravel pit or other hydrologically or environmentally sensitive area with something other than Clean Fill. No fill of any kind will be put in open water over an aquifer.

J. Garbage and refuse: Depositing, maintaining, or permitting to be maintained, upon any property outside an approved landfill any dangerous accumulation of any animal or vegetable matter which is likely to cause or transmit disease or which may be a hazard to health and/or household waste, including, but not limited to, items such as paper, tags, 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 rights-of-ways.

K. Improper sewage disposal: The pumping or depositing of any human sewage upon the surface of the ground or into any water body.

L. 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.

M. Livestock at Large. It is recognized that livestock at large can be a danger to the traveling public and can annoy neighbors and cause damage to neighboring lands. Any person owning or having in his charge or possession any livestock shall take all steps necessary to insure that such livestock are confined to property owned or leased by such owner or caretaker. In the event any owner or caretaker of livestock has three (3) or more incidents of livestock at large during any twelve (12) consecutive months it shall be considered a public nuisance. For the purposes of this section "livestock" means horses, mules, cattle, goats, llamas, sheep, and swine. For the purposes of this section "at large" means on or in any public road, right-of-way, or on land not owned or leased by the owner or caretaker of such livestock; "at large" does not include the controlled movement of livestock along public right-of-ways between pastures or holding areas, provided that the owner or caretaker or an employee of the owner or caretaker is at all times present during such controlled movement. Each incident of livestock at large exceeding two (2) times in a twelve (12) consecutive month period shall be considered a separate public nuisance.

N. Polluting water: Depositing any dead animal, decayed animal, vegetable matter, garbage, discarded items, manure or any slops of 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.

O. Snow removal. Depositing or permitting the deposition of snow from private property upon a county road, county highway or county right-of-way.

P. Transport of materials. Deposition, permitting the deposition or negligent deposition on any road, highway or public right-of-way any manure, seepage, garbage, rubbish, fill, fuel, fertilizers, wastes, chemicals, or wood while engaged in handling or moving any such substances.

SECTION V: Public Nuisance Penalty and Remedy

A. Any person that 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, a \$200 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 a civil action and abatement as set forth the SDCL 21-10-5 through 21-10-9.

C. In addition, in the event a burning defined as a public nuisance under Section 3, becomes an immediate threat to persons or property, the Brookings County Sheriff's Department may take steps to extinguish such burning and the costs may be assessed and collected.

SECTION VI: Enforcement

A. The Zoning Director is hereby authorized and directed to enforce all the provisions of this ordinance and establish rules for its administration. The Zoning Director may designate other employees to assist in the enforcement of this ordinance.

SECTION VII: Right of entry

A. Whenever necessary to make an inspection to enforce the conditions of this ordinance or if the Zoning Director has reasonable cause to believe that there is a violation on the grounds, the Zoning Director may enter the aforementioned grounds at all reasonable times to inspect the same or to perform any duty imposed by this ordinance, provided that if such property be occupied, the Zoning Director shall first present proper credentials and request entry; and if such property be unoccupied, the Zoning Director shall first make a reasonable effort to locate the owner or other persons having charge or control of the property and request entry. If such entry is refused, the Zoning Director shall have recourse to every remedy provided by law to secure entry.

B. When The Zoning Director shall have first obtained a proper inspection warrant or other remedy provided by law to secure, no owner or occupant or any other persons having charge, care or control of any property shall fail or neglect, after proper authorization is made as herein provided, to promptly permit entry thereon by the Zoning Director for the purpose of inspection and examination pursuant to this ordinance.

SECTION VIII: Notice to abate

A. In the event of a continuing nuisance the zoning director, in his discretion, may give a written notice to abate to the person creating, permitting, or maintaining such nuisance. Such notice may be served by first class mail to the last known address of such person. Notice is not required to proceed with enforcement under Section V.A.

SECTION IX: General Provisions

A. 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 the 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, Brookings County, or any municipality within the County, and any agency or department of those governmental entities.

B. Notwithstanding any provision of this ordinance to the contrary, nothing in this ordinance may be construed so as to prohibit a person from disposing of garbage and refuse from such person's own home or solid waste from such person's own Agricultural Operation upon such person's own land provided that such disposal does not create a hazard to public health or pollute ground or surface waters.

C. The provisions of this ordinance shall only apply to areas within Brookings County, SD, outside the corporate limits of any municipality.

SECTION X: Severability

If any provision of this ordinance shall be held invalid, it, shall not affect 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.

SECTION XI:

Any terms or provisions of the 2001 Ordinance For The Declaration And Abatement Of Public Nuisances which are inconsistent with Amendment shall be considered as repealed as of the effective date of this Amended Ordinance.

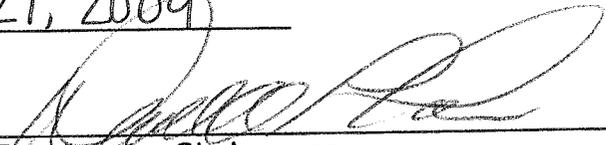
First Reading: December 15, 2009

Second Reading: December 22, 2009

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Don Larson, Chairperson
Brookings County Board of County Commissioners

ATTEST:



Brookings County Auditor

FIRST READING: December 15, 2009

SECOND READING: December 22, 2009