

## **CHAPTER 3.01 NUISANCES**

### **3.0101 Definitions.**

For the purpose of this chapter, the following terms are hereby defined:

*Abandoned property* shall mean any junk car, car bodies or equipment of any type, except in an authorized junk yard, or any accumulations of other unsightly trash or junk which would constitute a health hazard, a rodent harborage, a breeding area for insects or rodents, a dangerous place for children to play in and around or which tends to be unsightly and which does or tends to lower the value of adjacent real property because of its unsightliness.

*Abandoned vehicle* shall mean any vehicle that is left unattended or stored on any public property in the same or substantially same place within the city for a longer period than 24 hours.

*Garbage* shall mean the animal and vegetable waste resulting from the handling, preparation, cooking and serving of foods.

*Inoperable vehicle* shall mean any vehicle which is not in operating condition due to damage, removal or inoperability of one or more tires and/or wheels, the engine or other essential parts required for the operation of the vehicle, or which does not have lawfully affixed thereto unexpired license plates, or which constitutes an immediate health, safety, fire or traffic hazard.

*Litter* shall mean garbage, rubbish, waste material or animal waste improperly disposed of by discarding, abandoning, allowing to accumulate, scattering or depositing the same outside an approved container.

*Nuisance* shall mean unlawfully doing an act, or omitting to perform a duty, which act or omission either:

- (1) Annoys, injures, or endangers the comfort, repose, health, or safety of others;
- (2) Offends decency;
- (3) Unlawfully interferes with, obstructs, or tends to obstruct, or renders dangerous for passage, any lake or navigable river, bay, stream, canal, or basin, or any public park, square, street, or highway;
- (4) In any way renders other persons insecure in life, or in the use of property;

and in addition the specific acts, conditions and things listed in section 3.0102 are hereby declared to constitute public nuisances, but such acts, conditions and things shall not be deemed to be exclusive. (SDCL 21-10-1)

*Private property* shall mean any real property within the city that is privately owned and which is not public property.

*Public property* shall mean any street, alley or highway which shall include the entire width between the boundary lines of every way publicly maintained for the purpose of vehicular travel, and also means any other publicly owned property or facility.

*Removal agency* shall mean any public body, private or nonprofit organization authorized, hired or appointed by the city to remove and salvage vehicles.

*Solid waste* shall mean any garbage, refuse, sludge from a waste treatment plant, water supply treatment plant or air pollution control facility and other discarded materials, including solid, liquid, semisolid or contained gaseous material resulting from industrial, commercial and agricultural operations, and from community activities including, but not limited to, wood and other construction materials, appliances, yard waste, tires, scrap iron, chemicals or fuel. (SDCL 34A-6-1.3)

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*Unightly trash or junk* shall mean property which is deteriorated, wrecked or derelict property in unusable condition, having no value other than nominal scrap or junk value, if any, and which is left outside of a permanent, enclosed structure and which shall include, without limitation, motors, lawn mowers, campers, refrigerators and other household appliances, furniture, household goods and furnishings, scrap metals or lumber or other similar articles in such condition.

*Vehicle* shall mean any conveyance, whether or not self-propelled, and which is designed to travel along the ground or in or on the water and shall include, but not be limited to, automobiles, buses, motorbikes, motorcycles, motor scooters, trucks, tractors, pull trailers, go-karts, golf carts, boats, jet skis, campers and trailers.

*Wastewater* shall mean the spent water of a community. From the standpoint of source it may be a combination of the liquid and water-carried wastes from residence, commercial buildings, industrial plants and institutions, together with any groundwater, surface water and storm water that may be present.

*Yard waste* shall mean grass clippings, garden waste, and leaves.

(Ord. No. 616, 6-8-15)

### **3.0102 Acts, omissions and conditions prohibited.**

No person, whether an owner, occupant, tenant or other person in charge of any real property within the corporate limits of the city shall create, commit, maintain, or permit to be created, committed, or maintained, any public nuisance, to include, without limitation, the following specific acts, conditions and things, each and all of which are hereby declared to constitute a nuisance: (SDCL 9-32-1)

- A. Depositing, accumulating, or permitting to be accumulated upon any public or private property, any household wastewater, sewage, garbage, refuse, rubbish, offal, excrement, decaying fruit, vegetables, fish, meat, bones; any fowl, putrid, or obnoxious liquid substance; any chemical or hazardous material; or putrescible and nonputrescible animal or vegetable wastes or solid wastes, or any other waste material which constitutes or tends to create a danger to public health, safety, and welfare. (SDCL 9-32-10, SDCL 34A-7-9)
- B. The accumulation of manure, garbage or anything whatsoever which may be breeding areas for flies, mosquitoes or rodents. (SDCL 9-32-10)
- C. For the owner of a dead animal to permit it to remain undisposed of longer than 24 hours after its death. (SDCL 9-29-13)
- D. Any excavation, trench, or open basement in which stagnant water is permitted to collect or which may jeopardize the life, limb, or safety of the general public. (SDCL 9-29-13)
- E. Depositing, accumulating or permitting to be accumulated on any street, alley, or public ground any manure, garbage, rubbish, filth, fuel, wood, grass clippings, leaves, or other yard waste produced in conjunction with yard maintenance or gardening while engaged in handling or removing any such substance. The owner, tenant, or person in charge of any lot within the city is responsible for ensuring that any persons hired to cut their grass or maintain their yard abide by this chapter. (SDCL 9-32-10)
- F. [Repealed.]
- G. Disposing of garbage, waste, or refuse by open burning, or causing, allowing, or permitting the conducting of a salvage operation by open burning in the city. The following types of open burning shall be permissible for a specific purpose when conducted in conformity with the subsections set forth below:
  - 1. Fires set for the elimination of a fire hazard, which cannot be abated by any other means when authorized by the fire chief of the Salem Fire Department.

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2. Fires purposely set by city employees for the purposes as authorized by the fire chief of the Salem Fire Department.
  3. Fires purposely set by the Salem Fire Department personnel and authorized by the fire chief for the purpose of training and conducted in accordance with live fire-training standards.
  4. Fires contained in an approved incinerator so constructed, operated, or used so that sparks, cinders, ashes, smoke or fumes there from shall not become injurious or dangerous to the health, comfort or to the property of individuals or the public, nor materially impair the comfort of persons or the value of property within the city.
- H. Maintaining or permitting to be maintained on any private or public property any abandoned property or unsightly trash or junk, abandoned vehicle, or inoperable vehicle or parts thereof. It shall be unlawful to keep or place any of such vehicles or vehicle parts:
1. Upon public streets or property except on an emergency basis.
  2. Upon the private property of any person owning, in charge of, or in control of any real property within the city, whether as an owner, tenant, occupant, lessee or otherwise, for longer than 14 days unless it is within a fully enclosed building or structure. A carport, tarpaulin, tent or other similar temporary structure shall not be deemed to satisfy the requirements of this section.
- In no event shall an inoperable vehicle that constitutes an imminent health, safety or fire hazard be kept or located on any real property.
- I. The requirements of paragraph H. shall not apply to the following:
1. One inoperable vehicle kept on private property without being shielded from public view if licensed and kept on a private driveway. If this inoperable vehicle is in a state of externally visible disrepair or disassembly, it shall not be kept on the private driveway longer than 14 days.
  2. Filling stations, automobile repair shops or any other motor vehicle related businesses in compliance with applicable city ordinances may place inoperable vehicles being repaired or offered for sale on the premises.
  3. Junkyards operated and maintained in compliance with applicable city ordinances.
  4. One vehicle specifically designed and use for operation on drag strips or raceways that remains on private property.
  5. Any vehicle in an appropriate storage place or depository maintained in a lawful place and manner by the city or authorized by the city.
- J. Maintaining, or causing or permitting the same, any building or premises which is determined to be dangerous or dilapidated. Any building or structure which has any or all of the conditions or defects hereinafter described shall be deemed to be a dangerous or dilapidated building if such conditions of defects thereby annoy injure or endanger the comfort, repose, health or safety of others, or if such conditions or defects exist to the extent that the life, health, property, value of property or safety of the public or its occupants are jeopardized:
1. Whenever any building or structure is:
    - a. Vacant and unoccupied for the purpose for which it was erected; and
    - b. The building is unfit for occupancy as it fails to meet minimum housing standards; and
    - c. The building has remained substantially in such condition for a period in excess of six months.

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2. Whenever any building or structure through lack of maintenance or attention and by virtue of its physical appearance and presence thereby depresses the market value of surrounding properties.

(Ord. No. 616, 6-8-15; Ord. No. 622, 11-9-15; Ord. No. 630, 7-10-17; Ord. No. 637, 10-8-18)

State law reference(s)—Similar provisions: SDCL 9-29-13; SDCL 9-32-1.

### **3.0103 Diseased vegetation and dead trees.**

Any owner, occupant, or person in charge of any property under the jurisdiction of the city shall remove at his own expense any trees, brush, wood, or debris infected with Dutch Elm disease or other infestations or infectious disease or any dead trees found thereon when so notified by the city to do so. The city council shall cause to be mailed by certified mail, return receipt requested, or by personal service to such owner, occupant, or person, or by posting on the property, written notice that they may appear before the said city council at an appointed time not less than 14 days from the date of mailing or personal service of said written notice to show cause why said trees, brush, wood, or debris should not be declared a public nuisance. Failure by any person to actually receive any document sent to him by certified mail or to sign and return any receipt card acknowledging receipt by certified mail shall not invalidate service made upon such person by certified mail. Such notice is deemed completed at the time it is mailed, hand delivered or posted, and any period to reply or abate begins to run from the date of mailing, personal service or posting.

At said meeting the city council may resolve and declare the same to be a public nuisance and may order its removal by said owner, occupant, or person within 21 days from the date of service of said resolution and order on said owner, occupant, or person.

Any diseased vegetation stored in the city shall be debarked or covered with four to six mil clear plastic from April 1 to October 1, such plastic to be sealed by placing all edges in a three- to four-inch trench covered with soil. In addition, any diseased vegetation which is removed and not stored in accordance with the provisions of this section shall be properly disposed of by burning or burying in a designated disposal site.

(Ord. No. 616, 6-8-15)

State law reference(s)—Similar provisions: SDCL 9-32-12.

### **3.0104 Vegetation nuisance.**

- A. *Definitions.* For the purposes of this section, the following terms, phrases, words, and their derivations shall have the meanings given herein:

*Developed lot or area* shall mean a lot or area with a finished building or building under construction.

*Noxious weeds* shall mean all actively growing plants declared to be statewide noxious weeds by the South Dakota Weed and Pest Control Commission.

*Undeveloped lot or area* shall mean a vacant lot or area with no structure on it.

*Weeds* shall mean any plants growing uncultivated and out of context with the surrounding plant life when such plant has a seed head formed or forming and with a height of six inches or more, except as otherwise provided in this section.

- B. *Nuisances.*

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1. Each owner and each person in possession or control of any land shall cut or otherwise destroy, in whatever manner prescribed by the city, all noxious weeds thereon and shall keep said lands free of such growth.
  2. Each owner and each person in possession or control of any property shall be responsible to keep said lot, place, or area or upon any sidewalk abutting the same free of any noxious weeds and to keep grasses and weeds on said lot mowed so that grass and weeds are less than six inches in height.

Exception. Property owners with parcels of land one acre or more may apply for a "city limit haying permit" for relief from the requirements of this section 3.0104. The Salem City Council shall establish the criteria and standards to be maintained throughout the mowing season. The permit must be applied for annually.

3. Each owner and each person in the possession or control of any lands shall not allow any plant growth of any sort to remain in such a manner as to render the streets, alleys or public ways adjoining said land unsafe for public travel or in any manner so as to impede pedestrian or vehicular traffic upon any public place or way.
- C. *Notice to abate and abatement by city.* The finance officer shall annually on or before May 1 of each year publish once a week for two consecutive weeks a notice to property owners generally setting forth the duty to control weeds and other vegetation which might be a nuisance in violation of this section. The finance officer or his or her designee may cause a notice to abate nuisance to be served, by posting of notice on such property within view of the public, upon any property owner who fails to comply with the published notice or any person who at any other time has weeds or other vegetation. Upon failure, neglect or refusal of any owner, agent or occupant so notified to comply with said notice within three days, thereof the finance officer or his or her designee is hereby authorized and empowered to provide for the cutting, destroying or removal of the weeds, grass or other noxious matter and stabilize the soil if necessary. The city may defray the cost of the work, including administrative costs, by special assessment against the property as set out in subsection (D).
- D. *Costs recovered.* The finance officer shall cause an account to be kept against each lot upon which work is done pursuant to subsection (C) and shall after completion of the work, bill the owner of the property for such work and if not paid within 30 days thereafter, the finance officer shall thereupon add such assessment to the general assessment against said property. The finance officer shall certify such special assessment together with the regular assessment to the McCook County Auditor to be collected as municipal taxes for general purposes.
- Said assessment shall be subject to review and equalization the same as assessments or taxes for general purposes. In lieu of special assessment, the city council may institute a civil action against the owner or occupant of such property to recover said account.
- E. *Habitual violators.* If the owner or person in control of any land that has previously received a notice to abate nuisance relating to weeds within the preceding 12 months, then, the notice to abate nuisance may include notice that such owner or person in control of said property will be considered to be an habitual violator of this section and that if the nuisance is not abated within the allowed time, the city will consider the property to be subject to having a contract let by the city for mowing property as needed up to a weekly basis for the next following 12-month period of time and that the full cost of said contract together with an administrative fee of \$200.00 will be assessed against the property.

(Ord. No. 616, 6-8-15)

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### **3.0105 Littering in public places.**

No person shall throw or deposit litter in or upon any street, sidewalk, or other public place within the city except in authorized public or private receptacles. The following further identifies acts and conditions that constitute nuisances and are therefore prohibited:

- A. No person shall sweep into or deposit in any gutters, streets, or other public place within the city, the accumulation of litter from any building or lot or from any public or private sidewalk or driveway. Persons owning or occupying property or places of business shall keep the sidewalk in front of such premises free of litter.

For purposes of this chapter, a public nuisance shall also include snow and ice when deposited or allowed to accumulate in conflict with the provisions of this section.

- B. No persons, while a driver or passenger in a vehicle, shall throw or deposit litter or yard waste upon any street or other public place or upon private property within the city.

No person shall drive or move any truck or other vehicle within the city unless such vehicle is so constructed or loaded as to prevent any load, contents, or litter from being blown or deposited upon any street, alley, or public place.

- C. No person shall throw or deposit litter on any occupied, open, or vacant private property within the city, whether owned by such person or not, except that the owner or person in control of private property may maintain authorized private receptacles for collection in such a manner that litter will be prevented from being deposited upon any streets, sidewalk, or other public place or upon any private property.

(Ord. No. 616, 6-8-15)

### **3.0106 Removal of abandoned or inoperable vehicles—Public property.**

Whenever the city or any law enforcement officer for the city finds an abandoned or inoperable vehicle on public property within the city, a written notice shall be placed on the vehicle that it will be removed to a garage or place of safety unless the owner removes the vehicle from public property within 24 hours of the giving of the notice. After the expiration of the 24-hour period, the vehicle may be removed by a removal agency to a garage or place of safety. Nothing in this section precludes the city or any law enforcement officer for the city from immediately removing a vehicle that constitutes an imminent health, safety or fire hazard.

(Ord. No. 616, 06-08-15)

### **3.0107 Disposition of unclaimed vehicles.**

The removal agency shall have the rights and obligations conferred upon it by SDCL Ch. 32-36 in regard to titling or disposition of such unclaimed, abandoned or inoperable vehicle, except that, if not otherwise provided by state law, it shall have a possessory lien upon any vehicle removed under provisions for this article for the costs in taking custody of and storing such vehicles.

(Ord. No. 616, 6-8-15)

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### **3.0108 Notice procedure.**

A written notice shall be placed on the abandoned or inoperable vehicle by the city or by any law enforcement officer for the city requesting the removal of such motor vehicle in the time specified in this chapter. Written notice shall also be placed on the front door of any dwelling located on the private property requesting the removal of such motor vehicle in the time specified in this chapter. In the even the owner and the occupant or tenant of the real property are not the same person, written notice shall be given to the owner by certified mail, return receipt requested, requesting the removal of such motor vehicle in the time specific in this chapter. In the event the private property is not occupied, written notice shall be given to the owner by certified mail, return receipt requested, requesting the removal of such motor vehicle in the time specified in this chapter. Failure by any person to actually receive any document sent to him by certified mail shall not invalidate service made upon such person by certified mail. Such notice is deemed completed at the time it is mailed, and any period to reply or abate begins to run from the date of mailing.

(Ord. No. 616, 6-8-15)

### **3.0109 Responsibility for removal.**

Upon notice having been given, the owner of the abandoned or inoperable vehicle and the owner or occupant of the private property on which the vehicle is located, either or all of them, shall be responsible for its removal.

(Ord. No. 616, 6-8-15)

### **3.0110 Content of notice.**

The notice in section 3.0108 shall request removal of the abandoned or inoperable vehicle within 14 days after the date of the posting, mailing or personal service of such notice, and the notice shall advise that failure to comply with the notice to remove shall be a violation of this chapter, that the city may take steps to abate the same, and that in addition to abatement directly or by civil action, the city may pursue criminal fines and penalties against the owner, occupant, tenant or other person in charge of the real property as provided in this chapter.

(Ord. No. 616, 6-8-15)

### **3.0111 Public and private nuisance defined.**

A public nuisance is one that 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. Every other nuisance is private.

(Ord. No. 616, 6-8-15)

State law reference(s)—Similar provisions: SDCL 21-10-3.

### **3.0112 Remedies against nuisances.**

The remedies against any nuisance shall be:

- A. A civil action;
- B. Abatement; and

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- C. In cases of public nuisance only, the additional remedy of indictment or information as prescribed by the ordinance or by the South Dakota Codified Laws, and the rules relating thereto.

(Ord. No. 616, 6-8-15)

State law reference(s)—Similar provisions: SDCL 21-10-5.

### **3.0113 Abatement.**

A public nuisance may be abated without civil action by the city council or by any officer authorized thereto by law. Any private person may likewise abate a public nuisance which is especially injurious to him or her, or any private nuisance injurious to him or her in a 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 before entering to abate it. The city may defray the cost of abating a public nuisance by taxing the cost thereof by special assessment against the real property on which the nuisance occurred. When the nuisance abated is an unsafe or dilapidated building, junk, trash, debris, or similar nuisance arising from the condition of the property, the city may commence a civil action against the owner of the real property for its costs of abatement in lieu of taxing the cost by special assessment.

(Ord. No. 616, 6-8-15)

State law reference(s)—Similar provisions: SDCL 21-10-6.

### **3.0114 Notice.**

- A. *Initial notice.* The city finance officer or his or her designee, 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 certified mail, return receipt requested, 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 14 days of the date the notice was hand delivered or mailed. Failure by any person to actually receive any document sent to him by certified mail or sign and return any receipt card acknowledging receipt by certified mail shall not invalidate service made upon such person by certified mail. Notice is deemed completed at the time it is mailed and said period to reply or abate begins to run from the date of mailing.
- 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 three days of personal service or mailing.

(Ord. No. 616, 6-8-15)

### **3.0115 Public nuisance penalty and remedy.**

Any person who creates, commits, maintains or fails to abate a public nuisance as required under the provisions of this chapter shall be subject to a fine not to exceed the fine established by SDCL 22-6-2(2), by imprisonment not exceeding 30 days, or by both the fine and imprisonment, unless otherwise specifically provided. A separate offense shall be deemed committed on each day during or on which a violation occurs or continues. In addition, the city may also use the remedies of civil action and abatement as set forth in SDCL 21-10-5 through 21-10-9.

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(Ord. No. 535, 4-10-06; Ord. No. 616, 6-8-15)

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