

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; now therefore,

BE IT ORDAINED BY BROOKINGS COUNTY AS FOLLOWS:

Section 1. Definitions.

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.

Approved Container: A concrete, steel or other noncombustible container located, constructed, maintained and used to minimize fire hazard.

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.

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 2 feet or less in diameter and 1 foot or less in height for pleasure, religious, ceremonial, cooking or similar purposes.

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.

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

Occupied Structure: Any structure:

- A. Which is the permanent or temporary habitation of any person, whether or not any person is actually present;

- B. Which at the time is specially adapted for the overnight accommodation of any person, whether or not any person is actually present; or
- C. Which is a business structure and regularly has persons present, whether or not any person is actually present.

Open Burning: The intentional burning of any substance, whether natural or man-made, 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:

- A. 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
- B. The maintaining of a fire in any interior fireplace, stove or furnace.
- C. 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.

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

- A. An owner, occupant or agent,
- B. An assignee or collector rents,
- C. A contract for deed vendee,
- D. A mortgagor in possession,
- E. A receiver, executor or trustee,
- F. A lessee,
- G. A mortgagee in possession,

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

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.

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

Residential Development Area: An area of land that is located in a residential zoning district or an area consisting of three (3) or more dwelling units within 500 foot radius.

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 2. Open Burning Restrictions

A. 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.

B. 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.

C. 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.

Section 3. 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 2-C; or
 - g. Is started without a Prior Written Permit if required in Section 2-A or 2-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 to permit it to remain undisposed for more than seventy-two (72) 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. **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.
- N. **Snow removal.** Depositing or permitting the deposition of snow from private property upon a county road, county highway or county right-of-way.
- O. **Transport of materials.** Deposition, permitting the deposition or negligent deposition on any road, highway or public right-of-way any manure, septage, garbage, rubbish, fill, fuel, fertilizers, wastes, chemicals, or wood while engaged in handling or moving any such substances.

Section 4. 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 5. 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 6. 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.

First Reading: June 19, 2001

Second Reading: June 26, 2001

Adopted this 26th day of June 2001. 2001.

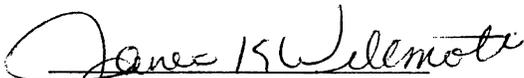
Published: July 6th, 2001

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Don Larson, Chairperson
Brookings County Board of County Commissioners

ATTEST:



Jane K. Willemot
Brookings County Auditor