

TITLE 3 - HEALTH AND SANITATION
[SANITATION AND HEALTH MEASURES SDCL 9-32]

- Chapter 3.01 - Nuisances
Chapter 3.02 - Rubble Site
Chapter 3.03 - Collection of Garbage & Recyclables

CHAPTER 3.01 - NUISANCES

- 3.0101 Definitions. For the purpose of this Chapter, the following terms are hereby defined.
- A. “Garbage” - The animal and vegetable waste resulting from the handling, preparation, cooking and serving of foods.
 - B. “Solid Waste” - 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)
 - C. “Wastewater” - The spent water of a community. From the standpoint of source it may be a combination of the liquid and water-carried wastes from residences, commercial buildings, industrial plants and institutions, together with any groundwater, surface water and storm water that may be present.
 - D. “Abandoned property” - Any inoperable 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.
 - E. “Abandoned vehicle” - 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.
 - F. “Inoperable vehicle” - Any vehicle which is not in operating condition due to damage, removal or inoperability of one or more tires and 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.
 - G. “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 any injury to human health; and in addition (4) 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)

- H. "Private property" - Any real property within the City that is privately owned and which is not public property.
- I. "Public property" - Any street, alley or highway which shall include the entire width between the boundary lines of every way publicly maintained for the purposes of vehicular travel, and also means any other publicly owned property or facility.
- J. "Removal agency" - Any public body, private or nonprofit organization authorized, hired or appointed by the City to remove vehicles.
- K. "Unsightly trash or junk" - 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.
- L. "Vehicle" - 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 cars, boats, jet skis, campers and trailers.

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. To permit a dead animal to remain undisposed of on real property longer than twenty-four (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. Throwing or letting fall on or permitting to remain on any street, alley, or public ground any manure, garbage, rubbish, filth, fuel, ashes, wood or construction materials or any offensive matter. (SDCL 9-32-10)

- F. Keeping or maintaining any building or enclosure where livestock or fowl are kept unless a special permit is requested and such is approved by the City Council. (SDCL 9-29-13)
- 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 City Volunteer Fire Department.
 - 2. Fires purposely set by the city maintenance personnel for the purposes as authorized by the Fire Chief of the City Volunteer Fire Department.
 - 3. Fires purposely set by the City Volunteer Fire Department personnel and authorized by the Fire Chief for the purpose of training and conducted in accordance with live fire-training standards.
 - 4. Campfires and other fires used solely for recreational purposes, for ceremonial occasions, and for outdoor preparation of foods.
- H. 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 or 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, property, value of property or safety of the public or its occupants are jeopardized.
 - 1. Whenever any building or structure is (i) vacant and unoccupied for the purpose for which it was erected and; (ii) the building is unfit for occupancy as it fails to meet minimum housing standards and; (iii) the building has remained substantially in such condition for a period in excess of six months.
 - 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.
- I. 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.

J. The requirements of paragraph I shall not apply to the following:

1. 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.
2. Junkyards operated and maintained in compliance with applicable City ordinances.
3. Any vehicle in an appropriate storage place or depository maintained in a lawful place and manner by the City or authorized by the City.

3.0103 Diseased, Dead or Dangerous Vegetation. 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 which is found to be dead, possessing infestations or infectious disease found thereon, or which poses a danger to the public, when so notified by the City to do so. The City Council shall cause to be mailed to such owner, occupant, or person, written notice that they may appear before the said City Council at an appointed time not less than fourteen (14) days from the date of mailing of said written notice to show cause why said trees, brush, wood, or debris should not be declared a public nuisance.

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 twenty-one (21) days from the date of service of said resolution and order on said owner, occupant, or person.

Any diseased, dead or dangerous vegetation stored in the City shall be debarked or covered with four (4) to six (6) mil clear plastic from April 1st to October 1st, 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. (SDCL 9-32-12)

(Amended: Ordinance No. 533, 02-11-13)

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.
1. “Developed lot or area” means a lot or area with a finished building or building under construction.
 2. “Noxious weeds” means all actively growing plants declared to be statewide noxious weeds by the South Dakota Weed and Pest Control Commission and all actively growing weeds declared by Lincoln County to be locally noxious.
 3. “Undeveloped lot or area” means a vacant lot or area with no structure on it.

4. "Weeds" means 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 eight (8) inches or more, except as otherwise provided in this section.

B. Nuisances.

1. Each owner and each person in the 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 eight (8) inches in height. However, grass and weeds located on undeveloped and unplatted property located more than 100 feet from developed or platted property shall be mowed so that grass and weeds are less than twelve (12) inches in height. This does not apply to vegetation which is being grown as a crop, livestock pasture or wildflower display garden.
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 each year and August 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 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 five (5) days, thereof the Finance Officer or his 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 Section 3.0104 (D).

(Amended: Ordinance No. 525, 07-09-12)

- D. Costs Recovered. The Finance Officer shall cause an account to be kept against each lot upon which work is done pursuant to Section 3.0104 (C) and shall after completion of the work, bill the owner of the property for such work and if not paid within thirty (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 Lincoln 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 24 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 24-month period of time and that the full cost of said contract together with an administrative fee of two hundred dollars (\$200.00) will be assessed against the property.
- F. Penalty. Any person whose duty it is to destroy or remove such noxious weeds or unhealthy vegetation as set forth in the preceding sections or who fails to destroy same within the time hereinbefore set forth shall upon conviction thereof be subject to the penalties established in this ordinance (Section 11.0101), in addition to other penalties as prescribed in this section.

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 48 hours after the termination of any snow fall, snow or ice accumulation.

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

No person shall drive or move any 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.

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 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.

- 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.
- 3.0108 Removal of Abandoned or Inoperable Vehicles - Private Property. 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 article. In the event 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 requesting the removal of such motor vehicle in the time specified in this Chapter. In the event the private property is not occupied, written notice shall be given to the owner by certified mail 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 or to sign and return any receipt card acknowledging receipt by certified mail shall not invalidate service.
- 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.
- 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 or mailing 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. 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.
- 3.0111 Remedies. The remedies against any nuisance shall be: (1) A civil action; (2) Abatement; and (3) By the South Dakota Codified Laws, and the rules relating thereto; (4) Administrative Fee. (SDCL 21-10-5)
- 3.0112 Abatement. A public nuisance may be abated without civil action by the City Council or by any officer authorized thereto by law. 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. (SDCL 21-10-6)

3.0113 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 may be charged with a Class 2 Misdemeanor. 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. Any person given notice of an abatement shall be charged an administrative fee as set by resolution by the Lennox City Council.

CHAPTER 3.02 - RUBBLE SITE

3.0201 Rubble Site. The rubble site will be operated according to a schedule adopted by the City. This schedule may be seasonally adjusted from time to time by the City Council. The rubble site is the overall responsibility of the Solid Waste & Recycling Committee. The operation will be accomplished by the rubble site manager, under the direct supervision of the Public Works Director.

(Amended: Ordinance No. 525, 07-09-12)

3.0202 Manager's Responsibilities.

- A. The rubble site manager will be responsible for the operation, to include, collection of fees established by resolution by the City Council.
- B. The manager will assure that only those items allowed, will be deposited in the rubble site.
- C. The manager has the right to reject any arriving load at his discretion, regardless of point of origin.

3.0203 Permitted Items. Trees, brush, leaves, grass clippings, yard and garden wastes shall be permitted for disposal.

3.0204 Rate Schedule. The rate schedule will be reviewed and established annually by resolution by the City Council, and is on file in the Municipal Finance Office.

CHAPTER 3.03 - COLLECTION OF GARBAGE & RECYCLABLES

3.0301 License Required. No commercial garbage hauler shall use the streets for the collection, removal or disposal of any garbage and recyclable materials without first having obtained a license to perform such service from the City of Lennox. The application shall be filed with the Finance Officer along with proof of insurance, proof of County license, proposed rate structure, and payment of license fee. The license fee shall be established by resolution by the City Council. The license shall run from January 1 through the 31st day of December. Any license approved and issued may be revoked by the City Council for violations of laws, regulations or stipulations concerning such operations.

(Amended: Ordinance No. 508, 06-13-11)

3.0302 Collection of Garbage and Recyclable Materials and Approval of Rates. Every licensed commercial hauler shall collect the garbage at least once each week. Garbage collectors shall be under no obligation to remove any garbage unless the payments of the removal of such garbage as provided by contract with the customer shall have been made. Recyclables shall be collected at least once a month by a licensed garbage hauler.

3.0303 Rates. All licensed garbage haulers shall file, as a part of their application for a business license, a general statement of their use rate structures and billing systems which shall include the following elements: 1) A rate to reward people who reduce their level of solid waste collection service based either upon volume or weight. 2) A rate to provide customers with adequate options and incentives to reduce their weekly level of solid waste collection service and the amount of solid waste collected as a result of their participation in waste reduction and recycling programs. 3) A rate that includes the combined cost of solid waste, using the above elements, and recycling collection services.

3.0304 Vehicles for collection of garbage and recyclables. Licensed commercial garbage and recyclable haulers shall provide themselves with suitable vehicles which shall be water tight and permanently covered on top so as to prevent the escape of odors and contents and so as to hide the garbage from the public view. Such vehicle shall be thoroughly washed at such times as may be necessary to keep the vehicles in proper sanitary condition. Such vehicles when conveying garbage shall be so loaded and unloaded that the contents shall not fall or spill upon the ground. No article or thing shall be carried on such vehicle so as to drag upon the highway. Vehicles shall not exceed 18,000 pounds, and/or 6,000 pounds per axle, and 600 pounds per tire inch width.

Commercial haulers shall obey all the ordinances of the City and all the rules and regulations relating to the collection and handling for garbage and recyclables, and report to the City Council any violations which may come to their attention. Any license issued under this chapter may be revoked by the Council for the violations by the licensee of any provision of State law, Federal law or City Ordinances.

3.0305 Dumping. Commercial haulers shall transport the garbage and refuse and recyclables to the sites designated by the City and County and will comply with all regulations in force at these sites.

3.0306 Storing Garbage Prior to Collection. All garbage shall be placed in either sealed water-tight bags or inside garbage containers and set to the curb or accessible alley on days of pickup. Whenever the premises in which garbage and rubbish accumulates are adjacent to a street or alley, the garbage and rubbish containers for such premises shall be kept in a location convenient and accessible to such street or alley, if premises are not adjacent to a street or alley, the garbage and rubbish containers shall be kept on the premises in such a location that they will be readily accessible to the nearest street or alley without being unsightly.

The owner or operator of each duplex, apartment building or similar multiple family dwelling shall furnish and maintain for use of the tenants a sufficient number of garbage containers to hold all garbage that accumulates upon such premises in the course of a week, or he shall require the tenants upon said premises to furnish such containers. The place where the garbage containers are located shall be kept clean and in a sanitary condition at all times.

Every owner or person in charge of any restaurant, hotel, grocery store, whole sale or food processing establishment or any other business or commercial place having garbage or

rubbish shall furnish and provide for use in connection therewith a garbage or refuse container. Such container shall have covers for all openings and shall be emptied often enough to prevent the same from giving off any odor or stench.

- 3.0307 City Not Liable. The City shall not be liable for any expense incurred through the failure of a licensee or his agents and employees, to operate and maintain collection services in a proper and efficient manner, and for any actions that may result from or be attributed to such services performed.
- 3.0308 Transfer. Any license may be transferred to another business upon approval by the City Council and payment of application fee.