

ORDINANCE NO. 2829

AN ORDINANCE CREATING THE MARSHALL COUNTY NUISANCE ORDINANCE.

BE IT ORDAINED BY THE BOARD OF COMMISSIONERS OF MARSHALL COUNTY, SOUTH DAKOTA, AS FOLLOWS:

Section 28-1. Nuisance defined and prohibited

(A) No person or persons, owner, occupant or person in charge of any house, building, lot or premises, shall create, maintain, commit, or permit to be created, maintained or committed, any public nuisance as defined in subsection B of this section, or as enumerated in subsection (c) below.

(B) Within the meaning of this section, a public nuisance shall consists of doing an act without lawful authority, or omitting to perform a duty, within the corporate limits of the county, or in any public grounds, or parts belonging to the county, which act or omission either:

- (1) Annoys, injures or endangers the comfort, repose, health or safety of others; or
- (2) Offends contemporary community moral standards; or
- (3) Does or tends to lower the value of adjacent real estate because of unsightliness; or
- (4) Unlawfully interferes with, obstructs or tends to obstruct, or renders dangerous for passage any lake or river, bay, stream, canal or basin, or any public park, square, street, alley, right-of-way or highway; or
- (5) In any way renders other persons insecure in life, or in the use of property and which 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.

(C) Nuisances shall include, but are not limited to, the following enumerations;

- (1) Waste, including but not limited to discarded items such as paper, rags, trash, garbage, clothing, tin cans, aluminum cans, batteries of any kind, used motor oil, boxes, plastic containers, glass containers, plastic wrap, cardboard, discarded household fixtures and furnishings, and any like items when such items are stored, collected, piled or kept on private or public property;
- (2) Building materials and waste, including, but not limited to, such items as lumber, lath, pallets, plaster, old iron or other metal, concrete, brick and tile, piles of rock, sand, dirt or gravel when not used for landscaping purposes, doors, windows, and scrap or salvage building materials, boxes, barrels, or other containers, when such items are

stored, collected, piled or kept and are not stored inside a building; except for building materials that are temporarily stored for work on the premises authorized by a valid building permit obtained for the premises provided that such building materials shall not remain on the premises for more than thirty days after the expiration of the building permit; and except for lumber neatly stacked on a platform at least 18" off the ground;

(3) Appliances, fixtures and furniture including, but not limited to, items such as stoves, refrigerators, freezers, sinks, cabinets and other kitchen appliances, bedroom furniture, mattresses, tables, chairs, clothes washing and drying machines, bathroom appliances and fixtures, light fixtures, washtubs, lawn mowers, tillers, chainsaws, snow blowers, and garden equipment when such items are stored, collected, piled or kept and are not stored inside a building; except that patio furniture and other furniture designed for outdoor use shall not constitute a nuisance, when kept in any district;

(4) It shall be unlawful for any person to leave or permit to remain outside of any dwelling, building or other structure or within any unoccupied or abandoned building, dwelling or other structure under his control in a place accessible to children any abandoned or discarded icebox, refrigerator or other container which has a airtight door or lid, snap lock or other locking device, without first removing said door or lid, snap lock or other locking device from said icebox, refrigerator or container;

(5) Junk, inoperable, or unlicensed motor vehicles; motor vehicle bodies; and dismantled/disassembled parts thereof; disassembled bicycles and bicycle parts, and other mechanical machines or motors or parts thereof when such items are stored, collected, accumulated or piled and are not stored inside a building. This section shall not apply to any motor vehicle held in a solid fenced enclosure on the licensed premises of a licensed junk dealer or to any motor vehicle in an appropriate storage place/depository maintained in a lawful place and manner by the county;

(6) Carcasses of animals and hides-all carcasses of animals remaining exposed after death, excepting legally caught and tagged game; and all undressed hides left deposited in any open place; all of which shall be removed within a reasonable amount of time, not to exceed four (4) days;

(7) Combustible refuse-depositing, maintaining or permitting to be maintained or be accumulated upon any public or private property any combustible refuse matter such as papers, sweepings, rags, grass, tree branches, dead leaves, wood shavings, wood, magazines, cardboard, etc.;

(8) Liquid refuse-all slop, foul or chemically polluted water, liquor or beer washings, all filth, refuse or offal, grease, lard, discharged through drains or spouts or otherwise thrown or deposited in or upon any street, alley, sidewalk, public way, lot, park, public square, public enclosure, or any pond or pool of water;

(9) Vegetables or vegetable matters emitting noxious odors. All vegetables, vegetable matters, or other articles that emit or cause an offensive, noxious or disagreeable smell or odor; and any compost pile which is of such a nature as to spread or harbor disease, emit unpleasant odors or harmful gas, or attract rodents, vermin or other disease carrying pests, animals, or insects, except that the presence of earthworms in a compost pile shall not constitute a nuisance;

(10) Failure to store in a covered container or throwing or letting fall on or permit to remain on any street, alley or public ground any manure, garbage, rubbish, filth, fuel, oil, small dead animals, wood or like material;

(11) Manure. The accumulation of raw manure unless it is in a properly constructed flyproof pit, bin, or box;

(12) The accumulation of dead branches, twigs, leaves, grass and other dead vegetation other than when in a proper compost device, dead trees, when in view of any adjacent properties or public right-of-ways;

(13) Rodent harborage. All structures and exterior property shall be kept free from rodent harborage and infestation. Where rodents are found, they shall be promptly exterminated by approved processes not injurious to human health. After extermination, proper precautions shall be taken to eliminate rodent harborage and prevent re-infestation;

(14) Parking livestock trucks or trailers in residential districts. Parking or permitting a livestock truck or trailer to remain on any street, area of public ground in a residential district when such truck or trailer gives off an offensive odor or is contaminated with manure or other filth;

(15) Any container or object in which stagnant or polluted water is permitted to collect or allow for the multiplication of insects.

(16) Any other condition the board of county commissioners shall deem and declare to be a nuisance.

(D) Livestock prohibitions.

(1) No person shall keep any creature used in animal husbandry, erect or maintain any building or enclosure for use in keeping any of such mammal, reptile, insect, bird, or fish or amphibians within 125 feet of any dwelling, house or building used for human habitation in the county, other than that of the owner of such animals. This section shall not apply to any property zoned pursuant to Ordinance No. 16, for Concentrated Animal Feeding Operations, or in the case of fairs, parades, circuses or such who have received the appropriate permissions.

(2) The keeping of animals as set forth in this section shall require a parcel or lot size of not less than five acres. Property must comply with all zoning ordinances and have approval prior to any creatures being on the property.

(3) No person owning or having possession, charge, custody or control of any creature used in animal husbandry may cause, permit or allow the same to stray or run or in any other manner to be at large in or upon any unenclosed lot or place, public or private, in the county; nor shall any person owning or having possession, charge, custody or control of any such animal cause or permit or allow the same to be staked out, or herd or graze any such animal upon any unenclosed private lot or land in the unincorporated village, in such manner that the rope or other attachment by which the animal is tethered may permit such animals to be or to go beyond the boundaries of the unenclosed private lot or land. Any animal suffered or permitted to be at large or otherwise to be within the county in violation of this section is declared to be a nuisance and a menace to public health and safety.

(4) No person may cause or allow any stable or kennel or place where any creature is, or may be kept or any private lot or land in the unincorporated village used to keep such creature to become unclean or unwholesome in violation of the neglect and cruel treatment to animals.

(5) No person owning or having possession, charge, custody or control of any creature used in animal husbandry may fail to provide for his creature sufficient good, wholesome food and water, proper shelter and protection from the weather, veterinary care when needed to prevent suffering, and to treat such creature with humane care and treatment.

(6) Cross references: Nuisances, § 16-61 et seq.; pets in parks, § 20-77; streets and sidewalks, ch. 26-22. State law references: Animals and livestock generally, SDCL title 40.

(E) Unlawful uses of premises.

(1) No person shall knowingly own, operate, lease or rent to another any house, building, shed, booth, lot or other place or premises or any thereof for use or conduct of gambling activities, nudity, adult arcades, adult bookstores/video stores, adult cabarets, adult motion picture theater, adult museum/art gallery, prostitution, unlawful sale or distribution of alcoholic beverages, or activities which annoy or injure the health or safety of others. For purposes of this section:

(a) "*Nudity*" or "*State of Nudity*" means the showing of the human male or female genitals, pubic area, vulva, anus, anal cleft or cleavage with less

than a fully opaque covering, or the showing of the female breast with less than a fully opaque covering of any part of the nipple and areola.

- (b) *“Adult Arcade”* means any place to which the public is permitted or invited wherein coin-operated or slug-operated or electronically, electrically, or mechanically controlled still or motion picture machines, projectors, or other image-producing devices are regularly maintained to show images to five or fewer persons per machine at any one time, and where the images so displayed are characterized by their emphasis upon matter exhibiting “specified sexual activities” or specified “anatomical areas”.
- (c) *“Adult Bookstore or Adult Video Store”* means a commercial establishment which, as one of its principal purposes, offers for sale or rental for any form of consideration any one or more of the following: books, magazines, periodicals or other printed matter, or photographs, films, motion pictures, video cassettes, compact discs, digital video discs, slides, or other visual representations which are characterized by their emphasis upon the display of “specified sexual activities” or “specified anatomical areas.”
- (d) *“Adult Cabaret”* means a nightclub, bar, juice bar, restaurant, bottle club, or similar commercial establishment, regardless of whether alcoholic beverages are served, which regularly features:
 - (i) persons who appear nude or semi-nude; or
 - (ii) live performances which are characterized by the exposure of “specified anatomical areas” or by “specified sexual activities;” or
 - (iii) films, motion pictures, video cassettes, slides or other photographic reproductions which are characterized by the exhibition or display of “specified sexual activities” or “specified anatomical areas.”
- (e) *“Adult Motel”* means a motel, hotel, or similar commercial establishment which:
 - (i) offers accommodations to the public for any form of consideration; provides patrons with closed-circuit television

transmissions, films, motions pictures, video cassettes, other photographic reproductions, or live performances which are characterized by the display of "specified sexual activities" or "specified anatomical areas"; and which advertises the availability of such material by means of a sign visible from the public right-of-way, or by means of any on or off-premises advertising, including but not limited to, newspapers, magazines, pamphlets or leaflets, radio or television; or

(ii) offers a sleeping room for rent for a period of time that is less than 10 hours; or

(iii) allows a tenant or occupant of a sleeping room to sub rent the room for a period of time that is less than 10 hours.

(f) "*Adult Motion Picture Theater*" means a commercial establishment where films, motion pictures, videocassettes, slides, or similar photographic reproductions which are characterized by their emphasis upon the display of "specified sexual activities" or "specified anatomical areas" are regularly shown to more than five persons for any form of consideration.

(g) "*Art Museum*" and/or "*Art Gallery*" means any structure where paintings, sculptures, pottery, lithograph and anything of artistic expression is shown, excluding live models in a state of nudity or semi nudity.

(h) "Prostitution" or "promotion of prostitution," means those acts as defined in S.D. Codified Laws § 22-23-1 and § 22-23-2.

(i) "*Specified Anatomical Areas*" means and includes:

(i) Less than completely and opaquely covered: human genitals, pubic region; buttock; and female breast below a point immediately above the top of the areola; and

(ii) Human male genitals in a discernibly turgid state, even if completely and opaquely covered.

(j) *"Specified Sexual Activity"* means any of the following:

- (i) intercourse, oral copulation, masturbation or sodomy; or
- (ii) excretory functions as a part of or in connection with any of the activities described in 28-1(E)(1)(j)(i) above.

(2) All places used for the unlawful purposes described in Section 28-1(E)(1) are declared to be common nuisances and, upon the judgment of the circuit court for violation for any of the offenses so described, the county sheriff shall be directed to abate and shut up such place by taking possession of all devices and all other property used in maintaining such nuisance and such personal property so taken shall be forthwith publicly destroyed by such officer.

(F) Abandoned property.

(1) No person shall abandon, leave or place, in any street, alley or public place of the county, any property of any kind; and no person shall permit any property of any kind so abandoned, left or placed to be or remain for more than twenty-four hours in any street, alley or public place of the county, adjacent to or in the vicinity of his property or residence, without reporting the same; and any property so abandoned, left or placed in any such street, alley or public place, and any property abandoned, left or placed by any person on any private property of which report or complaint may have reached any bureau or department of the unincorporated village, is declared to be a public nuisance and an obstruction and a menace to the public welfare, comfort, safety and health.

(2) It is made the duty of any member of the sheriff's department to report to the county sheriff any property so abandoned, left or placed and the Sheriff shall provide for the removal of such obstruction and the abatement of such nuisance, as soon as possible after receiving such report.

(3) It shall be the duty of the sheriff's department to take possession of any article of property so abandoned, left or placed on any public or private property, and if the same is believed to have any value, to keep it and make an attempt to find the owner thereof, and to retain any such article heretofore so taken up by it. It shall be the duty of such department to maintain a place for the keeping of any such article until the same shall be claimed or otherwise disposed of, and the county shall have a lien thereon for the reasonable expenses incurred and value or cost of the time and effort necessary in taking, removing and storing such article, and for the value of the

storage and keeping thereof, and may retain possession until any and all such liens are discharged.

(4) If any such article of property has been or is kept for ninety days or more without being claimed, the same may be disposed of by the sheriff's department as follows: If of no value or slight value, it may be destroyed; if of slight value but of use to the county, it may be turned over to the property department and used until claimed and the charges hereby made a lien thereon shall be regarded as a sufficient offset to the value of any such use; if of more than slight value, it may be sold by the sheriff's department ten days after notice of such sale has been given by one publication in a legal newspaper published in the county, and the county may be a bidder at such sale. If on any such sale, an amount is bid in excess of the charges or lien of the county, such excess shall be deposited to the credit of the general fund of the county.

(G) Dogs and Other Domestic Animals.

(1) Vicious Animals Prohibited. It shall be unlawful for any person to keep, maintain, or have in their possession or under their control within the county any vicious or dangerous animal, as defined hereinafter.

(2) Vicious Animals Defined. A vicious or dangerous animal is defined as follows:

- (a) Any animal which, according to records of the appropriate authority, has inflicted serious injury on a human being on public or private property.
- (b) Any animal, according to records of the appropriate authority, has killed or seriously injured a domestic animal while OFF the property of the owner of the animal.
- (c) Any animal owned or harbored primarily or in part for the purpose of fighting, or any animal trained for fighting.
- (d) Any animal which chases or approaches a person upon the streets, sidewalks, or any public or private property in a menacing fashion or apparent attitude of attack.
- (e) Any animal of a known propensity, tendency, or disposition to attack, to cause injury, or to otherwise threaten the safety of human beings or animals.
- (f) Any animal described below:
 - (i) Any animal which has been declared to be protected or endangered by the U.S. Department of the Interior.

- (g) Any person who violates the provisions of this Chapter shall be deemed to have engaged in a public nuisance as defined in SDCL Chapter 21-10.
- (h) The purpose of 28-1(H) is to promote the health, safety, morals, and general welfare of Marshall County
- (i) Marshall County adopts this chapter according to the power granted to it through SDCL 9-29-1, SDCL 9-29-12, and SDCL 9-29-13.

Section 28-2. Right of entry--Investigation and inspection of nuisance.

Whenever necessary to make an inspection or when the inspecting official has reasonable cause to believe that there exists a nuisance in any building or upon any premises any condition which makes such building or premises a nuisance as provide in this article, the inspector may enter such building or premises at all reasonable times to inspect the same or perform any duty imposed upon the inspector by this article, provided that: If such building or premises be occupied, the inspector shall first present proper credentials and demand entry; and if such building or premises be unoccupied, the inspector shall first make reasonable effort to locate the owner or other persons having charge or control of the building or premises and demand entry.

Section 28-3. Notice of violation and order.

Whenever an authorized county official determines that there has been a violation of this code or has grounds to believe that a violation has occurred, notice and order shall be given to the owner of the property where the violation is occurring, and/or the person or persons responsible for the property. Such notice and order shall:

- (1) Be in writing.
- (2) Include a description of the property where the violation is occurring, sufficient for identification.
- (3) Include a statement of the violation(s).
- (4) Include an order to correct the violation and bring the property into compliance with the provisions of this code within a specified, reasonable amount of time.

*Notice and order to cut weeds and grass may be given at the beginning of or during the growing season and shall require the owner or person(s) responsible for the

property, within seven days after the mailing thereof and at all times subsequent during the growing season as may be necessary, to cut and remove all weeds and grass as described in subsection 16-61(c)12.

(5) Inform the property owner or other persons responsible of their right to appeal.

(6) Be delivered either in person or by certified mail. If the notice is returned showing that the letter was not delivered a copy thereof shall be posted in a conspicuous place on or about the property where the violation is occurring.

Section 28-4. Emergency action without notice.

This article shall not apply to any nuisance that an authorized county official believes is an immediate danger to any person(s), in which case said official may take emergency action to abate the nuisance immediately without the notice and order described in section 16-63.

Section 28-5. Remedies.

The remedies against a public nuisance, in addition to those prescribed herein, shall be those prescribed by state law.

Section 28-6. Abatement.

If the person or persons so notified and ordered as set forth in section 16-63 fails to correct the condition as required in the notice and order within the time specified, an authorized county official may cause the condition to be abated by initiating whatever actions are necessary to correct the condition and cause it to be in compliance with this Code. A public nuisance may be abated without civil action by the county or officer authorized thereto by law. Any private person may likewise abate a public nuisance which is specially injurious to him or any private nuisance injurious to him in any 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 land, reasonable notice shall be given to him before entering to abate it. Any expense incurred by the county in the abatement of a nuisance may be recovered through civil suit or through special assessment against the real property on which the nuisance occurred.

Section 28-7. Penalty. In addition to the abatement remedies prescribed in this code, any person violating any of the provisions of this article shall be deemed guilty of a Class 2 misdemeanor and subject to criminal penalty as defined within the ordinances (\$200.00 fine or 30 days in jail or both).

Section 28-8. Appeals.

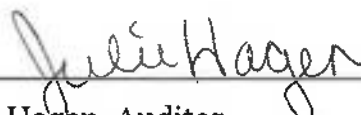
Any notice and order issued under this article may be appealed to the board of county commissioners. Appeals shall be made in writing and submitted to the board of county commissioners within ten days of the issuance of the notice and order. Appeals shall be reviewed by the board of county commissioners and the person submitting the appeal shall be notified of the determination of the appeal in a timely manner. Any person aggrieved by the board of county commissioners' determination may appeal to the circuit court. Any request for appeal to the circuit court must be made in writing within seven days after notification of the board of county commissioners' determination. Any action to abate shall be stayed until the board of county commissioners and/or circuit court makes their determination.

Section 28-9. Conflicts with State or Federal Law

This ordinance is written with the contemplation that there may be conflicts with State or Federal laws. Where State or Federal law are more restrictive than what has been set forth in this ordinance, that State or Federal law shall apply. Where this ordinance is more restrictive than what has been set forth by State or Federal law, this ordinance shall apply.


Lela Olson, Chairperson

ATTEST:


Julie Hagen, Auditor

By: _____

Deputy Auditor

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