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ORDINANCE NO. 0604-13

AN ORDINANCE ADOPTING THE 2006 REVISED PUBLIC NUISANCE ORDINANCE AND REPEALING ALL ORDINANCES IN CONFLICT THEREWITH.

BE IT ORDAINED BY LINCOLN COUNTY, SOUTH DAKOTA:

**Section 1. Prohibited.**

No person shall create, commit, maintain, or permit to be created, committed, or maintained any nuisance within the unincorporated area of the County. For the purposes of this ordinance, a person shall be considered to be any individual, partnership, firm, association, municipality, public or private corporation, state, tribe, nation, political subdivision, trust, estate or any other legal entity, including any officer or governing or managing body thereof.

**Section 2. Illustrative enumeration.**

Whatever is dangerous to human health, whatever renders the ground, the water, the air, or food a hazard or an injury to human health, and the following specific acts, conditions, and things are, each and all of them, hereby declared to constitute nuisances; provided, however, that this enumeration shall not be deemed to be exclusive:

- (1) *Abandoned property.* Any deteriorated, wrecked, dismantled, derelict, or inoperable property in unusable condition in its present state, and which has been left outside of an enclosed permanent structure. Without being so restricted this shall include deteriorated, wrecked, inoperative, dismantled or partially dismantled, or unlicensed motor vehicles, dilapidated or unregistered mobile homes, trailers, boats, machinery, refrigerators, washing machines or other appliances, plumbing fixtures, furniture, automotive parts, waste building materials, junk and any other similar articles in such condition.
- (2) *Breeding place for flies, rodents, pests.* The accumulation of manure, garbage, tires, debris or discarded items which is a potential harboring place and breeding area for flies, vermin and rodents.
- (3) *Burning.* 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, tar paper or any substance which may cause a black, hydrocarbon, toxic, or noxious plume of smoke. Also included is 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.

- (4) *Burning during a Fire Danger Emergency.* Burning of any substance, whether natural or manmade, or the intentional casting off of any burning substance, natural or manmade, within any unincorporated area of Lincoln County during a Fire Danger Emergency. For the purpose of this paragraph, the Lincoln County Commission may declare, by resolution, a Fire Danger Emergency at any time of the year, in any unincorporated area of the County, when weather or other conditions make open burning of any substance unduly hazardous and/or a danger to public safety. Said resolution may prohibit all open burning of any substance, regardless of circumstances, until such time as the resolution is rescinded by appropriate action of the Lincoln County Commission. This paragraph does not apply to the maintaining of a fire in any interior fireplace, stove or furnace.
- (5) *Careless burning.* Burning within any unincorporated area of Lincoln County without first contacting the Lincoln County Communications Department to notify that agency of the specific location and exact time of any burning activity. Burning in such a manner, or without reasonable safeguards, to prevent sparks, flames, hot ashes or embers from escaping from any open fire or fire container which could result in the spread of a fire. All open burning must be attended by one or more person(s) at all times while any sparks, flames or hot ashes are present. This paragraph does not apply to the maintaining of a fire in any interior fireplace, stove or furnace. This paragraph also does not apply to the burning of any substance in a 55 gallon barrel or barrel of smaller size.
- (6) *Dead animals.* For the owner of a dead animal to permit it to remain un-disposed for more than twenty-four (24) hours.
- (7) *Disposal or accumulation manure generated outside of Lincoln County.* Disposing or accumulating any manure or other manure or animal waste material generated outside of Lincoln County without a valid permit issued by the Lincoln County Commission.
- (8) *Drainage.* Diverting or permitting the diversion of water upon any county road, county highway or county right-of-way without a valid permit obtained from the Lincoln County Highway Superintendent and issued by the Lincoln County Commission. Nothing in this paragraph shall be construed to prohibit drainage which is otherwise permissible under SDCL 46A-10A-20.
- (9) *Driveways.* Building a driveway or road upon any county road, county highway or county right-of-way without a valid permit obtained from the Lincoln County Highway Superintendent and issued by the Lincoln County Commission.
- (10) *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 of the right-of-way.
- (11) *Fill.* Filling a gravel pit or other environmentally sensitive area with something other than clean fill.
- (12) *Garbage or refuse.* Depositing, maintaining, or permitting to be maintained accumulations of garbage, refuse, litter, waste, trash, upon any property outside an approved

solid waste facility. This shall include the accumulation of any animal and vegetable material which attends the processing, preparation, transportation, cooking, eating, sale or storage of meat, fish, vegetables, fruit and all other food or food products which is likely to transmit disease, or which may be a hazard to health.

- (13) *Improper accumulation of waste material.* Any accumulation of material such as ashes, glass, sand, earth, stones, concrete, mortar or asphalt.
- (14) *Improper manure disposal.* Any unspread accumulation of animal waste or bedding which has been transported from the point of generation. Any liquid animal waste deposited within 300 feet of a residence without being incorporated into the soil within 24 hours. Any manure spread thicker than three (3) inches on tillable soil. Any manure spread thicker than one (1) inch on frozen soil. Any manure spread on the ground surface upon slopes greater than six per cent (6%), or within 200 feet of a pond, stream, lake or drainageway. However, any manure that is injected or immediately incorporated into the soil may be applied up to a distance of 50 feet from a pond, stream, lake or drainageway.
- (15) *Improper garbage handling.* Throwing or letting fall on or permitting to remain on any street, road, or public ground any manure, septage, garbage, rubbish, filth, fuel, or wood while engaged in handling or removing any such substances.
- (16) *Litter.* Garbage, rubbish, trash, or other waste material improperly disposed of by discarding, abandoning, allowing to accumulate, scattering or depositing on any private or public property outside of an approved container or solid waste facility, or allowing such waste to be carried onto another property by natural elements.
- (17) *Polluting waters of the state.* Depositing any dead animal, decayed animal, vegetable matter, garbage, discarded items, manure or any slops or filth either solid or fluid, into any waters of the State.
- (18) *Private landfill.* Operating or allowing the operation of a private landfill without proper State or County approval.
- (19) *Rubbish.* Depositing, maintaining, or permitting to be maintained or to accumulate upon any property any combustible refuse matter such as papers, sweepings, rags, grass, dead trees, tree branches, wood shavings, scrap wood, magazines, cardboard, etc.
- (20) *Snow Removal.* Depositing or permitting the deposit of snow from private property upon a county road, county highway, or county right-of-way.
- (21) *Vegetation.* All weeds or plants declared to be primary or secondary noxious weeds by the State or County weed boards. Grass, except natural landscaping, exceeding twelve (12) inches in height in a residential subdivision.

### **Section 3. Enforcement.**

The Planning Director is hereby authorized and directed to enforce all the provisions of this Ordinance and establish rules for its administration. The Planning Director may designate other Lincoln County employees, including the Sheriff's Department, to assist in the enforcement of this ordinance.

#### **Section 4. Right of entry.**

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

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

#### **Section 5. Notice to abate.**

Whenever the Planning Director shall find that a nuisance exists, the person creating, permitting, or maintaining such nuisance shall be given written notice. Such notice may be served by mail.

#### **Section 6. Noncompliance.**

It shall be unlawful for any person who is served a written notice to abate a nuisance under the provisions of this ordinance to fail to do so within the time allowed in such notice. The Planning Director shall notify the State's Attorney of the failure of any person to abate a nuisance.

#### **Section 7. Saving clause.**

These regulations shall in no manner affect pending actions either civil or criminal, founded on or growing out of any regulations hereby repealed. These regulations shall in no manner affect rights or causes of action, either civil or criminal, not in suit that may have already accrued or grown out of any regulations repealed.

#### **Section 8. Severability.**

If any provision of this ordinance shall be declared invalid for any reason, such decision shall not affect the validity of the ordinance as a whole, or any portion thereof.

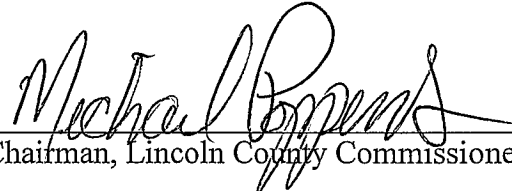
#### **Section 9. Repealer.**

This Ordinance repeals Lincoln County Ordinance 9605-03, as amended and existing prior to the effective date hereof, and any other ordinance in conflict therewith.

#### **Section 10. Penalty and remedy.**

Any person that maintains, commits, or fails to abate a public nuisance as described under the provisions of this ordinance shall be guilty of a Class 2 misdemeanor and may be subject to a maximum penalty of thirty (30) days in jail, a \$200 fine, or both. Each and every day that the violation continues may constitute a separate offense. As an alternative or in addition to the procedures herein, the County may also use the remedies of a civil action and abatement as set forth in SDCL 21-10-5 through SDCL 21-10-9, or any other provision of South Dakota law.

Date adopted: 4/11/06.

  
Vice Chairman, Lincoln County Commissioners

ATTEST:

  
Auditor, Lincoln County