

ORDINANCE 106

AN ORDINANCE FOR THE DECLARATION AND ABATEMENT OF PUBLIC NUISANCES

PURSUANT to SDCL 7-8-33 and consistent with the purpose of creating and maintaining a safe and healthy environment for the public welfare of Pennington County residents and their posterity; 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; then therefore,

BE IT ORDAINED BY THE PENNINGTON COUNTY COMMISSION AS FOLLOWS:

Section 1. Definitions.

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 carome, are petroleum based such as asphalt, are compactible or burnable materials such as but not limited to, paper, wood or plastic are prohibited.

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.

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

Stockpiling: In this context, it is 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, or other movement.

Adult Bookstore: "Adult Bookstore" means an establishment having as a substantial or significant portion of its stock in trade, books, magazines, films for sale or viewing on premises by use of motion picture devices or any other coin-operated means, and other periodicals which are distinguished or characterized by their emphasis on matter depicting, describing or relating to specified sexual activities or specified anatomical areas or an establishment with a segment or section devoted to the sale or display of such material.

Specified Sexual Activities: "Specified sexual activities is defined as:

- A. Human genitals in a state of sexual stimulation or arousal;
- B. Acts of human masturbation, sexual intercourse or sodomy;
- C. Fondling or other erotic touching of human genitals, pubic region, buttock or female breast.

Specified Anatomical Areas: "Specified anatomical areas" is defined as:

- A. The following shall not be less than completely and opaquely covered:
 - 1. Human genitals, pubic region;
 - 2. Buttocks;
 - 3. Female breasts below a point immediately above the top of the areola;
 - 4. Human male genitals in a discernibly turgid state, even if completely and opaquely covered.

Adult Entertainment Cabaret: "Adult entertainment cabaret" means a public or private establishment which features topless dances, strippers, male or female impersonators, or similar entertainers.

Adult Motion Picture Theater: "Adult motion picture theater" means an enclosed building used for presenting material distinguished or characterized by an emphasis on matter depicting, describing or relating to specified sexual activities or specified anatomical area for observation by patrons therein.

Section 2. No person or persons, owner, occupant or person in charge of any house, building, lot or premises, in any unincorporated areas of Pennington County, unless meeting the criteria for classification of land as agriculture as determined by the County Director of Equalization's Office, shall create, maintain or commit, or permit to be created, maintained or committed, any public nuisance as defined in Section 1 of this ordinance, or as enumerated in Section 3 of this ordinance.

Section 3. 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.
- C. 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.
- D. Garbage and refuse: Household waste, including, but not limited to, items such as paper, rags, 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 right-of-ways.
- E. Fill: Filling a gravel pit or other hydrologically or environmentally sensitive area with something other than clean fill.
- F. 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.
- G. Manure Disposal: Any unspread accumulation of manure which has been transported from the point of generation. Any manure deposited within 300 feet of a residence without benefit of incorporation into the soil.
- H. Polluting River: Depositing any dead animal, decayed animal, vegetable matter, garbage, discarded items, manure or any slops or 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.
- I. Transport of Materials: Deposition, permitting 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 removing any such substances.
- J. Vegetation: Weeds and grass, exclusive of crops and pasture land, growing to a height of greater than eighteen (18) inches.
- K. Adult bookstores, adult entertainment cabarets or adult motion picture theaters that are located within 1000 feet of any existing residential zone, school, church, park, playing fields, or other areas in which large numbers of minors regularly travel or congregate.

Section 4. Public Nuisance Penalty and Remedy.

- A. Any person who 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 or a two hundred dollar (\$200.00) 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 civil action and abatement as set forth in SDCL 21-10-5 through SDCL 21-10-9.

Section 5. 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 this Ordinance is conduct or activity which is authorized by permit, license, authorization, or approval issued by the United State of America, the State of South Dakota, Pennington County, or any municipality within the County, and any agency or department of these governmental entities.

Section 6. Severability. If any provision of this Ordinance shall be held invalid, it shall not effect 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.

Approved this 2nd day of February, 1999.

PENNINGTON COUNTY COMMISSION


Delores Coffing, Chairperson

ATTEST:

Amended:

First Reading: January 20, 1998
Second Reading: February 3, 1998
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Amended:

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Nancy J. Kuster, Deputy
Pennington County Auditor/Deputy

First Reading: August 19, 1997
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