

AN ORDINANCE FOR THE DECLARATION  
AND ABATEMENT OF PUBLIC NUISANCES

**SECTION 1 – STATUTORY AUTHORIZATION**

Under SDCL 7-8-33, SDCL 7-18A-2, SDCL Ch. 21-10, and SDCL Ch. 34-16, the Legislature has vested Pennington County with the authority to create, maintain, and promote public health, safety, and welfare of the residents and community.

**SECTION 2 – JURISDICTION**

This Ordinance governs all unincorporated lands that are within the jurisdiction of the Board of County Commissioners for Pennington County, South Dakota.

**SECTION 3 – CONSTRUCTION AND EFFECT OF ORDINANCE**

The following provisions apply to the construction and interpretation of this Ordinance and its sections.

- A. *Plain and Ordinary Language.*
  - 1. *General Rule.* The words used in this Ordinance must be given their plain and ordinary meaning.
  - 2. *Exception.* The words that have been defined in this Ordinance and PCZO § 103 must be given that defined meaning.
- B. *Application of Definitions.*
  - 1. *Defined Words Apply Throughout.* Whenever the meaning of a word or phrase is defined in this Ordinance, then that definition is applicable to the same word or phrase wherever it occurs except where a contrary intention plainly appears.
  - 2. *Conflict Between Definitions.* If a word is defined in both this Ordinance and PCZO § 103 and conflict between the definitions exist, then the definition from this Ordinance controls—not the definition incorporated by reference.

**SECTION 4 – DEFINITIONS**

- A. *Introduction.* Unless more specifically defined in PCZO § 103, the terms used in this Ordinance are defined below.
- B. *Definitions.*
  - 1. *Clean Fill.* Any concrete, rock, gravel, sand, dirt, or clay that:
    - a. has not been used as an absorbent for a regulated substance; and
    - b. does not contain chrome, petroleum-based products (such as asphalt), or compactible or burnable materials (such as wood products or plastic).
  - 2. *Inoperable Vehicle.* A vehicle that:
    - a. has not been registered or licensed in a state or territory within 3 years;
    - b. has been dismantled;
    - c. has a broken window, flat tire, no tires, or missing parts—including a door, fender, hood, trunk, engine; or,

- d. will not start.
- 3. *Manure*. Animal excreta and other materials such as bedding, straw, soil, hair, feathers and other debris normally included in animal waste handling operations.
- 4. *Nuisance*. An unlawful act or failure to perform a duty that:
  - a. annoys, injures, or endangers the comfort, repose, health, or safety of others;
  - b. offends decency;
  - c. interferes with, obstructs, or tends to obstruct, or renders dangerous for passage, any lake or navigable river, bay, stream, canal, or basin, or any public park, square, sidewalk, street, or highway;
  - d. renders, in any way, other persons insecure in life or in the use of property;
  - e. renders the ground, the water, the air, or food a hazard or an injury to human health; or,
  - f. is specifically listed in Section 5 of this Ordinance.
- 5. *PCZO §103 Incorporated*. The words defined in PCZO §103 are incorporated by this reference.
- 6. *Stockpiling*. In this context, it is unhealthful accumulation of a substance that 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 ware of soil by leaching, lateral transport, absorption, or other movement.

## **SECTION 5 – DECLARED NUISANCES**

The following is a non-exhaustive list of acts or failures to perform a duty that are declared nuisances under this Ordinance.

- A. Noxious weeds and other rank vegetation.
- B. Filling a gravel pit or other hydrologically or environmentally sensitive area with something other than clean fill.
- C. A condition on the property that provides shelter for rats, mice, snakes, and other vermin.
- D. A building or other structure that is
  - 1. kept in such a dilapidated condition that it is unfit for human habitation;
  - 2. kept in such an unsanitary condition that it is a menace to the health of people residing in its vicinity; or,
  - 3. presents a more than ordinary dangerous fire hazard in the vicinity where it is located.
- E. All unnecessary or unauthorized noises and annoying vibrations, including animal noises.
- F. All disagreeable or obnoxious odors and stenches, as well as the conditions, substances, or other causes that give rise to the emission or generation of such odors and stenches.
- G. The carcasses of animals or fowl not disposed of within reasonable time after death.

- H. The pollution of any public well or cistern, stream, lake, canal, or body of water by sewage, dead animals, creamery, industrial wastes, or other substances.
- I. Accumulation of more than 5 inoperable vehicles.
- J. Accumulation of stagnant water permitted or maintained on any lot or piece of ground.
- K. Dense smoke, noxious fumes, gas, soot, or cinders in an unreasonable quantity.
- L. Deteriorated, wrecked, dismantled, inoperable, or abandoned real or personal property in an unusable condition that has
  - 1. no value other than nominal scrap or junk value; or,
  - 2. been left unprotected outside of a permanent structure from the elements.
- M. Real or personal property that is deteriorated, wrecked, dismantled, inoperable, or abandoned. Examples of such property include 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 includes real or personal property that is deteriorated, wrecked, dismantled, inoperable, or abandoned located within the public right-of-way or section line right-of-way.
- N. An onsite wastewater treatment system that is in violation of the County's ordinances, the Administrative Rules of South Dakota, or the South Dakota Codified Laws.
- O. Unspread accumulation of manure.
- P. Manure deposited within 300 feet of a residence or waterway without benefit of incorporation into the soil.
- Q. Depositing any dead animal, decayed animal, vegetable matter, garbage, discarded items, or the like.
- R. Depositing, allowing depositing, or negligently depositing on any road, highway or public right-of-way any manure, septage, garbage, rubbish, fill, fuel, fertilizers, wastes, chemicals, wood, or the like while engaging in handling or removing any such substances.
- S. Weeds and grass, excluding crops and pastureland that have grown to a height of greater than 12 inches.
- T. A dangerous accumulation on the exterior of any property of combustible refuse matter—including papers, sweepings, rags, grass, dead trees, tree branches, wood shavings, wood, magazines, cardboard, or the like.
- U. Accumulation of snow and ice on a sidewalk that fronts or abuts a property.
- V. The condition of any sidewalk that fronts or abuts a property unfit or unsafe for the purposes of public travel by foot, bicycle, or the like.

**SECTION 6 – NUISANCE PROHIBITED**

No person may allow, cause, commit, create, or maintain a nuisance.

## SECTION 7 – NOTICE

- A. *Notice.* If a nuisance exists, the Planning Director or designee must give written notice to
  - 1. the owner or occupant of the property upon which the nuisance exists; or
  - 2. the owner or occupant of the property fronting or abutting sidewalks subject to §§ 5(U) and 5(V); or,
  - 3. the person causing or maintaining the nuisance.
- B. *Content of Notice.* The written notice must
  - 1. be served by hand or first-class mail;
  - 2. describe the nuisance or condition;
  - 3. describe any corrective action that must be taken to bring the property into compliance;
  - 4. inform the owner of the property that he or she shall either take the stated corrective action or file a written request for hearing before the Board within thirty days from the date of service of the notice.
  - 5. state that if the owner fails to comply with the requirements of the notice, the Planning Director shall proceed to have the nuisance or condition complained of abated or removed at the expense of the property owner.

## SECTION 8 – ABATEMENT BY COUNTY

- A. *Abatement.* If a person fails to bring the property into compliance after being served properly with the notice, then the Planning Director may abate the nuisance.
  - 1. *Summary Abatement by Planning Director.* The Planning Director has the authority to declare and summarily abate a nuisance if an abatement cost less than \$1,000.
  - 2. *Board Approval.* The Board must approve an abatement that costs over \$1,000.
- B. *Statement of Costs.* The Planning Director must prepare a statement of costs after a nuisance has been abated.

## SECTION 9 – LIEN

- A. *Costs of Abatement is a Lien on the Property.* All costs incurred by Pennington County in abating a nuisance under this Ordinance constitute a lien against the property upon which the nuisance existed.
- B. *Procedure.* The lien must be properly filed, proven, and collected in accordance with the law. Its filing is notice to all persons from the time of its recording, and it will bear interest at the legal rate thereafter until satisfied.

## SECTION 10 – PENALTY AND REMEDY

- A. *Maximum Punishment.* The maximum punishment for a violation of this Ordinance is 30 days' incarceration in the Pennington County Jail, a \$500 fine, or both.

- B. *Continuing Offense.* Each day a violation of this Ordinance occurs is a separate offense.

#### **SECTION 11 – SEVERABILITY**

The provisions of this Ordinance are severable. If any provision of this Ordinance is held invalid, then its invalidation will not affect any other provisions of this Ordinance that can be given effect without the invalid provision.