

## ORDINANCE # UCC 2003-02

### 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 Union County residents and their posterity.

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

**Public Nuisance:** Unlawfully doing an act, or omitting to perform a duty, which act or omission either: (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) whatever renders the ground, the water, the air, or food a hazard or an injury to human health; and in addition (4) the following specific acts, conditions, and things are, each and all of them, hereby declared to constitute public nuisances; provided however, that the additional enumeration is not deemed to be exclusive.

Whoever shall create, commit, maintain, or permit to be created, committed, or maintained (1) any of the enumerated conditions, specific acts, things, and situations or (2) otherwise violates the general provisions of this ordinance is guilty of a public nuisance and the place, contents area, thing, or all of the foregoing, are declared a public nuisance and shall be enjoined and abated as provided by state law and/or county ordinance.

#### **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 chrome, are petroleum based such as asphalt, are compactable or burnable materials such as but not limited to paper, wood or plastic are prohibited.

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

**Person:** 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.

**Residential Development Area:** An area of land that is located in a residential zoning district or an area consisting of three (3) or more dwelling units within a 500 foot radius.

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

**Section 2. The following are hereby declared to constitute public nuisances:**

1. Abandoned property. Any accumulations of other unsightly trash or junk which would constitute a health hazard, a rodent harborage, a breeding ground 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. Unsightly trash or junk includes 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 has been left unprotected from the elements outside of a permanent structure and shall include without being restricted, deteriorated, wrecked, in operative or partially dismantled motor vehicles, trailers, boats, motors, snowmobiles, lawn mowers, motorcycles, campers, refrigerators and other household appliances, furniture, household goods and furnishings, scrap metals or lumber or similar articles in such condition.
2. Breeding place for flies, rodents and/or pests. The unhealthful accumulation or stockpiling of manure, garbage, tires, debris or discarded items which is a potential harboring place and breeding area for flies 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 substances 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 administration 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 fifty (50) pounds of combustible containers, formerly containing organic or metallo-organic pesticides, except organic mercury, lead, cadmium, beryllium, selenium or arsenic compounds.
4. 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.
5. Dangerous building. For the purpose of this ordinance, a dangerous building shall be any building or structure which has any or all of the conditions or defects hereinafter described, provided that such conditions or defects exist to the extent that the life, health, property or safety of the public or its occupants are endangered:

- a. Whenever any door, aisle, passageway, stairway or other means of exit is not of sufficient width or size or is not so arranged as to provide safe and adequate means of exit in case of fire or panic.
- b. Whenever the walking surface of any aisle, passageway, stairway or other means of exit is so warped, worn, loose, torn or otherwise unsafe as to not provide safe and adequate means of exit in case of fire or panic.
- c. Whenever the stress of any materials, member or portion thereof, due to all dead and live loads, is more than one and one-half times the working stress or stresses allowed in the Building Code for new buildings of similar structure, purpose or location.
- d. Whenever any portion thereof has been damaged by fire, earthquake, wind, flood or by any other cause, to such an extent that the structural strength or stability thereof is materially less than it was before such catastrophe and is less than the minimum requirements of the Building Code for new buildings of similar structure, purpose or locations.
- e. Whenever any portion or member of appurtenance thereof is likely to fail, or to become detached or dislodged, or to collapse and thereby injure persons or damage property.
- f. Whenever any portion of a building, or any member, appurtenance or ornamentation on the exterior thereof is not of sufficient strength or stability, or is not so anchored, attached or fastened in place so as to be capable of resisting a wind pressure of one-half of that specified in the Building Code of new buildings or similar structure, purpose or location without exceeding the working stresses permitted in the Building Code for such buildings.
- g. Whenever any portion thereof has cracked, warped, buckled or settled to such an extent that wall or other structural portions have materially less resistance to winds or earthquakes than is required in the case of similar new construction.
- h. Whenever the building or structure, or any portion thereof, because of (i) dilapidation, deterioration or decay; (ii) faulty construction; (iii) the removal, movement or instability of any portion of the ground necessary for the purpose of supporting such building; (iv) the deterioration, decay or inadequacy of its foundation; or (v) any other cause, is likely to partially or completely collapse.
- i. Whenever, for any reason, the building or structure, or any portion thereof, is manifestly unsafe for the purpose of which it is being used.
- j. Whenever the exterior walls or other vertical structural members list, lean or buckle to such an extent that a plumb line passing through the center of gravity does not fall inside the middle one-third of the base.

- k. Whenever the building or structure, exclusive of the foundation, shows thirty-three percent (33%) or more damage or deterioration of its supporting member or members, or fifty percent (50%) damage or deterioration of its non-supporting members, enclosing or outside walls or covering.
- l. Whenever the building or structure has been so damaged by fire, wind, earthquake or flood, or has become so dilapidated or deteriorated as to become (i) an attractive nuisance to children;(ii) a harbor for vagrants, criminals or immoral persons, or as to (iii) enable persons to resort thereto for the purpose of committing unlawful or immoral acts.
- m. Whenever any building or structure has been constructed, exists or is maintained in violation of any specific requirement or prohibition applicable to such building or structure provided by the building regulations of this jurisdiction, as specified in the Building Code or Housing Code, or of any law or ordinance of this state or jurisdiction relating to the condition, location or structure of buildings.
- n. Whenever any building or structure which, whether or not erected in accordance with all the applicable laws and ordinances, has in any non-supporting part, member or portion less than fifty percent (50%), or in any supporting part, member or portion less than sixty-six percent (66%) of the (i) strength, (ii) fire-resisting qualities or characteristics, or (iii) weather-resisting qualities or characteristics required by law in the case of a newly constructed building of like area, height and occupancy in the same location.
- o. Whenever a building or structure, used or intended to be used for dwelling purposes, because of inadequate maintenance, dilapidation, decay, damage, faulty construction or arrangement, inadequate light, air or sanitation facilities, or otherwise, is determined by the health officer, designated housing inspector, or the Union County Land Use Administrator to be unsanitary, unfit for human habitation or in such a condition that is likely to cause sickness or disease.
- p. Whenever any building or structure, because of obsolescence, dilapidated condition, deterioration, damage, inadequate exits, lack of sufficient fire-resistive construction, faulty electric wiring, gas connections or heating apparatus, or other cause, is determined by the fire marshal or housing inspector to be a fire hazard.
- q. Whenever any building or structure is in such a condition as to constitute a public nuisance known to the common law or in equity jurisprudence.
- r. Whenever any portion of a building or structure remains on a site after the demolition or destruction of the building or structure or whenever any building or structure is abandoned for a period in excess of six months so as to constitute such building or portion thereof an attractive nuisance or hazard to the public.

6. Dead animals. For the owner of a dead animal to permit it to remain undisposed for more than seventy-two (72) hours.
7. Disposal or dumping. The accumulation of garbage, refuse, waste, trash, rubbish or building materials upon any property outside an approved landfill. Any concrete or rock which remains uncovered for longer than seven (7) days.
8. Fill. Filling a gravel pit or other hydrologically or environmentally sensitive area with something other than clean fill.
9. Garbage and refuse. Depositing, maintaining, or permitting to be maintained, upon any property outside an approved landfill any dangerous accumulation of any animal or vegetable matter which is likely to cause or transmit disease or which may be a hazard to health.
10. 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.
11. Manure disposal. Any unspread accumulation of manure, which has been transported from the point of generation. Any manure deposited or spread that does not conform to the Union County Concentrated Animal Feeding Operations manure application setbacks. Any manure spread thicker than three (3) inches on tillable soil. Any manure spread thicker than one (1) inch on frozen soil. Any manure applied on slopes greater than six percent (6%).
12. Open burning. The intentional burning of any substance, whether natural or manmade, or the intentional casting off of any burning substance, whether natural or manmade, except the burning of such substance in a container sufficient so as to prohibit the escape of any of the burning substance, or any sparks, flames or hot ashes from the container. The escape of any such burning substance, or the escape of any sparks, flames or hot ashes from such container shall be deemed prima facie evidence that the container was insufficient so as to meet the exception from the definition of an open burning set forth herein. The maintaining of a fire in any interior fireplace, stove or furnace is specifically excluded from the definition of an open burning as contemplated by this ordinance.
13. 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.
14. Private sanitary landfill. Operating or permitting the operation of a private sanitary landfill without controlling rodents, insects and litter by covering with dirt.

15. 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.
16. Nuisance vegetation. The following named weeds and plants shall be deemed dangerous and unhealthy and are declared to be nuisances: ragweed, pusley, pigweed, nettle, thistle of any kind, sunflower, goldenrod, tumbleweed, burdock, cocklebur, sandbur, wild oats, sticktight, milkweed, mustards and any and all other variety of weeds and vegetation deemed to be noxious, obnoxious, dangerous and unhealthy or deemed to be a nuisance by the building official, by the State of South Dakota, or by South Dakota statute as from time to time amended, and all other weeds and grasses growing upon any lot or parcel of land in the County to a greater height than twelve (12) inches or which have gone or are about to go to seed.

### **Section 3. Fire Danger Emergency.**

1. When weather or other conditions shall exist which may make the open burning of any substance unduly hazardous and a danger to public safety, the Union County Board of Commissioners may by resolution declare a "Fire Danger Emergency".
2. If a "Fire Danger Emergency" be declared, all open burning of any substance shall be prohibited within all of the unincorporated area of Union County until such time as the resolution declaring the "Fire danger Emergency" shall have been rescinded by appropriate action of the Union County Board of Commissioners.
3. Any person who shall create, commit, maintain, or permit to be created, committed or maintained an open burning in violation of a resolution declaring a "Fire Danger Emergency" shall be deemed to have committed a public nuisance in violation of County Ordinance and subject to all criminal and civil penalties.

### **Section 4. Public Nuisance Penalty and Remedy.**

1. Whenever the Union County Land Use Administrator, or his or her authorized designee, shall determine that a public nuisance exists, the Administrator shall report such violation to the Union County Board of Commissioners.
2. The Union County Board of Commissioners shall determine if a nuisance does exist. If, in the opinion of the Board of Commissioners a nuisance does exist, that individual responsible for the nuisance shall be notified of such violation by registered mail, return receipt requested. In the notice the Commissioners shall set a public hearing within thirty (30) days of mailing the notice of violation.
3. After the hearing, if the Union County Board of Commissioners determines that a nuisance does exist, they may order the nuisance to be removed within thirty (30) days from the date of the hearing.

4. After the thirty (30) days, if the nuisance has not been removed, the Union County Board of Commissioners may order the nuisance to be removed at the owner's expense. Such expense shall be added to the property tax of the property creating the nuisance.
5. A violation of this ordinance shall result in a fine not to exceed two hundred dollars (\$200.00). Every day that the ordinance continues to remain uncorrected shall be considered a separate offense and punishable as such.

**Section 5. Severability.**

If any provision of this ordinance shall be held invalid, it shall not affect 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.

**Section 6. Repealing Clause.**

All ordinances and parts of ordinances in conflict with this ordinance are hereby repealed. This ordinance shall be in full force and effect from and after its approval, adoption and publication as provided by South Dakota Codified Law.

First Reading: April 29, 2003  
Second Reading: May 13, 2003  
Publication: June 5, 2003  
Effective Date: June 25, 2003

Roger Boldenow  
SIGNED:  
Chairman, Union County Commissioners

Carol Klumpp  
ATTEST:  
Auditor, Union County