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## TITLE 5. PUBLIC AND PRIVATE NUISANCES

### Chapter 5.1 Definitions. (Ordinance 598)

- a. *"Abandoned property"* - includes, without being so restricted, deteriorated, wrecked, partially dismantled or inoperative motor vehicles.
- b. *"Building"* - Any structure designed or intended for the support, enclosure, shelter or protection of persons or property.
- c. *"Building official"* - That person designated by the City Council from time to time to serve as the City official authorized to assist in the enforcement of this Ordinance
- d. *"City"* - the City of Flandreau, Moody County, South Dakota.
- e. *"City Council"* - City Council of the City of Flandreau, Moody County, South Dakota.
- f. *"Designated official"* - person designated by the City Council of the City from time to time to care for the removal of noxious and unhealthful vegetation.
- g. *"Garbage"* - all organic refuse from the preparation of food and decayed or spoiled animal or vegetable food from any source.
- h. *"Inoperable vehicle"* - All vehicles must be both operational and properly licensed. Any vehicle which is not in operating condition due to damage, removal or inoperability of one or more tires, wheels, the engine or other essential parts required for the operation of the vehicle, or which does not have lawfully affixed thereto a valid state license plate, or which constitutes an immediate health, safety, and fire or traffic hazard is considered an "inoperable vehicle."
- i. *"Litter"* - A disorderly accumulation of objects, especially carelessly discarded trash.
- j. *"Noxious and unhealthful vegetation"* - weeds as defined by the federal or state government as being noxious.
- k. *"Nuisance"* - consists in 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; or
  - 2. Offends decency; or
  - 3. Unlawfully 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, street, or highway; or

4. In any way renders other persons insecure in life or in the use of property; or
  5. Whatever is dangerous to human health; whatever renders the ground, the water, the air, or food hazardous; or an injury to human health.
- l. *"Patio Fire Pit"* - called a chiminea, patio fire place, patio heater, fire pit brazier, etc.
  - m. *"Premises"* - A lot or parcel of land, improved or unimproved, parking areas thereon, walkways and sidewalks.
  - n. *"Public & Private Nuisance"* - A public nuisance is one 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. Every other nuisance is private. **(SDCL 21-10-3.)**
  - o. *"Refuse"* - Includes unwanted or discarded waste materials in a solid or semi-liquid state, consisting of garbage, rubbish or a combination thereof.
  - p. *"Rubbish"* - Includes non-putrescible solid waste consisting of combustible and noncombustible waste materials from residential units, commercial, industrial, and institutional establishments, including yard waste and items commonly referred to as "trash."
  - q. *"Sidewalk"* - A strip of property lying in front of and between the curb line and property line of the adjoining or abutting lot, piece, or parcel of land within the City.
  - r. *"Solid Waste"* - Refuse, rubbish, garbage, trash and bulky refuse.
  - s. *"Trash"* - Includes earth, soil, wood, tree leaves, dead leaves, small branches, clay, sand, bricks, plaster, Portland cement, chips, shavings, grass cuttings, sticks, rocks, old papers and magazines, paper or wood cartons, rags, sawdust, old clothing, and other combustible materials of a like nature which are not included in the definition of garbage.

## **Chapter 5.2 General Information.**

### **Section 5.2.1. Violation of this Ordinance.**

It is a violation of this ordinance for any person to maintain a public nuisance as defined herein. Anyone found guilty of doing so is punishable as provided for by *Section 1.1.6 - Misdemeanor.*

**Section 5.2.2. Acts under Statutory Authority not Deemed Nuisance.**

Nothing, which is done or maintained under the express authority of a statute, can be deemed a nuisance.

**Section 5.2.3. Damages for Past Injury Recoverable after Abatement.**

The abatement of a nuisance does not prejudice the right of any person to recover damages for its past existence.

**Section 5.2.4. Liability of Successive Owners for Continuing Nuisance.**

Every successive owner of property who neglects to abate a continuing nuisance upon, or in the use of, such property, created by a former owner, is liable therefore in the same manner as the one who first created it.

**Section 5.2.5. Public Nuisance not legalized by Lapse of Time.**

No lapse of time can legalize a public nuisance, amounting to in actual obstruction of public right.

**Section 5.2.6. Remedies against Public Nuisances Enumerated.**

Remedies against any nuisances are 1) a civil action; or 2) abatement using the procedures set forth in **Chapter 5.4**; and in cases of public nuisance only, the additional remedy of indictment, complaint or information as prescribed by statute and rules relating thereto.

**Section 5.2.7. Persons Entitled to Maintain Civil Action against Nuisance, Injunction and Damages Recoverable.**

The remedy by civil action against public nuisance may be maintained by any public body or officer authorized by law or official duty, or by any private person if it is specifically injurious to that person. Such remedy also may be used by any person whose property is injuriously affected or whose personal enjoyment is lessened by any nuisance public or private. In all such actions the nuisance may be enjoined, or ordered abated, and damages recovered in addition.

**Section 5.2.8. Abatement of Nuisance, Notice Required before Abatement.**

A public nuisance may be abated without civil action by any public body or officer authorized by law. Any private person may likewise abate a public nuisance which is specially injurious to that person or any private nuisance injurious to that person in any manner by removing, or if necessary, destroying the thing which constitutes the nuisance, without committing a breach of the peace or doing unnecessary injury. Where a private nuisance results from a mere omission of the wrongdoers, and cannot be abated without entering upon someone's land, reasonable notice must be given to that person before entering to abate it.

### **Section 5.2.9. Complaints. (Ordinance 598)**

In enforcing this Title, priority will be given on the following basis:

- a. Proactive code enforcement by a duly-authorized employee or agent of the City, including the Police Department;
- b. At the request of the City Council;
- c. Receipt of a formal complaint filed by any resident, property owner or occupant.

### **Section 5.2.10. Ordinances not to be construed to prevent properly-zoned business. (Ordinance 598)**

While the nuisance ordinances apply to all zones, these ordinances should not be construed to prevent the necessary activities of a primary line of business (as shown by NAICS / SIC codes and Sales tax receipts) of a properly-zoned business, provided the usage is reasonable in scope and duration. For example, if an auto repair business is zoned industrial, it is understood that some of the vehicles on that property may be inoperable for certain periods of time. Provided that the quantity of vehicles, duration, and other accommodations are reasonable, this should not be construed to be a violation.

## **Chapter 5.3 Nuisances.**

### **Section 5.3.1. Enumeration. (Ordinance 598)**

Nuisances may include but are not limited to:

- a. Garbage & Refuse. Depositing, maintaining, or permitting to be maintained or to accumulate upon any public or private property, any household waste water, sewage, garbage, tin cans, offal, or excrement, any decaying fruit, vegetables, fish, meat, or bones or any foul, putrid or obnoxious liquid substance.
- b. Noxious and Unhealthful Vegetation. No property owner or tenant may allow noxious and unhealthful vegetation to grow within the city. Cultivated and useful grasses in pastures are not nuisances, except that it shall be a nuisance to refuse to provide fire breaks as deemed necessary by the City Council, within seven days after notification by the Council for the necessity therefore.
- c. Disturbance. No owner of any dog, cat or other animal licensed or unlicensed, shall permit such animal to disturb the peace and quiet of the neighborhood by continuous barking or making other loud or unusual noises, or by

destroying or defacing property or causing injury to persons or domestic animals.

- d. Undressed Hides. Undressed hides kept longer than twenty-four hours, except in an appropriate enclosed storage facility.
- e. Manure. The accumulations of manure, unless it is in a properly constructed fly-proof pit, bin or box.
- f. Breeding Places for Flies. The accumulation of manure, garbage, or anything whatever in which flies breed.
- g. Stagnant Water. Any excavation in which stagnant water is permitted to collect.
- h. Dead Animals. For the owner of a dead animal to permit it to remain undisposed of longer than twenty-four hours after its death.
- i. Garbage Handling Improperly. Throwing or letting fall on or permitting to remain on any street, alley, or public ground any manure, garbage, rubbish, filth, fuel or wood.
- j. Throwing Litter on Streets. Throwing or depositing paper, ashes, rubbish or litter of any kind on the streets, alleys, public grounds, or private property without the permission of the occupant, within the corporate limits of the City of Flandreau or within Flandreau City Park.
- k. Rodents. Accumulation of junk, old iron, automobiles or parts thereof, or anything whatever in which rodents may live, breed or accumulate.
- l. Bonfires in Public Places. Burning, causing or permitting to be burned anywhere within the City, any filth, manure, garbage, sweeping, leaves, ashes, paper, rubbish or material of any kind *except that patio fire pits shall be permitted*.
- m. Abandoned, Deteriorated, Wrecked or Derelict Property. Any abandoned, deteriorated, wrecked or derelict property such as, but not limited to, trailers, boats, machinery, household appliances, plumbing fixtures, furniture and other articles in unusable condition, having no value other than nominal scrap or junk value, if any, and which has been left unprotected from the elements, and which constitutes fire, health or safety hazard or is unsightly shall not be permitted to be kept within the city limits.
- n. Unofficial Sign, Signal or Device. Placing, maintaining, or displaying upon or in view of any street any unofficial sign, signal or device which purports to be or is an imitation of or

resembles an official traffic sign or signal, or which attempts to direct the movement of traffic.

- o. Failure to Maintain Lawn. Maintaining a lawn in such a manner that grass and/or weeds are permitted to grow more than six inches (6") in height.
- p. Failure to Remove Snow and Ice from sidewalks:
  - 1. The owner or person in possession of any property abutting on any sidewalk shall keep such sidewalk free from snow and ice and shall remove any snow or ice from the sidewalk within 72 hours after the termination of any snow fall, snow or ice accumulation.
  - 2. The owner or person in possession of any property abutting upon any sidewalk that ends at an intersection or crosswalk shall maintain the sidewalk free from snow and ice to the edge of the street. Snow and ice deposited on the sidewalk in the street removal process shall be removed within 48 hours of being deposited.
- q. Inoperable Vehicles. Any vehicle that meets the definition of "inoperable vehicle" shall not be kept longer than forty-eight (48) hours, except in an appropriate enclosed structure or accessory structure. An authorized employee or agent of the City may demand a vehicle suspected of being inoperable be driven a distance of a quarter mile (approximately around one square block in town) in the presence of an authorized employee or agent of the City to demonstrate operability within one week of notice, at a mutually acceptable time. Failure of the owner to comply will be presumptive proof of inoperability.

### **Section 5.3.2. Maintenance and Sanitation of Premises and Building. (Ordinance 598)**

**Article 5.3.2.1. Purpose.** The purpose of this Section is to protect, promote and enhance the welfare, safety, health and property of the general public by prohibiting the keeping or maintaining of properties at variance with and inferior to the level of maintenance of surrounding properties.

**Article 5.3.2.2. Application.** The provisions of this Section shall apply to buildings and premises located in areas zoned for residential use.

**Article 5.3.2.3. Condition.** It shall be unlawful for any person owning, leasing, occupying, or having charge or possession of any buildings or premises in the City to keep or maintain such building or premises in a manner, which is at variance with, and inferior to the level of maintenance of surrounding properties.

**Article 5.3.2.4. Declared nuisance.** A building or premises is maintained or kept in a manner which is at variance with and inferior to the level of maintenance of surrounding properties and is hereby declared to constitute a public nuisance where there exists upon any building or premises any of the following condition or conditions:

- a. Buildings that are abandoned, boarded up, partially destroyed or partially constructed and uncompleted subsequent to the expiration of building permit.
- b. Exterior surfaces, including but not limited to, doors, door and window frames, cornices, porches, trim, balconies, decks and fences, that are not maintained in good condition. Exterior wood surfaces, other than decay-resistant woods, which are not protected from the elements and decay by painting or other protective covering or treatment. Peeling, flaking and chipped paint which have not been eliminated and surfaces repainted. Siding and masonry joints, as well as those between the building envelope and the perimeter of windows, doors and skylights, which have not been maintained weather resistant and water tight. Metal surfaces subject to rust or corrosion which have not been coated to inhibit such rust and corrosion, and surfaces with rust or corrosion that have not been stabilized and coated to inhibit future rust and corrosion
- c. Windows, skylights, doors and frames not kept in sound condition, good repair and weather tight. Glazing materials not maintained free from cracks and holes. Windows, other than a fixed window, not easily openable and capable of being held in position by window hardware.
- d. Overgrown vegetation that is unsightly and/or likely to harbor rats or vermin.
- e. Dead, decayed or diseased trees, weeds and other vegetation.
- f. Trash, garbage or refuse cans, bins, boxes, bags or other such containers stored in front yards visible

from public streets except when placed for pickup and, in that event, for no longer than 48 hours.

- g. Garbage, rubbish, solid waste, trash or refuse as defined, junk, tires, and debris or salvage materials visible from a public street, alley, or adjoining property.
- h. Premises having a topography, geology or configuration which as a result of grading operations or improvements to the land causes erosion, subsidence, unstable soil conditions or surface or subsurface drainage problems as to pose a threat to or be injurious to adjacent premises.
- i. Building exteriors, walls, fences, driveways or walkways that are in serious disrepair or defaced.
- j. Any other like and similar condition or conditions.

**Article 5.3.2.5. Act or Omission.** It shall be unlawful to permit by act or omission the following specific acts, conditions and things that are hereby also declared to be public nuisances:

- a. Failing, refusing or neglecting to keep the sidewalk in front of a house, place of business or premises in a clean and safe condition.
- b. Maintaining upon a premise any unsightly, partly complete or partly destroyed buildings, structures or improvements in the City, as this may endanger or injure neighboring properties including the value thereof or the public health, safety and general welfare.
- c. Maintaining any such premises or upon the sidewalk abutting or adjoining such lot, parcel, tract or piece of land, loose earth, mounds of soil, fill material, asphalt, concrete rubble or waste material of any kind (all such materials shall hereinafter be referred to as "waste materials"), except for waste materials used for construction or landscaping upon premises in which case it shall be the duty of the owner, lessee, occupant, or persons in possession of premises wherein the waste materials exist, to maintain weed control during construction and to level or remove waste materials after construction is completed, or in any event, within eight (8) months from time of placement of waste materials upon premises.

**Article 5.3.2.6.** For sites where filling, grading or excavation activities have or will span more than one year it shall be the duty of the owner, lessee, occupant or person in possession of said premises to level or remove the waste materials from said premises at least once each year during the months of either June, July or August for the purpose of maintaining weed and rodent control.

## **Chapter 5.4 Administrative Proceedings.**

**Section 5.4.1. Nuisances – General.** In addition to proceeding with a civil action in Circuit Court, the City Council may proceed to abate a nuisance as set forth in the following articles.

**Article 5.4.1.1 Written Notice.** If a nuisance exists, the City Council directing abatement shall issue a written notice of violation except as provided for by **Section 5.4.2.**

**Article 5.4.1.2 Serving Notice.** Notice may be served by personal service, sending by certified mail or publication one time in the official newspaper of the City.

**Article 5.4.1.3 Appeal to Council.** Within (7) days after service of notice, an appeal may be made to the City Council. The appeal shall be heard before the City Council at its next scheduled meeting. All persons who fail to appear or respond shall be deemed to have waived all objections.

**Article 5.4.1.4 Response to Appeal.** After hearing the appeal, the City Council may either accept the appeal or uphold the original declaration of nuisance. If the declaration is upheld, a date for completing abatement shall be established by the City Council and be included in their response to the appellant.

**Article 5.4.1.5 Abatement not Complete.** If abatement is not completed within the timeframe established by the City Council, they shall have authority to cause the nuisance to be abated and shall file an account of the expense thereof with the City Finance Officer.

**Article 5.4.1.6 Hearing.** At least seven days after filing the account, the City Council shall hold a hearing at their meeting. Notice shall be posted or mailed to the person to whom the charges are to be assessed, announcing the time of the City Council meeting and the proposed cost to be assessed.

**Article 5.4.1.7 Lien.** The City Council shall hear the matter and if the account is accepted, the amount thereof shall become a lien on the property of the violator and may be specially assessed against same as provided by law.

**Article 5.4.1.8 Civil Action to Recover Costs.** The City Council shall have the option, in lieu of special assessment, to seek a civil judgment for charges incurred in abating the nuisance.

**Section 5.4.2. Nuisance – Other.** No criminal penalty or billing shall be imposed under this article unless the City causes notice to be given to all owners, tenant or persons in possession of said property.

**Article 5.4.2.1 Notice – Lawn Maintenance.** *(See Section 5.3.1., subparagraph o.)* Notice shall be given to property owners whose property within said City on which that the height of the grass and/or weeds has exceeded the height of six inches (6”) and that any grass or weeds that exceed said height shall be removed within forty-eight hours. *The notice need not be given personally but may be given generally through the official newspaper annually.* The published notice shall constitute notice as required by this Section.

***Exception.*** *Property owners with parcels of land that exceed one (1) acre in size may petition the City Council for relief from the requirements of this Chapter. The Council may approve or disapprove the petition and establish other criteria that must be complied with. If the exception is approved, minimum upkeep standards shall require 1) the property, including boulevards, must be mowed at least twice a year, and 2) the control of noxious weeds.*

**Article 5.4.2.2 Notice – Cleaning Sidewalks.** *(See Section 5.3.1., subparagraph p.)* The city shall notify all owners or persons in possession of property abutting on sidewalks to keep such sidewalks free from snow and ice and to remove the same within 72 hours after every fall or accumulation of snow or ice. *The notice need not be given personally but may be given generally through the official newspaper annually.* The notice shall provide that each owner or person in possession is required to keep the sidewalk in front of the premises free and clear from snow and ice. It shall further provide that if the owner or person in possession fails to remove the snow or ice within 72 hours of the

falling or accumulation hereof, that the city may cause said snow or ice to be removed and charge the cost to the abutting property.

**Article 5.4.2.3** City may remove. If the owner or person in possession of property fails to abate the nuisance within of the time specified, the city may take remedial action to abate the nuisance and to charge the cost thereof against the abated property. A separate charge will be incurred each time this action is initiated.

**Article 5.4.2.4** City's Cost Assessed. The City Finance Officer shall cause an account to be kept against each lot for the abatement and shall mail to the owner or occupant a bill for such abatement.

### **Section 5.4.3. Hearing for approval of Assessment.**

In the event that the bill is not paid within 30 days of billing, the City Finance Officer shall prepare an assessment against such lot or lots for lawn mowing or the removal of snow or ice. The assessment shall be submitted to the City Council for its approval. A notice shall be published in the official newspaper advising the property owner of the time and place the City Council will meet for the purpose of approving such assessment. Such notice shall be published at least one (1) week prior to the date set for said hearing.

### **Section 5.4.4. Approval of Assessment.**

Upon the day named for the hearing at which the assessment of costs incurred by this City under **Section 5.4.2** shall be submitted for approval, the City Council shall meet. If they find said assessment to be reasonable and correct, the City Council shall approve the same, with or without modification or amendments, as they may deem proper, and file such assessment with the City Finance Officer.

### **Section 5.4.5. Lien Declared.**

From the date of approval and filing of the assessments made under this Section, the same shall be a special lien against the various pieces of property described in said assessment and shall be collected in like manner as special assessments are now collected for public improvements.

### **Section 5.4.6. Recovery by City.**

In lieu of spreading the cost of abatement as a special assessment against property under this Section, at the discretion of the City Council, said amount may be recovered in a civil action against the owner or occupant of said property.

### **Section 5.4.7. Liability of Offenders.**

Any person whose duty it shall be to abate these nuisances as provided in this Section, in addition to the penalties prescribed for the violation of

this Ordinance shall be liable to the City for any damage caused by the neglect.

**Section 5.4.8. Penalty for failure to comply with Section.**

Any person, whose duty it is to abate these nuisances as provided in this Section within the time prescribed shall, for a violation thereof, be subject to the penalties that may be imposed for a violation of this Ordinance in addition to the other penalties described in this Section.

