

ORDINANCE 255

AN ORDINANCE REPEALING ORDINANCE 246 IN ITS ENTIRETY AND REPLACING IT WITH A ORDINANCE 255 PROVIDING FOR THE DECLARATION AND ABATEMENT OF NUISANCES WITHIN AND FOR THE CITY OF LAKE NORDEN

BE IT ORDAINED by the City of Lake Norden that Ordinance 246 is hereby repealed in its entirety and is hereafter replaced with Ordinance 255 as follows:

PURSUANT TO S.D.C.L. §9-29-13, the City of Lake Norden hereby declares what constitutes a nuisance within its territorial jurisdiction, and hereby provides for the prevention, abatement and removal of nuisances.

Section 1. Definitions.

As used in this ordinance, the following words, terms and phrases shall have the meanings herein ascribed:

“Abandoned motor vehicle,” means any motor vehicle, which is left unattended on any public street or alley, in any public parking lot, or in any other public place for more than twenty-four consecutive hours.

“Enforcement Officer” Enforcement officer means any designated agent or employee of the City of Lake Norden duly authorized by the City Council to carry out the provisions of this ordinance, including, but not limited to the Mayor, duly elected members of the City Council, law enforcement officers or the Municipal Attorney.

“Grass” means blue grass, western wheat species, buffalo grass, gramma grass, big blue stem, little blue stem, Indian grass, needle and thread, and green needle.

“Junk motor vehicles” means any motor vehicle which does not have lawfully affixed thereto-unexpired license plates or which is wrecked, dismantled, partially dismantled, inoperable or discarded.

“Motor vehicle” means any self-propelled vehicle including, but not limited to, automobiles, motorcycles, motor scooters, trucks, tractors, go-carts, golf carts, and campers.

“Noxious matter” means trash, garbage and all other material which has been strewn about or otherwise apparently abandoned, or of no apparent value, which is unsightly, or which may be potentially hazardous as a breeding ground for insects and rodents and other undesirable animals, or which may prove hazardous to individuals using the area upon which these noxious matters exist.

“Refuse” shall be deemed putrescible and non-putrescible wastes, including, but not limited to, garbage, rubbish, ashes, incinerator ash, incinerator residues, street cleanings, market and industrial solid wastes, and sewage treatment wastes in dry or semisolid form.

“Rubbish” is deemed nonputrescible solid waste consisting of combustible and noncombustible wastes, such as ashes, paper, cardboard, tin cans, yard clippings, wood, glass, bedding, crockery, trees or portions of trees, or other litter with similar properties.

“Special waste” is deemed to include all hazardous waste, liquid waste, infectious waste, and other waste requiring special handling under any state, federal, or city law or regulation.

“Toxic waste” is deemed to be any waste which is defined as toxic by state, federal or local laws or regulations, or which is deemed to pose a toxic hazard to the landfill, human health or the environment.

“Weeds” means all weeds of the kind known as Russian thistle, Canadian thistle, cocklebur, ragweed, goldenrod, burdock, barberry, creeping Jennie, fescue, quack grass or sunflower, and all other noxious or unhealthful vegetation.

“Yard waste,” for the purposes of this chapter, shall be defined as natural, nonputrescible solid vegetation waste produced by commercial or private residential landscaping activities. Such waste shall include lawn cuttings, lawn rakings, branches, trees and garden waste, free of other debris or rubbish.

Section 2. Acts and Omissions Constituting Nuisances.

A 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;
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;
4. In any way renders other persons insecure in life, or in the use of property and 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.

Section 3. Nuisances Declared.

Nuisances shall include, but are not limited to, the following enumerations, which are deemed and declared nuisances:

1. All Wastes, including, but not limited to, items such as paper, rags, trash, garbage, discarded clothing, shoes, curtains, linen and other apparel, tin cans, aluminum cans, boxes, bales or baled items, plastic containers, glass containers, plastic wrap, 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;

2. Used building materials and waste, including, but not limited to, such items as lumber, lath, gypsum board, pallets, plaster, old iron or other metal, concrete, brick and tile, piles of rock, sand, dirt or gravel when not used for landscaping purposes, doors, windows, and scrap or salvage building materials, when such items are stored, collected, piled or kept and are not stored inside a building; except for building materials that are temporarily stored for work on the premises authorized by a valid building permit obtained for the premises and in compliance with the ordinances of Lake Norden; provided that such used or waste building materials shall not remain on the premises more than thirty (30) days after the expiration of the building permit;

3. Appliances, fixtures and furniture including, but not limited to, items such as stoves, refrigerators, freezers, sinks, cabinets and other kitchen appliances, bedroom furniture, mattresses, tables, chairs, clothes washing and drying machines, bathroom appliances and fixtures, light fixtures, washtubs, lawn mowers, tillers, chainsaws, snow blowers, and garden equipment when such items are stored, collected, piled or kept and are not stored inside a building; except that patio furniture and other furniture designed for outdoor use shall not constitute a nuisance when kept in any district and in view of adjacent properties or public right-of-ways;

4. Dismantled motor vehicles, motor vehicle bodies, and disassembled parts thereof, disassembled bicycles and bicycle parts, and other mechanical machines or motors or parts thereof when such items are stored, collected, piled or kept and are not stored inside a building;

5. Carcasses of animals and hides--all carcasses of animals remaining exposed one hour after death, excepting legally caught and tagged game, which shall be twenty-four hours; and all green or salted hides left deposited in any open place;

6. Liquid refuse--all slop, foul or chemically polluted water, liquor or beer washings, all filth, refuse or offal, grease, lard, discharged through drains or spouts or otherwise thrown or deposited in or upon any street, alley, sidewalk, public way, lot, park, public square, public enclosure, or any pond or pool of water;

7. Vegetables or vegetable matters emitting noxious odors. All vegetables, vegetable matters, or other articles that emit or cause an offensive, noxious or disagreeable smell or odor; and any compost pile which is of such a nature as to spread or harbor disease, emit unpleasant odors or harmful gas, or attract rodents, vermin or other disease carrying pests, animals, or insects, except that the presence of earthworms in a compost pile shall not constitute a nuisance;

8. Abandoned Property. No person shall abandon, leave or place, in any street, alley or public place of the city, any property of any kind; and no person shall permit any property of any

kind so abandoned, left or placed to be or remain for more than twenty-four hours in any street, alley or public place of the city, adjacent to or in the vicinity of his property or residence, without reporting the same; and any property so abandoned, left or placed in any such street, alley or public place, and any property abandoned, left or placed by any person on any private property of which report or complaint may have reached any bureau or department of the city, is declared to be a public nuisance and an obstruction and a menace to the public welfare, comfort, safety and health;

9. Any water or liquid that may become stagnant or allow mosquito larvae to exist;
10. Any other condition the city council shall deem and declare to be a nuisance.

Section 4. Abandoned and Junk Motor Vehicles.

1. Nuisance Declared.

The presence of an abandoned, wrecked, dismantled, inoperative, junk or partially dismantled motor vehicle or parts thereof, on private or public property, is declared a public nuisance. This section shall not apply to any motor vehicle enclosed within a building on private property or to any motor vehicle held in connection with a business enterprise, properly operated in the appropriate zoning district, or to any motor vehicle in operable condition specifically adapted or designed for operation on drag strips or raceways and covered with an appropriate cover to screen it from view, which vehicle remains on private property.

2. Storing, Parking or Leaving on Public Property – Prohibited.

No person shall park, store, leave or permit the parking, storing or leaving of any abandoned or junk motor vehicle of any kind, whether attended or not, upon any public property in the city.

3. Presence on private property--Prohibited.

No person owning, in charge of, or in control of any real property within the city, whether as owner, tenant, occupant, lessee or otherwise, shall allow any abandoned or junk motor vehicle of any kind to remain on such property longer than thirty days.

4. Presence on private property--Notice to remove.

Whenever it comes to the attention of any duly authorized Enforcement Officer that any person has an abandoned or junk motor vehicle on his property, a notice in writing shall be served by certified mail upon such person ordering the removal of such motor vehicle in the time specified. The notice shall be deemed complete upon mailing to the last known address of the addressee. The notice shall contain the request for removal within ten (10) days after the mailing of such notice, and the notice shall notify that failure to comply with the notice to remove shall be a violation of this chapter. The recipient of such notice shall have ten (10) days from the date of mailing to file a notice of appeal of the determination contained therein. The notice of appeal

must be in writing and filed with the finance officer. All appeals will be considered and decided upon by the mayor or his designee.

5. Presence of public property—Notice to remove.

Whenever any duly authorized Enforcement Officer finds an abandoned motor vehicle or junk motor vehicle on public property he shall place written notice on the vehicle that it will be removed to a garage or place of safety unless the owner removes the vehicle from public property within twenty-four hours of the giving of the notice. After the expiration of the twenty-four-hour period, the vehicle may be removed to a garage or place of safety. Nothing in this section precludes an Enforcement Officer from immediately removing a motor vehicle that causes an obstruction or hazard to traffic.

6. Removal by city--Notice to owner.

It shall be the duty of any duly authorized Enforcement Officer to notify, by certified mail, the registered owner, and if encumbered, the lien holder, of the removal, storage and present location of any motor vehicle removed under the provisions of this chapter and that the vehicle can be recovered by payment of costs incident to its removal and storage.

Section 5. Buildings or Structures Constituting a Nuisance.

A. Prohibited Conditions. Any building or structure within the City of Lake Norden is hereby declared to constitute a public nuisance if any of the following conditions exist:

1. Buildings or structures which are unsafe, abandoned, boarded up, partially destroyed, dilapidated due to deterioration, fire, wind, or other hazard, or partially constructed and uncompleted to the expiration of building permit or out of repair as to be dangerous, unsafe, unsanitary or otherwise unfit for human use

2. Buildings with excessively deteriorating concrete, siding, masonry, or roofing materials or peeling paint or other conditions that allows the exterior building to deteriorate or become unsightly or permit the effects of weather penetration to encourage decay, dry rot, warping, and/or cracking of the structure.

3. Buildings that are kept in an unsanitary condition that it is a menace to the health of the people residing in the vicinity thereof, or present a more than ordinarily dangerous fire hazard in the vicinity where it is located.

4. Broken windows, doors or attic vents.

B. Emergency Actions Involving Nuisance Buildings and Structures.

1. Imminent danger.

When, in the opinion of the Enforcement Officer, there is imminent danger of failure or collapse of a building or structure which endangers life, or when any structure or part thereof has collapsed and the safety of anyone is endangered by the occupation thereof, or when there is actual or potential danger to the building occupants or those in close proximity thereof because of explosives, explosive fume or noxious vapors or the presence of toxic fumes, gases or materials, or operation of defective or dangerous equipment, any duly authorized Enforcement Officer is hereby empowered to order and require the occupants to vacate the premises forthwith. The Enforcement Officer shall cause to be posted at each entrance to such structure a notice reading as follows: "This structure is unsafe and its occupancy has been prohibited by the Enforcement Officer." It shall thereafter be unlawful for any person to enter such structure except for the purpose of securing the structure, making the required repairs, removing the hazardous condition or of demolishing the same. The County Sheriff is granted the authority to abate any imminent danger.

2. Temporary safeguards.

Whenever there is imminent danger due to an unsafe condition, the Enforcement Officer shall order necessary work to be done, including boarding-up of openings, to render such structure temporarily secure and notwithstanding whether the notice procedure herein described has been complied with; and shall take whatever reasonable steps are necessary to mitigate such emergency.

3. Closing streets.

When deemed necessary, the Enforcement Officer may temporarily close structures, sidewalks, streets, public ways and places adjacent to unsafe structures to prohibit access thereto.

4. Emergency repairs.

Notwithstanding any statute or ordinance to the contrary, the Enforcement Officer may employ labor and purchase materials necessary to complete any work required hereunder as expeditiously as possible.

5. Costs of emergency repairs.

All costs incurred in performing emergency work described herein shall initially be paid by the City of Lake Norden. Thereafter, the City may institute any and all appropriate legal action to obtain reimbursement for those expenses.

6. Hearing.

Any person with an interest in property against which emergency measures are ordered shall comply with such order immediately. Such person shall thereafter, upon complying with the appeal process described herein, be afforded a hearing as described in this code.

Section 6. Prohibited Conditions Involving Weeds and Grass.

1. Prohibited conditions.

All weeds, grass having reached a height of eight inches, and other noxious matter are declared a nuisance and no owner of any lot, place or area within the city, or the agent of such owner or the occupant of such lot, place or area, shall permit on such lot, place or area, or upon any sidewalk abutting the same, any weeds, grass having reached a height of eight inches, or other noxious matter to grow, lie or be located thereon.

2. Notice to abate.

Any duly authorized Enforcement Officer is authorized and empowered to notify, in writing, the owner of any lot, place or area within the city, or the agent of such owner, or the occupant of such premises, to cut, destroy or remove any weeds, grass, or other noxious matter found growing, lying or located on such property or upon the sidewalk abutting same and stabilize the area to prevent future violation of this chapter. Such notice shall be by first-class mail addressed to the owner, agent or occupant at his last known address, and shall notify such owner, agent or occupant to cut, destroy or remove any such weeds, grass, or other noxious matter within ten (10) days after the service of such notice.

3. Abatement by city--Authority.

Upon the failure, neglect or refusal of any owner, agent or occupant to comply with the notice provided for herein, within ten (10) days after the mailing thereof, the City of Lake Norden is hereby authorized and empowered to provide for the cutting, destroying or removal of such weeds, grass, or other noxious matter and stabilize the soil if necessary. The City of Lake Norden may defray the cost of such work, including administrative costs, by special assessment against the property as set out herein. The cost to the landowner shall be fifty dollars (\$50.00) for the first hour of cutting and twenty-five dollars (\$25.00) for each additional hour of cutting, with a fifty-dollar (\$50.00) minimum charge.

4. Abatement by city--Cost--Assessment.

The Finance Office shall cause an account to be kept against each lot upon which work is done pursuant to this Section and have the same certified upon completion of the work. The Finance Office shall thereupon certify such account, showing the amount, the description of the property, and the owner thereof, to the city assessor, who shall thereupon add such assessment to the general assessment against such property and certify such special assessment, together with the regular assessment, to the county auditor to be collected as municipal taxes for general

purposes. Such assessment shall be subject to review and equalization the same as assessments for taxes for general purposes.

5. Abatement by city--Cost collection by suit.

In lieu of the assessment procedure prescribed herein, the costs incurred by the city under this chapter may, in the discretion of the city council, be recovered in a civil action against the owner or occupant of the property.

Section 7. Unlawful Deposits.

1. It is unlawful for any person to deposit on any street any material which may be harmful to the pavement thereof, or for any person to deposit, or for the owner of the adjacent property to allow, any deposit of any waste material, glass, rocks, dirt or other articles which may do injury to any person, animal or property, including any person traveling across the street or right-of-way.

2. In addition to any penalty provided for under this Ordinance, if the owner of the adjacent property does not remove the material within five days after receiving notice to remove the items, he shall be liable to the city for all costs incurred by the city in removing the material, glass, rock, dirt or other articles from the street or right-of-way adjacent to his property.

Section 8. Leasing Premises for Unlawful Purposes.

1. No person shall knowingly lease or rent to another any house, building, shed, booth, lot or other place or premises or any thereof for use or conduct of unauthorized gambling activities, prostitution, unlawful sale or distribution of alcoholic beverages, or activities which annoy or injure the health or safety of others.

2. All places used for the unlawful purposes as described herein are declared to be common nuisances and, upon the judgment of a court of competent jurisdiction for violation for any of the offenses so described, the Enforcement Officer shall be directed to abate and shut up such place by taking possession of all devices and all other property used in maintaining such nuisance and such personal property so taken shall be forthwith publicly destroyed by such officer.

Section 9. Public Nuisance Penalty.

In addition to the abatement remedies prescribed in this code, any person convicted of maintaining any nuisance in violation of any provision of this code shall be punished as prescribed under South Dakota Statute, unless otherwise specifically provided, and a separate offense shall be deemed committed on each day during or on which a violation occurs or continues.

Section 10. Abatement of Nuisances.

A public nuisance may be abated without civil action by any duly authorized Enforcement Officer. Any private person may likewise abate a public nuisance which is specially injurious to him or any private nuisance injurious to him in any manner by removing or, if necessary, destroying that which constitutes the nuisance, without committing a breach of the peace or doing unnecessary injury. If a private nuisance results from a mere omission of the wrongdoer, and cannot be abated without entering upon his land, reasonable notice shall be given to him before entering to abate it. The city may defray the cost of abating a public nuisance by taxing the cost thereof by special assessment against the real property on which the nuisance occurred.

Section 11. Notices and Orders

Whenever an Enforcement Officer determines a violation of this ordinance has occurred, notice shall be provided as follows:

1. Form of Notice. Notice(s) shall:
 - a. Be in writing.
 - b. If the violation exists on property, include a legal description of the property sufficient for identification.
 - c. Include a description of the alleged violation.
 - d. Provided for a reasonable time for voluntary compliance with the provisions of this code; and
 - e. Inform the recipient of the right of appeal.
2. Method of service.

Notwithstanding any other method prescribed herein Notice(s) shall be deemed properly served if:

- a. Delivered personally; or
- b. Sent by certified or first-class mail addressed to the last know address; or
- c. If the notice is returned showing that the letter was not delivered, a copy thereof shall be posted in a conspicuous place in or about the structure affected by the notice.

Section 12. Appeal Procedure.

1. Application.

Any person ordered to comply with any lawful notice or order issued by an Enforcement Officer shall have the right to appeal to the City Council, provided written Notice of Appeal is filed within ten (10) days service thereof. An application for appeal shall plainly state the reasons therefore.

2. Notice of meeting.

The City Council shall consider any appeal at its next regularly scheduled meeting after receipt thereof. Notice of the time and place of hearing shall be sent by first-class mail to the applicant not less than seven (7) days prior to the meeting.

3. Decision on Appeal.

The City Council may modify or reverse the decision of the Enforcement Officer by concurring vote of a majority of its members.

4. Declaration of Nuisance.

If the notice or order of the Enforcement Officer is upheld, the City Council shall direct the Enforcement Officer to institute any and all appropriate proceedings at law or equity to restrain, correct, or abate the violation according to law.

5. Stay of enforcement.

Any appeal filed hereunder, except those relating to conditions constituting Imminent Danger as defined hereunder shall stay the enforcement of the notice and the order until the appeal is heard by the City Council.

Section 13. Failure to Comply or Appeal.

1. Report to City Council.

If any notice or order is not voluntarily complied with or appealed within the time prescribed herein, the Enforcement Officer shall report such violation and failure to comply to the City Council.

2. Public Nuisance.

Upon receipt of a report of non-compliance or failure to appeal, the City Council may declare a public nuisance and may direct the Enforcement Officer to institute the appropriate proceedings at law or equity to restrain, correct, or abate the same according to law.

Section 13. Abatement Cost Recovery.

In addition to the specific methods for assessment of costs provided for herein, the City may recover the cost of its enforcement of this code. Costs incurred by City crews will be at

their hourly rate and standard equipment machine rates per hour. Cost incurred from outside sources will be charged from invoice. The cost may be recovered by civil action against the owner of the property and/or the cost may be taxed by special assessment against the property.

Section 14. Protection of Authorized Operations.

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 previously authorized by permit, license, authorization, or approval issued by the United States of America, the State of South Dakota, Hamlin County, or City of Lake Norden, and any agency or department thereof.

Section 15. Separability.

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 separable.

Section 16. Repeal of Conflicting Ordinances.

All ordinances or part of ordinances in conflict with this Ordinance or inconsistent with the provisions of this Ordinance are repealed entirely.

CITY OF LAKE NORDEN

Rusty Antonen
Mayor

ATTEST:

Delores Kangas
City Finance Officer

(SEAL)

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