

**CITY OF TEA
ORDINANCE 198**

**AN ORDINANCE AMENDING CHAPTER 3 OF THE REVISED ORDINANCES FOR THE
CITY OF TEA, SOUTH DAKOTA, PERTAINING TO NUISANCES**

**NOW THEREFORE BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF TEA,
SOUTH DAKOTA THAT CHAPTER 3, HEALTH AND SANITATION IS HEREBY AMENDED
IN ITS ENTIRETY TO READ AS FOLLOWS:**

**CHAPTER 3
NUISANCES**

- Article 1. Public Nuisances**
- Article 2. Noxious Weeds, Grasses and Vegetation Nuisance**
- Article 3. Special Assessments for Removal**
- Article 4. Abandoned Property**
- Article 5. Sidewalk Snow Removal**

ARTICLE 1. PUBLIC NUISANCES

Section 3.1.1 Public Nuisances Prohibited.

No person shall create, commit, maintain, or permit to be created, committed, or maintained any public nuisance as defined herein, within the City of Tea.

Section 3.1.2. Definition

- (a) For the purposes of this chapter, the word “nuisance” is hereby defined as any person doing an unlawful act, or omitting to perform a duty, or suffering or permitting any condition or thing to be or exist, which act, omission, control or thing either:
 - (i) Injures or endangers the comfort, repose, health or safety of others, or
 - (ii) Offends decency; or
 - (iii) Is offensive to the senses; or
 - (iv) Unlawfully interferes with, obstructs or tends to obstruct or renders dangerous for passage any public or private street, highway, sidewalk, stream, ditch or drainage, or
 - (v) In any way renders other persons insecure in life or the use of property or
 - (vi) Essentially interferes with the comfortable enjoyment of life and property or tends to depreciate the value of the property of others.

Section 3.1.3. Specific Public Nuisances.

- (a) The following, but not limited to, specific acts, conditions and things when committed in the City of Tea, each and all of them, hereby declared to constitute a public nuisances:
 - (i) Depositing, maintaining, or permitting to be maintained or to accumulate upon any public or private property, any household waste water, sewage, garbage,

refuse, rubbish, fecal, excrement, decaying fruit, vegetables, fish, meat, bones, any fowl, putrid, or obnoxious liquid substance, putrescible and nonputrescible animal or vegetable wastes or solid wastes, or any other waste material which constitutes or tends to create a danger to public health, safety, and welfare. (SDCL 9-32-10, SDCL 34A-7-9)

- (ii) The accumulation of manure, garbage or anything whatsoever which are breeding areas or flies, mosquitoes, rodents . (SDCL 9-32-10)
- (iii) Any condition which provides harborage for rats, mice, snakes and other vermin.
- (iv) The carcasses of animals or fowl not disposed of within twenty-four (24) hours after its death. (SDCL 9-29-32)
- (v) Any excavation, trench or open basement in which stagnant water is permitted to collect or which may jeopardize the life, limb or safety of the general public (SDCL 9-29-13)
- (vi) Throwing or letting fall on or permitting to remain on any street, alley or public ground any manure, garbage, rubbish, filth, fuel, wood, soil, earth, mud, clay, rock or any combination thereof while engaged in handling or removing any such substance. (SDCL 9-32-10)
- (vii) Burning, causing or permitting to be burned upon any private or public property any dirt, filth, manure, garbage, sweepings, leaves, ashes, paper, rubbish or material of any kind, except as otherwise permitted by the City Council. This provision shall not apply to the burning of wood in outdoor fireplaces or wood burners. (SDCL 9-33-1)
- (viii) Fallen tree limbs, diseased or dead trees and dead tree limbs shall be declared dangerous and a nuisance
- (ix) Maintain, or causing or permitting the same, any building or premises which is determined to be dangerous or dilapidated. Any building or structure which has any or all of the conditions or defects hereinafter described shall be deemed to be a dangerous or dilapidated building, if such conditions or defects thereby annoy, injure or endanger the comfort, repose, health, or safety of others, or if such conditions or defects exist to the extent that the life, health, property, value of property or safety of the public or its occupants are jeopardized:
 - (1) Whenever any building or structure is (1) vacant and unoccupied for the purpose for which it was erected and; (2) the building is unfit for occupancy as it fails to meet minimum housing standards and; (3) the building has remained substantially in such condition for a period in excess of six (6) months.
 - (2) Whenever any building or structure through lack of maintenance or attention and by virtue of its physical appearance and presence thereby depresses the market value of surrounding properties. (SDCL 9-29-13)

Section 3.1.4. Notice to Abate.

- (a) Whenever the Police Chief or any person designated by the Mayor or City Council who shall be charged with the administration or enforcement of this article, shall find a public nuisance exists within the city, it shall give written or verbal notice to the person creating, permitting or maintaining such nuisance. Written notice and order to abate the nuisance within a reasonable time as provided shall:
- (1) Include a description of the property where the violation is occurring, sufficient for identification.
 - (2) Include a statement of the violation(s).
 - (3) Include an order to correct the violation and bring the property into compliance with the provisions of this code within a specified, reasonable amount of time.
 - (4) Be delivered either in person or by certified mail. If the notice is returned showing that the letter was not delivered a copy thereof shall be posted in a conspicuous place on or about the property where the violation is occurring
- (b) It shall be unlawful for any person who is served a written or verbal notice to abate a nuisance under the provisions of this article to fail to do so within the time allowed in such notice.
- (c) Whenever the owner, occupant or agent of any premises in or upon which any nuisance may be found is unknown or cannot be found, the Police Chief or any person designated by the Mayor or City Council who shall be charged with the administration or enforcement of this article, may proceed to abate the nuisance **without** notice. In either case the expense of such abatement shall be collected from the person who may have created, caused or permitted such nuisance to exist.

Section 3.1.5 Emergency action without notice.

Any public nuisance that an authorized city official believes is an immediate danger to any person(s), said official may take emergency action to abate the nuisance immediately without the notice and order described in section 3.1.4.

Section 3.1.6 Abatement.

If the person or person so notified and ordered as set forth in section 3.1.4 fails to correct the condition as required in the notice and order within the time specified, the Police Chief or any person designated by the Mayor or City Council who shall be charged with the administration or enforcement of this article shall cause the condition to be abated by initiating whatever actions are necessary to correct the condition and prepare a statement of costs incurred in the abatement thereof. The City may contract with others for such purpose. Any person abating a nuisance pursuant to this section is hereby authorized to enter premises for that purpose.

Section 3.1.7. Costs assessed.

If the City abates a public nuisance pursuant to the provisions of this chapter, and the costs incurred by the City or its contractor are not paid within thirty (30) days after receipt of the statement thereof from the city, such costs may be levied against the property benefited or upon which the nuisance existed as a special assessment. The levying of such special assessment shall not affect the liability of the person to who the order is directed for punishment for violations of this code.

Section 3.1.8. Public Nuisance Penalty and Remedy.

Any person who creates, commits, maintains or fails to abate a public nuisance as required under the provisions of this Ordinance may be subject to a maximum penalty of (30) days in Jail or a two hundred dollar (\$200.00) fine or Both. A separate offense may be deemed committed on each day during or on which a violation occurs or continues. In addition, the City may also use the remedies of civil action and abatement as set forth in SDCL 21-10-5 through 21-10-9.

ARTICLE 2. NOXIOUS WEEDS, GRASSES AND VEGETATION NUISANCE

Section 3.2.1. It shall be the duty of the occupant, person in charge, or owner of any lot or parcel of land in the city to keep such lot, to include any abutting city right-of-way, commonly known as the “parkway,” free from noxious weeds, grasses and vegetation; and to cut, spray or remove the nuisance as required by this article.

Section 3.2.2. Definitions.

For the purpose of this chapter:

- (a) **Grasses.** Growth used as ground cover for the purpose of establishing a lawn within city limits
- (b) **Weeds.** All weeds or plants declared to be primary or secondary noxious weeds by the state weed and pest control commission, including but not limited to: all species of rag weed, all species of cockle burrs, all species of tumbleweeds, all species of thistles, dandelions, plantains, sweet clover, wild morning glory, black mustard, pig weed and all other noxious or unhealthful vegetation.
- (c) **Diseased Vegetation and Trees:** Any tree, brush, wood or debris infected with Dutch Elm disease or other infection or infections disease found thereon.
- (d) **Unightly:** Landscaping that is dead, characterized by uncontrolled growth or lack of maintenance, or is damaged;
- (e) **Undeveloped Lot:** A lot with no utility services to or structures upon. This does not apply to an undeveloped lot which is owned by an adjacent or adjoining landowner.

Section 3.2.3. Prohibited Conditions.

No person or persons, owner, occupant or person in charge of any lot or premise shall permit the follow:

- (a) Weeds or grasses growing upon any lot or parcel of land in the city which have gone or are about to go to seed;
- (b) Weeds and grasses taller than six (6) inches on developed lots;
- (c) All weeds and grasses taller than twelve (12) inches on undeveloped lots;
- (d) Any grasses, weeds, shrubs, bushes or diseased vegetation and trees which are unsightly, grown into a state that constitutes a fire hazard, and/or are likely to harbor rats, insects, pests or vermin;
- (e) This section shall not apply to vegetation which is not a primary or secondary noxious weed and is being grown as a crop, livestock pasture, native prairie display garden, wildflower display garden or other nature area designated by the City.

Section 3.2.4. Notice to Abate.

- (a) The Chief of Police or any person designated by the Mayor or City Council shall be charged with the administration or enforcement of this article and has the authority to require compliance on all property.
- (b) The Chief of Police or any person designated by the Mayor or City Council may at the beginning of or during the growing season, by public notice to each occupant, person in charge, or owner of any lot, require all conditions declared in Section 3.2.3 be cut or

removed within 5 days after publication and at all times subsequent thereto during the growing season.

- (c) The notice need not be given personally but may be given generally by publication in the official newspaper once a week for two consecutive weeks, and shall be deemed sufficient to allow those actions authorized by Sections 3.2.6. An individual notice may be provided by personal delivery to the occupant, owner, or person in charge of any lot or premise; or by sending notice certified to the address of the property owner as indicated on the official books of the County Treasure
- (d) The notice shall provide that all conditions determined to be a nuisance declared by Section 3.2.3 left uncorrected may be cut, sprayed or removed by the City, and the cost thereof assessed against that property, to include the cost of levying such special assessment.
- (e) Whenever the owner, occupant or agent of any premises in or upon which any nuisance may be found is unknown or cannot be found, the Police Chief or any person designated by the Mayor or City Council who shall be charged with the administration or enforcement of this article, may proceed to abate the nuisance **without** notice. In either case the expense of such abatement shall be collected from the person who may have created, caused or permitted such nuisance to exist.

Section 3.2.5. Emergency action without notice.

Any public nuisance that an authorized city official believes is an immediate danger to any person(s), said official may take emergency action to abate the nuisance immediately without the notice and order described in section 3.2.4.

Section 3.2.6 Abatement.

If the person or person so notified and ordered as set forth in section 3.2.4 fails to correct the condition as required in the notice and order within the time specified, the city shall cause such conditions to be abated by initiating whatever actions are necessary to correct the condition and to prepare a statement of costs incurred in the abatement thereof. The City may contract with others for such purpose. Any person abating a nuisance pursuant to this section is hereby authorized to enter premises for that purpose.

Section 3.2.7. Costs assessed.

If the City abates a nuisance pursuant to the provisions of this article, and the costs are not paid within thirty (30) days after receipt of the statement thereof from the city, such costs may be levied against the property benefited or upon which the nuisance existed as a special assessment. The costs and fees to the landowner shall be as established by resolution of the City Council. The levying of such special assessment shall not affect the liability of the person to who the order is directed for punishment for violations of this code.

Section 3.2.8. Public Nuisance Penalty and Remedy.

Any person who creates, commits, maintains or fails to abate a noxious weed, grasses or vegetation nuisance as required under the provisions of Article 2 may be subject to a maximum penalty of (30) days in Jail or up to a \$200.00 fine or Both. A separate offense may be deemed committed on each day during or on which a violation occurs or continues. In addition, the City may also use the remedies of civil action and abatement as set forth in SDCL 21-10-5 through 21-10-9.

ARTICLE 3. Special Assessments for Nuisance Abatement

Section 3.3.1. Costs Certified.

The Chief of Police or any person designated by the Mayor or City Council shall certify to the Finance Officer the costs kept against each lot of the cost of the nuisance abatement, by the 15th day of September.

Section 3.3.2. Assessment Roll Prepared.

The Finance Officer shall prepare and estimate of the assessment against each lot for the nuisance abatement for the preceding year, including therein the expense of levying the special assessment against each lot. The estimate shall be submitted to the governing board on or before the 1st day of November.

Section 3.3.3. Notice of Hearing

The Finance Officer shall cause to be published in the official newspaper a notice of the time and place when the governing board will meet for the purpose of approving the estimate, which notice shall be published one, not less than one (1) week before the hearing.

In addition to the publication of the notice of hearing, the Finance Officer shall mail a copy of the notice by first class mail, addressed to the owner of any property to be assessed for the improvements at his address as shown by the records of the register of deeds. The mailings shall be at least one (1) week prior to the date set for the hearing.

Section 3.3.4. Public Hearing

Upon the day for the hearing, the governing board shall meet and if it shall find the estimate correct it shall approve the estimate by resolution, or if not correct, it shall correct or modify the estimate and approve it as modified or corrected, and file the assessment roll with the finance officer.

The owner of any lot or parcel of land against which a special assessment is to be so levied, or its occupant or person in charge, shall have the right to appear before the governing board at such meeting to protest such assessment and to give reasons why such assessment should not be levied.

Section 3.3.5. Special Assessment Collection

From the date of the approval and filing of the assessment roll, the finance officer shall thereupon certify said roll, showing the description of the property and the owner thereof to the County Auditor who shall thereupon add such assessment to the general assessment together with the regular assessment to the County Treasurer to be collected as municipal taxes for general purposes under plan one. The same assessment roll shall be and become a special lien against the various pieces of property described in it.

ARTICLE 4. Abandoned Property.

SECTION 3.4.1. Keeping of Articles Abandoned or left on Private or Public Property

It shall be the duty of the Police Department to take possession of any article or property abandoned, left, or placed on any public or private property, and if the same is believed to have any value, to keep it and attempt to locate the owner thereof, and to retain any such article heretofore so taken up by it. It shall be the duty of the Police Department to maintain a place for the keeping of any such article until the same shall be claimed for otherwise disposed of, and the City shall have a lien thereon for the reasonable expenses incurred in the storage of such article. The City may retain possession of any article or property until any and all liens against it are discharged.

SECTION 3.4.2. Disposition of Unclaimed Property.

If any abandoned article or property has been or is kept for thirty (30) days or more without being claimed, the same may be disposed of by the Police Department by one of the following methods.

- a) If of no value or slight value, it may be destroyed.
- b) If of slight value but of use to the City it may be turned over to the proper department and used until claimed. Any lien incurred by the City against the property shall be regarded as a sufficient offset to the value of such use.
- c) If of more than slight value, it may be sold by the Police Department ten (10) days after notice of such sale as been published in the City's legal newspaper, and the City may be a bidder at such sale. If on any such sale an amount is bid in excess of the charges or lien of the City, such excess shall be deposited in the City's general fund.

ARTICLE 5. Removal of Snow and Ice from Sidewalk

SECTION 3.5.1. Prohibited.

The failure of any owner, lessee, occupant or person having charge of any parcel of real estate to remove snow and ice from any sidewalk located on or adjacent to such parcel of real estate, in which case the Chief of Police, without notice may have such ice and snow removed therefrom.

SECTION 3.5.2. Costs Assessed.

The costs and fees shall be as established by resolution of the City Council. A bill for the costs incurred thereby shall be presented by the Chief of Police to the owner personally by leaving the same at his residence, or place of business, or if he is a non-resident, by mailing the same to his last-known address by prepaid first class mail, or, if the name of such owner or his place or residence cannot be determined or ascertained after due diligence, by posting the same in a conspicuous place on his premises, and; if he shall fail to pay the same within thirty (30) days thereafter, the Chief of Police shall cause an account to be kept against each lot for the cost of doing such work, and the same shall be certified to the Finance Officer on or before the first day of September of each year for assessment against said property in the manner provided by Article 3.

Dated this 18th day of May, 2009

John M. Lawler, Mayor

ATTEST:

Dawn R. Murphy, Finance Officer

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