ORDINANCE 9605-03

RESOLUTION: BE IT RESOLVED by the Lincoln County Board of Commissioners that:

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 Lincoln County residents and their posterity.

WHEREAS, the County believes a general definition of, and non-exhaustive list of enumerated conditions declared to be public nuisances will serve to clarify potential public nuisance situations in unincorporated areas; then

THEREFORE BE IT ORDAINED by Lincoln County:

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) renders other persons insecure in life, or in the use or property; (3) 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 foregoing, are declared a public nuisance and shall be enjoined and abated as provided by state law and/or county ordinance.

Section 1. The following are hereby declared to constitute public nuisances:

a. Disposal or dumping. Accumulating garbage, refuse, waste, trash, rubbish of building materials or inoperable automobiles upon any property outside an approved landfill. Nothing in this section shall be construed to prohibit an individual from disposing of his/her own personal garbage in a reasonable and timely manner.

b. Drainage. Diverting or permitting the diversion of water upon any county road, county highway or county right-of-way without a valid permit obtained from the Lincoln County Highway Superintendent. Nothing in this section shall be construed to prohibit drainage which is otherwise permissible under SDCL 46A-10A-20…

c. Encroachment. Encroaching or permitting the encroachment of any county road, county highway or county right-of-way, which includes allowing a significant amount of soil to be blown onto any county road, county highway or county right-of-way, such that the amount of soil interferes with the operations of the road or the drainage in the right-of-way.

d. Fill. Filling a gravel pit or other hydrologically or environmentally sensitive area with something other than clean fill.

e. Driveways. Building a driveway or road upon and county road, county highway or county right-of-way without a valid permit which has been obtained from the Lincoln County Highway Superintendent.

f. Snow removal. Depositing or permitting the deposition of snow from private property upon a county road, county highway or county right-of-way.

G. Open burning. Burning of any substance, whether natural or manmade, or the intentional casting of any burning substance, natural or manmade, within any unincorporated area of Lincoln County without first contacting the Lincoln County Communications Department to notify the agency of the specific location and exact time of any burning activity. Notwithstanding the provisions of this paragraph, all open burning must be attended by one or more person(s) at all times while any sparks, flames or hot ashes are present. This paragraph does not apply to the maintaining of a fire in any interior fireplace, stove or furnace. This paragraph also does not apply to the burning of any substance in a 55 gallon barrel or barrel of smaller size.

h. Open burning during a “Fire Danger Emergency”. Burning of any substance, whether natural or manmade, or the intentional casting off of any burning substance, natural or manmade, within any unincorporated area of Lincoln County during a “Fire Danger Emergency”. For purposes of this paragraph, the Lincoln County Commission may declare, by resolution, a Fire Danger Emergency at any time of the year, in any area of the county, when weather or other conditions make open burning of any substance unduly hazardous and/or a danger to public safety. Said resolution may prohibit all open burning of any substance, regardless of the circumstances, until such time as the resolution is rescinded by appropriate action of the Lincoln County Commission. This paragraph does not apply to the maintaining of a fire in any interior fireplace, stove or furnace.

i. Disposal or accumulation of foreign manure. Disposing or accumulating any manure or other animal waste material produced outside of Lincoln County without a valid permit which has been obtained from the Lincoln County Commission. A fee for the application of said permit shall be set at $100.00 for the transporting of said manure or animal waster.

Section 2. Public Nuisance Penalty and Remedy.
a. Any person who maintains, commits, or fails to abate a public nuisance as required under the provisions of this ordinance shall be subject to a maximum penalty of thirty (30) days in jail, or a two hundred dollar ($200) fine, or both.

b. In addition, the County may also use the remedies of a civil action and abatement as set forth in SDCL 21-10-5 through SDCL 21-10-9.

Section 3. 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.

A motion by Skie and seconded by Coplan that said ordinance by hereby adopted. All commissioners voted “Aye”.

First Reading May 7, 1996
Second Reading May 14, 1996

LINCOLN COUNTY BOARD OF COMMISSIONERS

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John Frislie, Chairman