

TITLE IX: GENERAL REGULATIONS

Chapter

- 90. NUISANCES**
- 91. ABANDONED, WRECKED, DISMANTLED OR
INOPERATIVE VEHICLES**
- 92. LITTER**
- 93. ANIMALS**
- 94. STREETS AND SIDEWALKS**
- 95. RECREATION FACILITIES**
- 96. NOISE**
- 97. PARADES AND SPECIAL EVENTS**

CHAPTER 90: NUISANCES

Section

General

- 90.01 General authority
- 90.02 Definitions
- 90.03 Conditions and/or acts constituting a nuisance
- 90.04 Slot machine and premises public nuisance
- 90.05 Junk yards adjacent to interstate and primary highways; regulation
- 90.06 Appliances and other airtight containers
- 90.07 Harboring flies, insects or rodents
- 90.08 Abandoned property
- 90.09 Accumulation of lumber, junk and other materials
- 90.10 Offensive, foul or vicious smells
- 90.11 Public nuisance not legalized by lapse of time
- 90.12 Liability of successive owners for continuing nuisance

Nuisance vegetation

- 90.20 Certain weeds and plants declared nuisances
- 90.21 Duty to correct

Administration and Enforcement

- 90.35 Notice to owner of nuisance
- 90.36 Failure to comply with notice; removal of nuisance; costs
- 90.37 Hearing; time; issuance of order; appeal
- 90.38 Abatement of nuisance, notice required, taxing cost of abatement, civil action

- 90.99 Penalty

Cross-reference:

Loud and raucous noise, see § 131.05

GENERAL**§ 90.01 GENERAL AUTHORITY.**

This municipality shall have the power to declare what shall constitute a nuisance and prevent, abate, and remove the same pursuant to SDCL § 9-29-13.

§ 90.02 DEFINITIONS.

The words and phrases defined in this chapter, shall, when used in this chapter, have the meanings respectively ascribed to them in such section, except in those instances where the context clearly indicates a different meaning.

ABANDONED PROPERTY. Any 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 outside of a permanent structure from the elements, and shall include, with being so restricted, deteriorated, wrecked, inoperative, or partially dismantled motor vehicles, trailers, boats, machinery, refrigerators, washing machines, plumbing fixtures, furnitures and any other similar articles in such a condition.

ANIMAL WASTE. Any accumulation of waste manure or straw resulting from the transportation, housing or confining of animals not awaiting transportation, sale or slaughter in a duly licensed stockyard, sale pavilion or hatchery. **ANIMAL WASTE** is also known as **LIVESTOCK WASTE**.

APPLIANCE. Any household or office device operated by gas or electrical current which would include but not be limited to stoves, refrigerators, washing machines and dryers.

BREEDING PLACES FOR FLIES. The accumulation of manure, garbage, or anything whatever which are harboring places and breeding places for flies.

BREEDING PLACES FOR RATS AND OTHER RODENTS. The accumulation of manure, garbage, or anything whatever which are harboring places and breeding places for rats and other rodents.

BUILDING OFFICIAL. The municipal health inspector, the fire inspector, the building inspector, their respective authorized representatives, or any other municipal official authorized by the governing body with the enforcement of this code.

GARBAGE and **REFUSE**. Depositing, maintaining, or permitting to be maintained or to accumulate upon any public or private property any animal or vegetable matter which attends the processing, preparation, transportation, cooking, eating, sale or storage of meat, fish, vegetables, fruit and other food or food products found within the municipality which are likely to transmit disease or which may be a hazard to health.

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 while engaged in handling or removing any such substances.

IMPERFECT PLUMBING. Any imperfect, leaking, unclean, or filthy sink, water closet, urinal or other plumbing fixture in any building used or occupied by human beings.

MANURE. The accumulation of **MANURE** or livestock waste unless it be in a securely tied, closed biodegradable package placed in a leak-proof container with a tight fitting cover.

NUISANCE. 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;

(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.

(SDCL § 21-10-1)

(5) Nothing which is done or maintained under the express authority of a statute can be a **NUISANCE**.

(SDCL § 21-10-2)

POLLUTING RIVER. Throwing or leaving any dead animal or decayed animal or vegetable matter or any slops or filth whatsoever, either solid or fluid, into any pool water.

PREMISES. A lot or parcel of land, improved or unimproved, parking areas thereon, walkways and sidewalks.

PRIVATE NUISANCE. Every other nuisance that is not a public nuisance is a **PRIVATE NUISANCE**.

(SDCL § 21-10-3)

PUBLIC NUISANCE. 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.
(SDCL § 21-10-3)

RUBBISH. Depositing, maintaining, or permitting to be maintained or to accumulate upon any public or private property any combustible refuse matter such as paper, sweepings, rags, grass, tree branches, wood shavings, wood, magazines, cardboard and the like.

STAGNANT WATER. Any water or liquid in which mosquito larvae exist.

VEGETATION.

(1) All weeds or plants declared to be primary or noxious weed or secondary noxious weed by the State Weed Board and all other weed and grass growing upon any lot or parcel of land in the municipality to a greater height than eight inches which have gone or are about to go to seed. This section does not prohibit the cultivation of crops.

(2) Fallen tree limbs, dead trees, and dead tree limbs, which in the opinion of the governing body or appointed official constitute a health, safety or fire hazard.

(3) Limbs of trees hanging within less than seven feet in height from any sidewalk or 14 feet in height from the traveled portion or parking area of any street or road right-of-way within the municipality, all of which collectively are hereinafter referred to as **OVERHANGING LIMBS**.

WASTE MATERIAL. All noncombustible inorganic matter such as ashes, glass, sand, earth, stones, concrete, mortar, metals, tin cans and the like.

§ 90.03 CONDITIONS AND/OR ACTS CONSTITUTING A NUISANCE.

One or more of the following conditions and/or acts either alone or in combination with other, which at the same time affects an entire community or neighborhood, or a considerable number or persons, although the extent of annoyance or damage inflicted upon the individuals may be unequal, constitutes a public nuisance, however this enumeration shall not be deemed to be exclusive:

(A) The keeping of a premises at variance with the zoning laws applicable to the premises.

(B) The interference, obstructing or rendering dangerous for passage any lake, or navigable river, bay, stream, public park, street, alley or highway.

(C) Broken windows, doors, attic vents and underfloor vents.

(D) Allowing the exterior building coverings to deteriorate as to encourage decay, dry rot, warping and cracking.

(E) Any malfunctioning, leaking, unclean or filthy sink, water closet, urinal or other plumbing fixture in any building open for public use.

(F) Any sign or sign structure that is dismantled, partially dismantled, defective, broken, deteriorated, in disrepair or defaced.

(G) The accumulation of dead animals or fowl, animal or fowl matter or waste of any kind, dead, decayed, diseased trees, and other vegetation.

(H) Failure to store in a covered metal container or throwing or letting fall on or permit to remain on any street, alley or public ground any manure, garbage, rubbish, filth, fuel, small dead animals, wood or like material.

(I) Allowing the movement by natural elements, or the accumulation, or discarding, or throwing of litter, which would include but not be limited to: trash, refuse, debris, newspapers, magazines, glass, plastic containers, or styrofoam containers.

(J) Depositing, maintaining, or permitting to be maintained or be accumulated upon any public or private property any combustible refuse matter such as papers, sweepings, rags, grass, tree branches, wood shavings, wood, magazines, cardboard, and the like.

(K) The accumulation of junk and/or litter maintained upon any premises.

(L) Undressed hides kept longer than 24 hours, except at the place where they are to be manufactured, or in storeroom or basement whose construction is approved by the health department.

(M) Parking or permitting a livestock truck or trailer to remain on any street, area or public ground in a residential district when such truck or trailer gives off an offensive odor or is contaminated with manure or other filth.

(N) Any excavation or depression in which stagnant water is permitted to collect or allow for the multiplication of insects.

(O) (1) Maintaining upon 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 waste material exist, to maintain weed control during construction and to level or remove waste materials after construction is completed, or in any event, within eight months for time or placement of waste materials.

(2) For sites where filling, grading or excavation activities have or will span more than one year, it shall be the duty of the owner, lessees, occupant or person on 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.

(P) Livestock and poultry when a public nuisance. The collecting, keeping or feeding of any cattle, sheep, swine, goats, horses or poultry upon premises which are not maintained in a reasonably clean and sanitary condition, free from any noxious or offensive odor, or which will unreasonably interfere with the proper enjoyment of property in the area for residential or business purposes.

Penalty, see § 90.99

Cross-reference:

Land usage, see Title XV

§ 90.04 SLOT MACHINE AND PREMISES PUBLIC NUISANCE.

(A) All slot machines capable of being used for gambling and places where they are kept or operated together with all property of any kind kept or used in connection with the operation of the same, are hereby declared to be public nuisances.

(B) This section does not prohibit the manufacture, or any act appurtenant to the manufacture, of slot machines, or devices in this state for distribution.

(SDCL § 22-25-14) Penalty, see § 90.99

**§ 90.05 JUNK YARDS ADJACENT TO INTERSTATE AND PRIMARY HIGHWAYS;
REGULATION.**

(A) For the purposes of promoting the public safety, health, welfare, convenience and enjoyment of public travel, to protect the public investment in public highways, and to preserve and enhance the scenic beauty of lands bordering public highways, it is hereby declared to be in the public interest to regulate and restrict the establishment, operation, and maintenance of junk yards in areas adjacent to the interstate and primary systems within this state.

(B) Junkyards that do not conform to the requirements of this chapter are public nuisances.

(SDCL § 31-30-1) Penalty, see § 90.99

§ 90.06 APPLIANCES AND OTHER AIRTIGHT CONTAINERS.

(A) The keeping of any discarded icebox, refrigerator or other airtight container is hereby declared to constitute a public nuisance and the same shall be abated as provided by state law and the abatement of such nuisance shall not, in any manner, affect any penalty which may be imposed for the violation of this chapter.

(B) It shall be unlawful for any person to leave or permit to remain outside of any dwelling, building or other structure or within any unoccupied or abandoned building, dwelling or other structure under his or her control in a place accessible to children any abandoned or discarded icebox, refrigerator

or other container which has an airtight door or lid, snap lock or other locking device which may not be released from the inside, without first removing the door or lid, snap lock or other locking device from the icebox, refrigerator or container.

Penalty, see § 90.99

§ 90.07 HARBORING FLIES, INSECTS OR RODENTS.

It shall be a nuisance and unlawful to place, leave, dump or permit the accumulation of manure, garbage, or anything whatever, which harbors or favors the multiplication of flies, insects or rodents.

Penalty, see § 90.99

§ 90.08 ABANDONED PROPERTY.

It shall be a nuisance and unlawful to leave abandoned, discarded or unused furniture, appliances, sinks, toilets, cabinets or other household fixtures or equipment and any property of any kind on any street, alley or public place.

Penalty, see § 90.99

§ 90.09 ACCUMULATION OF LUMBER, JUNK AND OTHER MATERIALS.

(A) It shall be a nuisance and unlawful to allow the accumulation of lumber, boxes, barrels, bricks, stones or any other material unless placed on open racks that are elevated not less than eight inches above ground, and evenly piled or stacked so that such material will not afford harborage for rodents.

(B) It shall be a nuisance and unlawful to allow the accumulation of junk, old iron, or parts of motor vehicles, campers, trailers, tractors, or other like property.

Penalty, see § 90.99

§ 90.10 OFFENSIVE, FOUL OR VICIOUS SMELLS.

It shall be unlawful for any person or persons, within the limits of the municipality to permit or suffer any public nuisance involving offensive, foul or vicious smelling substances upon his or her property.

Penalty, see § 90.99

§ 90.11 PUBLIC NUISANCE NOT LEGALIZED BY LAPSE OF TIME.

No lapse of time can legalize a public nuisance, amounting to an actual obstruction of public right. (SDCL § 21-10-4)

§ 90.12 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 therefor in the same manner as the one who first created it.

(SDCL § 21-10-8) Penalty, see § 90.99

NUISANCE VEGETATION**§ 90.20 CERTAIN WEEDS AND PLANTS DECLARED NUISANCES.**

The following named weeds and plants shall be deemed dangerous and unhealthy and are declared to be nuisances: ragweed, pulsey, pigweed, nettle, thistle of any kind, sunflower, goldenrod, tumbleweed, burdock, cocklebur, sandbar, wild oats, sticktight, milkweed, mustard and any and all other variety or weeds and vegetation deemed to be noxious, obnoxious, dangerous and unhealthy or deemed to be a nuisance by the building official and all other weeds and grasses growing upon any lot or parcel of land in the municipality to a greater height than 12 inches or which have gone or are about to go to seed.

§ 90.21 DUTY TO CORRECT.

It shall be the duty of the occupant, person in charge, or owner of any lot or parcel of land in the municipality to keep such lot, to include any abutting municipal right-of-way, commonly known as the municipal boulevard, free of such nuisance vegetation by cutting, spraying or removal, as may be appropriate.

Penalty, see § 90.99

ADMINISTRATION AND ENFORCEMENT**§ 90.35 NOTICE TO OWNER OF NUISANCE.**

(A) If any nuisance, source of filth, cause of sickness or condition which endangers the public health is found on any property, the county health officer shall, by written notice served personally or by mail upon the property owner, describe the nuisance or condition found to exist and any corrective action to be taken by the owner of the property.

(B) The written notice shall inform the owner of the property that he or she shall either take the stated corrective action or file a written request for hearing within 30 days from the date of service of the notice. The notice shall further state if the owner fails to comply with the requirements of the notice, the health officer shall proceed to have the nuisance or condition complained of abated at the expense of the property owner.

(SDCL § 34-16-19)

§ 90.36 FAILURE TO COMPLY WITH NOTICE; REMOVAL OF NUISANCE; COSTS.

If an owner of property fails to comply with the requirements of a notice served pursuant to SDCL § 34-16-19, the health officer shall proceed to have the nuisance, source of filth, cause of sickness or condition which endangers the public health removed from the property or abated and report the cost of the removal or abatement to the municipality. The cost of such removal or abatement shall be assessed and charged against the property on which the nuisance or condition was located in the manner that other taxes are collected.

(SDCL § 34-16-20)

§ 90.37 HEARING; TIME; ISSUANCE OF ORDER; APPEAL.

Any hearing requested pursuant to SDCL § 34-16-19 shall be held during an open session of the governing body and shall be held no later than 45 days after filing the request for hearing. Following hearing, the governing body shall issue an appropriate order, including a statement of any corrective action which the board deems necessary. A decision of the governing body may be appealed to the circuit court in accordance with the provisions of SDCL Chapter 7-8.

(SDCL § 34-16-21)

§ 90.38 ABATEMENT OF NUISANCE, NOTICE REQUIRED, TAXING COST OF ABATEMENT, CIVIL ACTION.

A public nuisance may be abated without civil action by any public body or officer as authorized by law. Any municipality 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. If the nuisance abated is an unsafe or dilapidated building, junk, trash, debris, or similar nuisance arising from the condition of the property, the municipality may commence a civil action against the owner of the real property for its costs of abatement in lieu of taxing the cost by special assessment.

(SDCL § 21-10-6)

§ 90.99 PENALTY.

(A) Any person who maintains or commits any public nuisance, the punishment for which is not otherwise prescribed, or who intentionally does not perform any legal duty relating the removal of a public nuisance, may be punished by not more than 30 days in jail or a fine not to exceed \$500 or both.

(B) It shall be a violation for any person who has been served with personal notice by a law enforcement agency concerning the condition of such person's property to fail to abate the public nuisance within 60 days of receipt of the personal notice.

Penalty, see § 10.99

Statutory reference:

Maximum penalty, see SDCL §§ 9-19-3 and 22-6-2(2)

CHAPTER 91: ABANDONED, WRECKED, DISMANTLED OR INOPERATIVE VEHICLES

Section

- 91.01 Definitions
- 91.02 Storing, parking or leaving vehicles declared a nuisance
- 91.03 Exceptions
- 91.04 Presence on private property prohibited
- 91.05 Racing or antique vehicles

§ 91.01 DEFINITIONS.

For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning:

ABANDONED MOTOR VEHICLE. Any motor vehicle as deemed hereinabove which is left unattended on any public street, alley, public place or parking lot within the municipality for a longer period than 24 hours without notifying the chief of police and making arrangements for the parking of such motor vehicle.

JUNKED MOTOR VEHICLE. Any car bodies, wrecked cars, abandoned and unusable cars, car bodies or equipment of any type, except in authorized junk vehicles.

MOTOR VEHICLE. Any vehicle which is self propelled and designed to travel along the ground and shall include, but not be limited to, automobiles, buses, motorbikes, motorcycles, motor scooters, trucks, tractors, go-carts, golf-carts, campers and trailers.

PERSON. Any person, firm, partnership, association, corporation, company or organization of any kind.

PRIVATE PROPERTY. Any real property within the municipality which is privately owned and which is not public property as defined herein.

PUBLIC PROPERTY. Any street, alley or highway, or boulevard which shall include the entire width between the boundary lines of every way publicly maintained for the purposes of vehicular travel, and also means any other publicly owned property or facility.

REMOVAL AGENCY. Any public body, private or nonprofit organization authorized by the municipality to remove and salvage abandoned or inoperable motor vehicles.

VEHICLE. Any conveyance which is designed to travel along the ground or in the water and shall include, but not be limited to, automobiles, buses, motorbikes, motorcycles, motor scooters, trucks, tractors, pull trailers, go-carts, golf carts, boats, campers and trailers.

§ 91.02 STORING, PARKING OR LEAVING VEHICLES DECLARED A NUISANCE.

(A) The presence of an abandoned, discarded, wrecked, burned, dismantled, inoperable, junked or partially dismantled vehicle or parts thereof on private or public property is hereby declared a nuisance, which may be abated as such in accordance with the provisions of this subchapter.

(B) It is unlawful to keep or place any of such vehicles or vehicle parts:

(1) Upon public streets or property except on an emergency basis; or

(2) Upon private property of any person owning, in charge of, or in control of any real property in the municipality, whether as an owner, tenant, occupant, lessee or otherwise, for longer than 14 days unless it is within a carport, fully enclosed building or structure. A tarpaulin, tent or other similar temporary structure shall not be deemed to satisfy the requirements of this section.

(C) In no event shall an inoperable vehicle that constitutes an imminent health, safety or fire hazard be kept located on any premises.

Penalty, see § 10.99

§ 91.03 EXCEPTIONS.

This subchapter shall not apply to:

(A) One inoperable vehicle kept on private property without being shielded from public view if licensed and kept on a private driveway. If this inoperable vehicle is in a state of externally visible disrepair or disassembly, it shall not be kept on the private driveway for longer than 14 days.

(B) Filing stations, automobile repair shops or any other motor vehicle related business in compliance with applicable municipal ordinances may place inoperable vehicles being repaired or offered for sale on the premises.

(C) Junkyards operated and maintained in compliance with municipal ordinances.

§ 91.04 PRESENCE ON PRIVATE PROPERTY PROHIBITED.

No person owning, in charge of or in control of any real property within the municipality, 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 30 days.

Penalty, see § 10.99

§ 91.05 RACING OR ANTIQUE VEHICLES.

No owner or occupant of private property shall have an uncovered motor vehicle inoperable condition specifically adopted or designed for operation on drag strips or raceways or an uncovered motor vehicle retained on private property for antique collection purposes.

Penalty, see § 10.99

CHAPTER 92: LITTER

Section

- 92.01 Definitions
- 92.02 Throwing or depositing in or upon streets, sidewalks or public or private places
- 92.03 Sweeping into gutters, streets or other public places
- 92.04 Litter not contained prohibited
- 92.05 Hauling
- 92.06 Construction sites
- 92.07 Loading or unloading options
- 92.08 Distribution of handbills

- 92.99 Penalty

§ 92.01 DEFINITIONS.

For purposes of this subchapter, the following terms, phrases, words and their derivations shall have the following meanings:

GARBAGE. Putrescible animal and vegetable wastes resulting from the storage, distribution, handling, preparation, cooking and consumption of food.

HANDBILL. Any printed or written matter, any sample, dodger, circular, leaflet, pamphlet, newspaper, magazine, paper, booklet, or any printed or otherwise reproduced original or copy of any matter of literature.

LITTER. Any quantity garbage, trash, refuse, rubbish, debris or other waste material including, but not limited to, cans, bottles, jars, treated or untreated paper, wrappings, ashes, cigarettes, cardboard, rags, yard clippings, leaves, grass, wood, glass, crockery, dead animals, scrap metal, salvaged metal and motor vehicle parts that is not in a container.

LITTER TO BE CONTAINED. Any litter which is not enclosed within a building or placed securely in a container designed or reasonably adapted for use as a place for storing litter for the purpose of collection for disposal.

§ 92.02 THROWING OR DEPOSITING IN OR UPON STREETS, SIDEWALKS OR PUBLIC OR PRIVATE PLACES.

No person shall throw or deposit any litter in or upon any street, sidewalk or other public place or any private property except in public or private containers designed and intended for the collection of litter. Persons placing litter in such containers shall do so in such manner as to prevent its being carried or deposited by the elements upon any street, sidewalk, or other public place or private property.

Penalty, see § 92.99

§ 92.03 SWEEPING INTO GUTTERS, STREETS OR OTHER PUBLIC PLACES.

No person shall sweep into or deposit in any gutter, street, or other public place within the municipality any accumulation of litter from any building or lot or from any public or private sidewalk or driveway.

Penalty, see § 92.99

§ 92.04 LITTER NOT CONTAINED PROHIBITED.

Any person being the owner, tenant, or person in control of any private property shall at all time maintain the premises free of litter that is not contained.

Penalty, see § 92.99

§ 92.05 HAULING.

No person shall drive or move any truck or other vehicle unless such vehicle is so constructed or loaded as to prevent any load, contents, or litter from falling, being blown, or otherwise being deposited upon any street, alley, other public place, or any private property.

Penalty, see § 92.99

§ 92.06 CONSTRUCTION SITES.

(A) No person being the owner or person in charge of any property upon which a structure is being constructed or demolished shall permit the accumulation of litter that is not contained upon such property or permit litter therefrom to become blown or scattered upon such property or any property or public place.

(B) No person being the owner of any property upon which a structure is being constructed or demolished shall fail to provide adequate containers to hold all litter produced upon such property or otherwise appearing thereon.

Penalty, see § 92.99

§ 92.07 LOADING OR UNLOADING OPTIONS.

No person owning or having charge of any premises upon which objects or materials are being loaded upon or unloaded from any vehicle or other device for conveyance shall permit any litter that is not contained resulting from such loading or unloading to accumulate upon such property or to be blown or scattered upon such property or any other property or public place.

Penalty, see § 92.99

§ 92.08 DISTRIBUTION OF HANDBILLS.

No person shall throw or deposit any handbill in or upon any street , sidewalk or public place nor shall any person throw, deposit or place any handbill upon any vehicle without the specific and immediate consent of the person having charge of such vehicle. This section shall not prohibit the handing out of handbills to persons willing to receive such handbill.

Penalty, see § 92.99

§ 92.99 PENALTY.

Violation of any provision of this chapter may be punishable by not more than 30 days in jail or a fine not to exceed \$500 or both.

Statutory reference:

Maximum penalty, see SDCL §§ 9-19-3 and 22-6-2(2)

CHAPTER 93: ANIMALS

Section

General

- 93.001 Authority
- 93.002 Definitions
- 93.003 Animal control officer

Vicious Animals

- 93.020 Ownership of vicious dog
- 93.021 Vicious dog defined
- 93.022 Injury to person trespassing; teasing dog; attempting to commit crime
- 93.023 Determination that animal is a vicious dog

Rabies Control

- 93.040 Vaccination required
- 93.041 Report of rabies
- 93.042 Impoundment of animal that has bitten or attacked
- 93.043 Confinement of pet after attack upon person
- 93.044 Confinement of pet bitten by animal suspected of having rabies
- 93.045 Destruction of animal required

Licensing

- 93.060 Licensing of dogs and cats required
- 93.061 Application for license certificate and tag

Miscellaneous Regulations

- 93.075 Keeping of animals
- 93.076 Disturbing the peace
- 93.077 Stray, abandoned or unkept animals

- 93.078 Number of pets limited
- 93.079 Responsibility
- 93.080 Running at large prohibited
- 93.081 Neglect, abandonment, mistreatment of animal
- 93.082 Cruelty to animals
- 93.083 Unattended animals

Impoundment

- 93.095 Authority to impound
- 93.096 Notice to owner
- 93.097 Redemption of animal by person other than owner
- 93.098 Disposition of unredeemed animals
- 93.099 Costs

Administration and Enforcement

- 93.115 Enforcement; authority
- 93.116 Interference with enforcement
- 93.117 Failure to comply with a warning ticket
- 93.118 Record keeping requirements
- 93.119 Payment of fees and charges; stopping payment or issuing bad check prohibited

- 93.999 Penalty

GENERAL

§ 93.001 AUTHORITY.

This municipality shall have the power to regulate or prohibit the running at large of dogs, animals, and poultry, to establish pounds, appoint poundmasters, and regulate the impounding of animals, and to impose a tax or license on dogs running at large pursuant to SDCL § 9-29-12.

§ 93.002 DEFINITIONS.

For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

ABANDONMENT. Giving up with the intent of never again regaining one's interests in, or rights to, an animal other than placing ownership with a responsible party.

ANIMAL. Any mammal, bird, reptile, amphibian, or fish, except humans.

ANIMAL CONTROL OFFICER. An individual, approved by the governing body, with police authority, whose duty it is to apprehend animals within the jurisdiction of this chapter whose owner are in violation of this chapter. The police department shall also act as animal control officers.

ANIMAL SHELTER. A building and facilities therein approved by the governing board and the health authority for the impounding of animals.

ANTI-ESCAPE. Any housing, fencing or device which a guard dog cannot go over, under, through or around.

AT LARGE.

(1) An animal when off or away from the premises and not under the control of the owner, possessor, keeper, agent, servant, or a member of its immediate family by a leash.

(2) An animal when on the premises of the owner, possessor, keeper, agent, or servant if not attended by a competent person unless that animal is chained, restrained, enclosed, or confined in a manner preventing it from leaving the premises.

CONTRACTED AGENT. The person, organization, governmental agency or corporation with whom the municipality and/or county contracts to perform animal control functions.

DOMESTIC ANIMAL. Any animal that through long association with man, has been bred to a degree which has resulted in genetic changes affecting the temperament, color, conformation, or other attributes of the species to an extent that makes it unique and different from wild individuals of its kind.

EXPOSED TO RABIES. An animal has been **EXPOSED TO RABIES** if it has been bitten by, or been exposed to, any animal known to be or suspected of being infected with rabies.

GUARD DOG. Any dog that is utilized to protect commercial property, or is housed unattended on commercial property at any time other than normal business hours, except that such definition shall not apply to pet stores, boarding kennels, veterinary offices and animal shelters.

HANDLER. A person who is responsible for or capable of controlling the operations of a guard dog.

HUMANE SOCIETY INVESTIGATOR. An individual, approved by the governing body, with police authority, whose duty it is to apprehend animals within the jurisdiction of this chapter, whose owners are in violation of this chapter.

IMPOUNDMENT. Taking physical control and custody of an animal.

KENNEL. Any lot or premises or portion thereof where four or more dogs, cats, rabbits, or other household/domesticated animals, six months of age or older, are maintained, boarded, bred or cared for, in return for any compensation, or are kept for the purpose of sale.

NEUTERED DOG/CAT. Any male dog/cat which has undergone surgery to prevent reproduction, whose owner can provide proof of surgery.

OWNER. Any person harboring or keeping an animal and who is the head of the household of the residence of the owner or manager in charge of the establishment or premises at which an animal remains or returns to. An animal shall be deemed harbored if it is fed or sheltered for 20 consecutive days. (SDCL § 40-12-4)

PET. Any dog, cat, or other species of carnivore kept for domestication or display. (SDCL § 40-12-4)

RESTRAINT. A leash or chain, not longer than six feet in length, held by a competent person, or enclosing an animal within a vehicle being driven or parked on the streets, or keeping the animal within the property limits of its owner or keeper.

SERVICE ANIMAL. Any dog owned by any state, county or municipal police department or any state or federal law enforcement agency which has been trained to aid law enforcement officers and is actually being used for law enforcement purposes, or any properly trained dog certified by a licensed seeing-eye or hearing-ear dog agency and actually being used by a visually or hearing impaired person.

SHELTER MANAGER. The owner and/or supervisor of the animal shelter, either as an employee of the municipality or a contractor with the municipality. The individual is charged, together with the police department, with the overall enforcement of this chapter, and performs the professional services required in the care, treatment or euthanization of the animals being handled.

SPAYED DOG/CAT. Any female dog/cat which has undergone surgery to prevent conception, whose owners can provide suitable proof of such surgery.

WILD ANIMAL. Any animal(s) other than domestic dogs and cats, which in a wild state are carnivorous or which because of their nature or physical make up are capable of inflicting serious physical harm or death to human beings, including but not limited to: animal(s) which belong to the cat family, snakes which are poisonous or otherwise present a risk of serious physical harm or death to human beings as a result of their nature or physical makeup, and all raccoons, skunks, foxes, bears, coyotes, wolverines, badgers, lions and tigers.

§ 93.003 ANIMAL CONTROL OFFICER.

The animal control officer shall enforce the provisions of this chapter and may issue citations for violations of this chapter or may issue warning tickets requiring correction of a violation.

VICIOUS ANIMALS**§ 93.020 OWNERSHIP OF VICIOUS DOG.**

Any person owning or keeping a vicious dog as defined in SDCL §§ 40-34-13 through 40-34-15, has committed a public nuisance and is subject to the provisions of SDCL §§ 21-10-5 and 21-10-9. (SDCL § 40-34-13)

§ 93.021 VICIOUS DOG DEFINED.

For the purpose of this chapter, a ***VICIOUS DOG*** is:

(A) Any dog, which, when unprovoked, in a vicious or terrorizing manner approaches in apparent attitude of attack, or bites, inflicts injury, assaults or otherwise attacks a human being upon the streets, sidewalks or any public grounds or places; or

(B) Any dog which, on private property, when unprovoked, in a vicious or terrifying manner approaches in apparent attitude of attack, or bite, or inflicts injury, or other wise attacks a mailman, meter reader, serviceman, journeyman, delivery man or other employed person who is on private property by reason of permission of the owner or occupant of such property or who is on private property by reason a course of dealing with the owner of such private property. (SDCL § 40-34-14)

(C) Every vicious dog and every dog which has the habit of barking or howling in the night, or one that habitually chases and barks at vehicles disturbing and annoying any person or neighborhood, or one that shall injure or destroy any lawn, garden, shrubbery, flowers or vines, is hereby declared to be a public nuisance, and no person shall keep or harbor any such dog.

§ 93.022 INJURY TO PERSON TRESPASSING; TEASING DOG; ATTEMPTING TO COMMIT CRIME.

No dog may be declared vicious if an injury or damage is sustained by any person who was committing a willful trespass or other tort upon premises occupied by the owner or keeper of the dog, or who was teasing, tormenting, abusing or assaulting the dog or was committing or attempting to commit a crime. (SDCL § 40-34-15)

§ 93.023 DETERMINATION THAT ANIMAL IS A VICIOUS DOG.

(A) When the animal control officer determines that an animal is vicious, he or she shall notify the owner of such declaration in writing that such animal must be registered as a vicious animal withing five business days after the receipt of such written notice. The notice shall be served either in person or by mailing such notice by certified mail.

South Dakota Basic Code - General Regulations

(B) The owner of an animal that has been declared vicious shall make application to the animal control office to register such vicious animal and shall comply with the following:

(1) The owner of the animal shall notify the animal control officer of the following:

- (a) Ownership of the animal;
- (b) Name, address, and telephone number of new owner;
- (c) Address change of the owner or of any change in where the animal is housed;
- (d) A change in the health status of the animal;
- (e) Death of the animal.

(2) If the animal is indoors, the animal shall be under the control of a person over 18 years old.

(3) If the animal is outdoors and attended, the animal shall be muzzled, on a leash no longer than six feet and under the control of a person over 18 years of age.

(4) If the animal is outdoors and unattended, the animal must be locked in an escape-proof kennel approved by the animal control officer.

(5) The minimum standard for fencing, pens, or similar structures are the following:

(a) Fencing materials shall not have opening with a diameter of more than two inches; in the case of a wooden fence, the gaps shall not be more than two inches.

(b) Any gates within in such pen or structure shall be lockable and of such design to prevent the entry of children or the escape of the animal.

(c) The required pen or structure shall have secure sides and a secure top. If the pen or structure has no bottom secured to the side, the sides shall be imbedded into the ground or concrete.

(d) The pen or structure must protect the animal from the elements.

(e) The pen or structure may be required to have double exterior walls to prevent the insertion of fingers, hands or other objects.

(6) The animal shall be permanently identified by injecting an identification microchip into the animal using standard veterinary procedures and practices. The number and the veterinarian who injected the microchip is to be reported to the animal control officer.

(7) A universal sign denoting a vicious animal shall be displayed on the kennel or enclosure and on a place visible from the sidewalk or road adjacent to the property where the animal is kept.

(8) The owner shall carry \$100,000 liability insurance covering the medical and/or veterinary costs resulting from the vicious actions or any other damage the animal may do or cause to be done. Proof of such insurance shall be filed with the animal control officer.

(9) The owner shall present proof of current rabies vaccination and current municipal license of the animal to the animal control officer.

(10) The owner shall present proof to the animal control officer that the animal has been altered to prevent reproduction.

(C) The vicious animal shall be impounded by the animal control officer at the owner's expense until such time as all provisions of division (B) have been complied with.

(D) If the provisions of division (B) have not been met, the animal shall be seized and euthanized in a humane manner.

(E) (1) Any vicious animal found off the premises of its owner, other than provided for in this chapter, shall be seized by the animal control officer or any police officer and impounded. If the animal cannot be captured, it shall be destroyed.

(2) If the animal has been running at large, or bites a person, or bites another animal, that animal control officer or any police officer may order the owner to deliver the animal to the shelter within 24 hours and the owner ordered to appear in court to show cause why the animal shall not be destroyed. If the owner of the animal fails to deliver the animal as ordered, the animal control officer or any police officer shall use such means as necessary to impound the animal.

RABIES CONTROL

§ 93.040 VACCINATION REQUIRED.

(A) Any dog, cat or other animal susceptible to rabies, held as a pet in this municipality, that is six months of age or older, is required to be vaccinated against rabies by a licensed veterinarian or other qualified individual approved by the health authority. All subsequent rabies vaccinations as required by the health authority shall also be given at the appropriate intervals.

(B) Any owner of a dog, cat or other animal susceptible to rabies that is acquired by birth, purchase or adoption shall have that animal vaccinated within one month of such acquisition or when that animal reaches the age of six months.

§ 93.041 REPORT OF RABIES.

Any person who knows of an animal infected with rabies shall report the same to the animal control officer with a description of the animal and the name and address of the owner, if known.

§ 93.042 IMPOUNDMENT OF ANIMAL THAT HAS BITTEN OR ATTACKED.

(A) When an owner of an animal has been notified that animal has bitten or attacked any person, within 24 hours, that owner shall place the animal under the care and control of the animal control officer for a period of not less than ten days.

(B) At the end of the ten-day period, the animal control officer shall examine that confined animal and if cleared, the animal may be reclaimed by the owner. The owner is to pay all expenses incident to the confinement and examination.

(C) If, during confinement, the animal shows signs of rabies or it is known that animal has been exposed to rabies, then that animal may be confined in excess of the ten-day period and for as long a period as is necessary to determine a diagnosis.

(D) Any animal that has bitten or attacked and cannot be captured, may be destroyed in such a way as not to destroy the head so that it may be submitted to a laboratory for a rabies examination.

(E) (1) Within 24 hours of the bite, if an owner of the animal that has bitten or attacked can provide proof of a current rabies vaccination given within 30 days prior to the date of the bite or attack, then he or she may prevent the euthanization of the animal by order of the health authority or a veterinarian from the board of health.

(2) Any animal that has bitten any person may be euthanized by order of the health authority, if in its opinion and based on sound medical judgements, a greater risk is present if the animal is not euthanized. The health authority shall take into consideration the following factors:

- (a) History of the animal, including its exposure to rabies;
- (b) Vaccination record of the animal;

- (c) Health of animal;
- (d) Nature, seriousness and location of bite;
- (e) Circumstances surrounding the bite, including whether or not the bitten animal provoked it;
- (f) Tolerance of person bitten to vaccination treatments.

§ 93.043 CONFINEMENT OF PET AFTER ATTACK UPON PERSON.

The department may serve written notice upon the owner of any dog or cat which has attacked or bitten a person to confine the animal at the owner's expense upon his premises or at a municipal pound or other place designated in the notice for a period of at least ten days after the animal has attacked or bitten any person. The department may examine the animal at any time within the ten-day period of confinement to determine whether such animal shows symptoms of rabies. In the case of any pet other than a dog or cat, which has attacked or bitten a person, the department may serve written notice upon the owner of such animal that the owner shall have the animal euthanized immediately and submit the brain to an approved laboratory for rabies examination.

(SDCL § 40-12-5)

§ 93.044 CONFINEMENT OF PET BITTEN BY ANIMAL SUSPECTED OF HAVING RABIES.

The department may serve written notice upon the owner of a dog or cat known to have been bitten by an animal known or suspected of being affected by rabies, requiring the owner to confine such dog or cat for a period of not less than six months. However, if such dog or cat had been properly treated with an antirabic vaccine, confinement shall be for a period of not less than three months. In the case of any pet other than a dog or cat, the department may serve written notice upon the owner of such animal that the owner shall have the animal euthanized immediately.

(SDCL § 40-12-6)

§ 93.045 DESTRUCTION OF ANIMAL REQUIRED.

If the animal control officer determines that rabies exists in any animal, the board may kill such animal and any animal there is reason to believe an animal or person has been bitten by any animal affected with rabies.

*LICENSING***§ 93.060 LICENSING OF DOGS AND CATS REQUIRED.**

Each owner of a dog or cat that is the age of six months or over, within 30 days of the acquisition of the animal or within 30 days of the animal turning that age, shall have that animal licensed. Proof of rabies immunization and the proper fee shall be required at the time application for such licenses is made.

§ 93.061 APPLICATION FOR LICENSE CERTIFICATE AND TAG.

(A) Every owner of a dog or cat residing within the municipality shall submit an application for a license for each animal owned that is six months of age or older. A renewal application shall be submitted within one year of the issuance of the initial application and annually thereafter.

(B) Upon proper receipt of the application, a certificate and tag shall be issued to the owner of the animal. The certificate shall be in possession of the owner and the license shall be affixed to the licenses animal at all times. If there is a change of ownership, loss or death of the animal, the owner shall notify animal control of the event within ten days.

*MISCELLANEOUS REGULATIONS***§ 93.075 KEEPING OF ANIMALS.**

(A) The keeping of animals shall not be on such a scale so as to create a nuisance. This prohibition includes the domestic fowl of the order Galliformes and Gallinaceous (fowl-like birds), and the order Anseriformes (water fowl).

(B) Nothing in this sections shall prohibit the keeping of the domestic cat (*Felis catus*), the European polecat (*Mustela putorius foro*) otherwise known as the ferret, or the domestic dog (*Canis familiaris*), as long as the licensing or permit procedures and all other provisions of this chapter are followed.

(C) It is considered a nuisance and shall be unlawful for any person to keep and maintain (other than the care and treatment of injured or abandoned birds and animals by people licensed for that purpose) or sell native fur bearers, bears, mountain lions, bobcats, lynx, panthers, endangered species, exotic cats or venomous snakes.

§ 93.076 DISTURBING THE PEACE.

(A) The owner or custodian of an animal shall not allow the animal to create a disturbance by making loud noises at any time of the night or day.

(B) Any animal control officer or police officer may remove and impound any animal which is disturbing the peace when the owner of animal cannot be located. A notice advising the owner of the impoundment shall be left on the premises.

(C) Any person having custody or control of any female dog or cat in heat shall be required to keep such dog or cat confined in a building, secure enclosure, veterinary hospital, or boarding kennel so that it cannot attract or come into contact with another animal on public or private property except for controlled breeding purposes.

§ 93.077 STRAY, ABANDONED OR UNKEPT ANIMALS.

No person shall harbor or keep any stray animals. Animals known to be strays shall be immediately reported to the animal control officer.

§ 93.078 NUMBER OF PETS LIMITED.

It is unlawful for any person to have or to keep more than four domestic pets over the age of six months, except birds and fish on any lot or premises in the municipality, unless such person residing on or in the lot or premises has a valid kennel license issued by the municipality. The humane society, veterinarian offices, and retail pet stores are exempt from the provisions of this section.

§ 93.079 RESPONSIBILITY.

(A) No person shall create or maintain any condition or operate any equipment or keep any animal, fowl, pet or insect under his or her jurisdiction in such a way that such condition or operation causes or likely to cause the transmission of diseases from animals or insects to man.

(B) No owner, caretaker, or attendant of an animal shall allow an animal to defecate on public or private property other than his or her own. If such animal does defecate upon public or private property, the owner, keeper, caretaker, or attendant must immediately and thoroughly clean the fecal matter from such property.

(C) Anyone walking an animal on public or private property other than his or her own must carry with him or her visible means of cleaning up any fecal matter left by the animal. Animals used in parades or involved in law enforcement are exempt from this subsection.

§ 93.080 RUNNING AT LARGE PROHIBITED.

It shall be unlawful for any person to have any animal which is owned, kept, harbored, or allowed to be habitually in or upon the premises occupied by him or her under his or her control to be at large and to go in or upon the private premises of others or upon public property.

§ 93.081 NEGLIGENCE, ABANDONMENT, OR MISTREATMENT OF ANIMAL.

No person owning or responsible for the care of an animal may neglect, abandon, or mistreat the animal.

(SDCL § 40-1-2.3) Penalty, see § 93.999

§ 93.082 CRUELTY TO ANIMALS.

No person may subject an animal to cruelty.

(SDCL § 40-1-2.4) Penalty, see § 93.999

§ 93.083 UNATTENDED ANIMAL.

(A) A person may not leave any animal unattended in a standing or parked motor vehicle in a manner that endangers the animal's health or safety.

(B) A violation of this section is a class 2 misdemeanor carrying a \$200 fine.

(C) A person found to be in violation of this section shall bear the costs and fees associated with any required care, treatment, impounding, or kenneling of the animal.

Penalty, see § 93.999

IMPOUNDMENT**§ 93.095 AUTHORITY TO IMPOUND.**

The animal control officer or police officers have the authority to impound any animal in violation of this chapter.

§ 93.096 NOTICE TO OWNER.

The owner of any animal that has been impounded shall be notified within 24 hours of the impoundment of his or her animal, provided that name and address of the owner can be reasonably ascertained.

§ 93.097 REDEMPTION OF ANIMAL BY PERSON OTHER THAN OWNER.

If the owner of any animal that has been impounded fails to redeem such animal, after the impoundment period, any other person may redeem the animal, upon complying with any requirements of this chapter, may redeem the animal and become the lawful owner.

§ 93.098 DISPOSITION OF UNREDEEMED ANIMALS.

(A) If an impounded animal is wearing a license or other means of identification, the animal shall be kept at the shelter for a period of five days, excluding Sundays and holidays.

(B) If an animal is not wearing identification, it shall be confined for a period of three days, excluding Sundays and holidays. The animal control officer may dispose of the animal impounded in any humane manner.

§ 93.099 COSTS.

(A) An animal held or impounded shall be released to its owner or other persons only after payment of daily boarding costs, any veterinarian fees and impoundment fees have been paid in full.

(B) Boarding costs, veterinarian fees and impoundment fees are in addition to any fines assessed for violation of this chapter.

ADMINISTRATION AND ENFORCEMENT**§ 93.115 ENFORCEMENT; AUTHORITY.**

(A) The provisions of this chapter shall be enforced by the police department or the animal control officer.

(B) The animal control officer of police department may issue citations for violations of any section of this title or may issue warning tickets requiring correction of a violation.

§ 93.116 INTERFERENCE WITH ENFORCEMENT.

No person may hinder, delay or obstruct any police officer or the animal control officer in the performance of any duty under this chapter or seek to release any animal in the custody of the animal control officer, except as provided herein.

§ 93.117 FAILURE TO COMPLY WITH A WARNING TICKET.

It is unlawful for any person to fail or refuse to comply with the provisions of requirements of a warning ticket lawfully issued under this chapter.

§ 93.118 RECORD KEEPING REQUIREMENTS.

It shall be the duty of the shelter manager and the animal control officer to keep, or cause to be kept, accurate and detailed records of the licensing, finding, impoundment and disposition of all animals and owners coming into his or her custody. It shall be the duty of the animal control officer and shelter manager to keep, or cause to be kept, accurate and detailed records of all bite cases provided to him or her and his or her investigation of the same. It shall be the duty of the shelter manager to keep, or cause to be kept, accurate and detailed records of all moneys belonging to the municipality.

§ 93.119 PAYMENT OF FEES AND CHARGES; STOPPING PAYMENT OR ISSUING BAD CHECK PROHIBITED.

No person may avoid payment of licenses or impoundment fees prescribed by this chapter or charges for veterinarian services or rabies observation costs incurred under this chapter, by stopping payment on any check or issuing an insufficient funds check.

§ 93.999 PENALTY.

Any person, firm or corporation violating any provision of this chapter shall be guilty of a second degree misdemeanor and punished by a fine of not more than \$500 or by confinement not to exceed 30 days in the county jail, or both fine and imprisonment.

Statutory reference:

Maximum penalty, see SDCL §§ 9-19-3 and 22-6-2(2)

CHAPTER 94: STREETS AND SIDEWALKS

Section

General

94.01 Authority

Streets

94.15 Authority over streets; improvements

94.16 Railroads

Sidewalks

94.30 Width and material of sidewalks

94.31 Failure to keep sidewalks in repair; liability

94.32 Notice to construct or repair sidewalk

94.33 Failure of owner to repair sidewalk

94.34 Assessment of sidewalk repair costs

94.35 Filing of assessment for sidewalk construction or repair

94.36 Mailboxes

94.37 Discharge of rainwater

94.38 Sidewalk snow and ice control

94.39 Encroachments restricted

94.40 Encroachment, removal

Statutory reference:

General assessment law applicable to sidewalk improvements, see SDCL § 9-46-9

GENERAL

§ 94.01 AUTHORITY.

(A) *Utility openings and lights in streets and alleys.* This municipality shall have power to regulate openings in streets or alleys for laying of gas or water mains, sewers, tunnels, and drains, and the erecting of gas or electric lights pursuant to SDCL § 9-30-1.

(B) *Cleaning, removal of obstructions, injury and the like.* This municipality shall have the power to regulate the use of sidewalks, streets, alleys, wharves, parks, and public grounds, to provide for cleaning the same, to prevent and remove obstructions and encroachments upon the same, to prevent injury to the same, to regulate or prevent any practice having a tendency to annoy persons frequenting the same, and to regulate or prohibit structures under sidewalks and riding and driving thereon pursuant to SDCL § 9-30-2.

(C) *Signs and advertising in public places.* This municipality shall have power to regulate and prohibit the use of streets, sidewalks, and public grounds for signs, signposts, awnings, flying of flags or banners, posting of bills and advertisements, the exhibition or carrying of banners, placards, or advertisements, and the distribution of handbills pursuant to SDCL § 9-30-3.

(D) *Traffic and sales in public places.* This municipality shall have power to regulate traffic and sales upon the streets and sidewalks and in public places pursuant to SDCL § 9-30-4.

(E) *Snow removal; weed removal; expense paid by special assessment.* This municipality shall have power to require the owner of abutting property to remove snow and ice from sidewalks and weeds from parking, and to provide for their removal and for taxing the expense thereof by special assessment against the abutting property pursuant to SDCL § 9-30-5.

STREETS

§ 94.15 AUTHORITY OVER STREETS; IMPROVEMENTS.

This municipality shall have the power to lay out, establish, open, vacate, alter, widen, extend, improve, repair, grade, gravel, surface, pave, repave, bridge, construct a viaduct upon or over, erect equipment for street lighting in and otherwise improve, and establish and change the grade of roads, streets, alleys, sidewalks, and public grounds, and to regulate the making of openings and connections therein and the erection of lights thereon as provided in SDCL § 9-45-1.

Cross-reference:

Local provisions, see Title XVII

§ 94.16 RAILROADS.

(A) All railroad companies in this municipality shall make, keep open, and repair their crossings of streets and public roads, and to make, keep open, and repair ditches, drains, sewers, and culverts along and under their tracks, so that drainage of adjacent property shall not be impeded and the right-of-way shall be properly drained.

(SDCL § 9-35-8)

(B) This municipality may extend any street, alley, or highway over, under, or across, or to construct any sewer, water pipe, or main under or through any railroad track, right-of-way, or land of any railroad company within the corporate limits pursuant to SDCL § 9-35-7.

SIDEWALKS

§ 94.30 WIDTH AND MATERIAL OF SIDEWALKS.

The width of sidewalks in this municipality shall be as is set by the governing body. All sidewalks must be composed of material as is set out by the governing body.
(SDCL § 9-46-1) Penalty, see § 10.99

§ 94.31 FAILURE TO KEEP SIDEWALKS IN REPAIR; LIABILITY.

(A) Any owner of real property who fails to keep in repair the sidewalks in front of or along such property if he or she resides thereon, or if he or she does not reside thereon, to repair the same forthwith when notified, is liable to the municipality for any damage caused by such neglect.

(B) The duty of the municipality to notify the nonresident owner does not affect the liability of the owner for any injury proximately caused by the negligent construction or repair of the sidewalk.

(C) The failure of the municipality to notify the nonresident owner does not result in any liability on the part of the municipality for any injury proximately caused by the negligent construction or repair of the sidewalk.
(SDCL § 9-46-2) Penalty, see § 10.99

§ 94.32 NOTICE TO CONSTRUCT OR REPAIR SIDEWALK.

(A) If the municipality deems it necessary to construct, rebuild, or repair any sidewalk, it shall notify all owners of lots adjoining such sidewalk to construct, rebuild, or repair the sidewalk at their own expense within a time designated.

(B) Such notice shall be in writing and either be served personally or by return receipt mail, on each owner or by publication once in each week for two consecutive weeks. It shall set forth the character of the work and the time within which it is to be done. Such notice may be general as to the owners but shall be specific as to the description of such lots.
(SDCL § 9-46-3)

§ 94.33 FAILURE OF OWNER TO REPAIR SIDEWALK.

If such sidewalk is not constructed, reconstructed, or repaired in the manner and within the time prescribed pursuant to § 94.32, the municipality by resolution may cause the work to be done by day labor or by job. If the amount of the contract is less than the amount provided for in SDCL § 5-18A-14, it is not necessary to advertise for bids.

(SDCL § 9-46-4)

§ 94.34 ASSESSMENT OF SIDEWALK REPAIR COSTS.

The cost thereof shall be assessed against the lots fronting or abutting upon the sidewalk so constructed, reconstructed, or repaired, as provided in this chapter. In estimating such assessment the entire cost of the improvement fronting on the property to be assessed shall be divided by the number of feet fronting or abutting on the same, and the quotient shall be the sum to be assessed per front foot against each lot so fronting or abutting.

(SDCL § 9-46-5)

§ 94.35 FILING OF ASSESSMENT FOR SIDEWALK CONSTRUCTION OR REPAIR.

After the completion of the construction or repair of said sidewalk, the municipal engineer or such other person designated for that purpose shall file in the office of the municipal auditor or clerk, an assessment roll showing the amount to be assessed against each lot or parcel of ground which amount shall include the contract price or the cost of the work by day labor, engineering and any other costs entering into such construction or repair, the description of the property abutting upon said sidewalk which is to be assessed and the name of the owner or owners thereof as shown by the records in the office of the director of equalization.

(SDCL § 9-46-6)

§ 94.36 MAILBOXES.

Mailboxes are permitted to be located on or adjacent to a municipal street curb or sidewalk provided that all other requirements as set out by the municipality for installing the mailboxes are met.

(SDCL § 9-46-11)

§ 94.37 DISCHARGE OF RAINWATER.

It shall be unlawful for any person to permit the rainwater from any building discharge on and over the sidewalks.

Penalty, see § 10.99

§ 94.38 SIDEWALK SNOW AND ICE CONTROL.

(A) (1) The record owner of any building or ground within the municipality fronting upon or adjoining a street where a sidewalk exists in front of or adjoining such premises, shall clear or make arrangements to clear the sidewalk in front of or adjoining such buildings and ground to the width of the sidewalk within 24 hours after snow or ice has fallen or formed. Where it is impossible to take the snow and ice from the walk by reason of its being frozen to the sidewalk the record owner shall sprinkle or spread some suitable material upon the same to prevent the walk from becoming slippery and dangerous to travel.

(2) **RECORD OWNER** means the fee owner of real property as shown in the records of the register of deeds. A **CONTRACT PURCHASER** of real property means the record owner for the purpose of this section.

(B) If the record owner of any building or lot fails or neglects to remove snow and ice from the sidewalk adjoining the property within 24 hours after the same has fallen or formed, the municipal public works director or his or her designee may arrange for an independent contractor to remove the snow and ice. The municipality may also, at its discretion, remove the snow or ice if it deems such action appropriate. In either case, the municipality shall be entitled to a fee for the costs of arranging the removal plus the actual cost paid to the contractor or, in the event the removal is done by municipality employees, the record owner shall pay a sum as determined by the municipality plus material per hour for each employee. Such sums shall be recoverable by the same legal means as for the recovery of other nuisance abatements, including, but not limited to, direct billing of the property owner, assessment of the sum against the property itself, or by bringing an action against the property owner. Each day the record owner fails to remove the snow and ice, after notice as provided for in this section, shall constitute a separate violation of this section and shall be subject to a civil fine, as set by the municipality, per day for each separate violation.

§ 94.39 ENCROACHMENTS RESTRICTED.

It shall be unlawful for any person to erect, construct, install, place, or to permit the erection, construction, installation, placing of any encroachment upon or above any portion of any residential sidewalk in the municipality.

Penalty, see § 10.99

§ 94.40 ENCROACHMENT, REMOVAL.

Whenever any encroachment exists in violation of these provisions, written notice shall be given the owner of record requiring removal within 14 days. If the owner of record fails to remove the encroachment within the time specified in the notice, the municipality shall remove the encroachment at the owner's expense.

CHAPTER 95: RECREATION FACILITIES

Section

Municipal Park

- 95.01 Authority
- 95.02 Control of park
- 95.03 Athletic facilities; fees; park fund

Sport Shooting Range

- 95.15 Definition
- 95.16 Operation and use of any sport shooting range

MUNICIPAL PARK

§ 95.01 AUTHORITY.

This municipality shall have the authority to establish, improve, maintain and otherwise regulate public parks pursuant to SDCL §§ 9-38-1 *et seq.*

Statutory reference:

Budget of park boards, see SDCL §§ 9-38-42 and 9-38-44

§ 95.02 CONTROL OF PARK.

Except as provided for by first or second class municipalities under a commission form of government the public parks of every municipality, whether within or without the limits of the municipality, shall be under the control and supervision of the governing body thereof unless a park board shall have been created as provided in this pursuant to SDCL Chapter 9-38.

§ 95.03 ATHLETIC FACILITIES; FEES; PARK FUND.

(A) A municipality may establish, maintain, and operate golf courses, tennis courts, ball grounds, and other athletic amusements, and necessary facilities in connection therewith, as a part of its park system, and charge fees for the use thereof.

(B) All fees received under this section and any other money received for use of the board including tax revenues which may be appropriated for park purposes, shall be kept in a special park fund and shall be paid upon requisition by the president and secretary of the board and warrant drawn and executed as other warrants.

SPORT SHOOTING RANGE**§ 95.15 DEFINITION.**

A ***SPORT SHOOTING RANGE*** is an area designed and operated for the use of rifles, shotguns, or pistols as a means of silhouette, skeet, trap, black powder, or other sport shooting. A ***SPORT SHOOTING RANGE*** includes any shooting range located on public or private land or operated by a private entity or by a public entity, and a law enforcement shooting range.

(SDCL § 21-10-33)

§ 95.16 OPERATION AND USE OF ANY SPORT SHOOTING RANGE.

(A) The use or operation of a sport shooting range may not be enjoined as a nuisance if the range is in compliance with those statutes, regulations and ordinances that applied to the range and its operation at the time when the initial operation of the range commenced. The use or operation of a sport shooting range may not be enjoined as a nuisance due to any subsequent change in any statute, regulation, or ordinance pertaining to the normal operation and use of sport shooting ranges.

(SDCL § 21-10-28)

(B) The use or operation of a sport shooting range may not be enjoined as a nuisance by a person who acquires title to real property adversely affected by the normal operation and use of a sport shooting range which commenced operation prior to the time the person acquired title.

(SDCL § 21-10-29)

(C) The provisions of SDCL §§ 21-10-28 through 21-10-34 do not apply to any recovery for any act or omission relating to the operation or use of any sport shooting range based on negligent or willful or wanton misconduct.

(SDCL § 21-10-30)

(D) The provisions of SDCL §§ 21-10-28 through 21-10-34 do not apply if there has been a substantial change in the primary use of the sporting range.

(SDCL § 21-10-31) Penalty, see § 10.99

Statutory reference:

Significant threat to human life or private habitations, see SDCL § 21-10-28.1

CHAPTER 96: NOISE

Section

- 96.01 Purpose and intent.
- 96.02 General restrictions
- 96.03 Permit for outdoor sound amplification equipment
- 96.04 Revocation of permit
- 96.05 Hearing; revocation; appeal
- 96.06 Exceptions to application of chapter

§ 96.01 PURPOSE AND INTENT.

This chapter is enacted to protect, preserve and promote the health, safety, welfare, peace, quiet and tranquility of the citizens of the municipality and persons or visitors frequenting the municipality through the reduction, control and prevention of noise which is disruptive and constitutes an annoyance to the citizens and persons.

§ 96.02 GENERAL RESTRICTIONS.

No person may:

(A) Make noise or play a musical instrument audible to an adjacent business or residence or use sound equipment in public between the hours of 10:00 p.m. and 10:00 a.m., except as authorized by the chief of police;

(B) Operate any jack hammers or heavy equipment within 600 feet of a residence, church, hospital, hotel or motel between 7:00 p.m. and 6:00 a.m.;

(C) Operate sound equipment in a vehicle audible or causing vibration 30 feet from the equipment;
or

(D) Make loud or disturbing or offensive noises with any mechanical devices operated by compressed air and used for purposes of assisting braking on any semi-tractor, logging truck or other motor vehicle except for the aversion of imminent danger.

Penalty, see § 10.99

§ 96.03 PERMIT FOR OUTDOOR SOUND AMPLIFICATION EQUIPMENT.

(A) Except as provided in this chapter, any person, partnership, association, corporation or business desiring to use or operate any loudspeaker, public address system or other sound amplifying equipment outdoors, or indoors, but designed to project the sound outdoors, must first obtain a permit from the municipal police department which will then be brought forth to the governing board for approval. The permit may authorize the use or operation of the sound amplifying equipment between the hours of 10:00 p.m. and 10:00 a.m.

(B) The application for the permit shall be filed with the police department and shall provide the following information:

- (1) The name, address and telephone number of both the owner and the user of the sound amplifying equipment;
- (2) The license number of the motor vehicle, if any, upon which the equipment is to be used;
- (3) The general description of the sound amplifying equipment which is to be used; and
- (4) The dates and location of the proposed operation of the equipment.

(C) The permit may contain conditions as may be necessary to ensure compliance with this chapter and any other ordinances of the municipality as may be in effect when the permit is issued.

§ 96.04 REVOCATION OF PERMIT.

A permit issued under this chapter may be revoked or terminated by the chief of police if the noise which is produced under the permit becomes unreasonably loud, raucous, jarring, disturbing, disruptive or annoying to residents or other persons within the municipality.

§ 96.05 HEARING; REVOCATION; APPEAL.

(A) (1) If the municipality determines that facts exist for revocation of a permit, the municipality shall notify the permittee in writing of the intent to revoke the permit, including the grounds therefor, by personal delivery, or by certified mail. The notification shall be directed to the most current business address on file with the municipality. Within five working days of receipt of the notice, the permittee may provide to the chief of police or person appointed by the municipality, in writing, a response that shall

include a statement of reasons why the permit should not be revoked. Within three days of the receipt of the permittee's written response, the chief of police or person appointed by the municipality shall notify the permittee in writing of the hearing date on permittee's revocation proceeding.

(2) Within ten working days of the receipt of permittee's written response, the chief of police or person appointed by the municipality shall conduct a hearing at which the permittee shall have the opportunity to be represented by counsel and present evidence and witnesses on his or her behalf. If a response is not received by the chief of police or person appointed by the municipality in the time stated or, if after the hearing, the chief of police or person appointed by the municipality finds that grounds exist for revocation, the decision shall become final five days after the chief of police or person appointed by the municipality sends, by certified mail, written notice that the permit has been revoked. The notice shall include a statement advising the permittee of the right to appeal the decision to a court of competent jurisdiction.

(3) If the chief of police or person appointed by the municipality finds that no grounds exist for revocation of a permit, then within five days after the hearing, the chief of police or person appointed by the municipality shall withdraw the intent to revoke the permit, and shall so notify the permittee in writing by certified mail of that action and shall contemporaneously issue the permit.

(B) When a decision to revoke a permit becomes final, the permittee whose permit has been revoked, shall have the right to appeal the action to a court of competent jurisdiction. Upon the filing of any court action to appeal, challenge, restrain, or otherwise enjoin the municipality's enforcement of the revocation, the municipality shall immediately issue the permittee a provisional permit. The provisional permit shall allow the permittee to continue operation of the business and will expire upon the court's entry of a judgment on the permittee's action to appeal, challenge, restrain, or otherwise enjoin the municipality's enforcement.

§ 96.06 EXCEPTIONS TO APPLICATION OF CHAPTER.

The following shall be exceptions to the application of this noise regulations chapter:

- (A) Parades, community events, festivals, band concerts;
- (B) Emergency vehicles, and for emergency purposes such as police, fire and ambulance sirens or warning devices and loudspeakers used in connection with crimes, disasters or emergencies;
- (C) An employee of a governmental entity engaged in the employee's official duty; and
- (D) Church bells and chimes.

CHAPTER 97: PARADES AND SPECIAL EVENTS

Section

- 97.01 Definitions
- 97.02 Permit; required; application
- 97.03 Permit; issuance
- 97.04 Permit; contents
- 97.05 Permit; denial; appeal procedure
- 97.06 Deviation from permit
- 97.07 Permit; revocation
- 97.08 Use of sirens by emergency vehicles participating in parade
- 97.09 Insurance requirements

§ 97.01 DEFINITIONS.

For the purpose of this chapter the following definitions shall apply unless the context clearly indicates or requires a different meaning.

PARADE. Any scheduled walk, demonstration, procession, march or motorcade consisting of persons, animals, vehicles, or a combination thereof having a common purpose, design, designation or goal, upon any public street, sidewalk, alley, or other public thoroughfare, which does not comply with normal and usual traffic regulations and controls.

SPECIAL EVENT. Any planned assembly, block party, demonstration, rally, or gathering of a group of 25 or more persons, animals, vehicles, or a combination thereof, in a public space that:

- (1) Has a common purpose, design or goal and
 - (a) Which substantially inhibits the usual flow of pedestrians or vehicular travel on public streets;
 - (b) Which involves a temporary and exclusive use of a public space; or
 - (c) Involves a substantial deviation from the public space's current use.

(2) Special events do not include the following:

(a) Parades;

(b) The use of public space by governmental agencies acting within the scope of their authority;

(c) Funeral processions; or

(d) Picnics or gatherings in reserved spaces within public parks which are reserved in advance through the municipality or any designated department.

§ 97.02 PERMIT; REQUIRED; APPLICATION.

(A) No person shall conduct, manage or participate in any parade or special event unless a permit has been issued in accordance with this chapter. If a permit is issued, no person shall conduct, manage or participate in any parade or special event which is in violation of the terms or conditions of the permit.

(B) A permit must be applied for in writing on a form obtained from the municipality or any designated department and shall be filed at least 72 hours prior to the commencement of any parade or special event, unless an exception to the deadline is granted by the municipality or as provided in division (D). Late applications may be accepted at the discretion of the municipality or designee. The application shall set forth the following information:

(1) Name, address and telephone number of any individual, group, association, firm or corporation requesting the permit, and the applicable title or office of the person so applying;

(2) The name, address and telephone number of the person(s) responsible for the organization, coordination and conduct of the proposed activity;

(3) Time and date of commencement and termination of the proposed activity;

(4) A detailed narrative and timeline nature and purpose of the parade or special event, including a description of all activities, schedule of events, and all other pertinent information;

(5) A detailed event site plan mapping the physical areas for the event;

(6) The anticipated maximum number of persons, vehicles, bands, floats and other units of persons, horses or other animals to participate; and

(7) Such other reasonably relevant information as the municipal staff may request for investigation of the application.

(C) The applicant shall submit nonrefundable permit fee(s) to be set by resolution of the governing body with the application. Additional fees approved by resolution of the governing body may also be required. If the municipality or its designees determine that the event requires or utilizes municipal resources beyond what is reasonable for a parade or special event, staff may deny the permit or may charge applicant additional fees equivalent to the municipality's cost to provide the resources. Such fees may include municipality cost to provide barricades, police presence, sanitation, waste removal, picnic tables, etc. and may be billed before the permit is issued or after the parade or special event occurs.

(D) Demonstrations as defined below may be issued a special event or parade permit, as applicable. The municipality or its designee may consider an application that is filed after the filing deadline if there is sufficient time to process and investigate the permit application and to obtain municipal services for the event and if the circumstance that gave rise to the event application did not reasonably allow the applicant apply within the time prescribed in division (B). A **DEMONSTRATION** under this section is defined a parade or special event which involves a rally, picketing, speechmaking, march, vigil, religious service, or similar gathering that primarily involves the communication or expression of opinions, grievances, or personal views.

§ 97.03 PERMIT; ISSUANCE.

(A) *Special event and parade permit considerations.* The municipal officials reviewing all permit applications shall evaluate the following considerations in deciding on each application:

- (1) Whether the event promotes the community as a whole;
- (2) Whether the event provides positive civic and economic benefit;
- (3) The impact upon neighboring business and properties;
- (4) The frequency of closures of streets/public spaces for parades and special events;
- (5) Other events or activities that are permitted at the same time and/or location;
- (6) The applicant's conduct and compliance in sponsoring prior events;
- (7) The health, safety, and public welfare of event participants and the impact of the event on the health, safety, and public welfare of all citizens;
- (8) If applicable, whether the applicant conformed to all permit requirements and the provisions in this chapter in holding any previous parades or special events; and

(9) The financial and practical ability of the applicant to conduct the proposed parade or special event in conformance with the provisions of the permit and this chapter.

(B) *Parade permit.*

(1) The municipality or its designee may issue a parade permit after evaluating the application, such other information as may otherwise be obtained, and the considerations in division (A).

(2) No parade permit shall be issued if:

(a) The proposed activity will substantially interrupt the safe and orderly movement of traffic;

(b) The proposed activity will require the diversion of so great a number of police officers of the municipality to properly police the activity and the areas contiguous thereto as to prevent normal police protection to the municipality;

(c) The proposed activity will require the diversion of so great a number of ambulances as to prevent normal ambulance service to portions of the municipality other than that to be occupied by the activity and other areas contiguous thereto;

(d) Any concentration of persons, animals, units, floats or vehicles at assembly points of the proposed activity will unduly interfere with proper fire and police protection of, or ambulance service to, areas contiguous to the assembly areas;

(e) There is reason to believe that the proposed activity will not move from its point of origin to its point of termination, expeditiously and without unreasonable delay;

(f) Other similar scheduled activities for which permits have been issued will conflict with the activity proposed in the permit application;

(g) Applicant supervision for the proposed activity is inadequate, or volunteer/staff support for the parade is insufficient;

(h) The parade does not follow the standard parade route designated by the municipality, unless the municipality finds that a deviation from this route is substantially justified;

(i) The parade will adversely affect adjacent or neighboring properties by causing excessive noise or creating a nuisance;

(j) The parade will be conducted primarily for the purpose of private monetary gain or commercial advertisement; or

(k) The parade will fail to comply in any respect with the provisions of this chapter or any other applicable law.

(C) *Special event permit.*

(1) The municipality or its designee may issue a special event permit after evaluating consideration of the application, such other information as may be otherwise obtained, and the considerations in division (A).

(2) No special event permit shall be issued if;

(a) The proposed activity will substantially interrupt the normal and customary use of the public space;

(b) The proposed activity will impose an unreasonable burden upon the police department, fire department, or ambulance service;

(c) The proposed activity is scheduled to be held at an inappropriate time and or in an inappropriate location;

(d) Other similar scheduled activities for which permits have been issued will conflict with the special event proposed in the permit application;

(e) Applicant supervision for the proposed activity is inadequate or insufficient volunteer/staff support for the proposed event is insufficient;

(f) The special event will cause unreasonable injury or damage to the public space requested;

(g) The event will involve such a number of persons or activities as will exceed the reasonable capacity of the public space requested;

(h) The special event will cause unreasonable adverse effects on adjacent or neighboring properties by causing excessive noise or creating a nuisance;

(I) The special event will be conducted primarily for the purpose of private monetary gain or commercial advertisement; or

(j) The special event will fail to comply in any respect with the provisions of this chapter or any other applicable law.

§ 97.04 PERMIT; CONTENTS.

(A) The permits provided in this chapter shall include all information in the application and shall be signed by the municipal official, as appropriate, or their designees with a signed copy kept with the application on file in the municipal office issuing the permit. The permit may include any terms or conditions necessary for the preservation of the public health, safety and welfare and for the protection of the public space to be utilized.

(B) No permit shall be issued until the insurance required under this chapter has been filed with the municipality.

(C) Issuance of a permit shall not constitute municipal endorsement or sponsorship of the parade or special event. No permittee shall represent, advertise, promote or otherwise publish any claim of municipal endorsement or sponsorship of the parade or event unless the municipality authorizes such a claim by explicitly endorsing or sponsoring the parade or special event.

§ 97.05 PERMIT; DENIAL; APPEAL PROCEDURE.

Any person aggrieved shall have the right to file a written appeal of the denial of a permit to the governing body not later than seven days after notice of denial. The reason for the denial shall be provided in writing.

§ 97.06 DEVIATION FROM PERMIT.

No person organizing, conducting, coordinating or participating in any activity for which a permit has been granted under the provisions of this chapter shall deviate from or alter any of the terms, conditions, or contents of the permit without the express permission of the municipal official issuing the permit or its designee.

§ 97.07 PERMIT; REVOCATION.

Any permit issued under the provisions of this chapter may be revoked by the municipal official issuing the permit or his or her designee in the following circumstances:

(A) The violation by the permittee of any applicable provisions, terms or conditions of the permit or of state law or ordinance;

(B) The event is causing or expected to cause physical damage to persons or property;

(C) The event is interfering or will interfere with fire or police protection, or an emergency arises making it impossible to assign necessary personnel to the special event needed to protect the public safety;

(D) The event is creating or threatening to create a health hazard;

(E) Information is obtained after the permit is issued from which the municipality may reasonably conclude that the permit should have been denied; or

(F) The municipality finds that the insurance required by § 97.09 has lapsed or has been cancelled.

§ 97.08 USE OF SIRENS BY EMERGENCY VEHICLES PARTICIPATING IN PARADE.

Emergency vehicles participating in any parade or special event shall not sound sirens except when and if any emergency should arise and the vehicle must clear the area.

§ 97.09 INSURANCE REQUIREMENTS.

Special event and parade organizers shall provide adequate insurance coverage with designated limits as required by the municipal official issuing the permit. However, the municipal official issuing the permit may waive this requirement with the approval of the municipal attorney or other designated officer. The insurance policy shall name the municipality and its representatives as an additional insured.

