

AMENDED ORDINANCE NO. 2009-01

AN ORDINANCE ESTABLISHING THE PROHIBITION OF NUISANCES
AND THE ENFORCEMENT THEREOF

BE IT ORDAINED BY THE TOWN OF BUFFALO GAP, COUNTY OF
CUSTER, STATE OF SOUTH DAKOTA:

Section 1. Repeal

This Ordinance repeals and replaces Ordinance # 100 adopted by the Buffalo Gap Town Board May 13, 2004.

Section 2. Prohibition

A. No Person, owner or occupant of any house, business, building or lot in the Town of Buffalo shall create or commit any public nuisance as defined in subsections B and C of this Section.

B. Within the meaning of this section, a public nuisance consists in unlawfully doing an act, or omitting to perform a duty, within the corporate limits of the Town, or in any public grounds or parks belonging to the Town which act or omission either:

1. annoys, injures, or endangers the comfort, repose, health or safety of others; or
2. offends the decency; or
3. unlawfully interferes with, obstructs or tends to obstruct, or renders dangerous for passage any lake, stream, public park, public sidewalk, street or alley; or
4. in any way renders other persons insecure in life or in use of property; and which affects at the same time an entire community or neighborhood or any considerable number of persons although the extent of the annoyance or damage inflicted upon the individuals may be unequal.

C. Prohibited nuisances shall include, but are not limited to the following:

1. Waste material including, but not limited to, such items as paper, rags, trash, garbage, discarded clothing, shoes, curtains, line, tin cans, aluminum cans, plastic containers, glass containers, cleaning utensils, cooking utensils, discarded household fixtures, and similar items when kept or stored on private property in plain view of adjacent properties or public right-of-ways.

2. Used building materials and constructions waste including, but not limited to, such items as lumber, lath, gypsum board, pallets, plaster, old iron or other metal, concrete, brick, tiles, piles of rock, sand, dirt or gravel when not used for landscaping purposes, doors, windows, and similar items that are kept inside the corporate limits of the Town and are not stored inside a building, except for building materials that are temporarily stored for work on the premises for a valid building project.

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

4. Abandoned, wrecked, dismantled, inoperable, junked or partially dismantled motor vehicles, motor vehicle bodies, disassembled parts thereof, disassembled bicycles and bicycle parts, and other mechanical machines or motors or parts thereof when such items are stored, collected, piled, or kept in the Town, and are not kept inside a building or otherwise appropriately covered to screen such items from view.

a) "Inoperable vehicle" means any motor vehicle, as herein defined, which is not in operating condition due to damage or removal or inoperability of one or more tires and wheels, damage or removal or inoperability of the engine or other essential parts required for the operation of the vehicle, or which does not have lawfully affixed thereto a valid state license plate or which constitutes an immediate health, safety, fire or traffic hazard.

b) "Junked motor vehicle" means any motor vehicle that does not have lawfully affixed thereto a valid state license plate or plates, or the condition of which is wrecked, dismantled, partially dismantled, inoperable or discarded.

c) "Motor vehicle" means any vehicle which is designed to travel along the ground or water and shall include, but not be limited to,

automobiles, buses, motorbikes, motorcycles, motor scooters, trucks, tractors, go-carts, golf carts, campers, trailers, boats and farm equipment.

5. Carcasses of animals and hides, all carcasses of animals remaining exposed one (1) hour after death, except legally caught and tagged game, which shall be for twenty-four (24) hours, and all green or salted hides left deposited in any open place.

6. Liquid refuse, all slop, or chemically polluted water, liquor, all filth, refuse, or offal, discharged through drains or spouts or otherwise thrown or deposited in or upon any street, alley, sidewalk, public place, park or facility, or lake, stream, or pool of water.

7. All vegetable, vegetable matter, or other articles that emit or cause an offensive, noxious, or disagreeable smell or odor that may attract rodents, vermin, or other disease carrying pests, animals, or insects.

8. All weeds or plants declared to be primary or secondary noxious weeds or secondary noxious weeds by the State Weed Board and all other weed and grass growing upon any lot or parcel of land in the Town to a greater height than eight inches which have gone or are about to go to seed other than the cultivation of crops.

Section 3 Remedies

A. The Town has the following remedies against nuisance:

1. A Civil Action;
2. Abatement;
3. Citation for violation of municipal ordinance; and
4. In cases of public nuisance only, the additional remedy of indictment or information as prescribed by statute and rules related thereto.

B. Recovery of Costs:

1. The Town may recover the total cost of the repair or demolition of abating a public nuisance without civil action 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 Town 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.

C. Penalty

1. Any person violating this Ordinance shall be guilty of a misdemeanor and may be fined up to \$200.00 per day and/or 30 days in jail, per day, per violation.

Section 4. Abatement Procedures

A. Notice

1. Whenever the inspecting official becomes aware of and upon inspection thereof that any condition or conditions prohibited in this article has been created or exists on any premises located within the Town, the inspecting official may give, or cause to be given, notice to abate the unlawful condition or conditions existing on the premises.

2. Such notice shall be served either by certified mail at the last known address of the property owner, or personal service, or whenever the owner or agent there is not known or cannot be found and his or her last known post office address is unknown, a copy of such notice may be served by posting such notice for twenty-four (24) hours upon the premises where the nuisance exists or such notice may be served by publication as provided for by state statute for service by publication.

3. If the inspecting official has determined that a condition or conditions have been created or exists in violation of Town Ordinance, the order shall the work be physically commenced within such time and completed within such time as the inspecting official shall determine is reasonable under the circumstances.

B. Abatement

1. In the event a person shall fail to abate any nuisance created, permitted or maintained by him or her following written notice to do so, the inspecting official may cause such nuisance to be abated. The cost may be charged against the owner of the personal property abated or the owner of the real estate upon which the nuisance was located.

2. The inspecting official may prepare a statement of the expense incurred in the razing, demolishing, removing, reconstructing or other affirmative act necessary to abate the unlawful condition(s) and shall file such statement with the Town finance officer. Such statement shall refer to the particular premises including any improvements, structures or buildings thereon, upon which the actions taken to abate the unlawful conditions occurred. With regard to the premises or each piece of property therein referred to, the statement shall show the number of the lot and block and the name of the addition or subdivision in

which the lot lies or upon which the structures, improvements or buildings were located at the time that the actions to abate the unlawful conditions were taken or shall describe such premises in any other way that may be easily identified.

C. Appeal

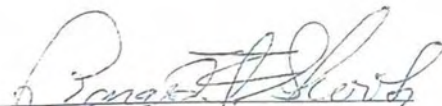
1. The owner or any person affected shall have the right of appeal to Trustees of the Town of Buffalo Gap for investigation and review of the inspecting official's determination. Such appeal shall be in writing, shall state the objections of the person filing the same, shall be filed with the municipal finance officer with the ten days after the date of posting, publishing, serving or mailing of the notice to abate, and shall be presented to the Trustees by the inspecting official at its next regular meeting. The Trustees shall determine by resolution whether the inspecting official shall proceed in accordance with the abatement notice, or as modified by the Trustees, or not at all, and its decision shall be final and conclusive

D. Inspecting Official Defined

"Inspecting Official" as used in this article shall be construed to mean the person authorized by the Board of Trustees for the Town of Buffalo Gap with the enforcement of this Ordinance.

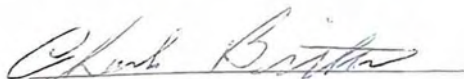
Section 5. Enactment

This ordinance shall take effect on the twentieth day after its publication unless suspended by operation of a referendum.



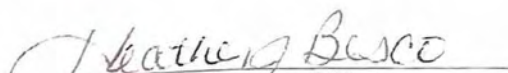
President, Ron Shook

1st reading
2nd reading 7-14-09
Published



Trustee

Trustee



Attested by Finance Officer