

**CITY OF BOX ELDER ORDINANCE # 707  
TO AMEND BOX ELDER CODE OF ORDINANCES, CHAPTER 22 - NUISANCES**

**WHEREAS**, the City of Box Elder seeks to enhance the clarity of its Nuisance ordinances, and to include for the regulation and authorization of Hay Lots within the City of Box Elder.

**NOW, THEREFORE, BE IT ORDAINED** by the City Council of the City of Box Elder that Box Elder Code of Ordinances, Chapter 22, Nuisances be amended to read as follows:

**Chapter 22 NUISANCES<sup>1</sup>**

**ARTICLE I. IN GENERAL**

**Sec. 22-1. Scope and purpose.**

- (a) The purpose of this chapter is to regulate acts, conditions and things that are or may be injurious to the health or safety of the public, that are indecent or offensive to the senses, or are an obstruction to the free use of property so as to interfere with the comfortable enjoyment of another's life or property.
- (b) No person shall create, commit, maintain, or permit to be created, committed or maintained any nuisance including, but not limited to, those described in ordinances within the City.
- (c) No provision set forth in this chapter shall be construed to limit any right or authority of the City to declare or abate a nuisance allowed by SDCL.

(Ord. No. 572, § 93.01.01, 2-6-2017)

**Sec. 22-2. Definitions.**

The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

*Abandoned vehicle* means any motor vehicle, trailer, or similar which is left unattended on any public street or alley, in any public parking lot, or in any other public place for more than twenty four (24) consecutive hours.

*Bonfire* means an outdoor fire utilized for ceremonial purposes.

*Damaged building* means any structure or building which has been destroyed or damaged by natural disasters or fire, and has not been torn down, salvaged or repaired.

*Debris* means the remains of something broken down or destroyed, including, but not limited to: scrap metal, paper, plastic or wood; pieces of asphalt, concrete, lumber or other building supplies; or yard clippings or cuttings of plant materials.

*Dilapidated building* means any structure, which, because of the lack of maintenance, has become a fire hazard or a public health or safety hazard.

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<sup>1</sup>State law reference(s)—Remedies against nuisances, SDCL ch. 21-10.

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*Filth* means foul or putrid matter, loathsome dirt, muck or refuse.

*Garbage* means kitchen refuse, cans, bottles, paper, cardboard, plastics, and other waste materials ordinarily originating on household or commercial premises.

*Impure water* means any well or other supply of water used for human consumption or for household purposes, which has become polluted.

*Indecent* means conduct or language patently offensive in its content or application.

*Nuisance* means anything contemplated under SDCL §21-10-1, which is injurious to the health or safety, or is indecent or offensive to the senses, or an obstruction to the free use of property so as to interfere with the comfortable enjoyment of life or property; any condition declared by the City Council to be a nuisance under SDCL §9-29-13.

*Open burning or open flame* means burning of materials wherein products of combustion are emitted directly into the ambient air without passing through a stack or chimney from an enclosed chamber. The term "open burning" or "open flame" does not include road flares, smudge pots and similar devices associated with safety or occupational uses typically considered open flames, recreational fires or use of portable outdoor fireplaces. For the purpose of this definition, a chamber shall be regarded as enclosed when, during the time combustion occurs, only apertures, ducts, stacks, flues or chimneys necessary to provide combustion air and permit the escape of exhaust gas are open. An operation of kindling or maintaining of an open fire or a fire on any public street, alley, road or other public or private land constitutes open burning.

*Patron* means any person present on licensed premises that is not in the employ of the licensee.

*Recreational fire* means an outdoor fire burning materials other than rubbish where the fuel being burned is not contained in an incinerator, outdoor fireplace, portable outdoor fireplace, barbecue grill or barbecue pit and has a total fuel area of five feet or less in diameter and two feet or less in height for pleasure, religious, ceremonial, cooking, warmth or similar purposes.

*Recreational vehicle* means a self-propelled vehicular portable structure built on a chassis designed to be used as a temporary dwelling for travel, recreational, vacation, or seasonal uses, permanently identified as a recreational vehicle.

*Rodents* means any animal of the order Rodentia, including, but not limited to, rats, mice, gophers, prairie dogs, and squirrels. For the purposes of this Chapter rodents shall also include rabbits, skunks, and raccoons.

*Rubbish* means any waste other than garbage, including paper, boxes, cartons, wastes from gardens and lawns, and tree branches.

*Stagnant water* means any excavation, pond, or low lying area, public or private, in which water is not circulating or flowing; dead water, standing fluids, not moving or flowing, that has become stagnant or has or may produce mosquito larvae or has an offensive odor.

*Waste material* means any noncombustible inorganic matter, including, but not limited to, ashes, glass, sand, earth, stones, concrete, mortar, metals, and tin cans.

*Junk/Wrecked vehicle* means any motor vehicle, trailer or similar which does not have lawfully affixed thereto unexpired license plates; any damaged automobile, trailer, or apparatus which is unlicensed, or because of body damage or non-operating parts, including tires and wheels, is in such a condition to render the start, legal operation, or use of the automobile improbable; and any motor vehicle, trailer, or similar which is dismantled, partially dismantled, inoperable or discarded, or with which one (1) or more broken window(s) or windshield(s) poses a potential threat to the public's health, safety, or welfare due to broken glass.

(Ord. No. 572, § 93.01.02, 2-6-2017)

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### Sec. 22-3. Violations and penalties.

Any person violating any provision of this code shall be assessed a civil penalty by means of an administrative citation issued by the Enforcement Officer and shall be payable directly to the City Finance Office. A continuing violation of this code constitutes a separate and distinct violation each day that the violation exists. Penalties assessed by an administrative citation shall be collected in accordance with the schedule of civil penalties.

(Ord. No. 572, § 93.01.03(A), 2-6-2017)

### Sec. 22-4. Specific acts, conditions, or things deemed to be nuisances.

- (a) *Generally.* Any condition that is dangerous or injurious to human health and safety, as declared by the City Council, constitutes a public nuisance; including, but not limited to the following:
- (1) Depositing, maintaining, or permitting to be maintained or to accumulate upon any public or private property any garbage, refuse, or waste which is likely to cause or transmit disease or which is hazardous to health;
  - (2) Depositing, maintaining, or permitting to be maintained or to accumulate upon any public or private property any junk, litter, debris, rubbish, building materials, lumber, vehicle parts, appliances, furniture, or yard waste or noxious matter.
  - (3) Depositing, maintaining, or permitting to be maintained or to accumulate upon any public or private property any abandoned, discarded, or unused furniture, refrigerators, washing machines, dryers, stoves, sinks, toilets, cabinets, or household furnishings/fixtures, or storing the items in such a manner as to be visible to the public from adjoining property, public alleys, streets or rights-of-way;
  - (4) Depositing, maintaining, or permitting to be maintained, any abandoned, junk/wrecked, inoperative or dismantled automobiles, or permitting to accumulate upon any public or private property for a period of seven (7) or more days. At all times, any of the above listed must be stored behind the front building line and screened from view, or removed from the property, except that this section does not include a vehicle left for repair at an approved regularly operated repair garage. This restriction does not apply to vehicles meeting the requirements found in "Vehicle Restoration" of this Article.
  - (5) Any trailer, recreational vehicle, or implement occupied overnight on a public street, or recreational vehicle or implement which is left standing on a public right-of-way for a period of ten (10) days or two hundred forty 240 hours, or longer;
  - (6) Depositing, maintaining, or permitting to be maintained or to accumulate upon any public or private property any trees or bushes that interfere with the health or safety of the public;
  - (7) Damaged buildings;
  - (8) Dilapidated buildings;
  - (9) Impure water;
  - (10) Rodents;
  - (11) Stagnant water;
  - (12) Any dead animal remaining on any public or private grounds for a period of more than twenty-four (24) hours;
  - (13) Depositing, placing, letting fall, or throwing materials into a pond, pool or waterway as to pollute the water;

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- (14) Erecting or maintaining any privy or cesspool, unless approved by the City Council and the State Department of Agriculture and Natural Resources;
  - (15) Unless otherwise approved by City Council, ignition of any bonfire or campfire on public or private property; campfires which are placed in approved fire rings and are in conjunction with a year-round state-licensed campground shall be exempt from this section;
  - (16) Parking or allowing a truck, trailer or any other vehicle which gives off an offensive odor or contains an offensive substance or other filth on any public or private grounds;
  - (17) Causing or allowing any offensive, foul odors or stench that are dangerous or offensive to the neighborhood to be emitted from public or private property;
  - (18) Causing or allowing pieces of paper, newsprint, excelsior, handbills, posters, building paper, advertisements, or other materials to be carried about by the winds;
  - (19) Fireworks, except as authorized by the City council by ordinance or resolution.
  - (20) Slaughter houses;
  - (21) Depositing, placing, throwing or letting fall any item into any surface drainage within the City, including, but not limited to, construction debris, garbage, ashes, grass clippings and other landscaping materials, tree branches or leaves, and other hazardous materials; or otherwise blocking drainage;
  - (22) Abandonment of air-tight refrigerators or other furniture as prohibited in this section;
  - (23) Depositing or placing any offal, filth, filthy waters, human or animal waste, or obnoxious liquid substances on any public or private property; and
  - (24) Depositing or placing any petroleum products or hazardous substance such as oil, gasoline, etc., on any private lot or public grounds.
- (b) *Other specific nuisances.* In addition to the items above, violation of any of the following requirements shall constitute public nuisances:
- (1) *Construction debris.* Any substantial blowing debris from construction sites is a nuisance and may result in immediate action by the Enforcement Officer with assistance by the Police Department. On construction sites, it shall be the responsibility of the owner or general contractor to have a container for all smaller construction debris.
  - (2) *Sidewalks with ice, snow or other obstructions.* Every person owning or occupying property shall keep all sidewalks abutting such property free of ice, snow and obstructions. Any portion of a sidewalk which has not been cleared of ice, snow or other obstructions and where a hazardous condition exists, shall be provided with a written notice to the owner or occupant of such property by the Enforcement Officer or Planning Director stating that such obstructions shall be removed within 24 hours. In the event that the property owner or occupant does not comply, the Enforcement Officer or Planning Director may cause the removal of such obstruction and may bill the property owner the removal costs plus administrative costs. In the event of snow and ice, the Enforcement Officer or Planning Director may issue the notice to the property owner or occupier or post the notice in a conspicuous place on the property.
  - (3) *Barbed wire or electrified fences.* It is unlawful for any person, on the perimeter of a residential property, to use barbed wire or electrified fences for the purpose of enclosing, in whole or part, any lots or parts of lots or parcels of ground in any residential district, unless otherwise approved by City Council.

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- (4) *Rubbish fires and certain other open burning.* No person shall set or cause to be set or allow upon his premises, public or private, any fire for the purpose of destroying any paper, rubbish, trees, leaves, grass, household trash, or other materials. Open burning when atmospheric conditions or local circumstances make such fires hazardous shall be prohibited. No bonfire shall be conducted within fifty (50) feet of a structure or combustible material unless the fire is contained in a pit.
  - (5) *Abandonment of air-tight refrigerators or other furniture.* No person shall abandon or discard in any public or private place accessible to children any chest, closet, piece of furniture, refrigerator, icebox, or other article having a compartment of a capacity of 1½ cubic feet or more and having a door or lid which, when closed, cannot be opened easily from the inside. Nor shall any person who, being the owner, lessee, or manager of such place, knowingly permit such abandoned or discarded article to remain in such condition.
  - (6) *Deposits of offensive substances on public or private property.* No person shall deposit or place any offal, filth, filthy waters, garbage, ashes, waste water, sewage, tin cans, excrement, manure (except when used for brief periods and in a proper manner as a fertilizer), decaying fruit, vegetables, fish, meat, or bones, or any foul, putrid or obnoxious liquid substances (including all gasoline and petroleum or products thereof) on any private lots, public thoroughfares (including all streets, highways, and sidewalks), or public grounds of the City. No person shall throw, let fall on or permit to remain on any street, alley, or public grounds any of the materials enumerated in this subsection while engaged in handling or removing the same.
  - (c) *Exception for manure accumulations.* Manure accumulated to be properly used as a fertilizer or which is in an agricultural zoned area shall be exempt from this section; provided, however, that manure shall not be allowed to accumulate except to be promptly used in the proper manner as fertilizer.
  - (d) *Examples not to be construed as a limitation on types of nuisances.* Notwithstanding anything herein to the contrary, the above listed examples shall not in any way be construed as a limitation on the definition of a public nuisance.

(Ord. No. 572, §§ 93.02.01, 93.07.01—93.07.04, 2-6-2017)

State law reference(s)—Acts and omissions constituting nuisances, SDCL 21-10-1.

## **Sec. 22-5. Slaughter houses and meat markets.**

- (a) No person shall engage in the business of slaughtering animals, packing them for market, rendering any animal matter, conducting a meat market or operating a livestock sale ring within the City or within one (1) mile thereof, without approval of the City Council. The approval shall be conditional upon the person proving compliance with any applicable health regulations and having received verification hereof by the authorized health representative.
- (b) Any establishment legally in operation prior to the adoption of the ordinance from which this section is derived shall be permitted to continue the operation until such time as the operation has become a health hazard to the general public.
- (c) No person shall permit or or allow to remain on the premises where such business is carried on any decaying meat, blood, bone, offal, filth, or other animal matter so that the same shall become offensive and unwholesome and endanger health or be a nuisance to the neighborhood. Such premises shall at all times be kept in a clean, healthy and non-offensive condition.
- (d) The City's health officer, Enforcement Officer, Planning Director, and police officers shall be permitted free entrance at all hours of the day or night to all places used for any investigative purpose specified in this chapter, and shall have the right to unrestricted examination of such places and of the machinery and utensils therein contained, and of the meat or provisions therein exposed for sale and the manner of

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conducting and operating such business. No person shall willfully hinder or obstruct such entrance or examination.

- (e) Any violations of this chapter may be immediately abated, if a public nuisance is declared and it is determined by the investigating person that the public health and safety are in jeopardy.

(Ord. No. 572, §§ 93.05.01—93.05.03, 2-6-2017)

#### **Sec. 22-6. Nuisance vehicles.**

- (a) Whenever a law Enforcement Officer finds a vehicle on public property in violation of this chapter, they shall place a written notice on the vehicle, that it will be removed to a towing impound yard or place of safety within 24 hours of the giving of the notice, unless the owner removes the vehicle from the public property within the 24-hour time frame.
- (b) After the expiration of the 24-hour notice, the vehicle may be removed by any removal agency to an impound yard, garage or place of safety. Nothing in this section precludes the Police Department from immediately removing a motor vehicle or apparatus which causes an obstruction or hazard to traffic or the public.
- (c) Any trailer, recreational vehicle, implement, vehicle or other personal property being stored in violation of this section shall be immediately removed from the right-of-way and may not be continued to be stored by moving the property to another location in any public right-of-way.

(Ord. No. 572, § 93.02.12, 2-6-2017)

#### **Sec. 22-7. Vehicle restoration.**

- (a) This section is intended to provide residents with a way to repair inoperable vehicles, to restore classic vehicles, or to prepare and maintain vehicles for competitive racing areas zoned as residential without such activity being considered a nuisance violation.
- (b) A residence may be permitted to have one vehicle in front of a residence, but not on the public right-of-way, that is non-operable or non-licensed. The vehicle must be covered with a fitted car cover or tarpaulin at all times that the vehicle is not being worked on or restored.
- (c) A residence or single property or parcel may have additional non-operable or non-licensed vehicles; however, all but one vehicle as listed above shall be maintained out of the view of the public right-of-way from which the property is addressed. The term "out of view" shall include storage inside a building or behind an opaque fenced area in the rear yard.
- (d) At no time may a vehicle being restored, or a non-operable vehicle or non-licensed vehicle, be stored in or permitted to stand in any public right-of-way.
- (e) Vehicle parts, including tires, to be used for the repair or restoration of a licensed vehicle shall be stored within the covered vehicle, within a building or behind an opaque fence, out of the view of the public, when the owner is not actually working on the vehicle.

(Ord. No. 572, § 93.08.02, 2-6-2017)

#### **Secs. 22-7—22-32. Reserved.**

## **ARTICLE II. ABATEMENT<sup>2</sup>**

### **Sec. 22-33. Filing complaint.**

- (a) Except as otherwise stated in this article, in the event any City representative receives a complaint, either orally or in writing, he shall forward the complaint to the appropriate agency for investigation.
- (b) As part of the investigation, the person taking the complaint shall obtain the name, address and telephone number of the person making the complaint, the address of the property for which the complaint is being filed, and the specific nature of the complaint.
- (c) Unless otherwise ordered by the court, the names of those filing complaints are not for publication and shall never be released.
- (d) After obtaining the necessary information from the complainant, the Enforcement Officer or Planning Director may request assistance from other City Departments or request an investigation by a more appropriate city employee or agent as is necessary based upon the nature of the complaint.

(Ord. No. 572, § 93.02.02, 2-6-2017)

### **Sec. 22-34. False reporting.**

Any person who makes a report or intentionally causes the transmission of a report to authorities empowered herein of a violation of this article, knowing that it did not occur, or false information about any violation of this article, is guilty of false reporting and shall be subject to any applicable penalties outlined within this Chapter, the City's code, or SDCL.

(Ord. No. 572, § 93.02.03, 2-6-2017)

### **Sec. 22-35. Right of entry.**

An Enforcement Officer, Planning Director, or Law Enforcement Officer shall have the right to enter upon property at reasonable times and in a reasonable manner to perform an inspection or abatement. Before entering the property, the owner or occupant, if available at the time, should be notified of the purpose of the entry. The officer, when entering the property, may take photos, video, or measurements and bring any persons, equipment, machinery, or items required for the inspection or abatement. While the officer or designee is conducting an inspection or performing an abatement, no person shall interfere with the officer or fail to comply with any reasonable request of the officer or any agent of the City.

(Ord. No. 572, § 93.02.13, 2-6-2017)

### **Sec. 22-36. Courtesy letter; notice of violation.**

- (a) Unless otherwise stated in this article, in the event the Enforcement Officer, Planning Director, or other employee finds that any violation exists, the City shall notify the owner or may notify the occupant creating, permitting or maintaining such nuisance by telephone, hand delivery, first class mail, certified mail with return receipt, personal service or any combination thereof.

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<sup>2</sup>State law reference(s)—Abatement, SDCL 21-10-6.

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- (b) The notice shall include the name and address of the property owner, the address or legal description of the property in violation, the nature of the violation, the code sections violated, a demand that the property owner become compliant, and the date upon which the representative will inspect the property for compliance.

(Ord. No. 572, § 93.02.04, 2-6-2017)

**Sec. 22-37. Abatement or filing of review required within 15 days.**

Any person who has received written notification of an existing violation shall either abate the nuisance or file a written notice of review along with the applicable fee outlined in the City's master fee schedule with the Planning Director within 15 days of receipt of the notice of violation. Failure to appeal the abatement or filing of a review within the time permitted relieves the violator of the right to appeal or further review of their case.

(Ord. No. 572, § 93.02.06, 2-6-2017)

**Sec. 22-38. Review by planning and zoning commission; appeal to city council.**

- (a) Any person who disagrees with the determination of a violation under this article by the Enforcement Officer or Planning Director shall, within 15 days of the notice, have the right to have the Planning Commission review the decision as provided in this section.
- (b) The aggrieved person shall first file a written request for review with the Planning Director, setting forth the basis for which they believe the decision that a violation exists to be in error. The writing shall also include the person's name and mailing address, telephone number, e-mail address (if available) and a copy of the violation notice.
- (c) Upon receipt of the written request for review, the Planning Director shall notify the Planning Commission. The Planning Commission shall have thirty (30) days to review the case and give its decision in writing to the landowner.
- (d) Any person aggrieved by the decision of the Planning Commission after review may appeal their case to the City Council and request a hearing. The hearing request must be made in writing and submitted to the City Finance Office within ten (10) days of the decision by the Planning Commission. The City Council, after hearing the facts of the case, may determine if a violation exists, set timelines for compliance, or issue additional fines regarding the violation.

(Ord. No. 572, §§ 93.02.07, 93.02.08, 2-6-2017)

**Sec. 22-39. Issuance of summons and complaint for violation.**

If the landowner fails to abate the nuisance or request a review from the Planning Commission within the given time, the City may, as a remedy, implement one or all of the following: issue an administrative citation, abate the nuisance without further notice, or file a complaint and summons to the landowner ordering the landowner to appear in court to answer the violation. Each violation may be considered a Class 2 misdemeanor for each day of violation until the nuisance is abated.

(Ord. No. 572, § 93.02.09, 2-6-2017)

**Sec. 22-40. Abatement by city.**

In addition to the remedies set forth herein for violation of this chapter, the City shall also have the authority to abate the nuisance as provided in §21-10-6 of SDCL. The Enforcement Officer, planning director or other employee or agent who conducted the investigation shall have the authority to employ, as needed, a contractor to assist with the abatement.



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(Ord. No. 572, § 93.02.10, 2-6-2017)

**Sec. 22-41. Landowner responsible for any costs.**

- (a) Any related expenses, receipts, or administrative, legal, and investigative fees associated with an investigation or abatement shall be billed to the landowner.
- (b) In the event the landowner fails to pay the bill within thirty (30) days upon receipt of the bill, the City Finance Officer may file a special assessment on the property with the Meade County or Pennington County Auditor's Office as appropriate.
- (c) In the event the nuisance abated is an unsafe or dilapidated building, junk, trash, debris or similar nuisance arising from the condition of the property, the City 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.

(Ord. No. 572, § 93.02.11, 2-6-2017)

**Sec. 22-42. Immediate abatement required in certain cases.**

Nuisances deemed to be in need of immediate abatement due to the threat to public health and safety (such as, but not limited to, unlawful bonfires, campfires, dead animals, undressed hides, fireworks, depositing filth, spoiled foods or similar items) shall be subject to immediate abatement without notice unless it is otherwise dictated by City policy or State statute. Similarly, if a notice of such nuisance is given, and the violator fails or refuses to abate, the City may have the nuisance abated immediately at the owner's expense.

(Ord. No. 572, § 93.02.12, 2-6-2017)

**Sec. 22-43. Alternate procedure for abatement of deposited substances.**

- (a) The provisions of this section shall only apply to nuisances caused by deposits of garbage, rubbish, filth or other waste material; vehicles containing obnoxious, offensive or nauseous substances; and offensive odors.
- (b) After determination of the City Council, or under other appropriate ordinance authority, the Enforcement Officer, Planning Director or other investigating employee or agent shall have the authority to have the nuisance abated, removed or cleaned up immediately, at the cost of the violator.
- (c) When the Enforcement Officer, Police Department or other investigating employee is dealing with a vehicle which contains obnoxious, offensive or nauseous substances, he shall direct the owner to remove the vehicle. If the owner is unable to be found within a reasonable time, the Enforcement Officer, police officer or other investigating employee or agent shall have the vehicle towed at the owner's or driver's expense. All towing and storage charges shall be assessed against the owner or driver of the vehicle before possession is returned.
- (d) For purposes of this section only, a reasonable amount of time shall be defined to be no longer than thirty (30) days under any circumstances; however, nothing in this provision shall prevent the City from taking immediate action when necessary to protect the health and safety of the public.

(Ord. No. 572, §§ 93.03.01, 93.03.02, 2-6-2017)

**Secs. 22-44—22-74. Reserved.**

***ARTICLE III. NUISANCE VEGETATION***

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**Sec. 22-75. Weeds and noxious vegetation.**

- (a) All weeds and plants declared to be dangerous or noxious weeds by the State Department of Agriculture or the Commission of State Weed Control and all other weeds suffered or allowed to grow during the growing season which are declared noxious, dangerous or unhealthy vegetation are declared a public nuisance. It shall be the duty of the property owner of any lot within the City to cut such noxious vegetation at such time as necessary to prevent its growth.
- (b) No landowner shall allow domestic grass, weeds or noxious vegetation to grow to a height of more than eight inches on property owned by them.
- (c) Unless otherwise agreed to by the City, landowners shall also be responsible to maintain grass, weeds or noxious vegetation to a height of less than eight inches on all property, abutting the landowner's property, to the edge of the driving surface of the street, alley or public right-of-way.

(Ord. No. 572, § 93.04.01, 2-6-2017)

**Sec. 22-76. Overhanging tree limbs or bushes.**

- (a) The limbs of trees or bushes hanging less than sixteen (16) feet in height above the driving surface of any public street shall be declared a public nuisance and shall be removed by the landowner having property abutting the street or public right-of-way where the nuisance exists.
- (b) The limbs of trees or bushes hanging less than twelve (12) feet in height above the driving surface of all alleys within the City limits shall be declared a public nuisance and shall be removed at the expense of the landowner having property abutting the alley where the nuisance exists.
- (c) Due to public safety concerns, the full width of sidewalks shall be kept clear of all vegetation between the walking surface and eight feet above the walking surface.
- (d) All limbs of trees or bushes which are hanging less than eight (8) feet in height above the walking surface of all sidewalks within the City, shall be declared a public nuisance and shall be removed by the property owner having property abutting the sidewalk where the nuisance exists.
- (e) The Enforcement Officer, Police Department, or Planning Director may declare all trees or bushes which cause or may in the future cause a traffic or visibility problem a public nuisance. In addition, the chief may, because of public safety, order the vegetation removed immediately at the expense of the property owner having property abutting the public right-of-way where the violation exists.
- (f) It shall be the duty of all landowners to keep all overhanging trees and bushes herein described over public rights-of-way cut down and removed on all lots owned or occupied by them. Additionally, such landowners shall maintain all grass, trees and bushes on land abutting property owned or occupied by them to the middle of the street.

(Ord. No. 572, § 93.04.02, 2-6-2017)

**Sec. 22-77. Diseased or infested trees.**

No person shall store or permit the accumulation of any diseased Elmwood in the City. No person shall store any tree or part thereof known to harbor or contain any pest infestation.

(Ord. No. 572, § 93.04.05, 2-6-2017)

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**Sec. 22-78. Notice of violation and order to abate.**

In the case of any overgrown vegetation, upon service of the notice, the landowner shall have ten (10) days in which to remove the violation.

(Ord. No. 572, § 93.04.03, 2-6-2017)

**Sec. 22-79. Removal of vegetation by the city.**

If the owner of the property fails to remove or cut vegetation within the time allowed, the City may cause such vegetation to be removed at the owner's expense. The City's Staff or a designated contractor may enter upon the property for the purpose of removing the violation.

(Ord. No. 572, § 93.04.04, 2-6-2017)

Add Section 22-80 Hay lots (will send that verbiage separately)

**Sec. 22-80. Hay lots.**

- (a) Hay lots shall be at least two (2) continuous acres.
- (b) Hay lots shall be registered prior to the season with the City of Box Elder's Planning Department.
- (c) Continuous acres will be evaluated at the time of application and before approval by the Planning Director or their representative.
- (d) Application and fee for hay lots shall be submitted annually no later than April 15th.
- (e) All lots that are not approved and registered with the City as a hay lot shall be mowed in accordance with Section 22-75.
- (f) Hay lots shall be harvested at least once per season and shall be cut down to eight inches (8") or less by the end of the season (no later than October 1st). If lots are not harvested or cut down by October 1st, the City shall declare a public nuisance pursuant to Section 22-75.
- (g) Front yards are considered vegetation under Section 22-75 and shall not be eligible to be harvested for hay.
- (h) Signs:
  - (1) Signs for approved hay lots shall be posted no later than May 1st, weather permitting.
  - (2) Signs shall be furnished by the City upon application approval and shall only be permitted to be posted on each approved hay lot.
  - (3) The owner of the hay lot, or their representative shall be responsible for displaying the sign on a t-post or other type of post. The sign shall be mounted at a height of at least four feet (4'), not to exceed six feet (6'), in a location clearly visible from the public right-of-way.
  - (4) Corner lots. Signs shall not be displayed within required twenty-five foot (25') sight triangles.
  - (5) If a sign is lost or damaged during the season, the replacement cost shall be covered by the owner of the lot.

**Secs. 22-81—22-101. Reserved.**

***ARTICLE IV. OBSCENITY***

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## Sec. 22-102. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

*Contemporary community standard* means the contemporary standard of the City, tested by the average person of the City.

*Disseminate* means to transfer possession of, whether with or without consideration.

*Exhibit* means to show or display.

*In the public view* means that conduct which would be viewed by the casual public observer.

*Knowingly* means having actual or constructive knowledge of the character of the subject matter or live conduct. A person shall be deemed to have constructive knowledge of the character of the subject matter or live conduct if he has knowledge of facts which would put a reasonable and prudent person on notice as to the suspect nature of the matter.

*Material* means anything tangible, whether derived through the medium of reading, observation or sound.

*Nudity or appearing in a state of nudity* means the showing of the human male or female genitalia, pubic areas or anus with less than a fully opaque covering; the showing of the female breast with less than a fully opaque covering of any part of the nipple; the exposure of any device, costume, or covering which gives the appearance of or simulates the genitals, pubic hair, natal cleft, perineum, anal region or pubic hair region; or the exposure of any device worn as a cover over the nipples or areolas of the female breast, which device simulates and gives the realistic appearance of nipples or areolas.

*Obscene material* means any matter or material, any book, magazine, newspaper or other printed or written material, or any picture, drawing, photograph, motion picture, or other pictorial representation, or any statue or other figure, or recording, transcription or mechanical, chemical or electrical reproductions, or any other articles, equipment, machines or other materials, or any performance or any description or representation, in whatever form, of nudity, sexual conduct, sexual excitement or sadomasochistic abuse, when:

- (1) Applying contemporary community standards, the work taken as a whole appeals to the prurient interest.
- (2) The work taken as a whole lacks serious literary, artistic, political or scientific value.

*Open display* means material, excluding motion pictures, which is available for viewing by non-employees of the establishment prior to dissemination.

*Prurient interest* means a shameful or morbid interest in nudity, sex or excretion which goes substantially beyond customary limits of candor in description or representation of such matters. If it appears from the character of the material or the circumstances of its dissemination that the subject matter is designed for a specifically susceptible audience or clearly defined deviant sexual group, the appeal of the subject matter shall be judged with reference to such audience or group.

*Public* includes those persons that have reached the age of majority.

*Public place* means and includes all outdoor places owned by or open to the general public, and all buildings and enclosed places owned by or open to the general public, including such places of entertainment, taverns, restaurants, clubs, theaters, dance halls, banquet halls, party rooms, or halls limited to specific members, restricted to adults, or to patrons invited to attend, whether or not an admission charge is levied.

*Sadomasochistic abuse* means flagellation or torture by or upon a person who is nude or clad in undergarments, a mask or bizarre costume, or the condition of being fettered, bound or otherwise physically restrained on the part of one who is nude or so clothed.

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*Sexual conduct* means any act of masturbation, sexual intercourse, or physical conduct with a person's clothed or unclothed genitals, pubic area, or buttocks, or if such person be a female, the breast.

*Sexual excitement* means the condition of human male or female genitals when in a state of sexual stimulation or arousal.

(Ord. No. 298, § I, 11-7-1994; Ord. No. 401, § 5, 10-7-2003; Ord. No. 410, 5-4-2004)

**Sec. 22-103. Findings, purpose and intent.**

- (a) The City Council makes the following findings regarding the need to ban public nudity. The findings are based upon the experiences of other cities which conducted various studies, where appearing in a state of nudity was permitted, as studied by the City Council. Additionally, the City Council also based its findings on the United States Supreme Court decisions of *City of Renton v. Playtime Theatres*, 475 U.S. 41, *City of Erie v. Pap's A.M.*, 529 U.S. 277 and *Young v. American Mini Theatres, Inc.*, 427 U.S. 50.
- (b) Public nudity can contribute to an increase in criminal activity in the area in which public nudity is displayed, taxing city crime-prevention programs and law enforcement services, as well as causing increased costs for prosecution services.
- (c) Appearing in a state of nudity can increase the risk of exposure to communicable diseases including, but not limited to, Acquired Immune Deficiency Syndrome (AIDS) for which there is currently no cure. Experiences of other cities indicate that businesses allowing the display of public nudity can facilitate the spread of communicable diseases by virtue of the design and use of the premises, endangering not only the patrons of such establishments, but also the general public.
- (d) The risk of criminal activity or public health problems can be minimized through a content-neutral ban on public nudity.
- (e) In direct furtherance of the substantial goals of public health, safety, and welfare, the city council adopts this article, recognizing that it has a great interest in the promotion of health and the prevention of criminal activity. It is not the intent of this article to inhibit the freedom of speech component of expressive conduct; instead, this article represents a balancing of competing interests: reduced criminal activity through the prohibition of public nudity versus the protected rights of expressive conduct. Thus, this article is designed to alleviate undesirable social problems and secondary effects that accompany appearing in a state of nudity without curtailing the constitutionally protected expression.

(Ord. No. 401, §§ 1—3, 10-7-2003)

**Sec. 22-104. Dissemination obscene material; violations and penalties; affirmative defense.**

- (a) Disseminating obscene material is a misdemeanor punishable by confinement in jail not to exceed thirty (30) days, or by a fine not to exceed \$200.00, or by both such fine and imprisonment.
- (b) A person is guilty of disseminating obscene material when he knowingly, in a public place within the public view, gives or makes available to the public, or promotes or possesses with intent to promote to the public, or he knowingly sells, gives, or loans to the public any material defined in Section 22-102.
- (c) A person is guilty of disseminating obscene material when, with reference to a show or other presentation which depicts obscene material, he knowingly exhibits such show or other presentation in a public place within the public view.
- (d) In any prosecution for disseminating obscene material, it is an affirmative defense that:
  - (1) The obscene material was not on open display.

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- (2) The obscene material was displayed only in an enclosure or behind a partition with all entrances clearly and distinctly marked with a sign in bold, capital letters at least three-fourths-inch high stating "adult material only."
  - (3) Such possession, dissemination or display occurred in the course of bona fide school, college, university, public museum or public library activities or in the course of employment of such an organization.

(Ord. No. 298, §§ II—V, 11-7-1994)

**Sec. 22-105. Committing obscene acts; exception.**

A person commits a public nuisance if he knowingly or intentionally in public engages in sexual intercourse, appears in a state of nudity, or fondles his own genitals or those of another person. This section shall not apply to a child under ten (10) years of age or an individual exposing a breast in the process of breast feeding an infant under two (2) years of age. The showing of the female breast with less than a fully opaque covering of any part of the nipple is allowed for any adult orientated business that was in operation at the time of the passage of the ordinance from which this section is derived.

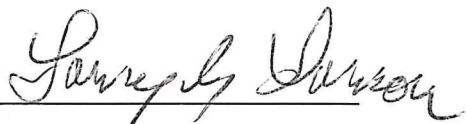
(Ord. No. 401, §§ 4, 5, 10-7-2003; Ord. No. 410, 5-4-2004)

**Sec. 22-106. Abatement of nuisances authorized.**

In addition to the specific penalties provided in this article and Ordinance No. 308, it is declared that any building, portion of a building, or enclosed place regularly used for the prohibited display of public nudity is a public nuisance, subjecting the owner, proprietor or other operator thereof to any and all actions authorized by the Laws of South Dakota for the abatement of public nuisances, including, but not limited to, the procedures set forth in Ordinance No. 308.

(Ord. No. 401, § 6, 10-7-2003)

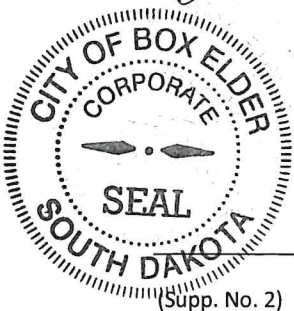
Dated this 20<sup>th</sup> day of December, 2022.

  
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City of Box Elder

ATTEST:

  
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Nicole Schneider  
City Administrator/Chief Finance Officer

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