

TITLE 3 – HEALTH AND SANITATION
[SANITATION AND HEALTH MEASURES SDCL 9-32]

Chapter 3.01 – Nuisances

Chapter 3.02 – Collection of Garbage & Recyclables

Chapter 3.03 – Dangerous Building

CHAPTER 3.01 – NUISANCES

3.0101 Definitions. For the purpose of this Chapter, the following terms are hereby defined.

- A. "Garbage" – The animal and vegetable waste resulting from the handling, preparation, cooking and serving of foods.
- B. "Solid Waste" – Any garbage, refuse, sludge from a waste treatment plant, water supply treatment plant or air pollution control facility and other discarded materials, including solid, liquid, semisolid or contained gaseous material resulting from industrial, commercial and agricultural operations, and from community activities...including, but not limited to wood and other construction materials, appliances, yard waste, tires, scrap iron, chemicals or fuel. (SDCL 34A-6-1.2)
- C. "Wastewater" – The spent water of a community. From the standpoint of source it may be a combination of the liquid and water-carried wastes from residences, commercial buildings, industrial plants and institutions, together with any groundwater, surface water and storm water that may be present.
- D. "Abandoned property" – Any junk car, car bodies or equipment of any type, except in an authorized junk yard, or any accumulations of other unsightly trash or junk which would constitute a health hazard, a rodent harborage, a breeding area for insects or rodents, a dangerous place for children to play in and around or which tends to be unsightly and which does or tends to lower the value of adjacent real property because of its unsightliness.
- E. "Abandoned vehicle" – Any vehicle that is left unattended or stored on any public property in the same or substantially same place within the City for a longer period than 24 hours.
- F. "Inoperable vehicle" – Any vehicle which is not in operating condition due to damage, removal or inoperability of one or more tires and wheels, the engine or other essential parts required for the operation of the vehicle, or which does not have lawfully affixed thereto unexpired license plates, or which constitutes an immediate health, safety, fire or traffic hazard.
- G. "Nuisance" – Unlawfully doing an act, or omitting to perform a duty, which act or omission: (1) annoys, injures, or endangers the comfort, repose, health, or safety of others; (2) in any way renders other persons insecure in life, or in the

use of property; (3) renders the ground, the water, the air, or food a hazard or any injury to human health; and in addition (4) the specific acts, conditions and things listed in Section 3.0102 are hereby declared to constitute public nuisances, but such acts, conditions and things shall not be deemed to be exclusive. (SDCL 21-10-1)

- H. "Private property" – Any real property within the City that is privately owned and which is not public property.
- I. "Public property" – Any street, alley or highway 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.
- J. "Removal agency" – Any public body, private or nonprofit organization authorized, hired or appointed by the City to remove and salvage vehicles.
- K. "Unsightly trash or junk" – Property which is deteriorated, wrecked or derelict property in unusable condition, having no value other than nominal scrap or junk value, if any, and which is left outside of a permanent, enclosed structure and which shall include, without limitation, motors, lawn mowers, campers, refrigerators and other household appliances, furniture, household goods and furnishings, scrap metals or lumber or other similar articles in such condition.
- L. "Vehicle" – Any conveyance, whether or not self-propelled, and which is designed to travel along the ground or in or on the water and shall include, but not be limited to, automobiles, buses, motorbikes motorcycles, motor scooters, trucks, tractors, pull trailers, go-karts, golf cars, boats, jet skis, campers and trailers.

3.0102 Acts, Omissions and Conditions Prohibited. No person, whether an owner, occupant, tenant or other person in charge of any real property within the corporate limits of the City shall create, commit, maintain, or permit to be created, committed, or maintained, any public nuisance, to include, without limitation, the following specific acts, conditions and things, each and all of which are hereby declared to constitute a nuisance: (SDCL 9-32-1)

- A. Depositing, accumulating, or permitting to be accumulated upon any public or private property, any household wastewater, sewage, garbage, refuse, rubbish, offal, excrement, decaying fruit, vegetables, fish, meat, bones; any fowl, putrid, or obnoxious liquid substance; any chemical or hazardous material; or putrescible and nonputrescible animal or vegetable wastes or solid wastes, or any other waste material which constitutes or tends to create a danger to public health, safety, and welfare. (SDCL 9-32-10, SDCL 34A-7-9)
- B. The accumulation of manure, garbage, or anything whatsoever which may be breeding areas for flies, mosquitoes, or rodents. (SDCL 9-32-10)

- C. The growth of weeds or plants declared to be primary or secondary noxious weeds by the state weed and pest control commission, all weeds declared to be locally noxious by the City Council, and all other weeds and grasses growing upon any real property in the City to a height greater than 8 inches, or which have gone or are about to go to seed, or the dense growth of brush or grasses which may constitute a health, safety or fire hazard, shall be deemed noxious, dangerous and unhealthful vegetation and are hereby declared to be a nuisance. Fallen tree limbs, diseased or dead trees, and dead tree limbs shall also be declared dangerous and a nuisance; provided, however, that vegetation that is not a primary or secondary noxious weed and is being grown as hay for livestock consumption, as a native prairie display garden, or as a wildflower display garden, or other nature areas, so long as the same are approved to be used as such by the City Council, shall not constitute a nuisance. (SDCL 9-32-12)
- D. For the owner of a dead animal to permit it to remain undisposed of longer than twenty-four (24) hours after its death. (SDCL 9-29-13)
- E. Any excavation, trench, or open basement in which stagnant water is permitted to collect or which may jeopardize the life, limb, or safety of the general public. (SDCL 9-29-13)
- F. 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 substance. (SDCL 9-32-10)
- G. Keeping or maintaining any building or enclosure where livestock or fowl are kept unless a special permit is requested and such is approved by the City Council. (SDCL 9-29-13)
- H. Disposing of garbage, waste, or refuse by open burning, or causing, allowing, or permitting the conducting of a salvage operation by open burning in the City. The following types of open burning shall be permissible for a specific purpose when conducted in conformity with the subsections set forth below:
 - 1. Fires set for the elimination of a fire hazard, which cannot be abated by any other means when authorized by the Fire Chief of the City Volunteer Fire Department.
 - 2. Fires purposely set by the city maintenance personnel for the purposes as authorized by the Fire Chief of the City Volunteer Fire Department.
 - 3. Fires purposely set by the City Volunteer Fire Department personnel and authorized by the Fire Chief for the purpose of training and conducted in accordance with live fire-training standards.
 - 4. Campfires and other fires used solely for recreational purposes, for ceremonial occasions, and for outdoor preparation of foods.

I. Maintaining, or causing or permitting the same, any building or premises which is determined to be dangerous or dilapidated. Any building or structure which has any or all of the conditions or defects hereinafter described shall be deemed to be a dangerous or dilapidated building, if such conditions or defects thereby annoy, injure or endanger the comfort, repose, health, or safety of others or, if such conditions or defects exist to the extent that the life, health, property, value of property or safety of the public or its occupants are jeopardized.

1. Whenever any building or structure is (i) vacant and unoccupied for the purpose for which it was erected and; (ii) the building is unfit for occupancy as it fails to meet minimum housing standards and; (iii) the building has remained substantially in such condition for a period in excess of six months.
2. Whenever any building or structure through lack of maintenance or attention and by virtue of its physical appearance and presence thereby depresses the market value of surrounding properties.

J. Maintaining or permitting to be maintained on any private or public property any abandoned property or unsightly trash or junk, abandoned vehicle, or inoperable vehicle or parts thereof. It shall be unlawful to keep or place any of such vehicles or vehicle parts:

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

In no event shall an inoperable vehicle that constitutes an imminent health, safety or fire hazard be kept or located on any real property.

K. The requirements of paragraph J shall not apply to the following:

1. 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 longer than 14 days.
2. Filling stations, automobile repair shops or any other motor vehicle related businesses in compliance with applicable City ordinances may place inoperable vehicles being repaired or offered for sale on the premises.
3. Junkyards operated and maintained in compliance with applicable City ordinances.

4. One vehicle specifically designed and used for operation on drag strips or raceways that remains on private property.
5. Any vehicle in an appropriate storage place or depository maintained in a lawful place and manner by the City or authorized by the City.

3.0103 Diseased Vegetation. Any owner, occupant, or person in charge of any property under the jurisdiction of the City shall remove at his own expense any trees, brush, wood, or debris infected with Dutch Elm disease or other infestations or infectious disease found thereon when so notified by the City to do so. The City Council shall cause to be mailed to such owner, occupant, or person, written notice that they may appear before the said City Council at an appointed time not less than fourteen (14) days from the date of mailing of said written notice to show cause why said trees, brush, wood, or debris should not be declared a public nuisance.

At said meeting the City Council may resolve and declare the same to be a public nuisance and may order its removal by said owner, occupant, or person within twenty-one (21) days from the date of service of said resolution and order on said owner, occupant, or person.

Any diseased vegetation stored in the City shall be debarked or covered with four (4) to six (6) mil clear plastic from April 1st to October 1st, such plastic to be sealed by placing all edges in a three to four-inch trench covered with soil. In addition, any diseased vegetation which is removed and not stored in accordance with the provisions of this Section shall be properly disposed of by burning or burying in a designated disposal site. (SDCL 9-32-12)

3.0104 Littering in Public Places. No person shall throw or deposit litter in or upon any street, sidewalk, or other public place within the City except in authorized public or private receptacles. The following further identifies acts and conditions that constitute nuisances and are therefore prohibited:

- A. No person shall sweep into or deposit in any gutters, streets, or other public place within the City, the accumulation of litter from any building or lot or from any public or private sidewalk or driveway. Persons owning or occupying property or places of business shall keep the sidewalk in front of such premises free of litter.

For purposes of this Ordinance, a public nuisance shall also include snow and ice when deposited or allowed to accumulate in conflict with the provisions of this Section.

- B. No persons, while a driver or passenger in a vehicle, shall throw or deposit litter upon any street or other public place or upon private property within the City.

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

C. No person shall throw or deposit litter on any occupied, open, or vacant private property within the City, whether owned by such person or not, except that the owner or person in control of private property may maintain authorized private receptacles for collection in such a manner that litter will be prevented from being deposited upon any streets, sidewalk, or other public place or upon any private property.

- 3.0105 Removal of Abandoned or Inoperable Vehicles – Public Property. Whenever the City or any law enforcement officer for the City finds an abandoned or inoperable vehicle on public property within the City, a written notice shall be placed on the vehicle that it will be removed to a garage or place of safety unless the owner removes the vehicle from public property within 24 hours of the giving of the notice. After the expiration of the 24-hour period, the vehicle may be removed by a removal agency to a garage or place of safety. Nothing in this section precludes the City or any law enforcement officer for the City from immediately removing a vehicle that constitutes an imminent health, safety or fire hazard.
- 3.0106 Disposition of Unclaimed Vehicles. The removal agency shall have the rights and obligations conferred upon it by SDCL Chp. 32-36 in regard to titling or disposition of such unclaimed, abandoned or inoperable vehicle, except that, if not otherwise provided by state law, it shall have a possessory lien upon any vehicle removed under provisions for this article for the costs or reasonable charges in taking custody of and storing such vehicles.
- 3.0107 Duty of Private Property Owners. No person owning, in charge of or in control of any real property within the City, whether as owner, tenant, occupant, lessee or otherwise, shall allow any abandoned or inoperable vehicle of any kind to remain on such property longer than 14 days.
- 3.0108 Notice Procedure. A written notice shall be placed on the abandoned or inoperable vehicle by the City or by any law enforcement officer for the City requesting the removal of such motor vehicle in the time specified in this Ordinance. Written notice shall also be placed on the front door of any dwelling located on the private property requesting the removal of such motor vehicle in the time specified in this article. In the event the owner and the occupant or tenant of the real property are not the same person, written notice shall be given to the owner by certified mail requesting the removal of such motor vehicle in the time specified in this Ordinance. In the event the private property is not occupied, written notice shall be given to the owner by certified mail requesting the removal of such motor vehicle in the time specified in this Ordinance.
- 3.0109 Responsibility for Removal. Upon notice having been given, the owner of the abandoned or inoperable vehicle and the owner or occupant of the private property on which the vehicle is located, either or all of them, shall be responsible for its removal.
- 3.0110 Content of Notice. The notice in section 3.0108 shall request removal of the abandoned or inoperable vehicle within 14 days after the date of the posting or

mailing of such notice, and the notice shall advise that failure to comply with the notice to remove shall be a violation of this Ordinance, that the City may take steps to abate the same, and that in addition to abatement directly or by civil action, the City may pursue criminal fines and penalties against the owner, occupant, tenant or other person in charge of the real property as provided in this Ordinance.

- 3.0111 Public and Private Nuisance Defined. A public nuisance is one that 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. Every other nuisance is private. (SDCL 21-10-3)
- 3.0112 Remedies Against Nuisances. The remedies against any nuisance shall be: (1) A civil action; (2) Abatement; and (3) In cases of public nuisance only, the additional remedy of indictment or information as prescribed by the Ordinance or by the South Dakota Codified Laws, and the rules relating thereto. (SDCL 21-10-5)
- 3.0113 Abatement. A public nuisance may be abated without civil action by the City Council or by any officer authorized thereto by law. Any private person may likewise abate a public nuisance which is especially injurious to him or her, or any private nuisance injurious to him or her in a manner by removing, or, if necessary, destroying that which constitutes the nuisance, without committing a breach of the peace or doing unnecessary injury. If a private nuisance results from a mere omission of the wrongdoer, and cannot be abated without entering upon his or her land, reasonable notice shall be given to him before entering to abate it. The City 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. When 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. (SDCL 21-10-6)
- 3.0114 Public Nuisance Penalty and Remedy. Any person who creates, commits, maintains or fails to abate a public nuisance as required under the provisions of this Ordinance shall be subject to a maximum penalty of thirty (30) days in jail or a two hundred dollar (\$200.00) fine, or both. A separate offense shall be deemed committed on each day during or on which a violation occurs or continues. In addition, the City may also use the remedies of civil action and abatement as set forth in SDCL 21-10-5 through 21-10-9.

CHAPTER 3.02 – COLLECTION OF GARBAGE & RECYCLABLES

3.0201 Definitions. For the purposes of this ordinance, the following terms shall have the meanings indicated, unless the context clearly indicates otherwise:

- A. Commercial Garbage Hauler – Any individual, corporation, organization or business that collects or transports any type of solid waste for other parties. Entities which transport their own solid waste and entities which transport waste solely for reuse or recycling but not for disposal, are not included in this definition.

Application - mail
Proof of Insurance
Recycling Program
Rate Schedule
Issue Permit

- B. Commercial garbage Hauler License – A license issued by the City of Valley Springs under the terms of this ordinance.
- C. License Holder or Licensee – Any commercial garbage hauler which holds a Commercial garbage Hauler License.
- D. Rate Structure – The structure of charges made by a Commercial Garbage Hauler to its customers. This term is not intended to include the level of the rates charged; rather, it is intended to include the overall structure of the rates charged. This term is intended to refer to the relationship between rates charged by a particular hauler (1) to different customers (2) for different volumes of waste and (3) for different types of waste.
- E. Solid Waste (SDCL 34A-6-1.3) – Any garbage, refuse, sludge from a waste treatment plant, water supply treatment plant or air pollution control facility and other discarded materials, including solid, liquid semisolid or contained gaseous material resulting from industrial, commercial and agricultural operations, and from community activities, but does not include mining waste in connection with a mine permitted under Title 45, Hazardous Waste as defined under SDCL Chapter 34A-11, solid or dissolved materials in domestic sewage or dissolved materials in irrigation return flows, or industrial discharges which are point sources subject to permits under Section 402 of the federal Water Pollution Control Act, as amended to January 1, 1989, or sources, special nuclear or by-product material as defined by the Atomic Energy Act of 1954, as amended to January 1, 1989.
- F. Volume Based – The property of providing financial incentives to encourage source reduction, re-use and recycling. Specifically, this term refers to garbage collection rate structures which provide for user fees which increase as the volume of waste collected increases.

3.0202 License Required. No commercial garbage hauler shall use the streets for the collection, removal or disposal of any garbage and recyclable materials without first having obtained a license to perform such service from the City Council. The application shall be filed with the Finance Officer along with proof of insurance, proof of County license, proposed rate structure and payment of license fee. The City Council may limit the number of licenses to be issued to one, or another specifically limited number. The license fee shall be one hundred (\$100) dollars per year for each licensee. The license shall run from January 15th through the 14th day of January of the following year.

3.0203 Application for License. The form of application for a Commercial Garbage Hauler License and renewal thereof, as required by the provisions of this ordinance, shall be available from the Municipal Finance Officer. Upon completion of the application, the applicant shall return it to the Municipal Finance Officer for review. For an application to be considered complete, the applicant must also submit:

- A. Proof of certification by the Sioux Falls Health Department that the applicant will be allowed to deposit solid waste collected from the City of Valley Springs in the Sioux Falls Sanitary Landfill;
- B. Certificate of insurance coverage, as described in the 3.0200 Performance Standards;
- C. Proposed rate structure, as described in 3.0200 Performance Standards;
- D. Payment of an application fee in accordance with the fee schedule as determined by resolution of the City Council;
- E. A written description of the recycling program offered by the hauler to its customers.

3.0204 Approval of Application by City Council Required Prior to Licensure. Before any Commercial Garbage Hauler License shall be issued, renewed or transferred under the provisions of this ordinance, the City Council must approve the application for license. The City Council may require the applicant to furnish additional information related to the provisions of this ordinance, prior to approval of an application. Upon approval of the application, the Municipal Finance Officer shall issue a Commercial Garbage Hauler License to the applicant. Once issued, licenses shall be conditional upon the license holder complying with the Performance Standards in 3.0200 of this ordinance.

3.0205 Collection of Garbage and Recyclable Materials. Every licensed commercial hauler shall collect the garbage at least once each week. Garbage collectors shall be under no obligation to remove any garbage unless the payments of the removal of such garbage as provided by contract with the customer shall have been made. Recyclables shall be collected at least once a month by a licensed garbage hauler.

3.0206 Rates. All licensed garbage haulers shall file, as a part of their application for a business license, a general statement of their use rate structures and billing systems.

3.0207 Renewal of License. A holder of a currently valid Commercial Garbage Hauler License may apply for renewal of such license in the same manner of application as described in Section 3.0203 of this ordinance.

3.0208 Transfer of License. A holder of a currently valid Commercial Garbage Hauler License may apply for renewal of such license, in conjunction with a party wishing to receive such a license, may apply for transfer of such license in the same manner of application described in Section 3.0203 of this ordinance. In such cases, the payment of the applicable fee shall be the responsibility of the party to receive the transferred license. For an application for a transfer to be considered complete, the signatures of an authorized representative from each party must be present on the application form.

3.0209 Performance Standards. For any Commercial Garbage Hauler License to be effective, the holder of such license shall comply with the following performance standards:

- A. Random Load Inspections. No holder of a Commercial Garbage Hauler License shall violate any rule or policy established by the City of Sioux Falls for the Sioux Falls Sanitary Landfill. All vehicles transporting solid waste to the Sioux Falls Sanitary Landfill and licensed under this ordinance shall be subject to random load inspections performed by the Sioux Falls Health Department. License holders should be aware that the Sioux Falls Health Department will forward reports of landfill violations to the City of Valley Springs.
- B. Minimum Design Requirements for Equipment. All solid waste collection or transportation equipment operated by license holders are required to meet the following standards:
 - 1. Vehicles shall be water tight.
 - 2. Vehicles shall be covered, with no openings which would allow the contents to escape.
 - 3. Vehicle boxes shall be of all metal construction and shall have metal doors which shall be in a closed position whenever the vehicle is in motion.
 - 4. Containers must be attached or bolted to the frame when in transport.
 - 5. All vehicles and containers must be manufactured or designed for hauling solid wastes.
 - 6. Vehicles and containers shall be thoroughly washed as directed by the City Council of Valley Springs or the Sioux Falls Health Department, as may be necessary to keep vehicles and containers in proper sanitary condition.
 - 7. Vehicles shall be loaded so that solid waste does not spill out, fall out, blow out or otherwise leave the vehicle or container while it is collecting or transporting solid waste.
- C. Frequency of Collection. Each holder of a Commercial Garbage Hauler License shall collect solid waste from its customers at least once per week. In cases where a customer of a license holder produces a type or quantity of waste which requires more frequent collection to protect public health, sanitation or safety, the City Council may direct the license holder to collect solid waste from that particular customer on a more frequent basis.
- D. Recycling Programs Required. Each holder of a Commercial Garbage Hauler License shall provide a program for collection of recyclable materials. Each such program shall include collection of recyclable materials from customers a minimum of one (1) time per month. Each hauler shall provide to the City, as part of the hauler's annual application for a Commercial Garbage Hauler's License, a written description of the hauler's recycling program. Charges to be included in with base rate.

- E. Insurance Required. A certificate of insurance which lists the City of Valley Springs as names insured must be provided along with the application for a Commercial garbage Hauler License.
1. Such insurance shall protect the applicant and the City against loss from the following:
 - a. Liability imposed by law for damages on account of bodily injury or death resulting therefrom, suffered or alleged to have been suffered by any person or persons whatever resulting directly or indirectly from:
 - (1) Any act, activity, errors or omissions of the licensee;
 - (2) Any act, activity, errors or omissions of any person acting for the licensee;
 - (3) Any act, activity, errors or omissions of any person under the control or direction of the licensee
 - b. Liability imposed by law for damages to property resulting directly or indirectly from:
 - (1) Any act, activity, errors or omissions of the licensee
 - (2) Any act, activity, errors or omissions of any person acting for the licensee
 - (3) Any act, activity, errors or omissions of any person under the control or direction of the licensee
 2. The certificate of insurance must show that the applicant has secured liability insurance with the following coverage:
 - a. For public liability and property damage and for bodily injury/death, resulting from any one accident or any other cause, in the minimum amount of two hundred fifty thousand (\$250,000) dollars for any one (1) occurrence and an annual aggregate limit of five hundred thousand (\$500,000) dollars for two (2) or more occurrences;
 - b. For damage liability for property damage resulting from any one (1) accident or other cause, in the minimum amount of two hundred fifty thousand (\$250,000) dollars; or
 - c. Combined coverage for bodily injury/death or property damage, in the minimum amount of one million (\$1,000,000) dollars.
- F. Duty of License Holder. License holders shall comply with all of the ordinances of Valley Springs.
- G. Rate Structure. Beginning with applications for licenses for the year 1995, each applicant for a Commercial Garbage Hauler License shall provide, as an attachment to the application, a schedule of the rates which the applicant is

proposing to charge its customers. The rate structure shall demonstrate that the applicant's proposed rates are volume based, as defined in 3.0201 if this ordinance. If applicable, charges shall be categorized as to residential, commercial and any other special charges. If the application is approved, the rate structure identified in the application shall remain in effect during the term of the license. A license holder may change the rate structure during the term of the license only upon approval by the City Council. The City Council may approve a requested change only after written request from the license holder, and only if the request appears to maintain the principles of volume based rates.

3.0210 Vehicle to Vehicle Transfer. The loading, unloading and transfer of garbage from one licensed garbage collection vehicle to another such vehicle shall occur only upon lands or within structures which have been zoned by the City for Industrial use or as directed by the City.

3.0211 Obligation to Remove. Garbage collectors shall be under no obligation to remove any garbage unless the payments for the removal of such garbage, as provided by contract with the customer, shall have been made.

3.0212 Storing Garbage Prior to Collection. All garbage shall be placed in either sealed water-tight bags or inside garbage containers except leaves and grass which are to be just bagged, and set to the curb or accessible alley on days of pickup. Whenever the premises in which garbage and rubbish accumulates are adjacent to a street or alley, the garbage and rubbish containers for such premises shall be kept in a location convenient and accessible to such street or alley, if premises are not adjacent to a street or alley, the garbage and rubbish containers shall be kept on the premises in such a location that they will be readily accessible to the nearest street or alley without being unsightly.

The proprietor or operator of each duplex, apartment house, or similar multiple family dwelling shall furnish and maintain for the use of the tenants a sufficient number of garbage containers to hold all garbage and rubbish that accumulates upon such premises in the course of a week, or he shall require the tenants upon said premises to furnish such containers. The place where the garbage and rubbish containers are located shall be kept clean and in a sanitary condition at all times.

Every owner or person in charge of any restaurant, hotel, grocery store, wholesale or food processing establishment or any other business or commercial place having garbage or rubbish shall furnish and provide for use in connection therewith a garbage or refuse container. Such container shall have covers for all openings and shall be emptied often enough to prevent the same from giving off any odor or stench.

3.0213 Revocation. Any license issued under the provisions of this chapter may be revoked by the City Council for the violation by the licensee of any applicable provision of state law or city ordinance, rule or regulation.

- 3.0214 City Not Liable. The City shall not be liable for any expense incurred through the failure of a licensee or his agents and employees, to operate and maintain collection services in a proper and efficient manner, and for any actions that may result from or be attributed to such services performed.
- 3.0215 Violation of Ordinance. Any violation of any provision of this Ordinance shall be a petty offense punishable pursuant to Valley Springs Municipal Ordinance 12.0101.
- 3.0216 Saving Clause. In the event that any part of this ordinance is declared, by a duly authorized court of law, to be unconstitutional, in conflict with South Dakota Codified laws, or in conflict with the Administrative Rules of South Dakota, such part of this ordinance shall become null and void. In the event of such a finding against a part of this ordinance, the remainder of this ordinance shall continue to be effective.
- 3.0217 Separability. All prior ordinances or parts of prior ordinances in conflict with the provisions of this ordinance are hereby repealed.

SECTION 3.03 – DANGEROUS BUILDING

- 3.0301 Definitions. For the purpose of this code, any building or structure which has any or all of the conditions or defects hereinafter described shall be deemed to be a dangerous building, provided that such conditions or defects exist to the extent that the life, health, property or safety of the public or its occupants are endangered:
1. Whenever any door, aisle, passageway, stairway or other means of exit is not of sufficient width or size or is not so arranged as to provide safe and adequate means of exit in case of fire or panic.
 2. Whenever the walking surface of any aisle, passageway, stairway or other means of exit is so warped, worn, loose, torn or otherwise unsafe as to not provide safe and adequate means of exit in case of fire or panic.
 3. Whenever the stress in any materials, member or portion thereof, due to all dead and live loads, is more than one and one-half times the working stress or stresses allowed in the Building Code for new buildings of similar structure, purpose or location.
 4. Whenever any portion thereof has been damaged by fire, earthquake, wind, flood, or by any other cause, to such an extent that the structural strength or stability thereof is materially less than it was before such catastrophe and is less than the minimum requirements of the Building Code for new buildings of similar structure, purpose or location.
 5. Whenever any portion or member or appurtenance thereof is likely to fail, or to become detached or dislodged, or to collapse and thereby injure persons or damage property.

6. Whenever any portion of a building, or any member, appurtenance or ornamentation on the exterior thereof is not of sufficient strength or stability, or is not so anchored, attached or fastened in place so as to be capable of resisting a wind pressure of one-half of that specified in the Building Code for new buildings of similar structure, purpose or location without exceeding the working stresses permitted in the Building Code for such buildings.
7. Whenever any portion thereof has wracked, warped, buckled or settled to such an extent that walls or other structural portions have materially less resistance to winds or earthquakes than is required in the case of similar new construction.
8. Whenever the building or structure, or any portion thereof, because of (i) dilapidation, deterioration or decay; (ii) faulty construction; (iii) the removal, movement or instability of any portion of the ground necessary for the purpose of supporting such building; (iv) the deterioration, decay or inadequacy of its foundation; or (v) any other cause, is likely to partially or completely collapse.
9. Whenever, for any reason, the building or structure, or any portion thereof, is manifestly unsafe for the purpose of which it is being used.
10. Whenever the exterior walls or other vertical structural members list, lean or buckle to such an extent that a plumb line passing through the center of gravity does not fall inside the middle one-third of the base.
11. Whenever the building or structure, exclusive of the foundation, shows 33 percent or more damage or deterioration of its supporting member or members, or 50 percent damage or deterioration of its nonsupporting members, enclosing or outside walls or coverings.
12. Whenever the building or structure has been so damaged by fire, wind, earthquake or flood, or has become so dilapidated or deteriorated as to become (i) an attractive nuisance to children; (ii) a harbor for vagrants, criminals or immoral persons; or as to (iii) enable persons to resort thereto for the purpose of committing unlawful or immoral acts.
13. Whenever any building or structure has been constructed, exists or is maintained in violation of any specific requirement or prohibition applicable to such building or structure provided by the building regulations of this jurisdiction, as specified in the Building Code or Housing Code, or of any law or ordinance of this state or jurisdiction relating to the condition, location or structure of buildings.
14. Whenever any building or structure which, whether or not erected in accordance with all applicable laws and ordinances, has in any nonsupporting part, member or portion less than 50 percent, or in any supporting part, member or portion less than 66 percent of the (i) strength, (ii) fire-resisting qualities or characteristics, or (iii) weather-resisting qualities or characteristics required by law in the case of a newly constructed building of like area, height and occupancy in the same location.

15. Whenever a building or structure, used or intended to be used for dwelling purposes, because of inadequate maintenance, dilapidation, decay, damage, faulty construction or arrangement, inadequate light, air or sanitation facilities, or otherwise, is determined by the health officer or housing inspector to be unsanitary, unfit for human habitation or in such a condition that is likely to cause sickness or disease.
16. Whenever any building or structure, because of obsolescence, dilapidated condition, deterioration, damage, inadequate exits, lack of sufficient fire-resistive construction, faulty electric wiring, gas connections or heating apparatus, or other cause, is determined by the fire marshal or housing inspector to be a fire hazard.
17. Whenever any building or structure is in such a condition as to constitute a public nuisance known to the common law or in equity jurisprudence.
18. Whenever any portion of a building or structure remains on a site after the demolition or destruction of the building or structure or whenever any building or structure is abandoned for a period in excess of six months so as to constitute such building or portion thereof an attractive nuisance or hazard to the public.

3.0302 Authority.

1. Administration. The Building Inspector shall be appointed by, and serve at the pleasure of, the City Council, which also may appoint in a similar manner deputy building inspectors, and such persons so appointed are hereby authorized to enforce the provisions of this chapter.
2. Right of Entry. Whenever necessary to make an inspection or whenever the Building Inspector has reasonable cause to believe that there exists in any building or upon any premises, any condition which makes such building or premises dangerous as defined in 3.0401, the Building Inspector may enter such building or premises at all reasonable times to inspect the same or perform any duty imposed upon the Building Inspector by this chapter; provided that (1) if such building or premises be occupied, he shall first present proper credentials and demand entry; and (2) if such building or premises be unoccupied, he shall first make a reasonable effort to locate the owner or other persons having charge or control of the building or premises and demand entry. If such entry is refused or owner is not located, the Building Inspector shall have recourse to every remedy provided by law to secure entry.
3. Declaration as Public Nuisance. All buildings or portions thereof which are determined after inspection by the Building Inspector to be dangerous as defined in this Chapter are hereby declared to be public nuisances and shall be abated by repair, demolition, or removal.

3.0303 Notice and order. The building official shall issue a notice and order directed to the record owner of the building. The notice and order shall contain:

1. The street address and a legal description sufficient for identification of the premises upon which the building is located.
2. A statement that the building official has found the building to be dangerous with a brief and concise description of the conditions found to render the building dangerous under this chapter.
3. A statement of the action required to be taken as determined by the building official.
 - a. If the building official has determined that the building or structure must be repaired, the order shall require that all required permits be secured therefore and the work physically commenced within such time (not to exceed 30 days from the date of the order) and completed within such time as the building official shall determine is reasonable under all of the circumstances and in accordance with current building code.
 - b. If the building or structure is in such condition as to make it immediately dangerous to the life, limb, property or safety of the public or its occupants, it shall be ordered to be vacated within a time certain from the date of the order as determined by the building official to be reasonable.
 - c. If the building official has determined that the building or structure must be demolished, the order shall require that the building be vacated within such time as the building official shall determine is reasonable (not to exceed 30 days from the date of the order); that all required permits be secured therefore within 30 days from the date of the order; and that the demolition be completed within such time as the building official shall determine is reasonable.
4. Statements advising that if any required repair or demolition work (without vacation also being required) is not commenced within the time specified, the building official (i) will order the building vacated and post it to prevent further occupancy until the work is completed, and (ii) may proceed to cause the work to be done and charge the costs thereof against the property or its owner.
5. Statements advising (i) that any person having any record title or legal interest in the building may appeal from the notice and order or any action of the building official to the board of appeals, provided the appeal is made in writing as provided in this ordinance and filed with the building official within 30 days from the date of service of such notice and order; and (ii) that failure to appeal will constitute a waiver of all right to an administrative hearing and determination of the matter.
6. Such notice may be served personally by the Police Department or authorized representative of the City by prepaid first class mail, certified mail, or registered mail, upon the owner of the property where the nuisance exists, and such notice

is deemed given at the time it is personally served, or mailed, and said period to reply or abate begins to run at such time of giving notice.

7. Proof of Service. Proof of service of the notice and order shall be certified to at the time of service by a written declaration under penalty of perjury executed by the person effecting service, declaring the time, date and manner in which service is made. The declaration, together with any receipt card returned in acknowledgment of receipt by certified mail, shall be affixed to the copy of the notice and order retained by the Building Inspector. Failure by any person to actually receive any document sent to him by certified mail or to sign and return any receipt card acknowledging receipt by certified mail shall not invalidate service made upon such person by certified mail.
8. Posting of Notice to Vacate. Every notice to vacate shall, in addition to being served as provided in this section, be posted at or upon each exit of the building, and shall be in substantially the following form:

"DO NOT ENTER
UNSAFE TO OCCUPY"
It is a misdemeanor to occupy this
building, or to remove or deface this notice.
Building Inspector
City of Valley Springs

3.0304 Appeal.

1. Board of Appeals. In order to provide for final interpretation of the provisions of this chapter and to hear appeals provided for hereunder, there is hereby established a Board of Appeals which shall be the City Council of Valley Springs. The Building Inspector shall be an (ex-officio) member of and shall act as Secretary to said Board. The Board may adopt reasonable rules and regulations for conducting its business and shall render all decisions and findings in writing to the appellant with a copy to the Building Inspector. Copies of all rules or regulations adopted by the Board shall be delivered to the Building Inspector who shall make them freely accessible to the public.
2. Form of Appeal. Any persons entitled to service under Section 3.0403 may appeal from any notice and order or any action of the Building Inspector under this chapter by filing at the office of the Municipal Finance Officer within 30 days from the date of the service of such order, a written appeal containing:
 - A. A heading in the words: "Before the Board of Appeals in the City of Valley Springs".
 - B. A caption reading: "Appeal of _____, giving the names and addresses of all appellants participating in the appeal.

- C. A brief statement setting forth the legal interest of each of the appellants in the building or the land involved in the notice and order.
 - D. A brief statement of the specific order or action protested, together with any material facts claimed to support the contentions of the appellant.
 - E. A brief statement of the relief sought, and reasons why it is claimed the protested order or action should be reversed, modified, or otherwise set aside.
 - F. The signatures of all parties named as appellants, and their official mailing addresses.
 - G. The verification (by declaration under penalty of perjury) of at least one appellant as to the truth of the matters stated in the appeal.
3. Processing of Appeal. Upon receipt of any appeal filed pursuant to this section, the Building Inspector shall present it at the next regular or special meeting of the Board of Appeals.
 4. Scheduling and Noticing Appeal for Hearing. As soon as practicable after receiving the written appeal, the Board of Appeals shall fix a date, time, and place for the hearing of the appeal by the Board. Such date shall be not less than 10 days and not more than 60 days from the date the appeal was filed with the municipal Finance officer. Written notice of the time and place of the hearing shall be given at least 10 days prior to the date of the hearing to each appellant by the Secretary of the Board either by causing a copy of such notice to be delivered to the appellant personally or by mailing a copy thereof, postage prepaid, addressed to the appellant at his address shown on the appeal.
 5. Effect of Failure to Appeal. Failure of any person to file an appeal in accordance with the provisions of this section shall constitute a waiver of his right to an administrative hearing and adjudication of the notice and order, or any portion thereof.
 6. Scope of Hearings on Appeal. Only those matters or issues specifically raised by the appellant shall be considered in the hearing of the appeal.
 7. Staying of Order Under Appeal. Except for vacation orders enforcement of any notice and order of the Building Inspector issued under this chapter shall be stayed during the pendency of an appeal therefrom which is properly and timely filed.
 8. Form of Notice of Hearing. The notice to appellant shall be substantially in the following form, but may include other information:

"You are hereby notified that a hearing will be held before (the Board or name of hearing examiner) at _____ on the _____ day of _____, 20____, at the

hour of __m., upon the notice and order served upon you. You may be present at the hearing. You may be, but need not be, represented by legal counsel. You may present any relevant evidence and will be given full opportunity to cross-examine all witnesses testifying against you.”

9. Inspection of the Premises. The Board or the hearing examiner appointed by the Board may inspect any building or premises involved on the appeal during the course of the hearing provided that (1) notice of such inspection shall be given to the parties before the inspection is made, (2) the parties are given an opportunity to be present during the inspection, and (3) the Board shall state for the record upon completion of the inspection the material facts observed and the conclusions drawn therefrom. Each party then shall have a right to rebut or explain the matters so stated by the Board.
10. Form of Decision. The decision shall be in writing and shall contain findings of fact, a determination of the issues presented, and the requirements to be complied with. A copy of the decision shall be delivered to the appellant personally or sent to him by certified mail, postage prepaid, return receipt requested. The effective date of the decision shall be as stated therein.

3.0305 Enforcement.

1. Recordation of Notice and order. If compliance is not made with the order within the time specified therein, and no appeal has been properly and timely filed, the Building Inspector shall file in the office of the County Auditor a certificate describing the property and certifying (1) that the building is a dangerous building and (2) that the owner has been so notified.

Whenever the corrections ordered shall thereafter have been completed or the building demolished so that it no longer exists as a dangerous building on the property described in the certificate, the Building Inspector shall file a new certificate with the County Auditor certifying that the building has been demolished or all required corrections have been made so that the building is no longer dangerous, whichever is appropriate.

2. Notice to Vacate. Whenever the required repair or demolition is not commenced within the time period specified in notice and order issued under this chapter, the Building Inspector shall post at each entrance of said building a notice to vacate.
3. Abatement of Nuisance. The Building Inspector may, in addition to any other remedy herein provided, order the building to be repaired to the extent necessary to correct the conditions which render the building dangerous as set forth in the notice and order; or, if the notice and order required demolition, to cause the building to be sold and demolished, or demolished and the materials, rubble and debris therefrom removed and the lot cleaned.
4. Extension of Time to Perform Work. Upon receipt of an application from the person required to conform to the order and an agreement by such person that

he will comply with the order if allowed additional time, the Building Inspector may, in his discretion, grant an extension of time, not to exceed an additional 120 days, within which to complete said repair, rehabilitation, or demolition, if the Housing Inspector determines that such an extension of time will not create or perpetuate a situation imminently dangerous to life or property.

The Building Inspector's authority to extend time is limited to the physical repair, rehabilitation, or demolition of the premises and will not in any way affect or extend the time to appeal his notice and order.

3.0306 Violations.

1. No person shall obstruct, impede or interfere with, any officer, employee, contractor or authorized representative of the city, or with any person who owns or holds any estate or interest in any building which has been ordered to be repaired, vacated or demolished under the provisions of this chapter.
2. No person shall enter or occupy any building which has been posted with a notice to vacate. No person shall remove or deface any such notice so posted until the required repairs, demolition, or removal ordered by the Housing Inspector have been completed.
3. Any person violating any provision of this chapter or failing to obey any order of the Building Inspector or Board of Appeals made pursuant to this chapter, after such order has become final, shall be subject to a fine not to exceed \$200.00, if convicted, and each day such violation or failure to obey shall occur may be considered a separate violation of this chapter. The Building Inspector is authorized to initiate prosecutions for the violation of this chapter or for the failure to obey such orders.

3.0307 Recovery of Cost of Repairs or Demolition.

1. Assessment. The City may recover the total cost of the repair or demolition of dangerous buildings or structures through any means available under the laws of the State of South Dakota, including, but not limited to, any special assessment procedure provided by such laws, as from time to time amended.
2. Surplus. Any surplus realized from the sale of such building, over and above the cost of demolition and of cleaning the lot, shall be paid over to the person or persons lawfully entitled thereto.