

**ORDINANCE #564**

**AN ORDINANCE AMENDING TITLE 3 HEALTH AND SANITATION OF THE CLARK MUNICIPAL CODE ESTABLISHING VIOLATION OF CERTAIN PUBLIC HEALTH RULES AS A PUBLIC NUISANCE**

**BE IT ORDAINED BY THE CITY OF CLARK THERE IS HEREBY ADOPTED THE FOLLOWING AMENDING SECTION 3.08 OF TITLE 3 – HEALTH AND SANITATION TO ADD THE FOLLOWING LANGUAGE.**

**“Chapter 3.08 Establishing Violation of Certain Public Health Rules as a Public Nuisance**

|         |                                     |
|---------|-------------------------------------|
| Section |                                     |
| 3.08.02 | Declaration of Emergency            |
| 3.08.04 | Immediate Abatement                 |
| 3.08.06 | Remedies Against Nuisance Generally |
| 3.08.99 | Penalties                           |

**3.08.02 Declaration of Emergency**

Notwithstanding any other provisions in the Clark Municipal Code relating to the declaration, identification, and abatement of nuisances, in the event that the City, the State of South Dakota or federal government declares an emergency to exist that endangers or presents a hazard to public health, welfare, or safety, and either the City, State of South Dakota or a federal government implements rules or recommendations restricting or limiting the actions of individuals or businesses in order to limit or slow the impact of such emergency event, the City may declare any business or individual who violates those rules or recommendations to be a public nuisance.

In declaring the emergency, the City may by resolution or ordinance set forth rules or recommendations restricting or limiting actions of individuals or businesses that the City has determined necessary to protect the immediate health, welfare, or safety of the public and within the resolution or ordinance may adopt by reference actions, declarations, or standards currently in place or being put in place by the State of South Dakota or the federal government.

**3.08.04 Immediate Abatement**

Upon a determination by the code enforcement officer or city police department that a business or individual is operating in violation of those rules and recommendations set forth above, which the City has declared to be a nuisance, the code enforcement officer or city police department may determine that such violation is an immediate threat to public health and safety, and may have the nuisance abated immediately at the owner’s expense.

In a situation where the City has to perform an immediate abatement that includes the closing or limiting of business or personal actions of an individual, that business or individual shall have the right to submit to the City in writing the actions the business or individual will take to bring activity within the rules and/or recommended standards contained in the City resolution or ordinance declaring an emergency. Upon receipt of the written proposal, the City will review the proposal within 48 hours exclusive of weekends or legal holidays, and advise the business or individual

whether the abatement will no longer be necessary if the business or individual fulfills and follows the existing regulations and properly adjusts activities to fit within those regulations.

Any business or individual aggrieved by any immediate abatement or requirements being placed on the person's activities may appeal the action at the next City Council Meeting that is at least 48 hours after the filing of the notice of the request for hearing, exclusive of weekends and legal holidays, wherein such filing is in writing and sets forth the reasons why the business or individual believes their actions are within the restrictions contained in the City's resolution or ordinance declaring an emergency.

### **3.08.06 Remedies Against Nuisance Generally**

In the enforcement of the City's resolution or ordinance declaring an emergency, the City shall also have additional rights and remedies against nuisance as exist under common law and under state statute, including, but not limited to, SDCL §9-29-13 and SDCL chap. 21-10.

### **3.08.99 Penalties**

Any violation of the provisions of this Ordinance is a Class 2 misdemeanor punishable by the maximum punishment set forth by the laws of the state of South Dakota pursuant to SDCL §22-6-2 and a daily fine for each day the nuisance continues. Said punishment may also include payment of any costs and/or restitution authorized by this Ordinance and/or State Law."

Pursuant to SDCL §9-19-13, this ordinance is necessary for immediate preservation of the health, peace, safety and welfare of the City and its citizens and, therefore, shall become effective immediately upon passage.

Dated this 25<sup>th</sup> day of April, 2020.

CITY OF CLARK

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John Pollock, Mayor

ATTEST:

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Jackie Luttrell, City Finance Officer

First Reading: April 20, 2020  
Second Reading: April 25, 2020  
Published: April 29, 2020