

ORDINANCE NO. 04-5280

AN ORDINANCE OF THE CITY OF BILLINGS, PROVIDING THAT THE BILLINGS, MONTANA CITY CODE BE AMENDED BY REVISING SECTIONS 18-300 THROUGH 18-18-306, BY ADDING SECTIONS TO BE NUMBERED 18-307 THROUGH 18-308; PROHIBITING PUBLIC NUISANCES, DEFINING TERMS, PROVIDING FOR A PROCEDURE WHEREBY THE EXISTENCE OF A PUBLIC NUISANCE CAN BE DETERMINED AND REMEDIATED, ESTABLISHING AN EFFECTIVE DATE, AND PROVIDING A SEVERABILITY CLAUSE.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BILLINGS, MONTANA:

Section 1. That section 18-301 of the Billings Montana City Code be amended so that such section shall read as follows:

Section 18-301- ~~Premises defined.~~ Purpose

~~Premises as used in this article shall be construed to mean any lot or parcel of land, together with the portion of any street, avenue or alley lying between such lot or parcel of land and the center of such street, avenue or alley.~~

The purpose of this Ordinance is to control conditions in the City of Billings that constitute public nuisances, are injurious to public health, safety and welfare, obstruct the free use of property or interfere with the comfortable enjoyment of life or property and to provide for the abatement of such nuisances, to protect the public health, safety and welfare and to promote the economic development of the City of Billings. It is also the purpose of this Ordinance to prevent and prohibit those conditions which reduce the value of private property, interfere with the enjoyment of public and private property, create and constitute public nuisances and contribute to the degradation of the character of neighborhoods and the depreciation of property values.

Section 2. That section 18-302 of the Billings Montana City Code be amended so that

such section shall read as follows:

Section 18-302 - Prohibition. Definitions.

~~Any person who shall create or maintain in the streets, avenues, alleys and public places or on any premises or property within the city owned, occupied or controlled by such person, any nuisance shall be punished as provided by section 1-110 and shall pay the costs of prosecution, together with the reasonable expense of removing or abating such nuisance to be proved on prosecution.~~

For the purposes of this Ordinance the following definitions shall apply:

(a) “**Abate**” means to repair, replace, remove, destroy or otherwise remedy the condition in question by such means, in such a manner and to such an extent that is determined necessary in the interest of the health, safety and general welfare of the effected community.

(b) “**Attractive Hazard**” means the open storage on property of any container that may attract children and having a compartment of more than 1 ½ cubic feet capacity and a door or lid that locks or fastens automatically when closed and cannot be easily opened from the inside.

(c) “**Dangerous Structure**” means any dangerous, decaying, unkempt, falling or damaged residential dwelling or other structure suitable for human occupancy excluding any structure related to an agricultural or farming operation.

(d) “**Enforcement Officer**” means any City employee so designated by the City Council or the City Administrator.

(e) “**Junk**” includes the open storage of old appliances, equipment, or parts thereof, old iron or other scrap metal, automobile or truck tires, cardboard, old lumber or scrap wood, rags, rope, paper, debris, rubble, batteries, rubber debris, mattresses or any worn out, cast off or discarded article or material which is ready for destruction or has been collected or stored as salvage, for

conversion to some other use or for reduction into components and is not part of a commercial or public salvaging or recycling operation.

(f) “**Junk Vehicle**” means any discarded, ruined, wrecked, or dismantled motor vehicle, including any component parts and which is not lawfully and validly licensed. For purposes of this Ordinance, any vehicle that is operable but unlicensed is considered a junk vehicle.

(g) “**Nuisance**” means a public nuisance created by allowing rubble, debris, junk, junk vehicle(s), dangerous structure(s) or refuse to accumulate so that it 1) endangers safety or health, is offensive to the senses, or obstructs the free use of property so as to interfere with the comfortable enjoyment of life or property or 2) a condition which renders any public right-of-way dangerous for passage.

(h) “**Obstruction to the Public Right-of-Way**” means the placement OF any debris, refuse, rubble, dirt, gravel, soil, fence, junk, junk vehicle or other personal property so as to obstruct traffic, drainage, pedestrians or otherwise safe and open access to such right-of-way.

(i) “**Open Storage**” means exposed to the elements or not stored inside an enclosed structure which includes walls on all sides and a roof.

(j) “**Person**” means any individual, firm, association, partnership, corporation or any entity, public or private.

(k) “**Premises**” means any lot, parcel of land, building, parcel, real estate, land or portion of land whether improved or unimproved including any portion of any street, right-of-way or alley lying between such lot or parcel of land and the center of such street, right-of-way or alley.

(l) “**Responsible Person**” means any agent, lessee, owner or other person occupying or having charge or control of any premises.

Section 3. That section 18-303 of the Billings Montana City Code be amended so that such

section shall read as follows:

Section 18-303- Offensive matter. Prohibitions.

~~Any owner, lessee, occupant or resident of any premises upon which is present any unwholesome, decaying or putrid animal or vegetable matter, the nature and condition of which tend to contaminate the atmosphere, or endanger or injure the health of any person or which is indecent or offensive to the senses, or interferes with the comfort or enjoyment of any resident or sojourner in the city, and who shall knowingly permit such matter to remain thereon for a period of more than twenty four (24) hours, shall, on conviction thereof, be deemed guilty of maintaining a public nuisance.~~

It is unlawful for any person to create or maintain on any premises or adjacent to a public right-of-way within the incorporated area of the City of Billings any condition that contributes to the creation of a public nuisance and is injurious to health or safety, is offensive to the senses, or obstructs the free use of property, so as to interfere with the comfortable enjoyment of life or property, or obstructs a public right-of-way. Such condition shall be deemed a nuisance if it affects an entire community or neighborhood or any considerable number of persons. Public nuisances include but are not limited to the following:

1. Maintaining an Attractive Hazard on any premises for more than 24 hours without removing the door, lid, or locking or fastening device from such container;
2. Maintaining a Junk Vehicle or vehicles on any premises for more than five (5) consecutive days without removing such vehicle(s) to a legal disposal site or placing said junk vehicle(s) inside a storage building or garage;

3. Maintaining a collection of Junk (See Definition) on any premises for more than five (5) consecutive days without removing such material to a legal disposal site or placing such collection inside a storage building or garage;
4. Creating or maintaining an obstruction to a public right-of-way;
5. Creating or maintaining on any premises an amount of decaying matter, animal or vegetable, that is not part of an agricultural or farming operation, so as to contaminate the atmosphere and be offensive to the senses and obstruct the free enjoyment of life and property; or
6. Maintaining a Dangerous Structure (See definition) for more than thirty (30) days without securing such property against entry, or abating the dangerous condition of such structure.
7. Nothing that is done or maintained pursuant to a permit issued by the City of Billings or the State of Montana shall be deemed a public nuisance.

Section 4. That section 18-304 of the Billings Montana City Code be amended so that such section shall read as follows:

Section 18-304. Right of entry. Enforcement

~~The city shall have authority at any time between the rising and setting of the sun to enter upon any building or premises and to do and perform whatsoever is necessary and proper for the thorough inspection of such to enforce this article. No person shall resist or obstruct any officer in the performance of such duty.~~

Upon written or oral complaint of any citizen so affected by an alleged public nuisance, or if an Enforcement Officer becomes aware of a condition or situation that may constitute a public nuisance, the Enforcement Officer shall investigate a the condition or situation within a

reasonable period of time. The Enforcement Officer shall determine whether such condition or situation constitutes a public nuisance. If the officer finds that there exists a public nuisance as defined herein, such officer shall give written notice to the owner of the premises ~~or~~ AND the Responsible Person who is maintaining or creating such public nuisance of the specific nature of the violation.

Section 5. That section 18-305 of the Billings Montana City Code be amended so that such section shall read as follows:

Section 18-305 Abatement and collection of costs. Right of Entry

~~(a) Whenever any person shall be convicted of committing, creating or maintaining a nuisance, the city judge may order the city administrator to abate the nuisance and to certify the cost thereof to the court and that cost shall be added to the fine, and payment of such cost may be collected in the manner provided for the collection of the fines.~~

~~(b) In case any nuisance shall be in, upon or about any vacant or unoccupied lot, tenement or structure owned by a nonresident having no known agent living in the city, the council may by order direct the city administrator to abate such nuisance, which shall be done at the owner's expense and the costs thereof shall be recovered in a civil action against such owner, and the owner's property attached and sold to satisfy any judgment recovered.~~

(a) A person may make a complaint of the existence of a public nuisance to a Code Enforcement Officer, a Fire Marshal, the City Administrator or his designee, or the Community Development Program Administrator. Such complaint shall include, whenever possible, the nature of the public nuisance, the location, including the address, the name of the owner, occupant, or manager of the property, the duration of the nuisance and the name and address of the complainant. Complaints shall be referred to the appropriate Code Enforcement Officer.

(b) The Enforcement Officer will contact the owner of the premises ~~or~~ AND the Responsible Person, either in writing or by telephone, prior to entry upon an individual's property. The purpose of this initial contact is to request consent to be on the property. If the owner or Responsible Person does not consent to entry onto the property, the officer will obtain a search warrant prior to any entry onto private property, unless exigent circumstances exist so that entry is necessary to prevent physical harm to the officers or other persons, the destruction of relevant evidence, the escape of the suspect, or some other consequence improperly frustrating legitimate law enforcement efforts.

Section 6. That section 18-306 of the Billings Montana City Code be amended so that such section shall read as follows:

~~Section 18-306 Public urination and defecation prohibited.~~

Emergency Abatement

~~It is unlawful for any person to urinate or defecate in any street, alley or public place except in a facility provided for that purpose.~~

(a) Whenever an Enforcement Officer has reason to believe that a public nuisance exists, and that such public nuisance constitutes an emergency presenting imminent danger of serious injury to persons or property, the administrative officer, his authorized representative, a Fire Marshal, or a Police Officer may immediately enter into any building or upon any premises within the jurisdiction of the City of Billings for purposes of inspection or abatement.

(b) Whenever a public nuisance exists which constitutes an emergency presenting imminent danger of serious injury to persons or property, an Enforcement Officer may order, without notice or judicial action, that the public nuisance be summarily abated by removal, destruction or mitigation. If the owner or responsible person fails to comply with a such an order within the

time prescribed, the Code Enforcement Officer shall cause the structure to be demolished and removed, either through an available public agency or by contract or arrangement with ~~with~~ private persons, and the cost of such abatement shall be paid by the owner of the property upon which the nuisance existed, pursuant to the procedures established in Section 8.

Section 7. That the Billings, Montana City Code be amended by adding a section to be numbered 13-307, to read as follows:

Section 18-307 - Voluntary Abatement

Unless a public nuisance constitutes an emergency presenting imminent danger of serious injury to persons or property, the Code Enforcement Officer shall afford the owner of the premises or the Responsible Person ten (10) days to voluntarily abate the public nuisance. The Enforcement Officer must give written notice IN PERSON OR BY CERTIFIED MAIL of the specific condition to be abated and the specific abatement required to the owner of the premises ~~or~~ AND the Responsible Person. Such written notice shall include a voluntary abatement agreement for the owner of the premises' signature and the Responsible Person's (if different than the owner) signature. Such signed agreement shall be returned to the Enforcement Officer and will be placed in the public record of the complaint. If the Responsible Person is different than the owner of the premises, both parties must sign the voluntary abatement agreement.

Section 8. That the Billings, Montana City Code be amended by adding a section to be numbered 13-308, to read as follows:

Section 18-308-Abatement and collection of costs.

The remedies specified in this section shall be in addition to all other remedies provided by law. When a public nuisance has not been voluntarily abated within the time specified in the notice to abate, the following procedure shall apply.

1. The City may bring an action in the Municipal Court to have the nuisance declared as such by the Court and for an order enjoining the public nuisance or authorizing its restraint, removal, termination or abatement by the owner or the person who caused the nuisance or the person who allowed the nuisance to be caused or to continue, or an administrative officer, his authorized representative, a Police Officer, a Code Enforcement Officer, a Community Service Officer or any person under contract with the City to perform such services.

2. The action to declare and abate a public nuisance shall be brought by the City in the name of the people of the City, by the filing of a complaint, which shall be verified or supported by an affidavit. Summons shall be issued and served as provided by Montana law for civil cases. Trial shall be to the Court.

3. A notice of appearance shall be served with the summons and complaint. The appearance date shall be not less than twenty-one days from the date of service of the summons and complaint. The trial shall be held upon the appearance date, unless the Court grants a continuance for good cause shown.

4. The respondent shall file a response on or before the appearance date set forth in the notice of appearance.

5. Upon the date and at the time set for appearance and trial, if the respondent has filed no response and fails to appear and if the City proves that proper service was made on the respondent at least twenty-one days prior to the appearance date, the Court may grant such orders as are requested by the City; except that, the Court shall order that enforcement by the City be stayed for ten days and that a copy of the Court's order be mailed to the respondent at his last known address. Failure to appear on any other date set for trial shall be grounds for entering a default and judgment thereon against a non-appearing party. For good cause shown, and prior to

enforcement, the Court may set aside an entry of default and the judgment entered thereon.

6. The judgment of the Municipal Court may be appealed to the district court.

7. The procedure for determining the cost of abatement of a public nuisance will be as follows:

(a) Code Enforcement staff will secure a contract for removal of the nuisance by following the usual city procurement process.

(b) Code Enforcement staff will coordinate the abatement project with the contractor, and oversee the work as it is being performed.

(c) After the Planning Director and the Code Enforcement staff have approved the final bill it will be forwarded to THE City Finance Department for payment.

(d) A copy of approved bill(s) and proof of disbursement is placed in the Code Enforcement File maintained by Code Enforcement Staff. These documents, along with the itemized Abatement Expense Report are used to determine the total cost of abatement for the property. Costs that may be included on the Abatement Expense Report are shown in Subsection 7(h) below. The Abatement Expense Report is then certified and transmitted to the Finance Department for approval of assessment on the real property being abated.

(e) The property owner will then be sent an Abatement Expense Report for the subject property and be given notice that any assessment that is not paid shall become a lien upon the property and is enforceable in the same manner as the nonpayment of property taxes. The interest fee will be waived for any payments made within 30 days of notice.

(f) A summary listing of the assessments, tax codes, and property owners will be kept by the clerk and recorder through August 31 of each year, and the list shall be presented to the Department of Revenue for billing on the next real property tax statement.

(g) A special abatement fund will be established to account for costs, collections, and transactions necessary to the efficient operation of the program. Assessment funds collected are returned to the designated abatement account for future use on other involuntary property abatements or for transfer back to the City general fund.

(h) The City shall determine the actual costs of cleanup and involuntary abatement actions and document such costs. The following expenses will be assessed as the actual costs of abatement of a NUISANCE condition: ~~of Community Decay:~~

(1). PLANNING STAFF TIME / MILEAGE / OTHER COSTS

(2). POLICE DEPT STAFF TIME / MILEAGE

(3). OTHER INVOLVED CITY STAFF TIME /MILEAGE / OTHER COSTS

(4). POSTAGE / MAILING COSTS

(5). OTHER DIRECT COSTS ASSOCIATED WITH ABATEMENT

(6) AN INTEREST FEE OF 6% per annum COMPUTED ON ABOVE COSTS which WILL BE WAIVED IF THE TOTAL COST OF ABATEMENT IS PAID BY THE PROPERTY OWNER WITHIN 30 DAYS OF NOTICE.

(i) The Code Enforcement staff has the discretion to coordinate and incur reasonable costs and services necessary for the safe, effective, and efficient cleanup of designated involuntary abatement properties. The code enforcement staff will notify the City Administrator before any additional contracted costs in excess of \$1,000 are incurred.

Section 9. EFFECTIVE DATE. This ordinance shall be effective thirty (30) days after second reading and final adoption as provided by law.

Section 10. SEVERABILITY. If any provision of this ordinance or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect the other provisions of

this ordinance which may be given effect without the invalid provisions or application, and, to this end, the provisions of this ordinance are declared to be severable.

PASSED by the City Council on first reading this 26th. day of April, 2004.

PASSED, ADOPTED and APPROVED on second reading this 10th day of May, 2004.

CITY OF BILLINGS

By _____
Charles F. Tooley, Mayor

ATTEST:

By _____
Marita Herold, CMC City Clerk