

ORDINANCE NO. 19-5721

AN ORDINANCE OF THE CITY OF BILLINGS, PROVIDING THAT THE BILLINGS, MONTANA CITY CODE BE AMENDED BY REVISING SECTIONS 18-300 THROUGH 18-309, 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:

Sec. 18-301. Purpose.

The purpose of this article is to control regulate conditions in the city that may 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 remediation of such nuisances, to protect the public health, safety and welfare and to promote the economic development stability of neighborhoods and areas within of the city. It is also the purpose of this article 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:

Sec. 18-302. Definitions.

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

Abandoned or Decaying Structure means a structure intended for human occupancy that is vacant and exhibits objectively determinable signs of deterioration specified in Section 18-303 (5)(B) sufficient to constitute a public nuisance.

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.

Creating a Hazard means a dangerous condition existing on property that would be attractive to children, including such things as an unfenced swimming pool, a refrigerator or other container that could trap a child inside, and an un-barricaded construction site.

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. Openings in the walls or roof that allow unrestricted access by humans, animals or weather to the interior of the structure shall constitute a presumption that the structure is dangerous.

Enforcement officer means a code enforcement officer, police officer, or other city employee designated by the city council or the city administrator.

Junk means includes the open storage of old any worn out, cast off or unusable 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. Junk includes but is not limited to old or scrap metal, rope, rags, household goods, appliances, furniture, vehicle parts or components, batteries, paper, tires, rubber debris or waste, iron, steel and other old or scrap ferrous or non-ferrous material, 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.

Junk-Inoperable vehicle means any discarded, ruined, wrecked, or dismantled motor vehicle or motor vehicle parts or components. Any vehicle not capable of immediate and legal operation on public roads shall be considered a junk an inoperable vehicle for purposes of this section.

Public Annuisance means a situation created or allowed to continue by the owner or occupant of real property which endangers may endanger or be injurious to public safety or health, is offensive to the senses, renders any public right-of-way dangerous for passage, adversely affects the property values of adjacent properties, or obstructs the free use of property so as to interfere with the comfortable enjoyment of life or property. Nothing which is done or maintained under the express authority of a statute can be deemed a nuisance. A public nuisance is one which affects, at the same time, an entire community or neighborhood or any considerable number of persons, although the extent of the annoyance or damage inflicted upon individuals may be unequal. A nuisance may include, but is not limited to:

- (1) Allowing rubble, debris, salvage, junk, junk vehicle(s) or refuse to accumulate.
- (2) Allowing a structure to remain unsecured from unauthorized entry.
- (3) Allowing a structure to become an eyesore or blight on a neighborhood by neglect or failure to make necessary repairs.
- (4) Allowing a residential structure to become unsuitable for human habitation, by failure to maintain the structure in compliance with applicable building, technical, and model codes.

(5) Allowing a condition to continue which materially and adversely affects property values on multiple adjacent and nearby properties.

~~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.

Open storage means exposed to the elements or not stored inside an enclosed structure which includes walls on all sides and a roof.

Person means any individual, firm, association, partnership, corporation or any entity, public or private.

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.

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:

Sec. 18-303. Prohibitions.

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 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 ~~Creating an attractive a~~ hazard on any premises for more than twenty-four (24) hours, ~~without removing the door, lid, or locking or fastening device from such container;~~
- (2) Maintaining a junk vehicle or ~~The open storage of more than three (3) inoperable 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 ~~The open storage of~~ 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;

(54) 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

(65) Maintaining a dangerous structure (see definition) or an abandoned or decaying structure for more than thirty (30) ten (10) days without securing such property against entry, or abating the dangerous or nuisance condition of such structure.

A. A dangerous structure is being maintained if three (3) or more of the following listed conditions exist:

- i. Broken or missing windows;
- ii. Broken or missing doors
- iii. Broken or missing attic vent(s);
- iv. Broken or missing under-floor vent(s);
- v. Building exteriors with substantially deteriorating or peeling paint which allows the exterior building coverings to significantly deteriorate;
- vi. Building exteriors with visible signs of decay such as siding with dry rot, warping or cracking;
- vii. Building with missing or severely damaged finish siding materials;
- viii. Buildings with missing or substantially damaged exterior walls;
- ix. Buildings with missing or severely damaged roofs; or
- x. Buildings with missing or severely damaged foundations.

B. An abandoned or decaying structure is being maintained if three (3) or more of the following listed conditions exist:

- i. Buildings with substantially deteriorating or peeling paint which allows the exterior building coverings to significantly deteriorate;
- ii. Building exteriors with visible signs of decay such as siding with dry rot, warping or cracking;
- iii. Two (2) or more reports to the Police Department or Code Enforcement Division of building exteriors, walls, fences, driveways, or walkways which has been defaced by "graffiti" within a 12-month period;

- iv. Two (2) or more reports to the Police Department or Code Enforcement Division of unauthorized persons (trespassing) on the property within a 12-month period;
- v. Has one or more essential utilities turned off;
- vi. Dead, dying or diseased trees;
- vii. Dead, dying or diseased shrubs and other desired vegetation;
- viii. Dead, dying or diseased lawn area(s) due to lack of water or other necessary maintenance;
- ix. Neglected trees and shrubs growing uncontrolled without proper pruning;
- x. Building walls which are broken, defective, or significantly deteriorated; or
- xi. Building appurtenances such as railings, gutters, fences, gates or exterior light(s) are broken, fallen, or significantly damaged.

(7) ~~Nothing that is done or maintained pursuant to a permit issued by the city or the state shall be deemed a public nuisance.~~

(8) ~~Violations of this section shall be cited into municipal court as criminal citations, subject to penalties as provided in BMCC section 1-110. Violations of this section may also be grounds for a civil abatement action as provided in this article.~~

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

Sec. 18-304. Enforcement and penalties.

(a) 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 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 and the responsible person who is maintaining or creating such public nuisance of the specific nature of the violation.

(b) Violations of this article may be cited into municipal court as municipal infraction citations and are subject to civil penalties as specified in section 18-1304. Each day that a violation occurs is a separate offense.

(c) The city may also pursue civil remedies including seeking a court order to allow the city to enter the property for the purposes of abating such public nuisance.

Section 5. That section 18-305, 18-306 and 18-307 of the Billings Montana City Code be deleted in their entirety:

Sec. 18-305. Right of entry.

(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 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, or some other consequence improperly frustrating legitimate law enforcement efforts.

Sec. 18-306. Emergency abatement.

(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 enforcement 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 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 immediately abated by removal, destruction or mitigation. If the owner or responsible person fails to comply with a such an order immediately, or cannot be located, the enforcement officer shall cause the structure to be demolished and removed, or the nuisance otherwise abated or mitigated, either through an available public agency or by contract or arrangement with private persons. 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 13-308.

Sec. 18-307. Voluntary abatement.

Unless a public nuisance constitutes an emergency presenting imminent danger of serious injury to persons or property, the 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 of the specific condition or

conditions to be abated and the specific abatement required to the owner of the premises and the responsible person. Such ten-day notice shall be served by personal service or certified mail, return receipt requested, to the owner or responsible person. If the enforcement officer, after good faith efforts, is unable to serve the ten-day notice by personal service or certified mail, the ten-day notice may be served by mailing the notice to the owner and responsible person's last known address via standard U.S. Mail and posting the notice conspicuously on the premises where the violation exists.

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 6: That section 18-308 of the Billings Montana City Code be amended so it reads as follows:

Sec. 18-308 305. 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 by the responsible party within the time specified in the notice of violation and after a first municipal infraction citation has been issued to abate, the following procedure shall applyes:

- (1) The city may bring a civil 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.
- (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 state law for civil cases. If the owner or responsible person cannot be personally served after good faith efforts, service may be made by publication as provided in state law for matters concerning real property.
- (3) A notice of appearance shall be served with the summons and complaint. The appearance date shall be not less than twenty-one (21) 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. The respondent shall file a response as provided by state law for civil cases and as set forth in sections 18-1302 and 18-1303. Within thirty (30) days of the response being filed, the court shall set the matter for scheduling conference and/or trial. 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.
- (4) The respondent shall file a response on or before the appearance date set forth in the notice of appearance. If the respondent has filed no response as required in section 18-305(3) and the city proves that proper service was made on the respondent, the court may enter judgment against the respondent as provided by state law for civil

cases and as set forth in section 18-1303. For good cause shown, and prior to enforcement, the court may set aside an entry of default and the judgment entered thereon.

(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 (21) 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 (10) 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 The enforcement officer will secure a good faith estimate of the costs to abate the public nuisance prior to or coincidentally with the civil action filed in municipal court. contract for removal of the nuisance by following the usual city procurement process. Code enforcement The enforcement officer may utilize city resources, including staff and equipment, to complete some or all components of a court ordered abatement, and the fair market value of utilization of staff and equipment shall be assessed in accordance with this section.
- b. Code enforcement staff will coordinate the abatement project and oversee the work as it is being performed. The enforcement officer will forward the good faith estimate of the costs to abate the public nuisance to the municipal court and the city's legal staff.
- 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. The municipal court may assess as a judgment the good faith estimate of the costs of abatement.
- 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. The municipal court may allow the property owner a period of time, not to exceed 45 days, to abate the public nuisance prior to assessing the good faith estimate in a judgement.

- 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 thirty (30) days of notice. At the expiration of the period of time allowed by the municipal court, the city may proceed to enter the property and abate the nuisance as ordered and in accordance with the good faith estimate.
- 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. The enforcement officer will coordinate the abatement project and oversee the work as it is being performed.
- 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. After the planning director and the enforcement officer have approved the final bill it will be forwarded to the city finance department for payment by the property owner.
- 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:
 1. Planning staff time/mileage/other costs.
 2. Police department 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 six (6) percent per annum computed on above costs which will be waived if the total cost of abatement is paid by the property owner within thirty (30) days of notice.

A copy of approved bill(s) and proof of disbursement is placed in the enforcement agency file maintained by enforcement officer. These documents, along with the itemized abatement expense report are used to determine the total cost of abatement for the property. The abatement expense report is then certified and transmitted to the finance department for approval of assessment on the real property being abated.

- 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 ten thousand dollars (\$10,000.00) are incurred. 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 thirty (30) days of notice.
- j. 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.
- k. 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.
- l. Any judgment assessed by the municipal court may not exceed the statutory amount as set in MCA 3-11-103, as amended. The portion of a good faith estimate that exceeds this statutory amount may not be assessed as a judgment by the municipal court.

Sec. 18-306. Authority of the City to seek other remedies.

This section is not the exclusive remedy for any nuisance action brought by the City of Billings. Nothing in this section prohibits or precludes the City of Billings from filing an action in District Court under state law.

Section 7. That section 18-309 of the Billings Montana City Code be re-number and included in section 18-100 of the Billings Montana City Code so it reads as follows:

Sec. 18-309103. Public urination and defecation prohibited.

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.

Section 8. EFFECTIVE DATE. This ordinance shall be effective thirty (30) days after second reading and final adoption as provided by law.

Section 9. 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 10th day of December, 2018.

PASSED, ADOPTED and APPROVED on second reading this 14th day of January, 2019.

CITY OF BILLINGS:



By: William A. Cole
William A. Cole, Mayor

ATTEST:

By: Denise R. Bohlman
Denise R. Bohlman, City Clerk