

ORDINANCE 24-5880

AN ORDINANCE OF THE CITY OF BILLINGS, PROVIDING THAT THE BILLINGS, MONTANA CITY CODE (BMCC) BE AMENDED BY REVISING ARTICLE 18-1100, OF SAID CODE

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BILLINGS THAT:

Section 1. That Article 18-1100, of the Billings, Montana City Code (BMCC) is amended so that such section shall read as follows:

Article 18-1100. – GRAFFITI

Sec. 18-1101. Purpose and intent.

Graffiti presents a threat to the health, safety and welfare of the community and reduces the value of adjoining properties. Graffiti is deemed a public nuisance in accordance with Sec. 18-301. Standards for graffiti abatement established in this section will help improve the appearance of these structures and preserve neighborhood property values.

The city council is enacting this article to help prevent the spread of graffiti vandalism and to establish a program for the removal of graffiti from public and private property. The council is authorized to enact this article pursuant to its police powers, as specified in Section 1.01 of the City Charter and MCA §§ 7-1-101, 7-5-4101, and 7-5-4104 that authorize the city to have all power possible for a self government city as fully and as completely as though they were fully enumerated in the Charter, to exercise any power not prohibited by the Constitution or laws of the state, to make and pass all laws not repugnant to the Constitution or laws of the state necessary for the government or management of the affairs of a city or town, and to define and abate nuisances and impose fines on persons guilty of creating, continuing or suffering nuisances to exist on premises they occupy or control.

The council finds that graffiti is a public nuisance and destructive of the rights and values of property owners as well as the entire community. Unless the city acts to remove graffiti from public and private property, the graffiti tends to remain. Other properties then become the target of graffiti, and entire neighborhoods are affected and become less desirable places in which to be, all to the detriment of the city.

The city council intends, through the adoption of this article, to provide additional enforcement tools to protect public and private property from acts of graffiti vandalism and defacement. The council does not intend for this article to conflict with any existing anti-graffiti state laws.

(Ord. No. 05-5332, § 1, 7-11-05)

Sec. 18-1102. Definitions.

~~For the purposes of this article, the following words shall have the meanings respectively ascribed to them in this section, except where the context clearly indicates a different meaning:~~

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

Graffiti means any unauthorized inscription, word, figure, painting or other defacement that is written, marked, etched, scratched, sprayed, drawn, painted, or engraved on or otherwise affixed to any surface of public or private property by any graffiti implement, to the extent that the graffiti was not authorized in advance by the owner or occupant of the property, or, despite advance authorization, ~~is otherwise deemed a public nuisance by the city council.~~ constitutes a public nuisance as defined in Section 18-302

Graffiti implement means an aerosol paint container, a broad-tipped marker, gum label, paint stick or graffiti stick, etching equipment, brush or any other device capable of scarring or leaving a visible mark on any natural or man-made surface.

Owner means any entity or entities have a legal or equitable interest in real or personal property including but not limited to the interest of a tenant or lessee.

Paint stick or graffiti stick means any device containing a solid form of paint, chalk, wax, epoxy, or other similar substance capable of being applied to a surface by pressure and leaving a mark of at least one-eighth ($\frac{1}{8}$) of an inch in width.

Perpetrator means a person who applies graffiti to or on any property located within the City of Billings.

Person means any individual, partnership, cooperative association, private corporation, personal representative, receiver, trustee, assignee, or any other legal entity.

Property means any real or personal property and that which is affixed, incidental or appurtenant to real property including but not limited to any structure, fence, wall, sign or any separate part thereof whether permanent or not.

Responsible party means an owner or entity or person acting as an agent for an owner by agreement who has authority over the property or is responsible for the property's maintenance or management. Irrespective of any arrangement to the contrary with any other party, each owner shall always be a responsible party for the purposes of this chapter. There may be more than one responsible party for a particular piece of property.

Unauthorized means without the consent of the responsible party.

(Ord. No. 05-5332, § 2, 7-11-05)

Sec. 18-1103. Prohibited acts. Prohibitions.

Defacement. It shall be unlawful for any person to apply graffiti to any natural or man-made surface on any city-owned property or, without the permission of the owner or responsible party, on any non-city-owned property.

It shall be unlawful for any person to apply graffiti to or on any property located within the City of Billings.

(Ord. No. 05-5332, § 3, 7-11-05)

Sec. 18-1104. Enforcement and Penalties - Perpetrator.

- (a) *Fines and imprisonment.* Any person violating this article by applying graffiti to any property shall be punished as provided in section 1-110.
- (b) *Restitution.* In addition to any punishment specified in this section, the court shall order any violator to make restitution to the victim for damages or loss caused directly or indirectly by the violator's offense in the amount or manner determined by the court.
- (c) *Community service.* In-lieu of, or as part of, the penalties specified in this section, an offender may be required to perform community service as described by the court based on the following minimum requirements:
 - (1) The offender shall perform at least thirty (30) hours of community service.
 - (2) The entire period of community service shall be performed under the supervision of a community service provider approved by the municipal court.
 - (3) Reasonable effort shall be made to assign the minor or adult to a type of community service that is reasonably expected to have the most rehabilitative effect on the offender, including community service that involves graffiti removal.

(Ord. No. 05-5332, § 4, 7-11-05)

Sec. 18-1105. Rewards and reimbursements for information.

- (a) The city may offer a reward in an amount to be established by resolution of the city council for information leading to the identification and apprehension of any person who willfully damages or destroys any public or private property by the use of graffiti. In the event of damage to public property, the offender or the parents or legal guardian of any unemancipated minor must reimburse the city for any reward paid. In the event of multiple contributors of information, the reward amount shall be divided by the city in the manner it shall deem appropriate.
- (b) Claims for rewards under this section shall be filed, in writing, with the city in the manner specified by the city council. clerk. Each claim should:

(1) Specifically identify the date, location, and kind of property damaged or destroyed;

(2) Identify by name the person who was convicted; and

(3) Identify the court and the date upon which the conviction occurred.

(c) The City Administrator shall review each claim for reward submitted pursuant to this chapter and either accept, accept in part, or deny the claim. No claim for a reward shall be accepted by the City Council unless the City investigates and verifies the accuracy of the claim and determines that the requirements of this section have been satisfied. The investigation must determine that the claimant's information was relevant and directly responsible for the arrest and conviction of the suspect.

(d) The offer of a reward is made to members of the public generally. However, no law enforcement officer, municipal officer, employee of the City, or person(s) apprehended shall be eligible for such a reward.

(e) Any person committing graffiti vandalism shall be civilly liable for any reward paid pursuant to this section. If said person is an unemancipated minor, then the parent or lawful guardian of said minor shall be civilly liable for any reward paid pursuant to this section.

~~(c) No claim for a reward shall be allowed unless the city investigates and verifies the accuracy of the claim and determines that the requirements of this section have been satisfied.~~

(Ord. No. 05-5332, § 5, 7-11-05)

Sec. 18-1106. Graffiti as a public nuisance.

(a) The existence of graffiti on ~~public or~~ private property in violation of this article is expressly declared to be a public nuisance and, therefore, is subject to the ~~removal and~~ abatement provisions specified in Section 18-305. ~~in this article.~~

(b) It is the duty of both the owner of the private property to which the graffiti has been applied and any responsible party to at all times keep the private property clear of graffiti.

(c) Failure to remove graffiti by the private property owner or any responsible party shall be punished as a municipal infraction and shall be subject to civil penalties as specified in section 18-1304.

(Ord. No. 05-5332, § 6, 7-11-05)

Sec. 18-1107. Removal of graffiti by perpetrator.

~~Any person applying graffiti on public or private property shall have the duty to remove the graffiti within twenty-four (24) hours after notice by the city or private owner of the property involved. Such removal shall be done in a manner prescribed by the~~

chief of police, the director of the department of public works, or any additional city department head, as authorized by the city council. Any person applying graffiti shall be responsible for the removal or for the payment of the removal. Failure of any person to remove graffiti or pay for the removal shall constitute an additional violation of this article.

(Ord. No. 05-5332, § 7, 7-11-05)

Sec. 18-1108. Removal of graffiti by property owner or city.

If graffiti is not removed by the perpetrator according to section 18-1107, graffiti shall be removed pursuant to the following provisions:

Property owner responsibility. It is unlawful for any person who is the owner or responsible party of property to permit property that is defaced with graffiti to remain defaced for a period of ten (10) days after service by first class mail of notice of the defacement. The notice shall contain the following information:

- (1) The street address and legal description of the property sufficient for identification of the property;
- (2) A statement that the property is a potential graffiti nuisance property with a concise description of the conditions leading to the finding;
- (3) A statement that the graffiti must be removed within ten (10) days after receipt of the notice and that if the graffiti is not abated within that time the city will declare the property to be a public nuisance, subject to the abatement procedures in section 18-1114;
- (4) An information sheet identifying any graffiti removal assistance programs available through the city and private graffiti removal contractors.

(Ord. No. 05-5332, § 8, 7-11-05)

Sec. 18-1109. Failure to comply.

Upon first failure, neglect or refusal to remove the graffiti during the prescribed period, the city shall give notice to the noncomplying owner, agent or occupant thereof. Such notice shall provide as a minimum:

- (1) That the noncomplying owner, or agent thereof, is allowed ten (10) days from the date of notice of noncompliance to remove;
- (2) That upon failure to comply the city may by its own work forces or by contract cause the graffiti to be removed and the cost thereof shall be assessed against the noncomplying real property together with an additional administrative cost equal to twenty five (25) percent of the cost of removal and a twenty-five dollar (\$25.00) penalty;
- (3) If the owner or agent of the property continues to neglect to maintain the property free from graffiti, the city may at its sole discretion remove the graffiti again as needed without additional notice of any kind. Charges as in

subsection (2), including penalty, will be assessed for each time the city removes the graffiti;

- (4) That the assessed amount together with costs and penalties shall constitute a lien on the noncomplying real property and will be taxed as a special assessment against the real property.
- (5) Appeal. The owner or agent may appeal any determination that they have failed to comply with the requirements of any order to the director of the city-county planning department.
- (6) Notice. Notice under this article is sufficient if served upon the owner or responsible person personally or mailed regular mail to the last known address owner or responsible person or the last address of the owner shown on the tax rolls of the county. Upon mailing, the city clerk shall execute an affidavit of mailing. Notice shall be deemed given when deposited in a United States Postal Service receptacle.

(Ord. No. 05-5332, § 9, 7-11-05)

Sec. 18-1110. Failure to comply misdemeanor.

Any person who willfully fails to comply with the provisions of this article is guilty of a misdemeanor and upon a signed complaint shall be punished as provided in section 1-110.

(Ord. No. 05-5332, § 10, 7-11-05)

Sec. 18-1111. Exceptions to property owner responsibility.

The removal requirements of section 18-1108 shall not apply if the property owner or responsible party can demonstrate that:

- (1) The property owner or responsible party lacks the financial ability to remove the defacing graffiti; or
- (2) The property owner or responsible party has an active program for the removal of graffiti and has scheduled the removal of the graffiti as part of that program, in which case it shall be unlawful to permit such property to remain defaced with graffiti for a period of ten (10) days after service by first class mail of notice of the defacement.

(Ord. No. 05-5332, § 11, 7-11-05)

Sec. 18-1112. right of city to remove.

- (a) Use of public funds. Whenever the city becomes aware or is notified and determines that graffiti is located on publicly or privately owned property viewable from a public or quasi-public place, the city shall be authorized to use public funds for the removal of the graffiti, or for the painting or repairing of the graffiti, but shall not authorize or undertake to provide for the painting or repair of any more

~~extensive an area than that where the graffiti is located, unless the city administrator, or the designee of the city administrator, determines in writing that a more extensive area is required to be repainted or repaired in order to avoid an aesthetic disfigurement to the neighborhood or community, or unless the property owner or responsible party agrees to pay for the costs of repainting or repairing the more extensive area.~~

- ~~(b) *Right of entry on private property.* Prior to entering upon private property or property owned by a public entity other than the city for the purpose of graffiti removal the city shall attempt to secure the consent of the property owner or responsible party and a release of the city from liability for property damage or personal injury. If the property owner or responsible party fails to remove the offending graffiti within the time specified by this article, or if the city has requested consent to remove or paint over the offending graffiti and the property owner or responsible party has refused consent for entry on terms acceptable to the city and consistent with the terms of this section, the city shall commence abatement and cost recovery proceedings for the graffiti removal according to the provisions specified below.~~

~~(Ord. No. 05-5332, § 12, 7-11-05)~~

Sec. 18-1113. Abatement and cost recovery proceedings.

- ~~(a) Annually the city shall prepare a list of all lots, tracts and parcels of real property within the city from which and adjacent to which graffiti was removed by the city and for which such charges and penalties have not yet been paid, the list shall include as a minimum the following:~~
- ~~(1) Name as shown by the tax rolls, common address if known;~~
 - ~~(2) Tax code of the property;~~
 - ~~(3) Legal description of the lot, tract or parcel;~~
 - ~~(4) Cost of the graffiti removal for that property;~~
 - ~~(5) Administrative costs;~~
 - ~~(6) Penalty assessed.~~
- ~~(b) The assessment list shall be incorporated into a special assessment resolution in proper form which resolution shall be presented to the city council for consideration. From and after passage of the resolution, the assessments stated therein, together with administrative costs and penalty shall constitute a special assessment, as provided in MCA §§ 7-1-101 and 7-5-4123 and a lien on the real property shown on the assessment list. A copy of the resolution after passage shall be certified to the official collecting the city taxes and assessments.~~

~~(Ord. No. 05-5332, § 13, 7-11-05)~~

Sec. 18-1114. Ease of removal provisions.

- (a) *Common utility colors and paint-type.* Any gas, electric, telephone, water, sewer, cable, telephone and other utility operating in the city shall paint its above-surface metal fixtures with a uniform paint type and color, or wrap, that meets with the approval of the city administrator or the city administrator's designee.
- (b) *Conditional encroachment permits.* All encroachment permits issued by the city shall, among such other things, be conditioned on:
 - (1) The permittee's application of an anti-graffiti material to the encroaching object of a type and nature that is acceptable to the city administrator, or the city administrator's designee;
 - (2) The permittee's immediate removal of any graffiti;
 - (3) The city's right to remove graffiti or to paint the encroaching object; or
 - (4) The permittee's providing the city with sufficient matching paint and/or anti-graffiti material on demand for use in the painting of the encroaching object containing graffiti.

(Ord. No. 05-5332, § 14, 7-11-05)

Sec. 18-1115. Prevention provisions.

Retro-fit existing graffiti-attracting surfaces; non-residential structures. The following provisions may be incorporated in a graffiti eradication order:

- (1) *At owner's expense.* Any surface of a structure on a parcel of land used for non-residential purposes that has been defaced with graffiti more than five (5) times in twelve (12) months shall be declared a public nuisance and required to be retrofitted, at the cost of the property owner, with features or qualities as may be established by the city as necessary to reduce the attractiveness of the surface for graffiti, or as necessary to permit more convenient or efficient removal of graffiti. In exercising the authority hereunder, the city may not impose a cost on the property owner of greater than three thousand dollars (\$3,000.00).
- (2) *At city's cost.* If the property owner or responsible party of property used for non-residential purposes on which is located a surface of a structure that has been defaced with graffiti more than five (5) times in twelve (12) months lacks the financial ability to make modifications, the owner or responsible party shall permit the city to enter the property and, at the city's cost, make modifications as necessary to reduce the attractiveness of the surface for graffiti, or as necessary to permit more convenient or efficient removal of graffiti.
- (3) *Appeal.* The owner or agent may appeal any determination that they are required to retrofit the property with features or qualities necessary to reduce the attractiveness of the surface for graffiti or to permit more convenient or efficient removal of graffiti to the director of the city-county planning department.

(Ord. No. 05-5332, § 15, 7-11-05) Sec. 18-1116. Anti-graffiti fund.

The city council may at its discretion hereby creates the city anti-graffiti fund. Costs recovered for graffiti removal and penalties assessed in municipal court against violators of

this article shall be placed in the fund, along with any monetary donations received from persons wishing to contribute to the fund. The council, or its designee, shall direct the expenditures of monies in the fund. Such expenditures shall be limited to the payment of the cost of labor and materials for graffiti removal, the payment, at the discretion of the city council, or its designee, of rewards for information leading to the conviction of violation of the article, the costs of administering the article, and such other public purposes pertaining to graffiti as may be approved by the council by resolution.

(Ord. No. 05-5332, § 16, 7-11-05)

Section 2. EFFECTIVE DATE. This ordinance shall be effective thirty (30) days after second reading and final adoption as provided by law.

Section 3. REPEALER. All resolutions, ordinances, and sections of the City Code inconsistent herewith are hereby repealed.

Section 4. 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 the 8th day of April 2024.

PASSED, ADOPTED and APPROVED on second reading this 22nd day of April,



CITY OF BILLINGS

BY: William A. Cole
William A. Cole, Mayor

ATTEST:

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

City Council Regular

Date: 04/22/2024
Title: Second Reading - Ordinance Amendment BMCC 18-1100, Graffiti
Presented by: Tina Hoeger
Department: Planning & Community Services
Presentation: No
Legal Review: Yes
Project Number: N/A

RECOMMENDATION

Staff recommends the City Council approve the second and final reading of amended ordinance Billings, Montana City Code (BMCC) Section 18-1100, Graffiti.

BACKGROUND (Consistency with Adopted Plans and Policies, if applicable)

At its meeting on April 8, 2024, the City Council conducted a public hearing and approved the first reading of amended ordinance BMCC 18-1100, Graffiti.

STAKEHOLDERS

The residents of Billings will ultimately benefit from making these ordinance amendments as the changes will increase efficiency of enforcement, better clarify the codes so people understand their rights and obligations under City code, and it is easier to apply the code by City Code Enforcement.

ALTERNATIVES

City Council may:

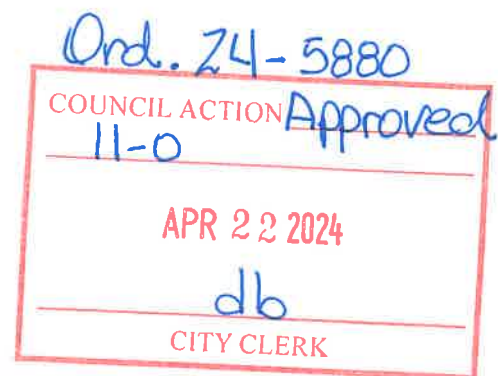
- Approve the amended ordinance BMCC 18-1100, Graffiti; or,
- Not Approve the amended ordinance BMCC, 18-1100. If not approved, ordinance BMCC, 1100 Graffiti will remain the same and not align with the effectiveness and updates the Code Enforcement staff, City Legal staff and City Council have been working toward.

FISCAL EFFECTS

An initial dollar amount to create the Anti-Graffiti fund as outlined in BMCC, 18-1100 is necessary as the only fiscal element of this Code Section. City Council approved a resolution to create this fund during the April 8, 2024 City Council Regular Meeting. Code Enforcement, Finance and Administrative staff will look at what an initial allocation to the fund could be and monies derived from fines and donations will also supplement this fund.

Attachments

Graffiti Ordinance Amended
Graffiti Ordinance Clean



ORDINANCE 24-_____

AN ORDINANCE OF THE CITY OF BILLINGS,
PROVIDING THAT THE BILLINGS, MONTANA CITY
CODE (BMCC) BE AMENDED BY REVISING ARTICLE
18-1100, OF SAID CODE

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BILLINGS THAT:

Section 1. That Article 18-1100, of the Billings, Montana City Code (BMCC) is amended so that such section shall read as follows:

Article 18-1100. – GRAFFITI

Sec. 18-1101. Purpose and intent.

Graffiti presents a threat to the health, safety and welfare of the community and reduces the value of adjoining properties. Graffiti is deemed a public nuisance in accordance with Sec. 18-301. Standards for graffiti abatement established in this section will help improve the appearance of these structures and preserve neighborhood property values.

The city council is enacting this article to help prevent the spread of graffiti vandalism and to establish a program for the removal of graffiti from public and private property. The council is authorized to enact this article pursuant to its police powers, as specified in Section 1.01 of the City Charter and MCA §§ 7-1-101, 7-5-4101, and 7-5-4104 that authorize the city to have all power possible for a self-government city as fully and as completely as though they were fully enumerated in the Charter, to exercise any power not prohibited by the Constitution or laws of the state, to make and pass all laws not repugnant to the Constitution or laws of the state necessary for the government or management of the affairs of a city or town, and to define and abate nuisances and impose fines on persons guilty of creating, continuing or suffering nuisances to exist on premises they occupy or control.

The council finds that graffiti is a public nuisance and destructive of the rights and values of property owners as well as the entire community. Unless the city acts to remove graffiti from public and private property, the graffiti tends to remain. Other properties then become the target of graffiti, and entire neighborhoods are affected and become less desirable places in which to be, all to the detriment of the city.

The city council intends, through the adoption of this article, to provide additional enforcement tools to protect public and private property from acts of graffiti vandalism and defacement. The council does not intend for this article to conflict with any existing anti-graffiti state laws.

(Ord. No. 05-5332, § 1, 7-11-05)

Sec. 18-1102. Definitions.

~~For the purposes of this article, the following words shall have the meanings respectively ascribed to them in this section, except where the context clearly indicates a different meaning:~~

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

Graffiti means any unauthorized inscription, word, figure, painting or other defacement that is written, marked, etched, scratched, sprayed, drawn, painted, or engraved on or otherwise affixed to any surface of public or private property by any graffiti implement, to the extent that the graffiti was not authorized in advance by the owner or occupant of the property, or, despite advance authorization, ~~is otherwise deemed a public nuisance by the city council.~~ constitutes a public nuisance as defined in Section 18-302

Graffiti implement means an aerosol paint container, a broad-tipped marker, gum label, paint stick or graffiti stick, etching equipment, brush or any other device capable of scarring or leaving a visible mark on any natural or man-made surface.

Owner means any entity or entities have a legal or equitable interest in real or personal property including but not limited to the interest of a tenant or lessee.

Paint stick or graffiti stick means any device containing a solid form of paint, chalk, wax, epoxy, or other similar substance capable of being applied to a surface by pressure and leaving a mark of at least one-eighth ($\frac{1}{8}$) of an inch in width.

Perpetrator means a person who applies graffiti to or on any property located within the City of Billings.

Person means any individual, partnership, cooperative association, private corporation, personal representative, receiver, trustee, assignee, or any other legal entity.

Property means any real or personal property and that which is affixed, incidental or appurtenant to real property including but not limited to any structure, fence, wall, sign or any separate part thereof whether permanent or not.

Responsible party means an owner or entity or person acting as an agent for an owner by agreement who has authority over the property or is responsible for the property's maintenance or management. Irrespective of any arrangement to the contrary with any other party, each owner shall always be a responsible party for the purposes of this chapter. There may be more than one responsible party for a particular piece of property.

Unauthorized means without the consent of the responsible party.

(Ord. No. 05-5332, § 2, 7-11-05)

Sec. 18-1103. ~~Prohibited acts. Prohibitions.~~

~~Defacement. It shall be unlawful for any person to apply graffiti to any natural or man-made surface on any city-owned property or, without the permission of the owner or responsible party, on any non-city-owned property.~~

It shall be unlawful for any person to apply graffiti to or on any property located within the City of Billings.

(Ord. No. 05-5332, § 3, 7-11-05)

Sec. 18-1104. Enforcement and Penalties - Perpetrator.

- (a) *Fines and imprisonment.* Any person violating this article by applying graffiti to any property shall be punished as provided in section 1-110.
- (b) *Restitution.* In addition to any punishment specified in this section, the court shall order any violator to make restitution to the victim for damages or loss caused directly or indirectly by the violator's offense in the amount or manner determined by the court.
- (c) *Community service.* In-lieu of, or as part of, the penalties specified in this section, an offender may be required to perform community service as described by the court based on the following minimum requirements:
 - (1) The offender shall perform at least thirty (30) hours of community service.
 - (2) The entire period of community service shall be performed under the supervision of a community service provider approved by the municipal court.
 - (3) Reasonable effort shall be made to assign the minor or adult to a type of community service that is reasonably expected to have the most rehabilitative effect on the offender, including community service that involves graffiti removal.

(Ord. No. 05-5332, § 4, 7-11-05)

Sec. 18-1105. Rewards and reimbursements for information.

- (a) The city may offer a reward in an amount to be established by resolution of the city council for information leading to the identification and apprehension of any person who willfully damages or destroys any public or private property by the use of graffiti. In the event of damage to public property, the offender or the parents or legal guardian of any unemancipated minor must reimburse the city for any reward paid. In the event of multiple contributors of information, the reward amount shall be divided by the city in the manner it shall deem appropriate.

-
- (b) Claims for rewards under this section shall be filed, in writing, with the city ~~in the manner specified by the city council.~~ clerk. Each claim should:
- (1) Specifically identify the date, location, and kind of property damaged or destroyed;
 - (2) Identify by name the person who was convicted; and
 - (3) Identify the court and the date upon which the conviction occurred.
- (c) The City Administrator shall review each claim for reward submitted pursuant to this chapter and either accept, accept in part, or deny the claim. No claim for a reward shall be accepted by the City Council unless the City investigates and verifies the accuracy of the claim and determines that the requirements of this section have been satisfied. The investigation must determine that the claimant's information was relevant and directly responsible for the arrest and conviction of the suspect.
- (d) The offer of a reward is made to members of the public generally. However, no law enforcement officer, municipal officer, employee of the City, or person(s) apprehended shall be eligible for such a reward.
- (e) Any person committing graffiti vandalism shall be civilly liable for any reward paid pursuant to this section. If said person is an unemancipated minor, then the parent or lawful guardian of said minor shall be civilly liable for any reward paid pursuant to this section.
- ~~(c) No claim for a reward shall be allowed unless the city investigates and verifies the accuracy of the claim and determines that the requirements of this section have been satisfied.~~

(Ord. No. 05-5332, § 5, 7-11-05)

Sec. 18-1106. Graffiti as a public nuisance.

- (a) The existence of graffiti on ~~public or~~ private property in violation of this article is expressly declared to be a public nuisance and, therefore, is subject to the ~~removal and~~ abatement provisions specified in Section 18-305. ~~in this article.~~
- (b) It is the duty of both the owner of the private property to which the graffiti has been applied and any responsible party to at all times keep the private property clear of graffiti.
- (c) Failure to remove graffiti by the private property owner or any responsible party shall be punished as a municipal infraction and shall be subject to civil penalties as specified in section 18-1304.

(Ord. No. 05-5332, § 6, 7-11-05)

Sec. 18-1107. Removal of graffiti by perpetrator.

Any person applying graffiti on public or private property shall have the duty to remove the graffiti within twenty four (24) hours after notice by the city or private owner of the property involved. Such removal shall be done in a manner prescribed by the chief of police, the director of the department of public works, or any additional city department head, as authorized by the city council. Any person applying graffiti shall be responsible for the removal or for the payment of the removal. Failure of any person to remove graffiti or pay for the removal shall constitute an additional violation of this article.

(Ord. No. 05-5332, § 7, 7-11-05)

Sec. 18-1108. Removal of graffiti by property owner or city.

If graffiti is not removed by the perpetrator according to section 18-1107, graffiti shall be removed pursuant to the following provisions:

Property owner responsibility. It is unlawful for any person who is the owner or responsible party of property to permit property that is defaced with graffiti to remain defaced for a period of ten (10) days after service by first class mail of notice of the defacement. The notice shall contain the following information:-

- (1) The street address and legal description of the property sufficient for identification of the property;
- (2) A statement that the property is a potential graffiti nuisance property with a concise description of the conditions leading to the finding;
- (3) A statement that the graffiti must be removed within ten (10) days after receipt of the notice and that if the graffiti is not abated within that time the city will declare the property to be a public nuisance, subject to the abatement procedures in section 18-1114.
- (4) An information sheet identifying any graffiti removal assistance programs available through the city and private graffiti removal contractors.

(Ord. No. 05-5332, § 8, 7-11-05)

Sec. 18-1109. Failure to comply.

Upon first failure, neglect or refusal to remove the graffiti during the prescribed period, the city shall give notice to the noncomplying owner, agent or occupant thereof. Such notice shall provide as a minimum:-

- (1) That the noncomplying owner, or agent thereof, is allowed ten (10) days from the date of notice of noncompliance to remove;

-
- ~~(2) That upon failure to comply the city may by its own work forces or by contract cause the graffiti to be removed and the cost thereof shall be assessed against the noncomplying real property together with an additional administrative cost equal to twenty five (25) percent of the cost of removal and a twenty five dollar (\$25.00) penalty;~~
- ~~(3) If the owner or agent of the property continues to neglect to maintain the property free from graffiti, the city may at its sole discretion remove the graffiti again as needed without additional notice of any kind. Charges as in subsection (2), including penalty, will be assessed for each time the city removes the graffiti;~~
- ~~(4) That the assessed amount together with costs and penalties shall constitute a lien on the noncomplying real property and will be taxed as a special assessment against the real property;~~
- ~~(5) Appeal. The owner or agent may appeal any determination that they have failed to comply with the requirements of any order to the director of the city-county planning department.~~
- ~~(6) Notice. Notice under this article is sufficient if served upon the owner or responsible person personally or mailed regular mail to the last known address owner or responsible person or the last address of the owner shown on the tax-rolls of the county. Upon mailing, the city clerk shall execute an affidavit of mailing. Notice shall be deemed given when deposited in a United States Postal Service receptacle.~~

~~(Ord. No. 05-5332, § 9, 7-11-05)~~

Sec. 18-1110. Failure to comply misdemeanor.

~~Any person who willfully fails to comply with the provisions of this article is guilty of a misdemeanor and upon a signed complaint shall be punished as provided in section 1-110.~~

~~(Ord. No. 05-5332, § 10, 7-11-05)~~

Sec. 18-1111. Exceptions to property owner responsibility.

~~The removal requirements of section 18-1108 shall not apply if the property owner or responsible party can demonstrate that:~~

- ~~(1) The property owner or responsible party lacks the financial ability to remove the defacing graffiti; or~~
- ~~(2) The property owner or responsible party has an active program for the removal of graffiti and has scheduled the removal of the graffiti as part of that program, in which case it shall be unlawful to permit such property to remain defaced~~

~~with graffiti for a period of ten (10) days after service by first class mail of notice of the defacement.~~

~~(Ord. No. 05-5332, § 11, 7-11-05)~~

Sec. 18-1112. right of city to remove.

~~(a) Use of public funds. Whenever the city becomes aware or is notified and determines that graffiti is located on publicly or privately owned property viewable from a public or quasi-public place, the city shall be authorized to use public funds for the removal of the graffiti, or for the painting or repairing of the graffiti, but shall not authorize or undertake to provide for the painting or repair of any more extensive an area than that where the graffiti is located, unless the city administrator, or the designee of the city administrator, determines in writing that a more extensive area is required to be repainted or repaired in order to avoid an aesthetic disfigurement to the neighborhood or community, or unless the property owner or responsible party agrees to pay for the costs of repainting or repairing the more extensive area.~~

~~(b) Right of entry on private property. Prior to entering upon private property or property owned by a public entity other than the city for the purpose of graffiti removal the city shall attempt to secure the consent of the property owner or responsible party and a release of the city from liability for property damage or personal injury. If the property owner or responsible party fails to remove the offending graffiti within the time specified by this article, or if the city has requested consent to remove or paint over the offending graffiti and the property owner or responsible party has refused consent for entry on terms acceptable to the city and consistent with the terms of this section, the city shall commence abatement and cost recovery proceedings for the graffiti removal according to the provisions specified below.~~

~~(Ord. No. 05-5332, § 12, 7-11-05)~~

Sec. 18-1113. Abatement and cost recovery proceedings.

~~(a) Annually the city shall prepare a list of all lots, tracts and parcels of real property within the city from which and adjacent to which graffiti was removed by the city and for which such charges and penalties have not yet been paid, the list shall include as a minimum the following:~~

- ~~(1) Name as shown by the tax rolls, common address if known;~~
- ~~(2) Tax code of the property;~~
- ~~(3) Legal description of the lot, tract or parcel;~~
- ~~(4) Cost of the graffiti removal for that property;~~
- ~~(5) Administrative costs;~~

~~(6) Penalty assessed.~~

- ~~(b) The assessment list shall be incorporated into a special assessment resolution in proper form which resolution shall be presented to the city council for consideration. From and after passage of the resolution, the assessments stated therein, together with administrative costs and penalty shall constitute a special assessment, as provided in MCA §§ 7-1-101 and 7-5-4123 and a lien on the real property shown on the assessment list. A copy of the resolution after passage shall be certified to the official collecting the city taxes and assessments.~~

~~(Ord. No. 05-5332, § 13, 7-11-05)~~

Sec. 18-1114. Ease of removal provisions.

- (a) *Common utility colors and paint-type.* Any gas, electric, telephone, water, sewer, cable, telephone and other utility operating in the city shall paint its above-surface metal fixtures with a uniform paint type and color, or wrap, that meets with the approval of the city administrator or the city administrator's designee.
- (b) *Conditional encroachment permits.* All encroachment permits issued by the city shall, among such other things, be conditioned on:
- (1) The permittee's application of an anti-graffiti material to the encroaching object of a type and nature that is acceptable to the city administrator, or the city administrator's designee;
 - (2) The permittee's immediate removal of any graffiti;
 - (3) The city's right to remove graffiti or to paint the encroaching object; or
 - (4) The permittee's providing the city with sufficient matching paint and/or anti-graffiti material on demand for use in the painting of the encroaching object containing graffiti.

(Ord. No. 05-5332, § 14, 7-11-05)

Sec. 18-1115. Prevention provisions.

~~*Retro-fit existing graffiti-attracting surfaces; non-residential structures.* The following provisions may be incorporated in a graffiti eradication order:~~

- ~~(1) *At owner's expense.* Any surface of a structure on a parcel of land used for non-residential purposes that has been defaced with graffiti more than five (5) times in twelve (12) months shall be declared a public nuisance and required to be retrofitted, at the cost of the property owner, with features or qualities as may be established by the city as necessary to reduce the attractiveness of the surface for graffiti, or as necessary to permit more convenient or efficient removal of graffiti. In exercising the authority hereunder, the city may not impose a cost on the property owner of greater than three thousand dollars (\$3,000.00).~~

~~(2) At city's cost. If the property owner or responsible party of property used for non-residential purposes on which is located a surface of a structure that has been defaced with graffiti more than five (5) times in twelve (12) months lacks the financial ability to make modifications, the owner or responsible party shall permit the city to enter the property and, at the city's cost, make modifications as necessary to reduce the attractiveness of the surface for graffiti, or as necessary to permit more convenient or efficient removal of graffiti.~~

~~(3) Appeal. The owner or agent may appeal any determination that they are required to retrofit the property with features or qualities necessary to reduce the attractiveness of the surface for graffiti or to permit more convenient or efficient removal of graffiti to the director of the city-county planning department.~~

~~(Ord. No. 05-5332, § 15, 7-11-05)~~

Sec. 18-1116. Anti-graffiti fund.

The city council ~~may at its discretion hereby~~ creates the city anti-graffiti fund. Costs recovered for graffiti removal and penalties assessed in municipal court against violators of this article shall be placed in the fund, along with any monetary donations received from persons wishing to contribute to the fund. The council, or its designee, shall direct the expenditures of monies in the fund. Such expenditures shall be limited to the payment of the cost of labor and materials for graffiti removal, the payment, at the discretion of the city council, or its designee, of rewards for information leading to the conviction of violation of the article, the costs of administering the article, and such other public purposes pertaining to graffiti as may be approved by the council by resolution.

(Ord. No. 05-5332, § 16, 7-11-05)

Section 2. EFFECTIVE DATE. This ordinance shall be effective thirty (30) days after second reading and final adoption as provided by law.

Section 3. REPEALER. All resolutions, ordinances, and sections of the City Code inconsistent herewith are hereby repealed.

Section 4. 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 the 8th day of April, 2024..

PASSED, ADOPTED and APPROVED on second reading this 22nd day of April, 2024.

CITY OF BILLINGS

BY: _____
William A. Cole, Mayor

Attest
:

Denise R. Bohlman, City Clerk

ORDINANCE 24-_____

AN ORDINANCE OF THE CITY OF BILLINGS,
PROVIDING THAT THE BILLINGS, MONTANA CITY
CODE (BMCC) BE AMENDED BY REVISING ARTICLE
18-1100, OF SAID CODE

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BILLINGS THAT:

Section 1. That Article 18-1100, of the Billings, Montana City Code (BMCC) is amended so that such section shall read as follows:

Article 18-1100. – GRAFFITI

Sec. 18-1101. Purpose.

Graffiti presents a threat to the health, safety and welfare of the community and reduces the value of adjoining properties. Graffiti is deemed a public nuisance in accordance with Sec. 18-301. Standards for graffiti abatement established in this section will help improve the appearance of these structures and preserve neighborhood property values.

(Ord. No. 05-5332, § 1, 7-11-05)

Sec. 18-1102. Definitions.

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

Graffiti means any unauthorized inscription, word, figure, painting or other defacement that is written, marked, etched, scratched, sprayed, drawn, painted, or engraved on or otherwise affixed to any surface of public or private property by any graffiti implement, to the extent that the graffiti was not authorized in advance by the owner or occupant of the property, or, despite advance authorization, constitutes a public nuisance as defined in Section 18-302.

Graffiti implement means an aerosol paint container, a broad-tipped marker, gum label, paint stick or graffiti stick, etching equipment, brush or any other device capable of scarring or leaving a visible mark on any natural or man-made surface.

Owner means any entity or entities having a legal or equitable interest in real or personal property including but not limited to the interest of a tenant or lessee.

Paint stick or graffiti stick means any device containing a solid form of paint, chalk, wax, epoxy, or other similar substance capable of being applied to a surface by pressure and leaving a mark of at least one-eighth ($\frac{1}{8}$) of an inch in width.

Perpetrator means a person who applies graffiti to or on any property located within the City of Billings.

Person means any individual, partnership, cooperative association, private corporation, personal representative, receiver, trustee, assignee, or any other legal entity.

Property means any real or personal property and that which is affixed, incidental or appurtenant to real property including but not limited to any structure, fence, wall, sign or any separate part thereof whether permanent or not.

Responsible party means an owner or entity or person acting as an agent for an owner by agreement who has authority over the property or is responsible for the property's maintenance or management. Irrespective of any arrangement to the contrary with any other party, each owner shall always be a responsible party for the purposes of this chapter. There may be more than one responsible party for a particular piece of property.

Unauthorized means without the consent of the responsible party.
(Ord. No. 05-5332, § 2, 7-11-05)

Sec. 18-1103. Prohibitions.

It shall be unlawful for any person to apply graffiti to or on any property located within the City of Billings.

(Ord. No. 05-5332, § 3, 7-11-05)

Sec. 18-1104. Enforcement and Penalties - Perpetrator.

- (a) *Fines and imprisonment.* Any person violating this article by applying graffiti to any property shall be punished as provided in section 1-110.
- (b) *Restitution.* In addition to any punishment specified in this section, the court shall order any violator to make restitution to the victim for damages or loss caused directly or indirectly by the violator's offense in the amount or manner determined by the court.
- (c) *Community service.* In-lieu of, or as part of, the penalties specified in this section, an offender may be required to perform community service as described by the court based on the following minimum requirements:
 - (1) The offender shall perform at least thirty (30) hours of community service.
 - (2) The entire period of community service shall be performed under the supervision of a community service provider approved by the municipal court.

-
- (3) Reasonable effort shall be made to assign the minor or adult to a type of community service that is reasonably expected to have the most rehabilitative effect on the offender, including community service that involves graffiti removal.

(Ord. No. 05-5332, § 4, 7-11-05)

Sec. 18-1105. Rewards and reimbursements for information.

- (a) The city may offer a reward in an amount to be established by resolution of the city council for information leading to the identification and apprehension of any person who willfully damages or destroys any public or private property by the use of graffiti. In the event of damage to public property, the offender or the parents or legal guardian of any unemancipated minor must reimburse the city for any reward paid. In the event of multiple contributors of information, the reward amount shall be divided by the city in the manner it shall deem appropriate.
- (b) Claims for rewards under this section shall be filed, in writing, with the city clerk. Each claim should:
- (1) Specifically identify the date, location, and kind of property damaged or destroyed;
 - (2) Identify by name the person who was convicted; and
 - (3) Identify the court and the date upon which the conviction occurred.
- (c) The City Administrator shall review each claim for reward submitted pursuant to this chapter and either accept, accept in part, or deny the claim. No claim for a reward shall be accepted by the City Council unless the City investigates and verifies the accuracy of the claim and determines that the requirements of this section have been satisfied. The investigation must determine that the claimant's information was relevant and directly responsible for the arrest and conviction of the suspect.
- (d) The offer of a reward is made to members of the public generally. However, no law enforcement officer, municipal officer, employee of the City, or person(s) apprehended shall be eligible for such a reward.
- (e) Any person committing graffiti vandalism shall be civilly liable for any reward paid pursuant to this section. If said person is an unemancipated minor, then the parent or lawful guardian of said minor shall be civilly liable for any reward paid pursuant to this section.

(Ord. No. 05-5332, § 5, 7-11-05)

Sec. 18-1106. Graffiti as a public nuisance.

- (a) The existence of graffiti on private property in violation of this article is expressly declared to be a public nuisance and, therefore, is subject to the abatement provisions specified in Section 18-305.
- (b) It is the duty of both the owner of the private property to which the graffiti has been applied and any responsible party to at all times keep the private property clear of graffiti.
- (c) Failure to remove graffiti by the private property owner or any responsible party shall be punished as a municipal infraction and shall be subject to civil penalties as specified in section 18-1304.

(Ord. No. 05-5332, § 6, 7-11-05)

Sec. 18-1114. Ease of removal provisions.

- (a) *Common utility colors and paint-type.* Any gas, electric, telephone, water, sewer, cable, telephone and other utility operating in the city shall paint its above-surface metal fixtures with a uniform paint type and color, or wrap, that meets with the approval of the city administrator or the city administrator's designee.
- (b) *Conditional encroachment permits.* All encroachment permits issued by the city shall, among such other things, be conditioned on:
 - (1) The permittee's application of an anti-graffiti material to the encroaching object of a type and nature that is acceptable to the city administrator, or the city administrator's designee;
 - (2) The permittee's immediate removal of any graffiti;
 - (3) The city's right to remove graffiti or to paint the encroaching object; or
 - (4) The permittee's providing the city with sufficient matching paint and/or anti-graffiti material on demand for use in the painting of the encroaching object containing graffiti.

(Ord. No. 05-5332, § 14, 7-11-05)

Sec. 18-1116. Anti-graffiti fund.

The city council may at its discretion create the city anti-graffiti fund. Costs recovered for graffiti removal and penalties assessed in municipal court against violators of this article shall be placed in the fund, along with any monetary donations received from persons wishing to contribute to the fund. The council, or its designee, shall direct the expenditures of monies in the fund. Such expenditures shall be limited to the payment of the cost of labor and materials for graffiti removal, the payment, at the discretion of the city council, or its designee, of rewards for information leading to the conviction of violation of the article, the costs of administering the article, and such other public purposes pertaining to graffiti as may be approved by the council by resolution.

(Ord. No. 05-5332, § 16, 7-11-05)

Section 2. EFFECTIVE DATE. This ordinance shall be effective thirty (30) days after second reading and final adoption as provided by law.

Section 3. REPEALER. All resolutions, ordinances, and sections of the City Code inconsistent herewith are hereby repealed.

Section 4. 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 the 8th day of April, 2024..

PASSED, ADOPTED and APPROVED on second reading this 22nd day of April, 2024.

CITY OF BILLINGS

BY: _____
William A. Cole, Mayor

Attest
:

Denise R. Bohlman, City Clerk

City Council Regular

Date: 04/08/2024
Title: Proposed Code Enforcement Ordinance Amendments - First Reading and Public Hearing
Presented by: Tina Hoeger
Department: Planning & Community Services
Presentation: Yes
Legal Review: Yes
Project Number: N/A

RECOMMENDATION

Code Enforcement and City Legal staff recommend City Council conduct a public hearing and approve the proposed amendments to the City Nuisance, Graffiti, and Boarded Up Structures Ordinances on First Reading.

BACKGROUND (Consistency with Adopted Plans and Policies, if applicable)

The Code Enforcement Division previously brought proposed amendments to the Nuisance, Graffiti, and Boarded Up Structures ordinances to Council in a Work Session on February 20. Council made some minor suggestions to the proposed amendments and then decided to move them to a First Reading and Public Hearing. The suggested changes by Council were made to the ordinances and reviewed by City Legal. The attached Nuisance Ordinance shows strikeout and new language.

STAKEHOLDERS

The residents of Billings will ultimately benefit from the City making these ordinance amendments as the changes will increase efficiency of enforcement, better clarify the codes so people understand their rights and obligations under the City Code, and make it easier to apply the codes by the City Code Enforcement Division.

ALTERNATIVES

City Council may:

- Approve the proposed amendments to the Nuisance, Graffiti, and Boarded Up Structures ordinances; or,
- Approve with modifications the proposed amendments to the Nuisance, Graffiti, and Boarded Up Structures ordinances; or,
- Not Approve the proposed amendments to the Nuisance, Graffiti, and Boarded Up Structures ordinances

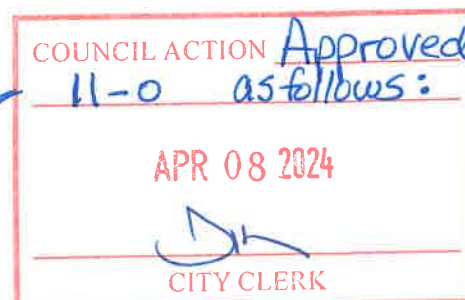
FISCAL EFFECTS

Should the Council decide to approve the ordinance changes, there could be some advantages of efficiency and process that might be fiscally beneficial. However, it would be difficult to measure them given the overall complexity of some of these enforcement processes. The establishment of the anti-graffiti fund reward opportunity would require an initial budget amount; however, Municipal Court fines would be deposited in this fund to help supplement the budget to support rewards for information leading to convictions.

Attachments

Presentation Notes
 Nuisance Ordinance
 Graffiti Ordinance
 Boarded Up Structures Ordinance

- 18-300, Nuisances APPROVED 11-0
- 18-1100, Graffiti APPROVED 11-0
- 18-1400, Boarded Up Structures APPROVED AS AMENDED 11-0





Ordinance Amendments

Tina Hoeger
Code Enforcement Division Manager
hoegert@billingsmt.gov
406-869-3936



Requested Changes

1. Removed "and/or". Kept the language "and" in all 3 ordinances where applicable.
2. Nuisance Ordinance:
 - a. Removed inoperable vehicle definition from the enforcement officer definition. This was a typo. (18-302 definitions)
 - b. Kept responsible person definition intact and in place. Has a different connotation under this ordinance than the definition of responsible party in the graffiti ordinance. (18-302 definitions)
 - c. Kept the original language of "three or more vehicles" as a public nuisance. (18-303 prohibitions, subsection 2)
 - d. Changed the language of "trespassing" to "criminal activity" on the property within a 24-month period. (18-303 prohibitions, what would now be subsection 5 ix)
3. Graffiti Ordinance:
 - a. Added definition for perpetrator (18-1102 definitions)
 - b. Kept responsible party definition (18-1102 definitions)
 - c. Resolution submitted for Council approval to establish reward level and anti-graffiti fund. (18-1116)
4. Boarded Up Structures Ordinance:
 - a. Boarded buildings prior to enactment of revised ordinance are grandfathered.

ORDINANCE 24-_____

AN ORDINANCE OF THE CITY OF BILLINGS,
PROVIDING THAT THE BILLINGS, MONTANA CITY
CODE (BMCC) BE AMENDED BY REVISING ARTICLE
18-300, OF SAID CODE

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BILLINGS THAT:

Section 1. That Article 18-300, of the Billings, Montana City Code (BMCC) is amended so that such section shall read as follows:

Article 18-300. – NUISANCES

Sec. 18-301. Purpose.

The purpose of this article is to 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 remediation of such nuisances, to protect the public health, safety and welfare and to promote the economic stability of neighborhoods and areas within 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.

(Ord. No. 04-5280, § 1, 5-10-04; Ord. No. 19-5721, § 1, 1-14-19)

Sec. 18-302. Definitions.

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

~~Abandoned or decaying structure means a structure that 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, falling or damaged residential dwelling or other structure 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.

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 an inoperable vehicle for purposes of this section.

Junk means 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.

Nuisance structure means a structure that exhibits objectively determinable signs of deterioration such as those set forth in section 18-303(5) which are sufficient to constitute a public nuisance and includes any dangerous, falling, or damaged residential dwelling, commercial structure, or other structure excluding any structure related to an agricultural or farming operation. Openings in the walls, roof or floor that allow unrestricted access by humans, animals, or weather to the interior of the structure shall constitute a presumption that the structure is ~~dangerous~~ a nuisance structure.

Public nuisance means a situation created or allowed to continue by the owner or occupant of real property which 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.

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.

(Ord. No. 04-5280, § 2, 5-10-04; Ord. No. 13-5604, § 1, 5-28-13; Ord. No. 19-5721, § 2, 1-14-19)

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. Public nuisances include but are not limited to the following:

- (1) Creating a hazard on any premises for more than twenty-four (24) hours.
 - (2) The open storage of more than three (3) inoperable vehicles on any premises for more than five (5) consecutive days.
 - (3) The open storage of a collection of junk (see definition) on any premises for more than five (5) consecutive days.
 - (4) 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.
 - (5) Maintaining a dangerous nuisance structure (see definition) ~~or an abandoned or decaying structure~~ for more than ten (10) days without abating the ~~dangerous or nuisance condition. of such structure.~~
- a. A dangerous nuisance structure is ~~being maintained~~ present if three (3) or more of the following listed conditions exist:
- i. Broken, boarded, or missing windows and/or doors;
 - ~~ii. Broken or missing doors;~~
 - ~~iii. ii.~~ Broken or missing attic vent(s);
 - ~~iv. iii.~~ Broken or missing under-floor vent(s);
 - iv. 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.viii. 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.x. 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 12-24 month period;~~
 - ~~iv.x. Two (2) or more reports to the police department or code enforcement division of unauthorized persons (trespassing) criminal activity on the property within a 12-24 month period;~~
 - ~~v.xi. Has one or more essential utilities turned off for a period of 30 days or more;~~
 - ~~vi.xii. Dead, dying or diseased trees, shrubs and other desired vegetation;~~
 - ~~vii. Dead, dying or diseased shrubs and other desired vegetation;~~
 - ~~viii.xiii. Dead, dying or diseased lawn area(s) due to lack of water or other necessary maintenance;~~
 - ~~ix.iv. Neglected trees and shrubs growing uncontrolled without proper pruning;~~
 - ~~xv. Building walls which are broken, defective, or significantly deteriorated; or~~
 - ~~xvi. Building appurtenances such as railings, gutters, fences, gates or exterior light(s) are broken, fallen, or significantly damaged.~~
 - ~~xvii. Damaged roofing to include missing shingles or roofing materials; warped shingles; or deteriorating roofing materials;~~

(6) Creating or maintaining on any premises:

(a) a condition constituting a public nuisance not otherwise described, or

(b) any location where persons gather for the purpose of engaging in unlawful conduct.

(Ord. No. 04-5280, § 3, 5-10-04; Ord. No. 13-5604, § 1, 5-28-13; Ord. No. 19-5721, § 3, 1-14-19)

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 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. The notice shall contain the following information:
- 1) The street address and legal description of the property sufficient for identification of the property;
 - 2) A statement that the property is a potential public nuisance with a concise description of the conditions leading to the finding;
 - 3) A statement that the public nuisance must be abated no less than ten (10) days after receipt of the notice. If the public nuisance is not abated within that time, the city may send a second/final ten (10) day notice.
 - 4) If the public nuisance is still not abated after the second/final notice, the city may declare the property to be a public nuisance subject to the abatement procedures in section 18-305. In cases of emergency or exigent circumstances, the officer shall have the discretion to abate the public nuisance within less than the ten (10) days from receipt of the first notice.
- B. Service of a notice of violation shall be made on the owner of the premises and the person responsible for the code violation by one or more of the following methods:
- 1) Personal service of the notice of violation.
 - 2) By leaving a copy of the notice of violation at the person's residence with a person of suitable age and discretion who resides there and concurrently mailing notice as provided for herein.
 - 3) By posting the notice of violation in a conspicuous place on the property where the violation occurred and concurrently mailing notice as provided for herein.
 - 4) For the owner of the premises, service by mail may be made by mailing a copy, postage prepaid, by ordinary first-class mail, to the person's residential address. The taxpayer's address as shown on the tax records of Yellowstone County for the property where the violation occurred shall also be deemed to be a proper address for the purpose of mailing such notice.
 - 5) For the responsible person, service by mail may be made for a notice of violation by mailing a copy, postage prepaid, by ordinary first-class mail, to the person's residential address or at the address of the violation. The person's address as shown on the records of the Montana Motor Vehicle Division shall also be deemed to be a proper address for the purpose of mailing such notice.

- 6) In all cases, service by mail shall be presumed effective upon the third business day following the day upon which the notice of violation was placed in the mail.
- 7) If either the owner of the premises or the responsible person cannot be personally served within the City of Billings, and if an address for mailed service cannot reasonably be determined, then service may be made upon that person by posting the notice of violation in a conspicuous place on the property where the violation occurred. Service by posting in this instance shall be presumed effective upon the seventh day following the day upon which the notice was posted.
- C. Proof of service shall be made by a written declaration under penalty of perjury executed by the person effecting the service declaring the time and date of service, the manner by which the service was made, and, if by posting, the facts showing the attempts to serve the person personally or by mail.
- D. Failure to make or attempt service on any person named in the notice of violation shall not invalidate any proceedings as to any other person duly served.
- ~~(b)~~ E. If the public nuisance is not abated within the time period specified in the notice of violation then the owner of the premises and the responsible person ~~Violations of this article~~ may be cited for the violation into municipal court as a municipal infraction citations and shall be are subject to civil penalties as specified in section 18-1304. Each day that a violation occurs is a separate offense.
- ~~(c)~~ F. The city may also pursue civil remedies provided by law including seeking injunctive relief or a court order to allow the city to enter the property for the purposes of abating such public nuisance.

(Ord. No. 04-5280, § 4, 5-10-04; Ord. No. 19-5721, § 4, 1-14-19)

Editor's note(s)—Ord. No. 19-5721, § 4, adopted Jan. 14, 2019, amended the title of § 18-304 to read as herein set out. The former § 18-304 title pertained to enforcement.

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

- (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) 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) 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) The judgment of the municipal court may be appealed to the district court.~~
- ~~(6) The procedure for determining the cost of abatement of a public nuisance will be as follows:~~
 - ~~a. 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. The enforcement officer may utilize city resources, including staff and equipment, to complete some or all components of a court ordered abatement, and the value of utilization of staff and equipment shall be assessed in accordance with this section.~~
 - ~~b. 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. The municipal court may assess as a judgment the good faith estimate of the costs of abatement.~~
 - ~~d. The municipal court may allow the property owner a period of time, not to exceed forty five (45) days, to abate the public nuisance prior to assessing the good faith estimate in a judgement.~~
 - ~~e. 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. The enforcement officer will coordinate the abatement project and oversee the work as it is being performed.~~
 - ~~g. 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. 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 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.

(Ord. No. 04-5280, § 8, 5-10-04, Ord. No. 13-5604, § 1, 5-28-13; Ord. No. 19-5721, § 6, 1-14-19)

Editor's note(s) — Ord. No. 19-5721, §§ 5, 6, adopted Jan. 14, 2019, repealed § 18-305 and renumbered § 18-308 as § 18-305 as set out herein. The historical notations have been retained with the amended provisions for historical purposes. The former § 18-305 pertained to right of entry, and derived from Ord. No. 04-5280, § 5, adopted May 10, 2004.

The procedure for abatement and collection of costs of a public nuisance shall be as set forth in Sec. 18-1304 and the following:

1. Upon finding a violation of Sec. 18-303 has been proven, the municipal court may either order the defendant to abate or cease the violation, or authorize the city to abate or correct the violation. The municipal court may allow the property owner of the premises and the responsible party up to thirty (30) days to abate the public nuisance upon the expiration of which the city shall be authorized by the court to enter the property and abate the nuisance.

-
2. The enforcement officer will coordinate any abatement project conducted by the city and oversee the work as it is being performed. The enforcement officer may utilize city resources, including staff and equipment, to complete some or all of the components of a court ordered abatement, and the value of utilization of staff and equipment shall be assessed in accordance with this section.
 3. Upon completion of an abatement project, the enforcement officer shall prepare an itemized abatement expense report and final bill for approval by the Code Enforcement Division Manager. Upon the Code Enforcement Division Manager's approval, the final bill will be forwarded to the city finance department for payment by the property owner.
 4. A copy of approved bill(s) and proof of disbursement shall be placed in the enforcement agency file maintained by the enforcement officer. These documents, along with the itemized abatement expense report, shall be used to determine the total cost of abatement for the property. The abatement expense report shall be transmitted to the finance department for approval of assessment on the real property being abated.
 5. The property owner of the premises 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 that 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.
 6. 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.
 7. 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.
 8. The municipal court may also order the city's costs for abatement or correction of the violation be entered as a judgment against the defendant. A request for judgment shall be accompanied by an itemized abatement expense report and final bill which have been approved by the Code Enforcement Division Manager.
 9. Any judgment assessed by the municipal court may not exceed the statutory amount as set in MCA 3-6-103.

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.

(Ord. No. 19-5721, § 6, 1-14-19)

Editor's note(s)—Ord. No. 19-5721, § 6, adopted Jan. 14, 2019, repealed the former § 18-306 and enacted a new § 18-306 as set out herein. The former § 18-306 pertained to emergency abatement and derived from Ord. No. 04-5280, § 6, adopted May 10, 2004 and Ord. No. 13-5604, § 1, adopted May 28, 2013.

Sec. 18-307. Reserved.

Editor's note(s)—Ord. No. 19-5721, § 6, adopted Jan. 14, 2019, repealed § 18-307, which pertained to voluntary abatement and derived from Ord. No. 04-5280, § 7, adopted May 10, 2004 and Ord. No. 13-5604, § 1, adopted May 28, 2018. Rnbd 18-308 as 18-305

Sec. 18-308. Reserved.

Editor's note(s)—See the editor's note to § 18-305.

Sec. 18-309. Reserved.

Editor's note(s)—See the editor's note to § 18-103.

Section 2. EFFECTIVE DATE. This ordinance shall be effective thirty (30) days after second reading and final adoption as provided by law.

Section 3. REPEALER. All resolutions, ordinances, and sections of the City Code inconsistent herewith are hereby repealed.

Section 4. 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 the 8th day of April 2024.

PASSED, ADOPTED and APPROVED on second reading this 22nd day of April, 2024.

CITY OF BILLINGS

BY: _____
William A. Cole, Mayor

Attest

Denise R. Bohlman, City Clerk

ORDINANCE 24-_____

AN ORDINANCE OF THE CITY OF BILLINGS,
PROVIDING THAT THE BILLINGS, MONTANA CITY
CODE (BMCC) BE AMENDED BY REVISING ARTICLE
18-1100, OF SAID CODE

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BILLINGS THAT:

Section 1. That Article 18-1100, of the Billings, Montana City Code (BMCC) is amended so that such section shall read as follows:

Article 18-1100. – GRAFFITI

Sec. 18-1101. Purpose and intent.

Graffiti presents a threat to the health, safety and welfare of the community and reduces the value of adjoining properties. Graffiti is deemed a public nuisance in accordance with Sec. 18-301. Standards for graffiti abatement established in this section will help improve the appearance of these structures and preserve neighborhood property values.

The city council is enacting this article to help prevent the spread of graffiti vandalism and to establish a program for the removal of graffiti from public and private property. The council is authorized to enact this article pursuant to its police powers, as specified in Section 1.01 of the City Charter and MCA §§ 7-1-101, 7-5-4101, and 7-5-4104 that authorize the city to have all power possible for a self-government city as fully and as completely as though they were fully enumerated in the Charter, to exercise any power not prohibited by the Constitution or laws of the state, to make and pass all laws not repugnant to the Constitution or laws of the state necessary for the government or management of the affairs of a city or town, and to define and abate nuisances and impose fines on persons guilty of creating, continuing or suffering nuisances to exist on premises they occupy or control.

The council finds that graffiti is a public nuisance and destructive of the rights and values of property owners as well as the entire community. Unless the city acts to remove graffiti from public and private property, the graffiti tends to remain. Other properties then become the target of graffiti, and entire neighborhoods are affected and become less desirable places in which to be, all to the detriment of the city.

The city council intends, through the adoption of this article, to provide additional enforcement tools to protect public and private property from acts of graffiti vandalism and defacement. The council does not intend for this article to conflict with any existing anti-graffiti state laws.

(Ord. No. 05-5332, § 1, 7-11-05)

Sec. 18-1102. Definitions.

~~For the purposes of this article, the following words shall have the meanings respectively ascribed to them in this section, except where the context clearly indicates a different meaning:~~

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

Graffiti means any unauthorized inscription, word, figure, painting or other defacement that is written, marked, etched, scratched, sprayed, drawn, painted, or engraved on or otherwise affixed to any surface of public or private property by any graffiti implement, to the extent that the graffiti was not authorized in advance by the owner or occupant of the property, or, despite advance authorization, ~~is otherwise deemed a public nuisance by the city council.~~ constitutes a public nuisance as defined in Section 18-302

Graffiti implement means an aerosol paint container, a broad-tipped marker, gum label, paint stick or graffiti stick, etching equipment, brush or any other device capable of scarring or leaving a visible mark on any natural or man-made surface.

Owner means any entity or entities have a legal or equitable interest in real or personal property including but not limited to the interest of a tenant or lessee.

Paint stick or graffiti stick means any device containing a solid form of paint, chalk, wax, epoxy, or other similar substance capable of being applied to a surface by pressure and leaving a mark of at least one-eighth ($\frac{1}{8}$) of an inch in width.

Perpetrator means a person who applies graffiti to or on any property located within the City of Billings.

Person means any individual, partnership, cooperative association, private corporation, personal representative, receiver, trustee, assignee, or any other legal entity.

Property means any real or personal property and that which is affixed, incidental or appurtenant to real property including but not limited to any structure, fence, wall, sign or any separate part thereof whether permanent or not.

Responsible party means an owner or entity or person acting as an agent for an owner by agreement who has authority over the property or is responsible for the property's maintenance or management. Irrespective of any arrangement to the contrary with any other party, each owner shall always be a responsible party for the purposes of this chapter. There may be more than one responsible party for a particular piece of property.

Unauthorized means without the consent of the responsible party.

(Ord. No. 05-5332, § 2, 7-11-05)

Sec. 18-1103. Prohibited acts. — Prohibitions.

~~Defacement. It shall be unlawful for any person to apply graffiti to any natural or man-made surface on any city-owned property or, without the permission of the owner or responsible party, on any non-city-owned property.~~

It shall be unlawful for any person to apply graffiti to or on any property located within the City of Billings.

(Ord. No. 05-5332, § 3, 7-11-05)

Sec. 18-1104. Enforcement and Penalties - Perpetrator.

- (a) *Fines and imprisonment.* Any person violating this article by applying graffiti to any property shall be punished as provided in section 1-110.
- (b) *Restitution.* In addition to any punishment specified in this section, the court shall order any violator to make restitution to the victim for damages or loss caused directly or indirectly by the violator's offense in the amount or manner determined by the court.
- (c) *Community service.* In-lieu of, or as part of, the penalties specified in this section, an offender may be required to perform community service as described by the court based on the following minimum requirements:
 - (1) The offender shall perform at least thirty (30) hours of community service.
 - (2) The entire period of community service shall be performed under the supervision of a community service provider approved by the municipal court.
 - (3) Reasonable effort shall be made to assign the minor or adult to a type of community service that is reasonably expected to have the most rehabilitative effect on the offender, including community service that involves graffiti removal.

(Ord. No. 05-5332, § 4, 7-11-05)

Sec. 18-1105. Rewards and reimbursements for information.

- (a) The city may offer a reward in an amount to be established by resolution of the city council for information leading to the identification and apprehension of any person who willfully damages or destroys any public or private property by the use of graffiti. In the event of damage to public property, the offender or the parents or legal guardian of any unemancipated minor must reimburse the city for any reward paid. In the event of multiple contributors of information, the reward amount shall be divided by the city in the manner it shall deem appropriate.

-
- (b) Claims for rewards under this section shall be filed, in writing, with the city in the manner specified by the city council. ~~clerk.~~ Each claim should:
- (1) Specifically identify the date, location, and kind of property damaged or destroyed;
 - (2) Identify by name the person who was convicted; and
 - (3) Identify the court and the date upon which the conviction occurred.
- (c) The City Administrator shall review each claim for reward submitted pursuant to this chapter and either accept, accept in part, or deny the claim. No claim for a reward shall be accepted by the City Council unless the City investigates and verifies the accuracy of the claim and determines that the requirements of this section have been satisfied. The investigation must determine that the claimant's information was relevant and directly responsible for the arrest and conviction of the suspect.
- (d) The offer of a reward is made to members of the public generally. However, no law enforcement officer, municipal officer, employee of the City, or person(s) apprehended shall be eligible for such a reward.
- (e) Any person committing graffiti vandalism shall be civilly liable for any reward paid pursuant to this section. If said person is an unemancipated minor, then the parent or lawful guardian of said minor shall be civilly liable for any reward paid pursuant to this section.
- ~~(c) No claim for a reward shall be allowed unless the city investigates and verifies the accuracy of the claim and determines that the requirements of this section have been satisfied.~~

(Ord. No. 05-5332, § 5, 7-11-05)

Sec. 18-1106. Graffiti as a public nuisance.

- (a) The existence of graffiti on public or private property in violation of this article is expressly declared to be a public nuisance and, therefore, is subject to the removal and abatement provisions specified in Section 18-305. ~~in this article.~~
- (b) It is the duty of both the owner of the private property to which the graffiti has been applied and any responsible party to at all times keep the private property clear of graffiti.
- (c) Failure to remove graffiti by the private property owner or any responsible party shall be punished as a municipal infraction and shall be subject to civil penalties as specified in section 18-1304.

(Ord. No. 05-5332, § 6, 7-11-05)

Sec. 18-1107. Removal of graffiti by perpetrator.

Any person applying graffiti on public or private property shall have the duty to remove the graffiti within twenty-four (24) hours after notice by the city or private owner of the property involved. Such removal shall be done in a manner prescribed by the chief of police, the director of the department of public works, or any additional city department head, as authorized by the city council. Any person applying graffiti shall be responsible for the removal or for the payment of the removal. Failure of any person to remove graffiti or pay for the removal shall constitute an additional violation of this article.

(Ord. No. 05-5332, § 7, 7-11-05)

Sec. 18-1108. Removal of graffiti by property owner or city.

If graffiti is not removed by the perpetrator according to section 18-1107, graffiti shall be removed pursuant to the following provisions:

Property owner responsibility. It is unlawful for any person who is the owner or responsible party of property to permit property that is defaced with graffiti to remain defaced for a period of ten (10) days after service by first class mail of notice of the defacement. The notice shall contain the following information:

- (1) The street address and legal description of the property sufficient for identification of the property;
- (2) A statement that the property is a potential graffiti nuisance property with a concise description of the conditions leading to the finding;
- (3) A statement that the graffiti must be removed within ten (10) days after receipt of the notice and that if the graffiti is not abated within that time the city will declare the property to be a public nuisance, subject to the abatement procedures in section 18-1114;
- (4) An information sheet identifying any graffiti removal assistance programs available through the city and private graffiti removal contractors.

(Ord. No. 05-5332, § 8, 7-11-05)

Sec. 18-1109. Failure to comply.

Upon first failure, neglect or refusal to remove the graffiti during the prescribed period, the city shall give notice to the noncomplying owner, agent or occupant thereof. Such notice shall provide as a minimum:

- (1) That the noncomplying owner, or agent thereof, is allowed ten (10) days from the date of notice of noncompliance to remove;

- ~~(2) That upon failure to comply the city may by its own work forces or by contract cause the graffiti to be removed and the cost thereof shall be assessed against the noncomplying real property together with an additional administrative cost equal to twenty five (25) percent of the cost of removal and a twenty five dollar (\$25.00) penalty;~~
- ~~(3) If the owner or agent of the property continues to neglect to maintain the property free from graffiti, the city may at its sole discretion remove the graffiti again as needed without additional notice of any kind. Charges as in subsection (2), including penalty, will be assessed for each time the city removes the graffiti;~~
- ~~(4) That the assessed amount together with costs and penalties shall constitute a lien on the noncomplying real property and will be taxed as a special assessment against the real property;~~
- ~~(5) Appeal. The owner or agent may appeal any determination that they have failed to comply with the requirements of any order to the director of the city-county planning department;~~
- ~~(6) Notice. Notice under this article is sufficient if served upon the owner or responsible person personally or mailed regular mail to the last known address owner or responsible person or the last address of the owner shown on the tax rolls of the county. Upon mailing, the city clerk shall execute an affidavit of mailing. Notice shall be deemed given when deposited in a United States Postal Service receptacle;~~

~~(Ord. No. 05-5332, § 9, 7-11-05)~~

Sec. 18-1110. Failure to comply misdemeanor.

~~Any person who willfully fails to comply with the provisions of this article is guilty of a misdemeanor and upon a signed complaint shall be punished as provided in section 1-110.~~

~~(Ord. No. 05-5332, § 10, 7-11-05)~~

Sec. 18-1111. Exceptions to property owner responsibility.

~~The removal requirements of section 18-1108 shall not apply if the property owner or responsible party can demonstrate that:~~

- ~~(1) The property owner or responsible party lacks the financial ability to remove the defacing graffiti; or~~
- ~~(2) The property owner or responsible party has an active program for the removal of graffiti and has scheduled the removal of the graffiti as part of that program, in which case it shall be unlawful to permit such property to remain defaced~~

with graffiti for a period of ten (10) days after service by first class mail of notice of the defacement.

(Ord. No. 05-5332, § 11, 7-11-05)

Sec. 18-1112. right of city to remove.

(a) Use of public funds. Whenever the city becomes aware or is notified and determines that graffiti is located on publicly or privately owned property viewable from a public or quasi-public place, the city shall be authorized to use public funds for the removal of the graffiti, or for the painting or repairing of the graffiti, but shall not authorize or undertake to provide for the painting or repair of any more extensive an area than that where the graffiti is located, unless the city administrator, or the designee of the city administrator, determines in writing that a more extensive area is required to be repainted or repaired in order to avoid an aesthetic disfigurement to the neighborhood or community, or unless the property owner or responsible party agrees to pay for the costs of repainting or repairing the more extensive area.

(b) Right of entry on private property. Prior to entering upon private property or property owned by a public entity other than the city for the purpose of graffiti removal the city shall attempt to secure the consent of the property owner or responsible party and a release of the city from liability for property damage or personal injury. If the property owner or responsible party fails to remove the offending graffiti within the time specified by this article, or if the city has requested consent to remove or paint over the offending graffiti and the property owner or responsible party has refused consent for entry on terms acceptable to the city and consistent with the terms of this section, the city shall commence abatement and cost recovery proceedings for the graffiti removal according to the provisions specified below.

(Ord. No. 05-5332, § 12, 7-11-05)

Sec. 18-1113. Abatement and cost recovery proceedings.

(a) Annually the city shall prepare a list of all lots, tracts and parcels of real property within the city from which and adjacent to which graffiti was removed by the city and for which such charges and penalties have not yet been paid, the list shall include as a minimum the following:

- (1) Name as shown by the tax rolls, common address if known;
- (2) Tax code of the property;
- (3) Legal description of the lot, tract or parcel;
- (4) Cost of the graffiti removal for that property;
- (5) Administrative costs;

ORDINANCE 24-5879

AN ORDINANCE OF THE CITY OF BILLINGS, PROVIDING THAT THE BILLINGS, MONTANA CITY CODE (BMCC) BE AMENDED BY REVISING ARTICLE 18-300, OF SAID CODE

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BILLINGS THAT:

Section 1. That Article 18-300, of the Billings, Montana City Code (BMCC) is amended so that such section shall read as follows:

Article 18-300. – NUISANCES

Sec. 18-301. Purpose.

The purpose of this article is to 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 remediation of such nuisances, to protect the public health, safety and welfare and to promote the economic stability of neighborhoods and areas within 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.

(Ord. No. 04-5280, § 1, 5-10-04; Ord. No. 19-5721, § 1, 1-14-19)

Sec. 18-302. Definitions.

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

~~Abandoned or decaying structure means a structure that 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, falling or damaged residential dwelling or other structure 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.

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 an inoperable vehicle for purposes of this section.

Junk means 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.

Nuisance structure means a structure that exhibits objectively determinable signs of deterioration such as those set forth in section 18-303(5) which are sufficient to constitute a public nuisance and includes any dangerous, falling, or damaged residential dwelling, commercial structure, or other structure excluding any structure related to an agricultural or farming operation. Openings in the walls, roof or floor that allow unrestricted access by humans, animals, or weather to the interior of the structure shall constitute a presumption that the structure is ~~dangerous~~ a nuisance structure.

Public nuisance means a situation created or allowed to continue by the owner or occupant of real property which 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.

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.

(Ord. No. 04-5280, § 2, 5-10-04; Ord. No. 13-5604, § 1, 5-28-13; Ord. No. 19-5721, § 2, 1-14-19)

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. Public nuisances include but are not limited to the following:

- (1) Creating a hazard on any premises for more than twenty-four (24) hours.
- (2) The open storage of more than three (3) inoperable vehicles on any premises for more than five (5) consecutive days.
- (3) The open storage of a collection of junk (see definition) on any premises for more than five (5) consecutive days.
- (4) 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.
- (5) Maintaining a dangerous nuisance structure (see definition) ~~or an abandoned or decaying structure~~ for more than ten (10) days without abating the ~~dangerous or nuisance condition.~~ ~~of such structure.~~
 - a. A dangerous nuisance structure is ~~being maintained~~ present if three (3) or more of the following listed conditions exist:
 - i. Broken, boarded, or missing windows and/or doors;
 - ii. ~~Broken or missing doors;~~
 - iii. ii. Broken or missing attic vent(s);
 - iv. iii. Broken or missing under-floor vent(s);
 - iv. 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. viii. 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~~x~~. 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 ~~12-24~~ month period;
- iv~~x~~. Two (2) or more reports to the police department or code enforcement division of ~~unauthorized persons (trespassing)~~ criminal activity on the property within a ~~12-24~~ month period;
- v~~xi~~. Has one or more essential utilities turned off for a period of 30 days or more;
- v~~xii~~. Dead, dying or diseased trees, shrubs and other desired vegetation;
- ~~vii. Dead, dying or diseased shrubs and other desired vegetation;~~
- v~~xiii~~. Dead, dying or diseased lawn area(s) due to lack of water or other necessary maintenance;
- ix~~iv~~. Neglected trees and shrubs growing uncontrolled without proper pruning;
- x~~y~~. Building walls which are broken, defective, or significantly deteriorated; or
- x~~vi~~. Building appurtenances such as railings, gutters, fences, gates or exterior light(s) are broken, fallen, or significantly damaged.
- x~~vii~~. Damaged roofing to include missing shingles or roofing materials; warped shingles; or deteriorating roofing materials;

(6) Creating or maintaining on any premises:

- (a) a condition constituting a public nuisance not otherwise described, or
- (b) any location where persons gather for the purpose of engaging in unlawful conduct.

(Ord. No. 04-5280, § 3, 5-10-04; Ord. No. 13-5604, § 1, 5-28-13; Ord. No. 19-5721, § 3, 1-14-19)

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 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. The notice shall contain the following information:

- 1) The street address and legal description of the property sufficient for identification of the property;
- 2) A statement that the property is a potential public nuisance with a concise description of the conditions leading to the finding;
- 3) A statement that the public nuisance must be abated no less than ten (10) days after receipt of the notice. If the public nuisance is not abated within that time, the city may send a second/final ten (10) day notice.
- 4) If the public nuisance is still not abated after the second/final notice, the city may declare the property to be a public nuisance subject to the abatement procedures in section 18-305. In cases of emergency or exigent circumstances, the officer shall have the discretion to abate the public nuisance within less than the ten (10) days from receipt of the first notice.

B. Service of a notice of violation shall be made on the owner of the premises and the person responsible for the code violation by one or more of the following methods:

- 1) Personal service of the notice of violation.
- 2) By leaving a copy of the notice of violation at the person's residence with a person of suitable age and discretion who resides there and concurrently mailing notice as provided for herein.
- 3) By posting the notice of violation in a conspicuous place on the property where the violation occurred and concurrently mailing notice as provided for herein.
- 4) For the owner of the premises, service by mail may be made by mailing a copy, postage prepaid, by ordinary first-class mail, to the person's residential address. The taxpayer's address as shown on the tax records of Yellowstone County for the property where the violation occurred shall also be deemed to be a proper address for the purpose of mailing such notice.
- 5) For the responsible person, service by mail may be made for a notice of violation by mailing a copy, postage prepaid, by ordinary first-class mail, to the person's residential address or at the address of the violation. The person's address as shown on the records of the Montana Motor Vehicle Division shall also be deemed to be a proper address for the purpose of mailing such notice.
- 6) In all cases, service by mail shall be presumed effective upon the third business day following the day upon which the notice of violation was placed in the mail.
- 7) If either the owner of the premises or the responsible person cannot be personally served within the City of Billings, and if an address for mailed service cannot reasonably be determined, then service may be made upon that person by posting the notice of violation in a conspicuous place on the property where the violation occurred. Service by posting in this instance shall be presumed effective upon the seventh day following the day upon which the notice was posted.

C. Proof of service shall be made by a written declaration under penalty of perjury executed by the person effecting the service declaring the time and date of service, the manner by which the service was made, and, if by posting, the facts showing the attempts to serve the person personally or by mail.

D. Failure to make or attempt service on any person named in the notice of violation shall not invalidate any proceedings as to any other person duly served.

(b) E. If the public nuisance is not abated within the time period specified in the notice of violation then the owner of the premises and the responsible person ~~Violations of this article~~ may be cited for the violation into municipal court as a municipal infraction citations and shall be are subject to civil penalties as specified in section 18-1304. Each day that a violation occurs is a separate offense.

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

(Ord. No. 04-5280, § 4, 5-10-04; Ord. No. 19-5721, § 4, 1-14-19)

Editor's note(s)—Ord. No. 19-5721, § 4, adopted Jan. 14, 2019, amended the title of § 18-304 to read as herein set out. The former § 18-304 title pertained to enforcement.

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

- (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) 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) 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) The judgment of the municipal court may be appealed to the district court.

(6) The procedure for determining the cost of abatement of a public nuisance will be as follows:

a. 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. The enforcement officer may utilize city resources, including staff and equipment, to complete some or all components of a court ordered abatement, and the value of utilization of staff and equipment shall be assessed in accordance with this section.

b. 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. The municipal court may assess as a judgment the good faith estimate of the costs of abatement.

d. The municipal court may allow the property owner a period of time, not to exceed forty five (45) days, to abate the public nuisance prior to assessing the good faith estimate in a judgement.

e. 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. The enforcement officer will coordinate the abatement project and oversee the work as it is being performed.

g. 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. 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 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.~~

~~(Ord. No. 04-5280, § 8, 5-10-04, Ord. No. 13-5604, § 1, 5-28-13; Ord. No. 19-5721, § 6, 1-14-19)~~

~~Editor's note(s)—Ord. No. 19-5721, §§ 5, 6, adopted Jan. 14, 2019, repealed § 18-305 and renumbered § 18-308 as § 18-305 as set out herein. The historical notations have been retained with the amended provisions for historical purposes. The former § 18-305 pertained to right of entry, and derived from Ord. No. 04-5280, § 5, adopted May 10, 2004.~~

The procedure for abatement and collection of costs of a public nuisance shall be as set forth in Sec. 18-1304 and the following:

1. Upon finding a violation of Sec. 18-303 has been proven, the municipal court may either order the defendant to abate or cease the violation, or authorize the city to abate or correct the violation. The municipal court may allow the property owner of the premises and the responsible party up to thirty (30) days to abate the public nuisance upon the expiration of which the city shall be authorized by the court to enter the property and abate the nuisance.
2. The enforcement officer will coordinate any abatement project conducted by the city and oversee the work as it is being performed. The enforcement officer may utilize city resources, including staff and equipment, to complete some or all of the components of a court ordered abatement, and the value of utilization of staff and equipment shall be assessed in accordance with this section.
3. Upon completion of an abatement project, the enforcement officer shall prepare an itemized abatement expense report and final bill for approval by the Code Enforcement Division Manager. Upon the Code Enforcement Division Manager's approval, the final bill will be forwarded to the city finance department for payment by the property owner.
4. A copy of approved bill(s) and proof of disbursement shall be placed in the enforcement agency file maintained by the enforcement officer. These documents, along with the itemized abatement expense report, shall be used to determine the total cost of abatement for the property. The abatement expense report shall be transmitted to the finance department for approval of assessment on the real property being abated.

5. The property owner of the premises 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 that 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.
6. 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.
7. 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.
8. The municipal court may also order the city's costs for abatement or correction of the violation be entered as a judgment against the defendant. A request for judgment shall be accompanied by an itemized abatement expense report and final bill which have been approved by the Code Enforcement Division Manager.
9. Any judgment assessed by the municipal court may not exceed the statutory amount as set in MCA 3-6-103.

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.

(Ord. No. 19-5721, § 6, 1-14-19)

Editor's note(s)—Ord. No. 19-5721, § 6, adopted Jan. 14, 2019, repealed the former § 18-306 and enacted a new § 18-306 as set out herein. The former § 18-306 pertained to emergency abatement and derived from Ord. No. 04-5280, § 6, adopted May 10, 2004 and Ord. No. 13-5604, § 1, adopted May 28, 2013.

Sec. 18-307. Reserved.

Editor's note(s)—Ord. No. 19-5721, § 6, adopted Jan. 14, 2019, repealed § 18-307, which pertained to voluntary abatement and derived from Ord. No. 04-5280, § 7, adopted May 10, 2004 and Ord. No. 13-5604, § 1, adopted May 28, 2018. Rnbd 18-308 as 18-305

Sec. 18-308. Reserved.

Editor's note(s)—See the editor's note to § 18-305.

Sec. 18-309. Reserved.

Editor's note(s)—See the editor's note to § 18-103.

Section 2. EFFECTIVE DATE. This ordinance shall be effective thirty (30) days after second reading and final adoption as provided by law.

Section 3. REPEALER. All resolutions, ordinances, and sections of the City Code inconsistent herewith are hereby repealed.

Section 4. 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 the 8th day of April 2024.

PASSED, ADOPTED and APPROVED on second reading this 22nd day of April,



CITY OF BILLINGS

BY: William A. Cole
William A. Cole, Mayor

ATTEST:

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

City Council Regular

Date: 04/22/2024
Title: Second Reading - Ordinance Amendment BMCC 18-300, Nuisances
Presented by: Tina Hoeger
Department: Planning & Community Services
Presentation: No
Legal Review: Yes
Project Number: N/A

RECOMMENDATION

Staff recommends the City Council approve the second and final reading of the amended ordinance Billings, Montana City Code (BMCC) Section 18-300, Nuisances.

BACKGROUND (Consistency with Adopted Plans and Policies, if applicable)

At its meeting on April 8, 2024, the City Council conducted a public hearing and approved the first reading of the amended ordinance BMCC 18-300, Nuisances.

The language of "Sec. 18-303" was removed in the clean version of the amended ordinance from Sec. 18-305, Abatement, and collection of costs after legal review in preparation for second reading. Section 18-305 will, in the future, be used as the process for other ordinances and therefore, the language of "Sec. 18-303" should be removed.

STAKEHOLDERS

The residents of Billings will ultimately benefit from making these ordinance amendments as the changes will increase efficiency of enforcement, better clarify the codes so people understand their rights and obligations under the City code, and make it easier to apply the codes by the City Code Enforcement Division.

ALTERNATIVES

City Council may:

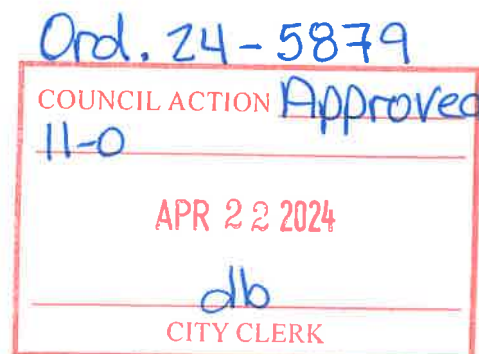
- Approve the amended ordinance BMCC 18-300, Nuisances; or,
- Not Approve the amended ordinance BMCC 18-300, Nuisances. If not approved, ordinance BMCC 18-300, Nuisances will remain the same and not have the more effective and updated language Code Enforcement staff, City Legal staff, and the City Council have been working to implement.

FISCAL EFFECTS

There are no direct fiscal impacts; however, if the Council approves amended ordinance BMCC 18-300, Nuisances, there could be some advantages of efficiency and process that might be fiscally beneficial, although difficult to measure given the overall complexity of some of these enforcement processes.

Attachments

Nuisance Ordinance Amended
Nuisance Ordinance Clean



ORDINANCE 24-_____

AN ORDINANCE OF THE CITY OF BILLINGS,
PROVIDING THAT THE BILLINGS, MONTANA CITY
CODE (BMCC) BE AMENDED BY REVISING ARTICLE
18-300, OF SAID CODE

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BILLINGS THAT:

Section 1. That Article 18-300, of the Billings, Montana City Code (BMCC) is amended so that such section shall read as follows:

Article 18-300. – NUISANCES

Sec. 18-301. Purpose.

The purpose of this article is to 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 remediation of such nuisances, to protect the public health, safety and welfare and to promote the economic stability of neighborhoods and areas within 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.

(Ord. No. 04-5280, § 1, 5-10-04; Ord. No. 19-5721, § 1, 1-14-19)

Sec. 18-302. Definitions.

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

~~Abandoned or decaying structure means a structure that 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, falling or damaged residential dwelling or other structure 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.

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 an inoperable vehicle for purposes of this section.

Junk means 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.

Nuisance structure means a structure that exhibits objectively determinable signs of deterioration such as those set forth in section 18-303(5) which are sufficient to constitute a public nuisance and includes any dangerous, falling, or damaged residential dwelling, commercial structure, or other structure excluding any structure related to an agricultural or farming operation. Openings in the walls, roof or floor that allow unrestricted access by humans, animals, or weather to the interior of the structure shall constitute a presumption that the structure is ~~dangerous~~ a nuisance structure.

Public nuisance means a situation created or allowed to continue by the owner or occupant of real property which 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.

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.

(Ord. No. 04-5280, § 2, 5-10-04; Ord. No. 13-5604, § 1, 5-28-13; Ord. No. 19-5721, § 2, 1-14-19)

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. Public nuisances include but are not limited to the following:

- (1) Creating a hazard on any premises for more than twenty-four (24) hours.
 - (2) The open storage of more than three (3) inoperable vehicles on any premises for more than five (5) consecutive days.
 - (3) The open storage of a collection of junk (see definition) on any premises for more than five (5) consecutive days.
 - (4) 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.
 - (5) Maintaining a ~~dangerous~~ nuisance structure (see definition) ~~or an abandoned or decaying structure~~ for more than ten (10) days without abating the ~~dangerous or nuisance condition. of such structure.~~
- a. A ~~dangerous~~ nuisance structure is ~~being maintained~~ present if three (3) or more of the following listed conditions exist:
- i. Broken, boarded, or missing windows and/or doors;
 - ii. ~~Broken or missing doors;~~
 - iii. ~~ii.~~ Broken or missing attic vent(s);
 - iv. ~~iii.~~ Broken or missing under-floor vent(s);
 - iv. 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.viii. 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;~~
 - ~~iiix. 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 12-24 month period;~~
 - ~~ivx. Two (2) or more reports to the police department or code enforcement division of unauthorized persons (trespassing) criminal activity on the property within a 12-24 month period;~~
 - ~~vx. Has one or more essential utilities turned off for a period of 30 days or more;~~
 - ~~vxii. Dead, dying or diseased trees, shrubs and other desired vegetation;~~
 - ~~vii. Dead, dying or diseased shrubs and other desired vegetation;~~
 - ~~vixiii. Dead, dying or diseased lawn area(s) due to lack of water or other necessary maintenance;~~
 - ~~ixiv. Neglected trees and shrubs growing uncontrolled without proper pruning;~~
 - ~~xv. Building walls which are broken, defective, or significantly deteriorated; or~~
 - ~~xvi. Building appurtenances such as railings, gutters, fences, gates or exterior light(s) are broken, fallen, or significantly damaged.~~
 - ~~xvii. Damaged roofing to include missing shingles or roofing materials; warped shingles; or deteriorating roofing materials;~~

(6) Creating or maintaining on any premises:

- (a) a condition constituting a public nuisance not otherwise described, or
- (b) any location where persons gather for the purpose of engaging in unlawful conduct.

(Ord. No. 04-5280, § 3, 5-10-04; Ord. No. 13-5604, § 1, 5-28-13; Ord. No. 19-5721, § 3, 1-14-19)

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 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. The notice shall contain the following information:

- 1) The street address and legal description of the property sufficient for identification of the property;
- 2) A statement that the property is a potential public nuisance with a concise description of the conditions leading to the finding;
- 3) A statement that the public nuisance must be abated no less than ten (10) days after receipt of the notice. If the public nuisance is not abated within that time, the city may send a second/final ten (10) day notice.
- 4) If the public nuisance is still not abated after the second/final notice, the city may declare the property to be a public nuisance subject to the abatement procedures in section 18-305. In cases of emergency or exigent circumstances, the officer shall have the discretion to abate the public nuisance within less than the ten (10) days from receipt of the first notice.

B. Service of a notice of violation shall be made on the owner of the premises and the person responsible for the code violation by one or more of the following methods:

- 1) Personal service of the notice of violation.
- 2) By leaving a copy of the notice of violation at the person's residence with a person of suitable age and discretion who resides there and concurrently mailing notice as provided for herein.
- 3) By posting the notice of violation in a conspicuous place on the property where the violation occurred and concurrently mailing notice as provided for herein.
- 4) For the owner of the premises, service by mail may be made by mailing a copy, postage prepaid, by ordinary first-class mail, to the person's residential address. The taxpayer's address as shown on the tax records of Yellowstone County for the property where the violation occurred shall also be deemed to be a proper address for the purpose of mailing such notice.
- 5) For the responsible person, service by mail may be made for a notice of violation by mailing a copy, postage prepaid, by ordinary first-class mail, to the person's residential address or at the address of the violation. The person's address as shown on the records of the Montana Motor Vehicle Division shall also be deemed to be a proper address for the purpose of mailing such notice.

-
- 6) In all cases, service by mail shall be presumed effective upon the third business day following the day upon which the notice of violation was placed in the mail.
- 7) If either the owner of the premises or the responsible person cannot be personally served within the City of Billings, and if an address for mailed service cannot reasonably be determined, then service may be made upon that person by posting the notice of violation in a conspicuous place on the property where the violation occurred. Service by posting in this instance shall be presumed effective upon the seventh day following the day upon which the notice was posted.
- C. Proof of service shall be made by a written declaration under penalty of perjury executed by the person effecting the service declaring the time and date of service, the manner by which the service was made, and, if by posting, the facts showing the attempts to serve the person personally or by mail.
- D. Failure to make or attempt service on any person named in the notice of violation shall not invalidate any proceedings as to any other person duly served.
- ~~(b)~~ E. If the public nuisance is not abated within the time period specified in the notice of violation then the owner of the premises and the responsible person ~~Violations of this article~~ may be cited for the violation into municipal court as a municipal infraction citations and shall be are subject to civil penalties as specified in section 18-1304. Each day that a violation occurs is a separate offense.
- ~~(c)~~ F. The city may also pursue civil remedies provided by law including seeking injunctive relief or a court order to allow the city to enter the property for the purposes of abating such public nuisance.

(Ord. No. 04-5280, § 4, 5-10-04; Ord. No. 19-5721, § 4, 1-14-19)

Editor's note(s)—Ord. No. 19-5721, § 4, adopted Jan. 14, 2019, amended the title of § 18-304 to read as herein set out. The former § 18-304 title pertained to enforcement.

Sec. 18-305. 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 abated by the responsible party within the time specified in the notice of violation and after a first municipal infraction citation has been issued, the following procedure applies:~~

- ~~(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) 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) 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) The judgment of the municipal court may be appealed to the district court.~~
- ~~(6) The procedure for determining the cost of abatement of a public nuisance will be as follows:~~
- ~~a. 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. The enforcement officer may utilize city resources, including staff and equipment, to complete some or all components of a court ordered abatement, and the value of utilization of staff and equipment shall be assessed in accordance with this section.~~
 - ~~b. 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. The municipal court may assess as a judgment the good faith estimate of the costs of abatement.~~
 - ~~d. The municipal court may allow the property owner a period of time, not to exceed forty-five (45) days, to abate the public nuisance prior to assessing the good faith estimate in a judgement.~~
 - ~~e. 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. The enforcement officer will coordinate the abatement project and oversee the work as it is being performed.~~
 - ~~g. 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. 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 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.

(Ord. No. 04-5280, § 8, 5-10-04; Ord. No. 13-5604, § 1, 5-28-13; Ord. No. 19-5721, § 6, 1-14-19)

Editor's note(s) — Ord. No. 19-5721, §§ 5, 6, adopted Jan. 14, 2019, repealed § 18-305 and renumbered § 18-308 as § 18-305 as set out herein. The historical notations have been retained with the amended provisions for historical purposes. The former § 18-305 pertained to right of entry, and derived from Ord. No. 04-5280, § 5, adopted May 10, 2004.

The procedure for abatement and collection of costs of a public nuisance shall be as set forth in Sec. 18-1304 and the following:

1. Upon finding a violation of Sec. 18-303 has been proven, the municipal court may either order the defendant to abate or cease the violation, or authorize the city to abate or correct the violation. The municipal court may allow the property owner of the premises and the responsible party up to thirty (30) days to abate the public nuisance upon the expiration of which the city shall be authorized by the court to enter the property and abate the nuisance.

-
2. The enforcement officer will coordinate any abatement project conducted by the city and oversee the work as it is being performed. The enforcement officer may utilize city resources, including staff and equipment, to complete some or all of the components of a court ordered abatement, and the value of utilization of staff and equipment shall be assessed in accordance with this section.
 3. Upon completion of an abatement project, the enforcement officer shall prepare an itemized abatement expense report and final bill for approval by the Code Enforcement Division Manager. Upon the Code Enforcement Division Manager's approval, the final bill will be forwarded to the city finance department for payment by the property owner.
 4. A copy of approved bill(s) and proof of disbursement shall be placed in the enforcement agency file maintained by the enforcement officer. These documents, along with the itemized abatement expense report, shall be used to determine the total cost of abatement for the property. The abatement expense report shall be transmitted to the finance department for approval of assessment on the real property being abated.
 5. The property owner of the premises 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 that 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.
 6. 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.
 7. 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.
 8. The municipal court may also order the city's costs for abatement or correction of the violation be entered as a judgment against the defendant. A request for judgment shall be accompanied by an itemized abatement expense report and final bill which have been approved by the Code Enforcement Division Manager.
 9. Any judgment assessed by the municipal court may not exceed the statutory amount as set in MCA 3-6-103.

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.

(Ord. No. 19-5721, § 6, 1-14-19)

Editor's note(s)—Ord. No. 19-5721, § 6, adopted Jan. 14, 2019, repealed the former § 18-306 and enacted a new § 18-306 as set out herein. The former § 18-306 pertained to emergency abatement and derived from Ord. No. 04-5280, § 6, adopted May 10, 2004 and Ord. No. 13-5604, § 1, adopted May 28, 2013.

Sec. 18-307. Reserved.

Editor's note(s)—Ord. No. 19-5721, § 6, adopted Jan. 14, 2019, repealed § 18-307, which pertained to voluntary abatement and derived from Ord. No. 04-5280, § 7, adopted May 10, 2004 and Ord. No. 13-5604, § 1, adopted May 28, 2018. Rnbd 18-308 as 18-305

Sec. 18-308. Reserved.

Editor's note(s)—See the editor's note to § 18-305.

Sec. 18-309. Reserved.

Editor's note(s)—See the editor's note to § 18-103.

Section 2. EFFECTIVE DATE. This ordinance shall be effective thirty (30) days after second reading and final adoption as provided by law.

Section 3. REPEALER. All resolutions, ordinances, and sections of the City Code inconsistent herewith are hereby repealed.

Section 4. 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 the 8th day of April 2024.

PASSED, ADOPTED and APPROVED on second reading this 22nd day of April, 2024.

CITY OF BILLINGS

BY: _____
William A. Cole, Mayor

Attest
:

Denise R. Bohlman, City Clerk

ORDINANCE 24-_____

AN ORDINANCE OF THE CITY OF BILLINGS,
PROVIDING THAT THE BILLINGS, MONTANA CITY
CODE (BMCC) BE AMENDED BY REVISING ARTICLE
18-300, OF SAID CODE

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BILLINGS THAT:

Section 1. That Article 18-300, of the Billings, Montana City Code (BMCC) is amended so that such section shall read as follows:

Article 18-300. – NUISANCES

Sec. 18-301. Purpose.

The purpose of this article is to 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 remediation of such nuisances, to protect the public health, safety, and welfare and to promote the economic stability of neighborhoods and areas within 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.

(Ord. No. 04-5280, § 1, 5-10-04; Ord. No. 19-5721, § 1, 1-14-19)

Sec. 18-302. Definitions.

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

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.

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

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 an inoperable vehicle for purposes of this section.

Junk means 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.

Nuisance structure means a structure that exhibits objectively determinable signs of deterioration such as those set forth in section 18-303(5) which are sufficient to constitute a public nuisance and includes any dangerous, falling, or damaged residential dwelling, commercial structure, or other structure excluding any structure related to an agricultural or farming operation. Openings in the walls, roof or floor that allow unrestricted access by humans, animals, or weather to the interior of the structure shall constitute a presumption that the structure is a nuisance structure.

Public nuisance means a situation created or allowed to continue by the owner or occupant of real property which 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.

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.

(Ord. No. 04-5280, § 2, 5-10-04; Ord. No. 13-5604, § 1, 5-28-13; Ord. No. 19-5721, § 2, 1-14-19)

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. Public nuisances include but are not limited to the following:

- (1) Creating a hazard on any premises for more than twenty-four (24) hours.
- (2) The open storage of more than three (3) inoperable vehicles on any premises for more than five (5) consecutive days.
- (3) The open storage of a collection of junk (see definition) on any premises for more than five (5) consecutive days.
- (4) 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.
- (5) Maintaining a nuisance structure (see definition) for more than ten (10) days without abating the nuisance condition.

A nuisance structure is present if three (3) or more of the following listed conditions exist:

- i. Broken, boarded, or missing windows and/or doors;
- ii. Broken or missing attic vent(s);
- iii. Broken or missing under-floor vent(s);
- iv. Building exteriors with substantially deteriorating or peeling paint;
- v. Building exteriors with visible signs of decay such as siding with dry rot, warping or cracking;
- vi. Building with missing or severely damaged finish siding materials;
- vii. Buildings with missing or substantially damaged exterior walls;
- viii. Buildings with missing or severely damaged foundations.
- ix. 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 24-month period;
- x. Two (2) or more reports to the police department or code enforcement division of criminal activity on the property within a 24-month period;
- xi. Has one or more essential utilities turned off for a period of 30 days or more;
- xii. Dead, dying or diseased trees, shrubs and other desired vegetation;

-
- xiii. Dead, dying or diseased lawn area(s) due to lack of water or other necessary maintenance;
 - xiv. Neglected trees and shrubs growing uncontrolled without proper pruning;
 - xv. Building walls which are broken, defective, or significantly deteriorated;
 - xvi. Building appurtenances such as railings, gutters, fences, gates or exterior light(s) are broken, fallen, or significantly damaged; or
 - xvii. Damaged roofing to include missing shingles or roofing materials; warped shingles; or deteriorating roofing materials.

(6) Creating or maintaining on any premises:

- (a) a condition constituting a public nuisance not otherwise described, or
- (b) any location where persons gather for the purpose of engaging in unlawful conduct.

(Ord. No. 04-5280, § 3, 5-10-04; Ord. No. 13-5604, § 1, 5-28-13; Ord. No. 19-5721, § 3, 1-14-19)

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 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. The notice shall contain the following information:

- 1) The street address and legal description of the property sufficient for identification of the property;
- 2) A statement that the property is a potential public nuisance with a concise description of the conditions leading to the finding;
- 3) A statement that the public nuisance must be abated no less than ten (10) days after receipt of the notice. If the public nuisance is not abated within that time, the city may send a second/final ten (10) day notice.
- 4) If the public nuisance is still not abated after the second/final notice, the city may declare the property to be a public nuisance subject to the abatement procedures in section 18-305. In cases of emergency or exigent circumstances, the officer_