

ORDINANCE 05-5332

AN ORDINANCE OF THE CITY OF BILLINGS, PROVIDING THAT THE BILLINGS, MONTANA CITY CODE BE AMENDED BY ADDING SECTIONS TO BE NUMBERED 18-1101 THROUGH 18-1116; PROHIBITING GRAFFITI, DEFINING TERMS, PROVIDING FOR A PROCEDURE WHEREBY GRAFFITI CAN BE REMEDIATED, ESTABLISHING AN EFFECTIVE DATE, AND PROVIDING A SEVERABILITY CLAUSE.

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

SECTION 1. That the Billings, Montana City Code be amended by adding a section to be numbered 18-1101, to read as follows:

Section 18-1101. Purpose and Intent.

The City Council of Billings, Montana is enacting this Ordinance 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 Ordinance pursuant to its police powers, as specified in Section 1.01 of the City Charter and Montana Code Annotated Sections 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 of Montana, to make and pass all laws not repugnant to the Constitution or laws of the State of Montana 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 Ordinance, 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 Ordinance to conflict with any existing anti-graffiti state laws.

SECTION 2. That the Billings, Montana City Code be amended by adding a section to be numbered 18-1102, to read as follows:

Section 18-1102. Definitions.

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

(a) *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.

(b) *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.

(c) *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.

(d) *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 (1/8th) of an inch in width.

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

(f) *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.

(g) *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.

(h) *Unauthorized* means without the consent of the responsible party.

SECTION 3. That the Billings, Montana City Code be amended by adding a section to be numbered 18-1103, to read as follows:

Section 18-1103. Prohibited Acts.

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.

SECTION 4. That the Billings, Montana City Code be amended by adding a section to be numbered 18-1104, to read as follows:

Section 18-1104. Penalties.

(a) Fines and Imprisonment. Any person violating this Ordinance shall be punished as provided in Section 1-110 of this Code.

(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.

SECTION 5. That the Billings, Montana City Code be amended by adding a section to be numbered 18-1105, to read as follows:

Section 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 with the City in the manner specified by the City Council.

(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.

SECTION 6. That the Billings, Montana City Code be amended by adding a section to be numbered 18-1106, to read as follows:

Section 18-1106. Graffiti as Nuisance.

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

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

SECTION 7. That the Billings, Montana City Code be amended by adding a section to be numbered 18-1107, to read as follows:

Section 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 Ordinance.

SECTION 8. That the Billings, Montana City Code be amended by adding a section to be numbered 18-1108, to read as follows:

Section 18-1108. Removal of Graffiti by Property Owner or City.

If graffiti is not removed by the perpetrator according to [Section 7], graffiti shall be removed pursuant to the following provisions:

(a) 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 City Code Section [Section 14 of this ordinance].

(4) An information sheet identifying any graffiti removal assistance programs available through the City and private graffiti removal contractors.

SECTION 9. That the Billings, Montana City Code be amended by adding a section to be numbered 18-1109, to read as follows:

Section 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.

SECTION 10. That the Billings, Montana City Code be amended by adding a section to be numbered 18-1110, to read as follows:

Section 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.

SECTION 11. That the Billings, Montana City Code be amended by adding a section to be numbered 18-1111, to read as follows:

Section 18-1111. Exceptions to Property Owner Responsibility.

The removal requirements of subsection (a) above 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.

SECTION 12. That the Billings, Montana City Code be amended by adding a section to be numbered 18-1112, to read as follows:

Section 18-1112. Right of City to Remove.

(1) 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.

(2) 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 Ordinance, 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.

SECTION 13. That the Billings, Montana City Code be amended by adding a section to be numbered 18-1113, to read as follows:

Section 18-1113. Abatement and Cost Recovery Proceedings.

Assessment.

(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 Sections 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.

SECTION 14. That the Billings, Montana City Code be amended by adding a section to be numbered 18-1114, to read as follows:

Section 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 that meets with the approval of the City Administrator.

(b) Condition 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.

SECTION 15. That the Billings, Montana City Code be amended by adding a section to be numbered 18-1115, to read as follows:

Section 18-1115. Prevention Provisions.

(a) 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 AND NO/100 DOLLARS (\$3000.00).

(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.

SECTION 16. That the Billings, Montana City Code be amended by adding a section to be numbered 18-1116, to read as follows:

Section 18-1116. Anti-Graffiti Fund.

The City Council hereby creates the City of Billings Anti-Graffiti Fund. Costs recovered for graffiti removal and penalties assessed in Billings Municipal Court against violators of this Ordinance shall be placed in the fund, along with any monetary donations received from persons wishing to contribute to the fund. The Council shall direct the expenditures of monies in the fund. Such expenditures shall be limited to the payment of the cost of graffiti removal, the payment, at the discretion of the City Council, of rewards for information leading to the conviction of violation of the Ordinance, the costs of administering the Ordinance, and such other public purposes as may be approved by the Council by resolution.

SECTION 17. EFFECTIVE DATE. This ordinance shall be effective thirty (30) days after second reading and final adoption as provided by law.

SECTION 18. SEVERABILITY. If any provision of this ordinance or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect the other provisions of this ordinance which may be given effect without the invalid provisions or application, and, to this end, the provisions of this ordinance are declared to be severable.

PASSED by the City Council on first reading this 27th day of June, 2005.

PASSED, ADOPTED and APPROVED on second reading this 11th day of July, 2005.

CITY OF BILLINGS

By _____
Charles F. Tooley, Mayor

ATTEST:

By _____
Marita Herold, CMC/AAE City Clerk