

ORDINANCE NO. 08-5461

AN ORDINANCE OF THE CITY OF BILLINGS, PROVIDING THAT THE BILLINGS, MONTANA CITY CODE BE AMENDED BY REVISING SECTION 25-300, WEEDS AND/OR OFFENDING VEGETATION, TO AMEND DEFINITIONS, DUTY TO REMOVE NUISANCE VEGETATION, NOTICE AND ADD APPEAL PROCEDURES, ADOPT THE REVISIONS AS AN AMENDMENT TO THE VEGETATION REGULATIONS AND SET A TIME PERIOD FOR THE REGULATION TO BE EFFECTIVE.

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

Section 1. RECITALS. *Title 7, Chapter 22, Part 41, MCA, and Section 25-300, allows the City of Billings to declare and determine what vegetation within the city or town shall be nuisance weeds; require the owner or owners of any property within the city to exterminate or remove nuisance weeds from their premises and the one-half of any road or street lying next to the land or boulevard abutting thereon; and provide the manner in which they shall be exterminated; and, in the event the owner or owners of any of said premises neglect to exterminate or remove the nuisance weeds, for levying the cost of such extermination or removal as a special tax against the property.*

Section 2. DESCRIPTION. The regulation shall apply to all land within the City of Billings.

Section 3. That the Billings, Montana City Code be amended by revising Section 25-300 to delete language and add new language to the existing regulations to read as follows:

Sec. 25-301. Definitions.

[For the purpose of this article, the following terms, phrases, words and their derivations shall have the meaning given herein:]

Developed parcel means any parcel of land that has been used or is being used for commercial or residential use with a principal structure covering over five (5) percent of the parcel.

Offending vegetation means vegetation which violates the sections of this article.

Nuisance Weeds means:

- (a) all weeds, grasses, noxious weeds, and unintended vegetation growing in excess of twelve inches (12") in height located on any premises in the City.
- (b) any other unintended vegetation creating a potential fire hazard, visual or physical obstruction for pedestrians or vehicles, potential for the spread of said vegetation, or unsightly condition.

Owner and/or occupant means any person who alone, jointly, or severally with others:

- (1) Has a legal or equitable interest in a dwelling unit, with or without accompanying actual possession thereof;
- (2) Acts as the agent of a person having a legal or equitable interest in a dwelling or dwelling unit thereof; or
- (3) Is the general representative or fiduciary of an estate through which a legal or equitable interest in a dwelling unit is administered.

means the title owner(s), representative(s) of any title owner, occupant(s), contract purchaser, or any other person or representative of any entity which holds a legal or equitable interest in any parcel.

Ownership means ownership of land which shall be deemed to exist from the center line of any abutting alley, to and including the curb and gutter area of any abutting street of such lot or tract of land.

Parcel includes both developed and undeveloped parcels.

Undeveloped parcel of land means any parcel of land zoned for but not currently being used for commercial or residential use.

Weed means any plant which:

- (a) Ordinarily grows without cultivation; and
- (b) Is not grown for the purposes of landscaping or food production.

Weeds cut or removed means weeds that can normally be cut by the use of a push or ridden mower.

Sec. 25-302. Duty to remove nuisance weeds.

The existence of nuisance weeds or offensive vegetation in violation of this section constitutes a public nuisance.

(a) *Developed parcel.* It shall be the duty of every owner (occupant) of a developed parcel to cut, destroy or remove, or cause to be cut, destroyed or removed, all nuisance weeds in excess of twelve (12) inches in height growing thereon and upon one-half (1/2) of any road, street or alley abutting this property to a height of four (4) inches or less.

(b) *Undeveloped parcel.* It shall be the duty of every owner (occupant) of an undeveloped parcel to cut, destroy or remove, or cause to be cut, destroyed or removed, all nuisance weeds in excess of twelve (12) inches in height growing thereon and upon one-half (1/2) of any road, street or alley abutting this property to a height of four (4) inches or less on property located within one hundred fifty (150) feet of any developed parcel, road, or park.

(c) *Traffic hazards.* All nuisance weeds and offensive vegetation in developed and undeveloped areas on any parcel shall also comply with and be subject to all requirements imposed under sections 6-1204(b) and section 6-1205 [concerning] 22-441, 22-443 and 27-615, B.M.C.C. concerning visibility at intersections, alleys and drive approaches.

(d) *City Property.* The City Administrator shall designate responsibility for removal of nuisance weeds on City properties to the appropriate City Department(s).

Sec. 25-303. Notice to destroy.

The city clerk or designee shall give notice to destroy nuisance offending weeds within the city limits by publishing notice to the public at least once each week for two (2) consecutive weeks in a newspaper of wide circulation within the city. The last publication shall not be less than seven (7) days prior to April 30th ~~thirtieth~~. Such notice shall at a minimum advise the public as follows:

(1) That all owners of real property ~~or agents having control thereof~~ are responsible for destroying all nuisance weeds in prohibited areas by extermination, removal or cutting not later than April 30th ~~thirtieth~~ of each year and to keep the areas free of nuisance weeds through September 30th ~~October~~ ~~thirtieth~~ of that year.

(2) Failure to remove the offending nuisance weeds may cause the city to cut or remove the weeds and charge the cost thereof against the real property together with an administrative cost equal to twenty-five (25) percent of the removal cost and a penalty of twenty-five dollars (\$25.00) for the first time the city provides the cutting/removal, fifty dollars (\$50.00) for the second cutting/removal and seventy-five dollars (\$75.00) for the third and any following subsequent times the city provides cutting/removal per season calendar year.

Sec. 25-304. Failure to comply.

Upon first failure, neglect or refusal to maintain the prohibited areas free from nuisance weeds during the prescribed period, the city shall give notice to the non-complying owner, agent or occupant thereof. Such notice shall provide as at a minimum:

(1) That the non-complying owner, or agent thereof, ~~is shall be~~ allowed seven (7) ten (10) days from the date of notice of noncompliance to exterminate or remove nuisance weeds;

(2) That upon failure to comply the city may by its own work forces or by contract cause the weeds to be exterminated, removed or cut and the cost thereof shall be assessed against the non-complying real property together with an additional administrative ~~cost~~ ~~fee as set forth in sec. 25-303(2)~~ ~~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 of any parcel~~ continues to neglect to maintain the prohibited areas free from weeds, allow nuisance weeds to grow in violation of this article after the City has already exterminated, removed, or cut nuisance weeds at that same parcel during the preceding 12 months, the city may at its sole discretion exterminate, remove or cut the weeds again as needed without any additional notice to the owner, ~~of any kind~~. Charges as in Sec. 25-303(2) subsection (2), including penalty, will be assessed for each time the city removes the nuisance weeds;

(4) That the assessed amount together with costs and penalties shall constitute a lien on the non-complying real property and will be taxed as a special assessment against the real property.

Sec. 25-305. Notice.

~~Notice under this article is sufficient if served personally or mailed regular mail to the last known address or the last address 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.~~

Notice of a violation under this article shall be made by either:

- (a) Posting a copy of the notice on the parcel;
- (b) Mailing a copy of the notice by first class U. S. Mail to the owner of the property at the last known address shown on the tax rolls of Yellowstone County; or
- (c) Personal service upon the owner.

Notice shall be deemed given and complete the day the notice is posted, mailed, or personally served.

Sec. 25-306. 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 or citation shall be punished as provided in section 1-110.

Sec. 25-307. 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 nuisance weeds were removed or exterminated 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 weed 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 tax, as provided in MCA 7-22-4101 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.

Sec. 25-308. Appeals

(a) In the event an owner disagrees with a notice of violation, or due to extreme hardship is incapable of complying with the provisions of this article, the owner may appeal a violation notice to the Director of Planning within seven (7) days of receiving the violation notice. Such appeal must be in writing and must set forth the specific reasons why the violation notice is not well taken, or why the owner is unable to comply with the provisions of this chapter. The Director of Planning shall review the appeal and make a determination as to the validity of the owner's

basis for objecting to the action demanded, and shall promptly notify the owner of the decision reached. For good cause shown, or in cases of extreme hardship, the Director of Planning may make a determination that the provisions of this article are inapplicable to a certain parcel. Decisions of the Director of Planning are final, and subject only to judicial review.

(b) An owner may file a written appeal of any costs, fees and penalties imposed under this article to the Director of Planning within seven (7) days of being billed. Such appeal must be in writing and must set forth the specific reasons as to the owner's objections to the costs, fees, and penalties imposed. The Director of Planning shall review the appeal and make a determination as to the validity of the owner's basis for objecting the costs, fees, and penalties imposed, and shall promptly notify the owner of the decision reached. For good cause shown, or in cases of extreme hardship, the Director of Planning may modify or waive costs, fees and penalties imposed under this article. Decisions of the Director of Planning are final, and subject only to judicial review.

Sec. 25-309. Time Calculations

All time periods referenced in this article shall be calculated as actual calendar days, including weekends and holidays.

Section 6. REPEALER. All ordinances or parts of ordinances in conflict herewith are hereby repealed.

Section 7. 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.

Section 8. EFFECTIVE DATE. This ordinance shall be effective from and after final passage and as provided by law.

PASSED by the City Council on first reading April 14, 2008.

PASSED, ADOPTED AND APPROVED on second reading April 28, 2008.



CITY OF BILLINGS:

BY:

Ron Tussing, Mayor

ATTEST:

BY: Cari Martin
Cari Martin, City Clerk

