

ORDINANCE NO. 12-5564

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 cut 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.

Weeds cut or removed means reducing the height of the nuisance weeds to four (4) inches or less. ~~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 in violation of this section constitutes a public nuisance.

(1) *Developed parcel.* It shall be the duty of every owner 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 (½) of any road, street or alley abutting this property to a height of four (4) inches or less.

(2) *Undeveloped parcel.* It shall be the duty of every owner 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 ($\frac{1}{2}$) 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.

(3) *Traffic hazards.* All nuisance weeds on any parcel shall also comply with and be subject to all requirements imposed under Sections ~~22-441, 22-443 and~~ 27-615, concerning visibility at intersections, alleys and drive approaches.

(4) *City property.* The city administrator shall designate responsibility for cutting or 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 cut or remove ~~destroy~~ nuisance 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. Such notice shall at a minimum advise the public as follows:

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

(2) Failure to cut or remove the 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 cutting/ 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 subsequent times the city provides cutting/removal per 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 at a minimum:

(1) That the non-complying owner, or agent thereof, shall be allowed ten (10) days from the date of notice of noncompliance to ~~exterminate~~ cut 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~~ or removed and the cost thereof shall be assessed against the non-complying real property together with an additional administrative fee as set forth in subsection 25-303(2);

(3) If the owner, of any parcel continues to allow nuisance weeds to grow in violation of this article after the city has already ~~exterminated, removed, or cut or removed~~ nuisance weeds at that same parcel during the preceding ~~twelve (12)~~ six (6) months, the city may at its sole discretion ~~exterminate, remove or cut or remove~~ the weeds again as needed without any additional notice to the owner. Charges as in subsection 25-303(2), including penalty, will be assessed for each time the city

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

- (1) Posting a copy of the notice on the parcel;
- (2) 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
- (3) 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 municipal infraction.

A violation of the provisions of this article shall be a municipal infraction. Persons found to have committed a violation of this article shall be subject to civil penalties as specified in section 18-1304.

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 cut or 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 cutting/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. 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 4. REPEALER. All ordinances or parts of ordinances in conflict herewith are hereby repealed.

Section 5. 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 6. 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 23, 2012.

PASSED, ADOPTED AND APPROVED on second reading May 14, 2012.



CITY OF BILLINGS:

BY: Thomas W. Hanel
Thomas W. Hanel, Mayor

ATTEST:

BY: Cari Martin
Cari Martin, City Clerk