

## **ARTICLE 18-300. NUISANCES<sup>1</sup>**

### **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.

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<sup>1</sup>Editor's note(s)—Ord. No. 04-5280, §§ 1—8, adopted May 10, 2004, amended article 18-300 in its entirety to read as herein set out. Formerly, article 18-300 pertained to similar subject matter and derived from the Code of 1967, §§ 10.40.010(a), (c), (d), (f), 10.40.020, and Ord. No. 86-4714, § 1, adopted September 8, 1986.

Cross reference(s)—Health and sanitation generally, Ch. 15.

State law reference(s)—Public nuisance, MCA 45-8-111 et seq.

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*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)~~ one (1) or more 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.

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

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

- ~~i. Buildings with substantially deteriorating or peeling paint which allows the exterior building coverings to significantly deteriorate;~~
- ~~ii. Building exteriors with visible signs of decay such as siding with dry rot, warping or cracking;~~
- iii. Two (2) or more reports to the police department or code enforcement division of building exteriors, walls, fences, driveways, or walkways which has been defaced by "graffiti" within a 12-24 month period;
- iv. Two (2) or more reports to the police department or code enforcement division of unauthorized persons (trespassing) on the property within a 12-24 month period;
- v. Has one or more essential utilities turned off for a period of 30 days or more;
- vi. Dead, dying or diseased trees, shrubs and other desired vegetation;
- ~~vii. Dead, dying or diseased shrubs and other desired vegetation;~~
- viii. Dead, dying or diseased lawn area(s) due to lack of water or other necessary maintenance;
- ix. Neglected trees and shrubs growing uncontrolled without proper pruning;
- x. Building walls which are broken, defective, or significantly deteriorated; or
- xi. Building appurtenances such as railings, gutters, fences, gates or exterior light(s) are broken, fallen, or significantly damaged.
- xii. Damaged roofing to include missing shingles or roofing materials; warped shingles; or deteriorating roofing materials;

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(6) Creating or maintaining on any premises:

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

(b) any premises 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/or 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/or 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

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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/or 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~~

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~~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:](#)

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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/or 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 ~~D~~istrict ~~C~~ourt 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.

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**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.