

Ordinance No. 592

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SIDNEY, MONTANA, AMENDING TITLE 8, CHAPTER 3, NUISANCES, OF THE CITY CODE OF THE CITY OF SIDNEY, MONTANA.

WHEREAS, the City Council of the City of Sidney desires to amend Title 8, Chapter 3, Nuisances to amend the procedure for enforcement and abatement of nuisances,

NOW, THEREFORE, BE IT ORDAINED AS FOLLOWS by the City Council of the City of Sidney that Chapter 3 of Title 8 of the City Code of the City of Sidney is hereby amended as follows:

8-3-1: DEFINITIONS:

ABATE: To repair, replace, remove, destroy, or otherwise remedy the condition in question by the means and extent deemed necessary by the enforcement agency, as identified herein, in the interest of the health, safety, and general welfare of the community.

ADMINISTRATIVE CITATION: Means a citation issued by a code enforcement officer of the city-county for violations of this chapter.

COMMUNITY DECAY: An objectionable condition resulting in situations that are injurious to health, indecent, offensive to the senses, or which obstruct the free use and enjoyment of adjacent property so as to interfere with the comfortable enjoyment of life or the values of property, including, but not limited to, rubble, debris, junk, refuse, landscaping litter, junk vehicles, wood, dilapidated buildings, dilapidated fences, dilapidated garages and outbuildings, and storing and accumulation of wood, tires, and other objects for more than thirty (30) days. This definition shall also encompass those situations more specifically defined in section 8-3-3. This definition does not apply to properly permitted construction and/or demolition projects during the time any necessary permits are in effect.

COMMUNITY STANDARDS: The standards hereby adopted and hereinafter approved by the city council as a means of protecting and enhancing the safety and security of the citizens of Sidney and the quality of the city's environment and to provide guidance to the enforcing department as to the application of this chapter.

OWNER: Any person whose name appears on the public records of the city of Sidney and county of Richland as the owner of premises, whether under deed or contract.

PERSON: Any individual, firm, partnership, company, association, corporation, or other entity whether organized for profit or not.

PREMISES: Any lot or parcel of land or property, including any building or portion thereof, improved or unimproved.

PUBLIC NUISANCE: Any condition which adversely affects, at the same time, an entire community or neighborhood or any other considerable number of persons, although the extent of the annoyance or damage inflicted on individuals may be unequal. A condition constituting "community decay" is by definition a public nuisance.

PUBLIC RIGHT OF WAY: Any area or parcel of land granted, deeded, dedicated to, or otherwise acquired by the city or the public at large for any public purpose, including, but not limited to, alleys, roadways, sidewalks, public streets, water or waterways, storm drains, sanitary sewers, water pipes, electric and telephone conduits, electronic services, overhead wires, and supporting structures.

PUBLIC VIEW: Any area visible from a point, up to six feet (6') above the surface of the center of any public roadway, sidewalk or right of way from which the public nuisance is visible.

RESPONSIBLE PARTY means:

1. The person or persons who own the property where the violation exists;
2. The person or persons in charge of the premises where the violation exists;
3. The person or persons using the premises where the violation exists;
4. If any of the above is a minor, a parent or guardian of the minor shall be the responsible party; and
5. If any of the above is a business entity the manager or on-site supervisor where the violation exists.

SHIELDING: Refers to any natural barriers, fencing or other manmade barriers used to conceal material from public view. Any shielding barrier must conform to all local zoning regulations, building codes, covenants, and applicable city ordinances. Any shielding is to be of sufficient height and density to conceal any violation on the premises visible to public view. This definition is not intended to require that permanent buildings, utility poles, or other similar structures be shielded. (Ord. 509, 2-22-2011)

8-3-2: MAINTENANCE DUTY OF PERSON CONTROLLING OFFENDING PREMISES:

It shall be the responsibility and duty of any person owning, leasing, occupying, or having charge or possession of any premises in the city, and the agent thereof, to keep and maintain such premises and the right of way abutting such premises in a safe, sanitary, orderly, clean, and aesthetic condition. Failure to do so shall be a violation of this chapter. (Ord. 509, 2-22-2011)

8-3-3: CONDITIONS CONSTITUTING COMMUNITY DECAY:

A. It shall be a violation of this chapter for any person to allow any of the following to exist on any land or property in the City of Sidney:

1. The piling or spreading of straw, hay, grass trimmings or similar material, unless the material is to be used as soil conditioner or mulch and the material is plowed into the ground or otherwise mixed and covered with clean soil within thirty (30) days of its placement upon the premises.
2. The dumping, piling, or stacking of bricks, tires, concrete blocks, wood, lumber, and/or similar material in public view, unless said material is stacked in neat piles and all items and residue from such items, such as mortar, wood splinters, broken and unusable bricks, are, within thirty (30) days of their placement on the premises, removed to a licensed solid waste disposal site or to some other location which has been approved by the appropriate authority.
3. The storage or accumulation of cardboard boxes or paper, unless the same is specifically accumulated for recycling and is removed from the premises within thirty (30) days of its placement on the premises.
4. The storage or accumulation of broken packing boxes and shipping pallets, rubble, debris, junk, refuse, dead animals, or other similar items, unless the same is removed from the premises within thirty (30) days of its placement on the premises.
5. The piling, dumping, or depositing of any dirt, demolition wastes, including wood, bricks, concrete, used road blacktop and other similar materials.
6. The storage and accumulation of iron, metal, component vehicle and machine parts, household appliances, barrels, and other salvaged metal items, unless such material is stored in an approved, properly zoned and permitted, and shielded salvage facility.
 - 6.1. If such material is being accumulated as part of an ongoing, active salvage business, the salvage business must:
 - 6.1.1. Be located in an area properly zoned for a salvage yard, pursuant to the City of Sidney Zoning Ordinance, as may be amended from time to time;

6.1.2. Possess a conditional use permit, pursuant to Section 11.14.40 of the Zoning Ordinance of the City of Sidney, as may amended from time to time; and

6.1.3. Shield any materials described in this section from public view according to the standards set forth in this chapter.

7. Abandoned, discarded, or unused furniture, stoves, sinks, toilets, cabinets, or other household fixtures or equipment.

8. Abandoned, wrecked, dismantled, or inoperative, vehicles trailers, campers, and boats unless the same are accumulated as part of an ongoing, active salvage business located in an area properly zoned for such a business and which possesses a conditional use permit The possession by any individual of more than two inoperable vehicles on any one piece of property on which there is not an ongoing, active salvage business shall be a violation of this ordinance.

9. Excessive amounts of animal waste or its byproducts; any amount of human waste; any condition which may otherwise cause unsanitary or hazardous conditions to exist; and any condition which may be offensive to other persons by sight or odor and which may detract from the aesthetic qualities or economic value and vitality of any neighborhood within the city. (Ord. 555, 8-18-2014)

10. The presence of and enforcement of law with respect to abandoned and/or junk vehicles is addressed in Title 61, Chapter 12, Part 4 of the Montana Code Annotated, as may be amended from time to time, and is hereby incorporated by reference. (Ord. 509, 2-22-2011)

B. It shall be a violation of this chapter for any person to allow the following conditions to exist within the City of Sidney which compromise the health, safety, and welfare of the citizens of the City of Sidney and which otherwise detract from the sanitary and aesthetic qualities of the community and/or jeopardize the economic value and vitality of any neighborhood of the City:

1. Buildings of any kind which are abandoned, boarded up, partially destroyed, structurally unstable, partially constructed, and/or uncompleted buildings after building permits have expired.

2. Buildings used for residential purposes which do not have running water, electricity, and sewage/septic services. Conditions described in this subsection shall be deemed unsanitary and hazardous to the health and public safety of the citizens of the City of Sidney.

3. Buildings with damaged and/or deteriorating exteriors causing, or having the potential to cause, dangerous structural conditions.

4. Broken windows, doors, attic vents, damaged roofs, or other appurtenances.

5. Premises having a topography, geology, or configuration which, as a result of grading operations or improvements to the land, experience erosion, subsidence, unstable soil conditions, or surface or subsurface drainage problems potentially hazardous to adjacent premises.
6. Building exteriors, walls, fences, driveways, or walkways which are broken, defective, deteriorated, in disrepair, if such condition has existed and persisted on the premises for a period of thirty (30) days.
7. Building exteriors, walls, fences, driveways, or walkways which have been defaced due to any writing, inscription, scratching, and/or any other marking commonly referred to as "graffiti."
8. Any other condition which is, or may reasonably become, infested or inhabited by rodents, vermin, or animals, or may furnish a breeding place for mosquitoes or other pests, or in any other way threatens or endangers the public health, welfare, or safety of the citizens of the City of Sidney, or which offends the senses, or is likely to impair the economic and aesthetic value of neighboring property.

C. The standards and conditions set forth in this section 8-3-3 are not intended to be, nor shall the same be considered, the sole or exclusive standards for establishing a violation. The committee has discretion to determine whether a violation exists. (Ord. 509, 2-22-2011)

8-3-4: ESTABLISHMENT OF COMMITTEE TO EXAMINE COMPLAINTS:

There is hereby established a committee composed of one member of the City Council, the mayor, the department of public works, and the office of the city building inspector, as the persons and departments which shall have the following duties and responsibilities:

- A. The duty to inspect when there has been a complaint that a public nuisance is present in an area. (Ord. 555, 8-18-2014)
- B. The authority to formulate applicable standards by which to enforce this chapter, which standards must be approved by the city council.
- C. The duty to determine whether an infraction of the provisions of this chapter has occurred, following credible complaints. (Ord. 509, 2-22-2011)
- D. The duty to allocate responsibility for enforcement actions to the appropriate enforcement authority: Sidney fire department, Sidney police department, the city department of public works, or the city building inspector. (Ord. 555, 8-18-2014)

8-3-5: ENFORCEMENT AGENCIES:

The enforcement authority designated under section 8-3-4 of this chapter to assume

enforcement of the provisions of this chapter shall have the following powers as enforcement agency:

- A. The duty to send a written notice of violation to any individual determined to be the owner of the property found to be in violation of this chapter.
- B. The power to enter upon the premises in violation after written notice and after a show cause hearing, for the specific purpose of abating the violation.
- C. The power to assess the property owner for the actual costs of an abatement made by the city or its agent. (Ord. 509, 2-22-2011)

8-3-6: ENFORCEMENT OF COMMUNITY STANDARDS:

- A. Inspection: Within ten (10) days of receiving a signed written complaint, or otherwise making determination that, a condition of community decay exists, the designated enforcement agency shall conduct an inspection of the premises alleged to be in violation of this chapter to determine whether a violation exists. Whenever appropriate, such reports of violation as well as subsequent inspections shall be shared and coordinated with the Richland County sanitarian.
- B. Notice: If the designated enforcement agency determines that a violation of this chapter exists, the agency shall notify the owner of the premises in violation, in writing of the violation and order the abatement or mitigation of the violation within ten (10) days from the date of the notice. The property owner and/or occupant of the premises may request an extension in writing submitted to the director of public works. The director of public works shall have the authority to grant an extension of not more than thirty (30) days in which to bring the premises into compliance. Any additional extensions or extensions longer than thirty (30) days must be approved by the committee.
- C. Service of Notice: The Notice shall be served by the enforcement agency on the property owner and/or occupant(s) of the premises by posting the notice on the door of the premises and by certified mail, return receipt requested, to the property owner.
- D. Contents Of Notice: The notice of violation shall:
 - 1. Include a statement specifically describing the violation.
 - 2. Specify that the owner of the property has ten (10) days from the date of the written notice to bring the premises into compliance with community standards; and
 - 3. Advise the owner of the premises that if the violation is not abated within ten (10) days from the date of the written notice, the enforcement agency may undertake

abatement or mitigation and assess the costs thereof to the owner of the premises;
and

4. Advise the owner of any building constituting a public nuisance which cannot be abated under the terms of this chapter, and that has become uninhabitable or which has been found to represent a dangerous condition to members of the public, that abatement of said nuisance must be accomplished by demolition.

D. Emergency Abatement:

1. Whenever the City, the committee, or the enforcement agency has reason to believe that a public nuisance exists, and that such public nuisance constitutes an emergency presenting imminent danger of serious injury to persons or property, the committee, an authorized representative appointed by the committee, a fire marshal, or police officer may immediately enter into any building or upon any premises within the jurisdiction for purposes of abatement.
2. Whenever a public nuisance exists which constitutes an emergency presenting imminent danger of serious injury to persons or property, the committee may order, without notice or judicial action, that the public nuisance be immediately abated by removal, destruction, or mitigation. If the owner or responsible party fails to comply with such an order immediately, or cannot be located, the committee shall cause the structure to be demolished and removed, or the nuisance otherwise be abated, either through available public agency or by contract or arrangement with private persons. The cost of such abatement shall be paid by the owner of the property upon which the nuisance existed, pursuant to Subsection F.

- E. Fines: Violations of this Chapter shall be punishable by a fine of \$100.00, and every day subsequent to the date the notice of violation was provided in which the property owner shall fail to comply with this Chapter shall be deemed as a separate offense; provided that any fine imposed shall not exceed a maximum fine of \$500.00 pursuant to M.C.A. § 7-5-109.

F. Abatement and Collection of Costs:

1. Determination Of Compliance: Upon expiration of the property owner's ten (10) day time-frame for abatement, the enforcement agency shall conduct an inspection of the premises to determine whether abatement or mitigation has occurred.
2. Administrative Sanctions: In the event the enforcement agency has determined that no abatement or mitigation has occurred within ten (10) days after the date of the notice, the following procedure shall apply:
 1. The code enforcement officer shall notify the owner or responsible party by certified mail with an administrative citation indicating that community decay

conditions exist on the property and that the owner or responsible party must take measures to correct the violation.

2. If the code enforcement officer believes it is advisable, he or she may post a dated order in a conspicuous place on the property, providing notice that community decay condition(s) have been found on the property and informing the owner or responsible party of the matters set forth above in the notice of violation together with the abatement actions that may be taken under this chapter if the owner or responsible party fails to abate the community decay condition(s).

Request for Hearing. Within ten days after receiving notice to comply with the code enforcement notification to abate the community decay condition(s), the owner or responsible party may request a hearing before the Municipal court. If the owner or responsible party has requested a hearing, the code enforcement officer may not take any action to abate the violation until after the hearing and authorization to proceed has been provided by the court. To request a hearing, the responsible party must file a request with the municipal court, and mail a copy of this request to the City of Sidney.

8-3-7 - Failure to abate.

If the owner or responsible party shall fail to abate the community decay conditions pursuant to the requirements set forth in the notice of violation, or in the event of an appeal, within ten days of the decision of the municipal court upholding the notice of violation, the code enforcement officer may enter upon the subject private property and shall take any and all measures necessary to abate the community decay condition(s).

8-3-8 - Cost of abatement of the violation.

Within twenty days after abatement of the community decay condition(s), the owner or responsible party will be notified of the cost of abatement, including administrative costs. If the owner or responsible party fails to pay the bill in thirty days, the code enforcement officer shall certify the amount of the charges to the clerk and recorder for collection.

8-3-9 Procedure for Determining and Assessing Costs of Abatement: The property owner shall 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. A summary listing of the assessments and property owners will be kept by the Clerk through June 31 of each year, and the list shall be presented to the Treasurer for billing on the next real property tax statement. A special abatement

fund shall be established to account for costs, collections, and transactions necessary to the efficient operation of enforcement procedure. Assessment funds collected shall be returned to the designated abatement account for future use on other involuntary property abatements or for transfer back to the City general fund. The City shall determine the actual costs of abatement and document such costs. The following expenses will be assessed as the actual costs of abatement:

- a. Planning staff time, mileage, and costs;
- b. Police department staff time, mileage, and costs;
- c. Other involved City staff time, including attorney's fees, mileage, and costs;
- d. Postage and mailing costs;
- e. Other direct costs associated with abatement;
- f. An interest fee of six (6) percent per annum computed on the above costs, which will be waived if the total cost of abatement is paid by the property owner within thirty (30) days of notice.

8-3-10: MITIGATION OF CONDITIONS CONSTITUTING COMMUNITY DECAY FOR PROPERLY ZONED SALVAGE YARDS:

- A. The maintenance of accumulations and conditions such as those described in sections 8-3-2 and 8-3-3 of this chapter which would otherwise be considered public nuisances shall be lawful under this chapter if, and only if:
 - a. The premises is being used as an active, ongoing salvage business located in an area properly zoned as a salvage yard, pursuant to the City of Sidney Zoning Ordinance, as may be amended from time to time,
 - b. The owner(s) of the premises possesses a conditional use permit, pursuant to Section 11.14.40 of the Zoning Ordinance of the City of Sidney, as may be amended from time to time; and
 - c. The condition on the premises is shielded from public view in accordance with the following standards:
 - i. **Erection and Maintenance of Fences:**
 - 1. Wooden Fences: When wooden fences are used for shielding, the boards must be spaced and/or slated to reduce

wind load. The space between boards when viewed from broadside shall not be more than one and one-half inches ($1\frac{1}{2}$ "), and the interval between spaces shall not be less than seven and one-half inches ($7\frac{1}{2}$ "). Rough dimension lumber or better is acceptable.

2. Chainlink: Chainlink fences with standard fiberglass or other inserts are acceptable, provided the gap between adjacent slats does not exceed one and one-half inches ($1\frac{1}{2}$ ").
3. Other Types of Fencing: Other types of fencing of equivalent permanence, attractiveness, and shielding qualities, including corrugated metal, may also be acceptable, in the discretion of the committee.

ii. Alternative Shielding:

1. Shrubs and Trees: Shielding with shrubs and trees is acceptable, as long as they provide a similar degree of shielding to a fence at all times of the year.
2. No more than one fencing material shall be used on any one side of a shielding barrier, unless approved by the committee.

- B. The shielding erected for mitigation purposes shall be maintained by the person responsible for a violation under sections 8-3-2 and 8-3-3 of this chapter in an appropriate and workmanlike manner and shall be replaced as it becomes necessary. (Ord. 509, 2-22-2011)

8-3-11: COMPATIBILITY:

With the exception of section 8-3-7 of this chapter, nothing in this chapter may be construed to abrogate or adversely affect the provisions of any lawful ordinance, regulation or resolution that is more restrictive than the provisions of this chapter or those of the Montana Code Annotated. (Ord. 509, 2-22-2011)