

Ordinance #102

AN ORDINANCE REPEALING AND AMENDING CHAPTER 8.24 OF THE HARLEM MUNICIPAL CODE REGARDING COMMUNITY DECAY

**BE IT ORDAINED BY THE CITY COUNCIL OF THE
CITY OF HARLEM, MONTANA:**

Section 1: Chapter 8.24 of the Harlem Municipal Code passed and adopted by the City Council of the City of Harlem on May 14, 2008.

Section 2: Chapter 8.24 of the Harlem Municipal Code is amended to read as follows:

8.24 Community Decay

The purpose of this ordinance is to regulate, control and prohibit conditions that contribute to community decay on, adjacent to, or visible from all public roadways and rights of way within the City of Harlem, so as to improve property values and increase community awareness of each individual's responsibilities and obligations as good citizens and good neighbors.

8.24 Definitions:

For purposes of this ordinance, the following definitions shall apply:

COMMUNITY DECAY: Any condition created by allowing rubble, debris, junk, refuse, landscaping debris, auto parts, abandoned cars, or other matter to accumulate, resulting in conditions that are injurious to health, are indecent, are offensive to the senses, or which obstruct the free use and enjoyment of life or the values of property. This definition does not apply to property permitted construction and/or demolition projects during the time any necessary permits are in effect. This definition does not include persons servicing, manufacturing or processing materials, goods, or products on lots in public view, so long as the materials used in the normal operation of the business are neatly stacked or piled. This definition does not include normal residential maintenance or landscaping projects.

PUBLIC NUISANCE:

(1) "Public nuisance" means:

(a) a condition which endangers safety or health, is offensive to the senses, or obstructs the free use of property so as to interfere with the comfortable enjoyment of life or property by an entire community or neighborhood or by any considerable number of persons;

(b) any premises where persons gather for the purpose of engaging in unlawful conduct; or

(c) a condition which renders dangerous for passage any public highway or right-of-way or waters used by the public.

(2) A person commits the offense of maintaining a public nuisance if he knowingly creates, conducts, or maintains a public nuisance.

(3) Any act which affects an entire community or neighborhood or any considerable number of persons (as specified in subsection (1(a))) is no less a nuisance because the extent of the annoyance or damage inflicted upon individuals is unequal.

(4) No agricultural or farming operation, place, establishment, or facility or any of its appurtenances or the operation thereof is or becomes a public nuisance because of the normal operation thereof as a result of changed residential or commercial conditions in or around its locality if the agricultural or farming operation, place, establishment, or facility has been in operation longer than the complaining resident has been in possession or commercial establishment has been in operation.

(5) Noises resulting from the shooting activities at a shooting range during established hours of operation are not considered a public nuisance.

DEPARTMENT: The agency of city government designated by the City of Harlem Mayor to enforce this ordinance *is the City council*.

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

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

SHIELDING: Any natural barriers, fencing or other manmade barriers used to conceal a facility from public view. All shielding barriers must conform to all local zoning, planning, and building and protective covenant requirements. All shielding barriers shall be of sufficient height and density to conceal any violation on the premises from public view. This definition is

not intended to require that permanent buildings, utility poles or other similar structures be shielded.

PROHIBITIONS: It shall be a violation of this ordinance to own or maintain any public nuisance or community decay. A public nuisance or community decay include, but are not limited to the following:

- A. No person shall dump, pile, or stack bricks, concrete blocks, waste wood, and similar material in public view unless said material is stacked in neat piles and all waste material from the cleaning of such items, such as mortar, wood splinters, broken and unusable bricks, is removed to a licensed solid waste disposal facility or to some other location which has been approved by the designated department within thirty (30) days.
- B. No person shall store or accumulate cardboard boxes, broken packing boxes, paper, broken shipping pallets, rubble, debris, junk refuse, dead animals or animal parts, or other similar items in public view.
- C. No person shall pile, dump or deposit any dirt, demolition waste, including wood, bricks, concrete, used road black top, or other similar materials in public view unless such material is to be utilized for fill material to fill a land depression. If such material is used as fill material, it may contain only dirt, bricks, concrete and/or used road black top, as allowed by local, state and federal regulations.
- D. No person shall accumulate or store iron, metal, machine parts, household appliances, barrels, or other salvaged metal items in public view.
- E. No person shall accumulate or store any other rubble, debris, junk or refuse that, upon investigation, is deemed to be a “public nuisance” as defined in this chapter.
- F. Abandoned vehicles shall be handled pursuant to this ordinance and also pursuant to section 75-10-501, Montana Code Annotated.

SHIELDING: The maintenance of material that would be considered a public nuisance shall be lawful under this chapter if such material is shielded from public view in accordance with the following standards:

- A. Any shielding must conform to all local zoning, planning, building code, and protective covenant requirements applicable to the property and shall be of sufficient height and density that none of the nuisance material on the premises is visible to public view.
- B. Trees, hedges, and shrubs are preferred as shielding; wooden fencing would also be acceptable as shielding material.
- C. No more than one nonvegetative shielding material shall be used on any one side of a shielding barrier unless approved by the designated department.
- D. All materials must comply with all local, state, and federal regulations, including the uniform fire code.

ABATEMENT AND MITIGATION: The abatement or mitigation of conditions which constitute a public nuisance prohibited by this ordinance shall be accomplished under the provisions of this section. Where an established use results in the storage of material otherwise prohibited in this ordinance within public view due to an elevated public right of way or other circumstance beyond the control of the property owner, the condition shall be mitigated in accordance with the provisions of this section.

- A. Initiation: Abatement or mitigation shall be initiated by the ~~designated department~~ *City council*.
- B. Inspection: Within ~~thirty (30)~~ *ten (10)* days of receiving a signed, written complaint *by an individual or written documentation by a city employee that a condition of public nuisance or that a condition of* community decay exists, the ~~designated department~~ *City council* shall conduct an inspection of the property alleged to be in violation of this chapter to determine whether there is, in fact, a violation.
- C. Notice: If it is determined that there is a violation of this ordinance, the designated department shall notify the owner of the property of the violation, in writing and by certified mail and order the abatement or mitigation of the violation or the submission of a plan for abatement or mitigation within ~~thirty (30)~~ *ten (10)* days. The notice of violation shall:

1. Include a statement specifically describing the violation;
2. Specify that the owner, manager, or lessee of the property has ~~thirty (30)~~ *ten (10)* days from receipt of such notice to bring the property into compliance or to submit a plan to comply with this ordinance by means of removal, shielding, or mitigation of the condition(s).
3. ~~Advise the owner, manager or lessee of the property that if the violation is not abated or mitigated, the designated department may undertake abatement or mitigation and assess the cost thereof to the owner of the property.~~

D. Plan of abatement or mitigation: The owner, manager, or lessee of the property may, after receipt of a notice of violation, submit a plan of abatement or mitigation to the designated department which shall include:

1. The type of abatement, shield, or mitigation to be undertaken;
2. The date for commencement of action; and
3. The date for completion of the abatement or mitigation.

The designated department may accept such a plan and defer further proceedings under this chapter pending abatement or mitigation.

E. Enforcement:

1. After ~~thirty (30)~~ *ten (10)* days, or the date agreed to by the property owner and the designated department, which shall not exceed a total of ~~ninety (90)~~ *thirty (30)* days, the department shall determine whether the violation has been abated.
2. ~~When enforcing this ordinance, the city shall first pursue criminal sanctions and shall pursue abatement or mitigation procedures when necessary to protect the health, safety and welfare of the residents of the city.~~
2. If the owner fails to act, the ~~designated department~~ *City council* shall inform ~~City council~~ *its City attorney of the violation*. ~~City council will inform law enforcement of the violation, and law enforcement~~ *The City attorney* will provide the owner, manager, or lessee of the property a notice allowing ~~30~~ *ten (10)* days for the

abatement and/or mitigation of the nuisance. If the nuisance still exists after the ~~30~~ *ten (10)* day notice, the owner, manager, or lessee may be ~~ticketed for violation of the ordinance and upon conviction will be~~ subject to a fine not to exceed \$500.

3. In addition to a fine, the court may order the property owner to abate the violation within a reasonable, specified time.
4. If the property owner fails to comply with the court order, the court can grant the City of Harlem authority to enter upon the owner's property for the specific purpose of abating, mitigating, or shielding the violation.
5. The city may, by court order, assess the property owner for the actual cost of abatement, mitigation, or shielding.
6. If the assessment is not paid, it shall become a lien on the property and may be enforced the same as nonpayment of property taxes.

Section 3: This Ordinance was passed, approved, and adopted by the City Council on the 8th day of September, 2014, and was approved by the Mayor on the 8th day of September, 2014.

Section 4: This Ordinance shall be effective thirty (30) days after its passage by the City Council and approval by the Mayor of the City of Harlem.

William J. Taylor
Mayor of the City of Harlem

Attested to by:

Rebecca Skoyen
Clerk of the City of Harlem