

ORDINANCE NO. 2022-10

AN ORDINANCE AMENDING HARDIN CITY CODE DECLARING DEAD AND DISEASED TREES AS A PUBLIC NUISANCE AND ESTABLISHING PROCEDURES FOR ABATEMENT

WHEREAS, the City of Hardin desires to modify and change the City Code of Hardin, Montana in the interest of public health and safety related to the dead, dying, decaying, or diseased trees on private property;

WHEREAS, the City of Hardin has the general authority to establish, maintain and enforce city codes necessary for the management of the affairs of a city, pursuant to Mont. Code Ann. § 7-16-4101 et seq. (2021):

WHEREAS, the City Council of the City of Hardin has the specific authority to define and abate nuisances and to impose fines upon persons for creating, continuing, or suffering nuisances to exist on the premises that they control, per Mont. Code Ann. § 7-5-4104 (2021).

NOW THEREFORE BE IT ORDAINED BY THE CITY COUNCIL FOR THE CITY OF HARDIN, MONTANA, Title 9, Chapter 3 is amended by inserting a new section, 9-3-5, as follows:

9-3-5: TREES AND SHRUBS ON PRIVATE PROPERTY:

A. It shall be unlawful for any person owning, having supervision, control, or possession of any lot, tract, parcel of land or portion of it, occupied or unoccupied, improved or unimproved, within the City Limits of the City of Hardin, to permit or maintain any tree or shrub or part thereof which is a public nuisance, hazard, or danger to other property owners, including dead, dying, decaying, and or diseased trees and shrubs, and it shall be the duty of such person to promptly remove, eradicate otherwise control such condition.

B. If the City Code Enforcement Officer, with reasonable certainty, upon inspection or examination, that any tree or shrub exists in or upon any private premises in a manner determined as a public nuisance, a hazard, or a danger to other property owners, said officer shall immediately, in writing, notify the owner, supervisor, tenant, or person in possession of the property of the existence of the public nuisance, hazard, or danger and issue said person an order detailing the requirements of and the reasons for abatement to be completed within a reasonable time to be specified in the order, but not less than 30 days. If the owners, supervisor, tenant, or person in possession cannot be found, a copy of said notice shall be placed upon said tree or shrub, or on the property in a conspicuous location.

C. If the owner, supervisor, tenant, or person in possession of the property upon which a tree or shrub identified as a public nuisance, hazard, or danger to other property owners does not abate the affected tree shrub by the date in the notice, the City Code Enforcement Officer, the City of Hardin, or a private contractor hired by the City, is authorized to enter the affected property to abate the said public nuisance, hazard, or danger, after 24 hours' notice to the owner, supervisor, tenant, or person in possession of the property. The reasonable cost of such abatement shall be filed as a lien against the property, or the City of Hardin may levy an assessment on the property tax rolls, in accordance with 9-3-5(E)(4) through (6), or both.

D. Plan Of Abatement: The owner, supervisor, tenant, or person in possession of the property may, after receipt of a notice of violation, submit a plan of abatement to the designated City Code Enforcement Officer which shall include:

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

The City Code Enforcement Officer may accept such a plan and defer further proceedings under this chapter pending abatement.

E. Enforcement:

1. After thirty (30) days, or the date in the notice, which shall not exceed a total of ninety (90) days, the City Code Enforcement Officer shall determine whether the violation has been abated.

2. If the owner, supervisor, tenant, or person in possession of the property has not adequately addressed the violations within the time frame set forth in the notice, the City may, as soon as practicable after such failure, have the violations abated.

3. The designated City department, or authorized third party abating, shall record the name of the owner, supervisor, tenant, or person in possession of the property, the legal description and street address of the lot(s), the exact dates and costs of all abatement action done in accordance with this section including, but not limited to, the costs of private contractors hired for such purpose and administrative costs.

4. Each person who fails to abate the violations as required herein and thus requires the City to perform the work in accordance with this section shall be liable to the City for the cost of such work plus a civil penalty of one hundred dollars (\$100.00) or ten percent (10%) of such costs, whichever is greater.

5. The City Code Enforcement Officer shall give the owner, supervisor, tenant, or person in possession of the property written notice of the amount owed to the City as soon as practicable following the completion of the work. The payment of such amount may be enforced through suit for collection or by levying an assessment on the tax rolls for the property, or both.

6. In the event of assessment, the City Council shall annually adopt a resolution levying an assessment and tax against each lot or parcel of land abated in accordance with the provisions of this section. All assessments levied shall be charged simple interest at the rate of ten percent (10%) per year from the date the work is performed until the assessment is fully paid and satisfied.

F. Appeal: The owner, supervisor, tenant, or person in possession of the property may appeal the assessment to City Council. Owners, supervisors, tenants, or persons in possession wishing to appeal the assessment will submit their appeal to the director of public services or designated representative within thirty (30) days of the date of the first notice and within five (5) working days prior to the City Council meeting at which the assessment is being considered, whichever is sooner. This provision does not apply to any proceeding that may be initiated in any court against an owner, supervisor, tenant, or person in possession of the property.

G. Jurisdiction: This section applies to property within the city limits.

DATE OF EFFECT.

The amendment to this ordinance shall take effect and be in force thirty (30) days from the date of its second reading and passage by the City Council as required by law.

FIRST READING AND PASSAGE By a majority vote of the members present this 19th day of July, 2022.

YEAS 6

NAYS 0



[Signature]
Mayor

ATTEST:

[Signature]
City Clerk

POSTED AND MADE AVAILABLE TO THE PUBLIC this 21st day of July, 2022.

[Signature]
City Clerk

SECOND READING AND PASSAGE By a majority vote of the members present this 2nd day of August, 2022.

YEAS 6 NAYS 0



[Signature]
Mayor

ATTEST:

[Signature]
City Clerk