

ORDINANCE NO. 02-2022

AN ORDINANCE BY THE CITY COUNCIL OF THE CITY OF HARLOWTON, MONTANA, REPEALING EXISTING CHAPTER 7.32 RELATING TO COMMUNITY DECAY AND PASSED BY UNANIMOUS VOTE IN FEBRUARY, 2007, AND REPLACING THE SAME WITH A REVISED AND CLARIFIED ORDINANCE TO ADDRESS COMMUNITY DECAY AND PUBLIC NUISANCES WITHIN THE CITY LIMITS OF THE CITY OF HARLOWTON, TO REGULATE, CONTROL, AND PROHIBIT CONDITIONS THAT CONTRIBUTE TO COMMUNITY DECAY OR CONSTITUTE A PUBLIC NUISANCE.

WHEREAS, the City Council has found that the existing Municipal Codes Chapter 7.32 concerning community decay and public nuisance do not adequately inform the public and residents of the City of Harlowton of what constitutes a nuisance or community decay sufficient to be addressed or enforced by the City Council; and

WHEREAS, the City Council has been made aware that there are sufficient questions regarding the enforcement of violations of Chapter 7.32 to warrant clarification of provisions in the existing ordinance regarding notice of alleged violations of Chapter 7.32, and subsequent enforcement of violations of Chapter 7.32; and

WHEREAS, the Ordinance Committee of the City Council has drafted a revised Chapter 7.32 to address possible deficiencies in the existing ordinance (Chapter 7.32), has solicited public comment on revisions to Chapter 7.32, and has incorporated such comment as deemed appropriate in the revised Chapter 7.32; and

WHEREAS, the City Council finds that it is in the best interest of the City of Harlowton to replace the existing ordinance in its entirety with the revised version of Chapter 7.32 as recommended by the Ordinance Committee of the City Council, as provided below:

NOW THEREFORE, BE IT ORDAINED, by the City Council, City of Harlowton, Montana, as follows: **BY THE CITY COUNCIL OF THE CITY OF HARLOWTON, MONTANA:**

Section 1: Action

A. The City Council proposes that Chapter 7.32, as it presently exists, should be repealed in its entirety.

B. The City Council proposes that new Chapter 7.32 should be adopted to include the following:

Chapter 7.32

COMMUNITY DECAY OR PUBLIC NUISANCES

Sections:	7.32.010.	PURPOSE
	7.32.020.	DEFINITIONS
	7.32.030.	PROHIBITIONS AND DUTIES
	7.32.040.	REPORTING AND COMPLAINTS
	7.32.050.	SHIELDING
	7.32.060.	ABATEMENT AND MITIGATION
	7.32.070.	JURISDICTION
	7.32.080.	PENALTY
	7.32.090.	EFFECTIVE DATE
	7.32.100.	COMPATIBILITY
	7.32.110.	SEVERABILITY

[Section] **7.32.010: Purpose**: The purpose of this Chapter is to regulate, control and prohibit conditions that contribute to community decay or public nuisances on, adjacent to or visible from all public roadways and rights of way within the City, so as to improve property values and increase community awareness of each individual's responsibilities and obligations as good citizens and good neighbors.

[Section] **7.32.020: Definitions**. For purposes of this Chapter, the following definitions shall apply:

1. **ABATEMENT**: Abatement means to repair, replace, remove, destroy or otherwise remedy the condition in question by such means, in such manner and to such extent as is determined necessary in the interest of the affected community.

2. **COMMUNITY DECAY**: Any public nuisance created by fire damaged structures, animal enclosures or by allowing rubble, outside toilets, debris, junk, refuse, landscaping debris 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 adjacent property so as to interfere with the comfortable enjoyment of life or the values of property. This definition does not apply to properly 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 operations of the business are neatly stacked or piled. This definition does not include normal residential maintenance or landscaping projects.

3. **COMPONENT PART**: Any identifiable part of a discarded, ruined, wrecked, or dismantled motor vehicle, including, but not limited to, fenders, doors, hoods, engine blocks, motor parts, transmissions, frames, axles, wheels, tires, and passenger compartment fixtures.

4. **DANGEROUS STRUCTURE**: Dangerous structure means any dangerous, failing or damaged residential dwelling or other structure. 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.

5. DEPARTMENT: Any government agency designated by the City Council to enforce this rule, including the City's Public Works Department and the Wheatland County Sheriff's Office.

6. JUNK: 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 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.

7. JUNK VEHICLE: A discarded, ruined, wrecked, or dismantled motor vehicle, including component parts, that is not lawfully and validly licensed and/or remains inoperative or incapable of being driven.

8. NUISANCE: Nuisance means a situation created or allowed to continue by the owner or occupant of real property which is injurious to health; indecent or offensive to the senses; an obstruction to the free use of another's property, so as to interfere with the comfortable enjoyment of life or property; renders any public right of way dangerous for passage; or adversely affects the property values of adjacent properties.

9. NUISANCE WEEDS: Nuisance weeds are all weeds, grass and other wild and uncared for vegetation growing to a height in excess of twelve (12) inches, including any thistle, dandelions, sweet clover, and any weed of any other kind not specifically designated by the Wheatland County weed district as a "noxious weed."

10. OBSTRUCTION TO THE PUBLIC RIGHT OF WAY: Obstruction to the public right of way means the placement of any debris, refuse, rubble, dirt, gravel, soil, fence, junk, junk vehicles or other personal property so as to obstruct traffic, drainage, pedestrians or otherwise safe and open access to such right of way.

11. OWNER: Owner means the owner of record or any person with legal, financial or equitable interest in the property on which the alleged public nuisance exists at the time of the violation.

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

13. PROPERTY: Property means any real property, premises, structure or location on which a public nuisance is alleged to exist.

14. PUBLIC NUISANCE: Public nuisance means a nuisance that 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.

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

16. SHIELDING: Any natural barriers, fencing or other manmade barriers used to conceal a facility from public view. 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.

[Section] **7.32.030: Prohibitions And Duties.** It shall be a violation of this Chapter to own or maintain any public nuisance or community decay as follows:

- A. No person shall dump, pile, or stack bricks, concrete blocks, waste wood, and similar material in public view unless said material is stacked 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 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 store or accumulate iron, metal, machine parts, household appliances, component parts or other salvage metal items in public view, unless stored in an orderly and safe manner.
- D. 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.
- E. It is a public nuisance for any person to keep or maintain any pen or enclosure, stable or building for animals in such a filthy or unwholesome condition as to be offensive to neighbors or passersby, or injurious to the health of the neighborhood.
- F. It is a public nuisance for any owner, lessee, occupant or resident of any premises to suffer or cause to be maintained on such premises for twenty-four (24) hours or longer any unwholesome decaying or putrid animal or vegetable matter which contaminates the atmosphere or endangers or injures the health of any person, or which is indecent or offensive to the senses or interferes with the comfort or enjoyment of any resident in the City.
- G. It shall be the duty of every owner of real property within the City to cut, destroy and remove; or cause to be cut, destroyed and removed; all weeds or grasses in excess of twelve (12) inches in height growing thereon.
- H. All weeds, vegetation and fences in the City shall also comply with and be subject to, all requirements imposed under the laws of the City and the State with regard to visibility at intersections, alleys and drive approaches

I. Any person possessing one or more junk vehicles, regardless of ownership, shall shield the vehicles from public view or remove the vehicles to a licensed motor vehicle wrecking facility or to a licensed motor vehicle graveyard, as defined by section 75-10-501, Montana Code Annotated.

J. No person shall maintain a dangerous structure for more than thirty (30) days without securing such property against unauthorized entry or abating the dangerous condition of such structure.

[Section] **7.32.040: Reporting And Complaints.** Any citizen affected by a nuisance and/or community decay, including a non-resident landowner, is entitled to make a written complaint to the City of Harlowton. Such complaint shall include, whenever possible, the nature of the nuisance and/or community decay; the location of the nuisance, including the address; the name of the owner, occupant, or manager of the premises; the duration of the nuisance and/or community decay; and the name and address of the complainant.

[Section] **7.32.050: 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. Trees, hedges and shrubs are preferred as shielding.
- B. No more than one nonvegetative shielding material shall be used on any one side of a shielding barrier unless approved by the designated department.
- C. All materials must comply with all local, State and Federal regulation, including the Uniform Fire Code.

[Section] **7.32.060: Abatement And Mitigation.** The abatement or mitigation of conditions which constitute a public nuisance prohibited by this Chapter shall be accomplished under the provisions of this Section. Where an established use results in the storage of material otherwise prohibited in this Chapter 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 provision of this section, unless emergency abatement is necessary.

- A. Initiation: Abatement or mitigation shall be initiated by the City of Harlowton.
- B. Inspection: Where an alleged condition of community decay exists, the designated department shall conduct an inspection of the property alleged to be in violation of this Chapter to determine whether there is, in fact, a violation, and refer the matter to the City Council for further action at a regularly scheduled City Council meeting. If entry upon the property is necessary by the designated department, the designated department will contact the owner of the premises and/or the occupant, either in writing or by telephone, prior to entry upon the premises. The purpose of this initial contact is to request consent to be on the property. If the owner or responsible person does not consent to entry onto

the property, a search warrant or other court order will be obtained prior to any entry onto private property, unless exigent circumstances exist that require immediate entry.

C. Notice: If it is determined by the City Council that there is a violation of this Chapter, the City shall notify the property owner of record of the violation, in writing, 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) days of the receipt of such notice. If the owner of record is not the occupant of the property, the City will also send notice to the occupant or lessee of the premises, if known. The notice of violation shall:

1. Include a statement specifically describing the violation;
2. Specify that the owner of the property has thirty (30) days from receipt of such Notice to bring the property into compliance or to submit a plan to the City to comply with this Chapter and the City's order by means of removal, shielding or mitigation of the conditions; and
3. Advise the owner of the property that if the violation is not abated or mitigated the City of Harlowton may request the designated department to issue a citation for a violation of the City of Harlowton municipal code and petition the City Court for an order permitting the City to undertake abatement or mitigation and assess the costs thereof to the owner of the property.

D. Plan of Abatement or Mitigation: The owner of the property may, after receipt of a notice of violation, submit a plan of abatement or mitigation to the City Council or to the designated department, specified in the notice of violation, 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, not to exceed thirty (30) days.

The City Council may accept such a plan and defer further proceedings under this Chapter pending abatement or mitigation.

E. Emergency Abatement: Whenever a designated department has reason to believe that a nuisance exists, and that such nuisance constitutes an emergency presenting imminent danger of serious injury to persons or property, the designated department, his authorized representative, a fire marshal, or law enforcement, may immediately enter into any building or upon any premises within the jurisdiction of the City of Harlowton for purposes of inspection or abatement, and may order, with the approval of the Wheatland County Sheriff's Office, without notice or judicial action, that the nuisance be immediately abated by removal, destruction or mitigation. Failure to locate the owner or

of the owner to comply with such order shall permit the City to abate or mitigate the nuisance as deemed necessary and pursue remedies allowed by this Chapter.

F. Enforcement: Upon receipt of a written complaint as contemplated in section 5.C, or a designated department or City Council member becomes aware of a condition or situation that may constitute a nuisance or community decay, the City shall investigate the condition or situation within a reasonable period of time. Upon conclusion of the investigation, the designated department or council member will report to the City Council, which will determine if a violation exists, and notify the property owner as provided in section 5.C.

1. After thirty days or the date agreed to by the property owner and the City of Harlowton, which shall not exceed a total of sixty (60) days, the City Council shall determine whether the violation has been abated.
2. When enforcing this chapter, the City shall have the option to pursue any sanctions in any order, and shall pursue abatement or mitigation procedures when necessary to protect the health, safety and welfare of the residents of the City.
3. If the owner fails to act, the designated department shall issue a citation and set a date and time for an appearance in the City Court whereby the owner must appear and show cause why the violation has not been abated. Every day from this point forward will constitute a separate violation.
4. If the property owner has still failed to comply or filed no response to the notice of appearance in City Court, the Court may grant such orders as are requested by the City, and shall order such enforcement by the City be stayed for ten (10) days and that a copy of the Court's order be mailed to the Respondent at his/her last known address. Failure to appear on any other date set for trial shall be grounds for entering a default judgment against a non-appearing party. For good cause shown, and prior to enforcement, the Court may set aside an entry of default and the judgment entered thereon. The City of Harlowton representatives or contractors acting on the City's behalf may, with the permission and written order of the City Court, enter upon the owner's property for the specific purpose of abating, mitigating or shielding the violation, whichever the City Council deems appropriate. However, the judgment of the City Court may be appealed to the District Court for Wheatland County.
5. The remedies specified in this Chapter shall be in addition to all other remedies provided by law. The City may assess the property owner for the actual costs of the abatement, mitigation or shielding, together with an administration cost equal to twenty-five percent (25%) of the actual cost.
6. If the assessment is not paid, within sixty (60) days it shall become a lien on the property and may be enforced the same as nonpayment of property taxes.

G. Appeal Procedures: An alleged violator may appeal a City Council decision in writing via certified mail to the Harlowton City Council within ten (10) days of receiving the notice from the City described in this Chapter determining that a violation of this Chapter exists, rejecting a remedial plan or the assessment of a fine for noncompliance. The City Council shall hold a hearing within forty-five (45) days from the date the appeal was received. Within thirty (30) days after the hearing, the City Council shall, in writing, affirm, modify or withdraw the Council's decision. Once an appeal for a hearing has been made, the Council's decision shall be stayed until the City Council has held the hearing and affirmed, modified or withdrawn the prior decision.

[Section] **7.32.070: Jurisdiction.** This Chapter applies to property within the City limits.

[Section] **7.32.080: Penalty.** Any person convicted of violating this Chapter is guilty of a misdemeanor punishable by a fine of not less than one hundred dollars (\$100.00) and not more than five hundred dollars (\$500.00).

[Section] **7.32.090: Effective Date.** This chapter shall become effective thirty (30) days after its final passage and adoption by the Harlowton City Council.

[Section] **7.32.100: Compatibility.** Nothing in this Chapter or in section 7-5-2110, Montana Code Annotated may be construed to abrogate or affect the provisions of any lawful ordinance, regulation or resolution that is more restrictive than the provisions of this Chapter or 7-5-2110, Montana Code Annotated.

[Section] **7.32.110: Severability.** If any provision of this Chapter is held to be invalid, such invalidity shall not affect other provisions which can be given effect without this invalid provision. To this end, the provisions of this Chapter are severable.

Section 2: Repealer

All resolutions, ordinances and sections of the City of Harlowton Municipal Code in conflict herewith are hereby repealed.

Section 3: 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 provision or application and, to this end, the provision of this ordinance is declared to be severable.

Section 4: Effective date

The First Reading of this ordinance occurred on, and is reflected in the minutes of the City Council dated _____, 2022.

This ordinance shall be in full force and effect 30 days after passage of the Second Reading.

PASSED AND ADOPTED ON THIS SECOND READING, by the City Council of the City of Harlowton this 10 day of May, 2022.

<u>Ron Teig</u> Councilperson	<u>Yes</u>	<u>No</u>	<u>X</u> Absent
<u>Kathleen Schreiber</u> Councilperson	<u>X</u> Yes	<u>No</u>	<u>Absent</u>
<u>William Bennett</u> <u>Charley Bennett</u> Councilperson	<u>X</u> Yes	<u>No</u>	<u>Absent</u>
<u>Jack Runner</u> Councilperson	<u>X</u> Yes	<u>No</u>	<u>Absent</u>
<u>Allison Jones</u> Councilperson	<u>X</u> Yes	<u>No</u>	<u>Absent</u>
<u>Frank Brouillette</u> Councilperson	<u>X</u> Yes	<u>No</u>	<u>Absent</u>

Approved:

Paul Otten
Paul Otten, Mayor

Approved as to Form and Content

Karen Finstad Hammel
Karen Finstad Hammel, City Attorney

ATTEST:

Lara Brisco
Lara Brisco, City Clerk

ORIGINAL ORDINANCE PASSED BY THE CITY COUNCIL FEBRUARY 27, 2007 BY A UNANIMOUS VOTE.