

**AN ORDINANCE TO CONTROL LITTER WITHIN CARBON COUNTY;
AND ESTABLISHING PROCEDURES FOR ITS ENFORCEMENT**

WHEREAS, MCA Section 7-5-2109, authorizes counties to adopt an ordinance for the control of litter within the county; and

WHEREAS, the Carbon County Commissioners have determined there is a need to control litter in Carbon County;

NOW, THEREFORE, BE IT ORDAINED BY THE COUNTY COMMISSIONERS OF CARBON COUNTY, STATE OF MONTANA:

Definitions

1. (a) "Litter" means any quantity of uncontainerized solid waste which may be classified as trash, debris, rubbish, refuse, garbage or junk by the Sheriff. Litter does not include used farm machinery or equipment.
- (b) "Person" means an individual, firm, partnership, company, association, corporation, city or town, or any other entity, whether organized for profit or not.
- (c) "Violation" means littering by any person on any county road or other land, public or private, within the County. Each day the violation exists is a separately punishable offense.

Duties of private property owners

It shall be unlawful for an owner, lessee or occupant of private property to allow litter on his or her property. It shall also be unlawful for any person to scatter litter on public property, including county roads. This prohibition applies to loose litter as well as litter that is trapped at fences, wall bases and other lodging points.

Powers and Duties of the Sheriff

2. The Sheriff has the following powers and authority:
 - (a) The power to inspect when there has been a complaint by a member of the public that litter is present in an area or when, in the course of normal Sheriff operations, a potential litter violation is observed by the Sheriff.
 - (b) The power to determine whether or not this Ordinance applies after an inspection of the property or area.
 - (c) The duty to serve a written Notice to Appear and Complaint on the person who owns, leases or occupies the property on which litter is present or who scatters litter on public property, and the duty to file the Notice and Complaint in Justice Court.

(d) The duty to provide the County Attorney with sufficient documentation to enable him or her to prosecute the violation as a misdemeanor.

Penalty

3. Any violation of the provisions of this ordinance shall constitute a misdemeanor punishable by a fine not to exceed \$200.00 per violation. Violation of this ordinance may not be punishable by imprisonment. Each day the violation exists is a separately punishable offense.

Jurisdictional Area

4. This ordinance applies to the whole of Carbon County with the exception of incorporated municipalities that have ordinance making powers.

Effective Date

5. This ordinance shall be in full force and effect thirty (30) days after its passage and adoption by the Carbon County Commission.

Severability

6. If any provision of this ordinance is declared invalid by any court or tribunal, the remaining provisions of this ordinance shall not be affected thereby.

PASSED on first reading this 8th day of April 2010, by the Board of County Commissioners, Carbon County, State of Montana.


John Prinkki, Chairman

Doug Tucker, Commissioner


David Davidson, Commissioner

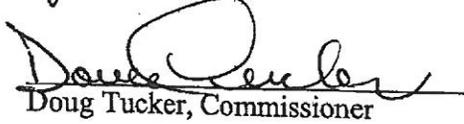
Attest



Linda Ladvala, Carbon County Clerk and Recorder

PASSED on second and final reading this 22 day of April 2010, by the Board of County Commissioners, Carbon County, State of Montana.


John Prinkki, Chairman


Doug Tucker, Commissioner

David Davidson, Commissioner

Attest



Linda Ladvala, Carbon County Clerk and Recorder

NOTICE OF VIOLATION

You Are Hereby Notified, pursuant to MCA § 7-5-2109, the Board of Carbon County Commissioners, on [DATE OF ADOPTION], adopted An Ordinance to Control Litter within Carbon County, Ordinance [NUMBER] (the "Ordinance") and established procedures for its enforcement within Carbon County.

Please be advised that a violation of the Ordinance on property located at _____, Carbon County, State of Montana has come to my attention. A violation of the provisions of the Ordinance shall constitute a misdemeanor punishable by a fine not to exceed \$200 per violation. Each day the violation exists is a separately punishable offense.

Accordingly, on the _____ day of _____, 20____, I went to the address set forth above to investigate the alleged violation.

I observed that a violation of the Ordinance does exist in that the following uncontainerized solid waste, trash, debris, rubbish, refuse, garbage, and/or junk which constitutes litter, is scattered about the subject property:

- wood cardboard plastic containers discarded tires/vehicle parts
metal newspapers discarded appliances discarded fencing materials
glass/bottles machine parts wire discarded building materials
cans food wrappers wrecked/disabled vehicles
concrete discarded furniture broken/discarded fixtures (toilets, sinks, tubs, etc.)

The litter was observed in the following locations on the reported property:
front yard side yard back yard fencing shrubs wall bases driveway

You Are Hereby ORDERED Within THIRTY (30) Days from receipt of this notice to REMOVE and/or SHIELD the litter from public view via materials approved of in advance by the Carbon County Planning Department. In the event that you anticipate such corrective action may exceed the THIRTY (30) timeframe provided for herein, you are required within that same THIRTY (30) days to submit to the Carbon County Planning Department an abatement plan detailing all of the following:

- 1. A firm date for commencement of corrective action,
2. The definitive corrective measures to be taken,
3. A firm date for final compliance.

You Are Hereby Further Notified that I will conduct a re-inspection of your property after the THIRTY (30) days has lapsed to confirm that the property has been brought into compliance. In the event that the property remains in violation of the Ordinance, criminal charges may be sought against you in Justice Court. Alternatively or concurrently, an enforcement action may be filed against you in District Court for public nuisance and abatement.

If you have any questions about this NOTICE or would like to discuss this matter further, please contact me at [SHERIFF'S OFFICE?]. Thank you for your anticipated cooperation.

Dated this _____ day of _____, 2010.

IN THE JUSTICE COURT, CARBON COUNTY, STATE OF MONTANA
BEFORE THE HONORABLE JUSTICE OF THE PEACE

CARBON COUNTY, STATE OF MONTANA,)
Plaintiff,)
vs.)
)
)
)
Defendant,)
)

TK _____

AFFIDAVIT OF PROBABLE CAUSE

The undersigned Affiant, being first duly sworn, states that probable cause to issue the ticket attached hereto is based on the following:

- a. Name of Complaining party:
 _____, whose address is: _____
- b. On the ____ day of _____, 20____, Affiant became aware of a potential violation of the Carbon County Ordinance to Control Litter [NUMBER] (the Ordinance) on property at _____, Carbon County, State of Montana, and in the possession of the Defendant, which required inspection. Affiant learned of the Complaint via: telephone call written complaint in office complaint Affiant's observations.
- c. On the ____ day of _____, 20____ Affiant went to the reported address to investigate the alleged violation.
- d. Affiant observed that the Defendant did knowingly, purposely, or negligently violate the Ordinance by scattering the following uncontainerized solid waste, trash, debris, rubbish, refuse, garbage, and/or junk which constitutes litter:
 wood cardboard plastic containers discarded tires/vehicle parts
 metal newspapers discarded appliances discarded fencing materials
 glass/bottles machine parts wire discarded building materials
 cans food wrappers wrecked/disabled vehicles _____
 concrete discarded furniture broken/discarded fixtures (toilets, sinks, tubs, etc.)
- e. Affiant observed the litter in the following locations on the reported property:
 front yard side yard back yard fencing shrubs wall bases driveway

- f. Your Affiant offers this statement as probable cause to support the finding of a violation of the Ordinance by the Defendant named above and in Ticket No. _____ attached hereto and fully made a part hereof.

Dated this ____ day of _____, 2010.

State of Montana)
County of Carbon)

Signed and sworn to before me on the ____ day of _____, 20____, by

NOTARY PUBLIC

Residing at:

My commission expires:

Misc File 7477

341809

STATE OF MONTANA }
COUNTY OF CARBON } SS

Office of the County Clerk & Recorder

I hereby certify that the within

Ordinance 2010-2 was for

for record in my office this 20 day

of May A.D. 2010

at 10:03 o'clock A.M.

Attest my hand and the seal of

said County

David H. Mitchell
Clerk and Recorder

Deputy

Fee \$ DDM