



Planning and Development Board Agenda

**Thursday - July 19, 2018 4:00 PM
City/County Complex Community Room**

CALL TO ORDER AND INTRODUCTIONS

REVIEW AND APPROVAL OF MINUTES FROM PREVIOUS MEETING

Discussion/Decision of Approving June Meeting Minutes

Suggested Action: Approve

[PB Meeting Minutes_6.21.18.docx](#)

CONFLICT OF INTEREST

PUBLIC COMMENT

Q&A SESSION OF GALLATIN COUNTY CODE ENFORCEMENT OFFICER

DISCUSSION OF COMMUNITY DECAY ORDINANCE FOR PARK COUNTY

Samples of Decay Ordinances from Yellowstone, Gallatin and Lewis and Clark County

[Community_Decay_Ordinance.pdf](#)

[CommunityDecayOrdinance03_15_11_Draft7.pdf](#)

[CommunityDecayOrdinance2017-001.pdf](#)

PROJECT UPDATES

OLD BUSINESS

NEW BUSINESS

DISCUSSION OF NEXT AGENDA

PUBLIC COMMENT

ADJOURNMENT

Planning and Development Board Agenda Item Report

Meeting Date: July 19, 2018

Submitted by: Lawson Moorman

Submitting Department: PLANNING

Item Type: Minutes

Agenda Section: Review and Approval of Minutes from Previous Meeting

Subject:

Discussion/Decision of Approving June Meeting Minutes

Suggested Action:

Approve

Attachments:

[PB Meeting Minutes_6.21.18.docx](#)

Planning & Development Board
Community Center, Gardiner, MT
4:00pm, June 21, 2018

Attendance: Planning Board Members Peter Fox, Mike Dailey, Frank Schroeder, John Hiedke, Dave Haug, Rich Baerg; Planning Staff, Lawson Moorman, Mike Inman; Public, Wendy Riley, Jerry Ladewig, Kristin Nunn, Joe Gross

Call to Order and Introductions: 4:00pm, Peter Fox called the meeting to order.

Review and Approval of Minutes from Previous Meeting: *Dailey made a motion to approve the minutes as submitted, Hiedke seconded, motion passed unanimously.*

Conflict of Interest: None. Schroeder stated that he was adjacent to the proposed Draft Zoning District and Hiedke stated he was within the proposed Draft Zoning District.

Public Comment for Items on the Agenda: Ladewig thanked the Board and Staff for their work at the Commission meeting surrounding the proposed zoning district.

Update/Discussion on Draft US Hwy 89/ East River Rd/ Old Yellowstone Trail Zoning District and Next Steps : Inman outlined the process thus far up to the Commission meeting where the Commission approved the Planning Board and Staff to move forward in accepting public comment and setting up public hearings for the proposed draft. Inman then outlined the upcoming public process, including public hearing schedules, noticing requirements, comment opportunities and the Board's role in the process. Fox asked if an outline of that process was available. Inman stated a copy of the noticing schedule was available upon request. Fox asked how the public hearing scheduled for August 16th would affect the regularity scheduled meeting in Cooke City. Inman stated that if a regular meeting was necessary for that month the regular Board meeting would be moved to Emigrant that month and take place right before the public hearing. Schroeder asked if an excess of public comment would have an effect on the schedule. Inman stated it would not as there was time already allotted in the schedule to process significant comments from the public. Fox asked what type of public comment had been received thus far. Inman stated that the majority of the feedback had been positive in nature, despite an article in the Livingston Enterprise incorrectly stating the district had already been created. The Board discussed the potential for public comment to alter the proposed language of the draft. Fox asked the public if they had any questions. Riley suggested that the Board let staff know that the draft is subject to change based on public comment.

Discussion on Decay Ordinance Statute and Implementation Considerations: Inman outlined the state statute surrounding decay ordinances and informed the Board on the research staff had done on neighboring jurisdictions which currently had decay ordinances. Moorman spoke about Flathead County's enforcement protocol for their decay ordinance. Schroeder and the Board discussed the fact that for Park County a decay ordinance would require some type of

scalability so as to not bog the County down in enforcement of small cases. Fox informed the Board and Staff that the Gallatin County enforcement officer was willing to come speak to the Board on their decay ordinance and that his intent for a decay ordinance would be to focus on the most egregious cases. The Board discussed various existing locations around the County that may qualify under a decay ordinance. Dailey asked about the ability to utilize lost value to neighboring properties as a basis for enforcement. Moorman said they would look into the legality of doing so. Haug brought up cases of neighbors trying to use local codes during personal feuds. Inman informed the Board that state law would not allow for decay ordinances to consider agriculture. Ladewig asked the Board to also potentially consider decay inside a home, interagency cooperation and cleanup of green box sites.

Project Updates: None.

Old Business: None.

New Business: Fox requested that the Staff begin utilizing local newsletters as well as the paper and website to advertise Board meetings.

Discussion of Next Agenda: Per the Board's request, Staff stated they would reach out to the Gallatin County code enforcement staff and ask if they would be willing to present to the Board at the next meeting. Fox also asked that Staff present the Board with specific examples of nearby decay ordinances prior to the next meeting.

Public Comment for Items not on the Agenda: Gross shared with the Board a potential land dispute issue between two private parties in Gardiner and gave updates on a potential bridge redecking coming up.

Adjournment: Fox adjourned the meeting at 5:01 pm.

Planning and Development Board Agenda Item Report

Meeting Date: July 19, 2018

Submitted by: Lawson Moorman

Submitting Department: PLANNING

Item Type: Discussion

Agenda Section: Discussion of Community Decay Ordinance for Park County

Subject:

Samples of Decay Ordinances from Yellowstone, Gallatin and Lewis and Clark County

Suggested Action:

Attachments:

[Community_Decay_Ordinance.pdf](#)

[CommunityDecayOrdinance03_15_11_Draft7.pdf](#)

[CommunityDecayOrdinance2017-001.pdf](#)

AN ORDINANCE TO CONTROL COMMUNITY DECAY

WHEREAS, Section 7-5-2111, MCA gives counties the authority to regulate, control, and prohibit conditions that contribute to community decay; and

WHEREAS, the Lewis and Clark County Commissioners have determined there is a need for a comprehensive ordinance to control community decay in Lewis and Clark County outside the boundaries of incorporated cities; and

WHEREAS, the Lewis and Clark County Commissioners have determined the community decay ordinance passed by the Board of Commissioners on March 17, 1987 is inadequate to address current needs in the county; and

WHEREAS, the Lewis and Clark County Commissioners desire to adopt a new community decay ordinance:

NOW, THEREFORE, BE IT ORDAINED BY THE COUNTY COMMISSIONERS OF LEWIS AND CLARK COUNTY, STATE OF MONTANA:

1. PURPOSE

The purpose of this ordinance is to regulate, control, and prohibit conditions that contribute to community decay on or adjacent to public roadways within the unincorporated areas of Lewis and Clark County.

2. DEFINITIONS

The following definitions apply to this ordinance:

- (a) "Abate" means to eliminate or remove all of the conditions that constitute a violation of this ordinance.
- (b) "Adjacent to any public roadway" means a property that directly abuts or shares a border with a public road right-of-way.
- (c) "BOCC" means the Lewis and Clark Board of County Commissioners.
- (d) "Community decay" means a public nuisance created by allowing rubble, debris, junk, or refuse to accumulate resulting in conditions that are injurious to health, indecent, offensive to the senses, or obstruct the free use of property so as to interfere with the comfortable enjoyment of life or property. "Community Decay," as used in this ordinance, may not be construed or defined to apply to normal farming, ranching, or other agricultural operations or to a farm, ranch, or other agricultural facility, or any appurtenances thereof, during the course of its normal operations, or to normal activities at a shooting range.
- (e) "Department" means the City-County Health Department or its designee.
- (f) (1) "Junk Vehicle" means a motor vehicle, including component parts:
 - (i) that is discarded, ruined, wrecked, or dismantled;
 - (ii) that, except as provided in subsection (f)(2), is not lawfully and validly licensed, and
 - (iii) that remains inoperative or incapable of being driven.



- (2) If a vehicle is permanently registered under MCA § 61-3-562 and meets the criteria for a junk vehicle under subsection (f)(1), the vehicle is a junk vehicle.
- (g) "Nuisance" has the meaning contained in Section 27-30-101, MCA (2005).
- (h) "Owner" means an individual, firm, partnership, company, association, corporation, city, town, or any other entity, whether organized for profit or not, owning any land, easement, or right-of-way as recorded in the official record of the clerk and recorder.
- (i) "Person" means an individual, firm, partnership, company, association, corporation, city, town, or any other entity, whether organized for profit or not.
- (j) "Public nuisance" means a nuisance that affects, at the same time, an entire community or neighborhood or any number of persons, although the extent of the annoyance or damage inflicted upon individuals may be unequal.

3. VIOLATIONS

It shall be a violation of this ordinance to allow or maintain conditions that contribute to community decay on or adjacent to any public roadway within Lewis and Clark County. Conditions that may contribute to community decay include, but are not limited to, the following:

- (a) Metal Fixtures, Vehicles, Appliances, and Related Items. The storage or accumulation of iron, metal, component vehicle and machine parts, junk vehicles, household appliances, barrels, and other salvaged metal items.
- (b) Boxes, Building Materials, and Related Items. The storage or accumulation of cardboard, packing material, construction and building material, demolition waste, concrete or concrete blocks, or other similar materials.
- (c) Recreational Vehicles. The storage or accumulation of wrecked, ruined, or dismantled snowmobiles, four wheelers, camp trailers, pedal bikes, motorbikes, and boats or their component parts.
- (d) Modular or Mobile Homes, Sheds, Buildings. The storage, accumulation, or presence of mobile or permanent structures that are uninhabited and dilapidated due to neglect or inattention.
- (e) Garbage or Trash. The storage or accumulation of trash or garbage that is not contained in a garbage receptacle.
- (f) Furniture. The storage, accumulation, or presence of household furniture not designed for outdoor use.
- (g) The storage or accumulation of raw materials, equipment parts, or bulk commodities.
- (h) Other Rubble, Debris, Junk, or Refuse. The storage or accumulation of any other rubble, debris, junk, or refuse meeting the definition of community decay.

4. ENFORCEMENT AND ABATEMENT

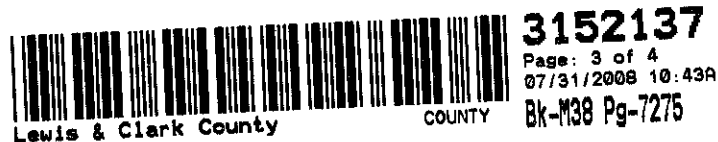
This ordinance may be enforced pursuant to the following procedures:

- (a) Upon receipt of a complaint or upon observation of conditions showing that community decay may exist upon a property within Lewis and Clark County, the Department shall inspect the property alleged to be in violation of this ordinance and shall determine whether a violation exists.

- (b) If the Department determines that a violation of this ordinance exists, the Department shall notify the owner of the property, in writing, of the violation. The notice shall be sent by certified mail or served on the owner of the property by a law enforcement officer and shall conform to the "Contents of Notice" section of this ordinance.
- (c) Within fifteen (15) working days from the receipt of the notice, the owner of the property in violation may submit, in writing, a plan of abatement to the Department. Such plan may be approved, approved with modifications, or disapproved by the Department. If approved or approved with modifications, further enforcement under this ordinance shall be deferred for the period specified in the abatement plan. The proposed abatement plan shall include the following:
1. type of abatement proposed;
 2. date abatement is to commence;
 3. reasons abatement cannot be completed within thirty (30) days after receipt of the notice of violation;
 4. date abatement is to be complete.
- (d) The owner of the property in violation shall have thirty (30) days from the receipt of the notice to abate the violation or be in the process of abatement in accordance with an abatement plan approved by the Department.
- (e) After thirty (30) days from the receipt of the notice by the owner of the property in violation, the Department shall determine whether the violation has been abated or is in the process of abatement in accordance with an approved abatement plan.
- (f) If the property owner fails to abate the conditions constituting community decay within thirty (30) days or within the time period specified in the approved abatement plan, the Department shall send the property owner written notification of the property owner's failure to abate the violation. The notification shall be sent by certified mail or served on the owner of the property by a law enforcement officer and shall provide the property owner with ten (10) additional days to complete abatement.
- (g) If the property owner fails to complete abatement of the violation within ten (10) days, as described in subsection (f), the Department may petition the Justice Court for a show cause hearing. At the hearing, the Justice Court shall determine whether proper notice was made and whether a violation of this ordinance existed at the end of the 10-day period referenced in subsection 4(f). If the Justice Court determines a violation existed at the end of the 10-day period, the court shall issue an order authorizing the Department to enter upon the property and abate the violation.
- (h) The Department shall assess the actual costs of abatement incurred by the Department to the property owner. Nonpayment of the assessment shall become a lien upon the property and is enforceable in the same manner as the nonpayment of property taxes.

5. CONTENTS OF NOTICE

The notice of violation shall state the following:





- (a) That the Department has determined a violation of this ordinance exists on the property;
- (b) The nature of the violation and its location;
- (c) The name of the property owner and any other person the Department determines to be responsible for abatement;
- (d) The steps necessary to abate the violation;
- (e) The date abatement must be completed in the absence of an approved abatement plan;
- (f) That failure to comply with the notice within the time specified, unless extended by an approved abatement plan, enables officers and employees of Lewis and Clark County to enter upon the property for the specific purpose of abating the violation.
- (g) That Lewis and Clark County is authorized to assess the property owner for the actual costs of the abatement and nonpayment of the assessment becomes a lien upon the property and is enforceable in the same manner as the nonpayment of property taxes.

6. APPEAL PROCESS

District Court. Persons aggrieved by a decision of the Justice Court may appeal to the First Judicial District Court for review pursuant to Section 3-10-115, MCA. The appeal must be filed within 30 days after the decision of the Justice Court.

7. COMMUNITY DECAY FUND

Any liens collected under the provisions of this ordinance shall be paid to the Lewis and Clark County Treasurer and placed to the credit of a fund to be known as the "Community Decay Fund."

8. SEVERABILITY

Should any court declare any part of this ordinance unconstitutional or invalid, the ordinance as a whole, or any part thereof, other than the part so declared to be unconstitutional or invalid, shall remain in effect.

PASSED on first reading the 17th day of July, 2008, and passed on second and final reading this 31st day of July, 2008, by the Board of County Commissioners, Lewis and Clark County, State of Montana.



LEWIS AND CLARK COUNTY
BOARD OF COMMISSIONERS

Ed Tinsley
Ed Tinsley, Chairman

ATTEST:

Paulette DeHart
Paulette DeHart, Clerk of the Board

EFFECTIVE DATE OR ORDINANCE: August 31, 2008

Yellowstone County Community Decay Ordinance

Authority and Purpose

Pursuant to Section 7-5-2111(1) of the Montana Code Annotated, the Montana Legislature has given a board of county commissioners the authority to enact a county community decay ordinance to regulate, control and prohibits conditions that contribute to community decay on or adjacent to any public roadway within a county. Pursuant to the authority granted to it by the Legislature, the Yellowstone County Board of County Commissioners has enacted the Yellowstone County Community Decay Ordinance to protect the public health, safety and welfare of the people in the County and to promote the economic development of the County.

Prohibitions

~~A property owner may not allow community decay to accumulate on or adjacent to any public roadway within the County. Community decay means a public nuisance created by allowing rubble, debris, junk, or refuse to accumulate resulting in conditions that are injurious to health, indecent, offensive to the senses, or obstruct the free use of property so as to interfere with the comfortable enjoyment of life or property. Community decay does not mean: (1) normal farming, ranching, or other agricultural operations or to a farm, ranch, or other agricultural facility, and any appurtenances thereof, during the course of its normal operations or (2) normal activities at a shooting range. Community decay includes junk vehicles. A junk vehicle means a motor vehicle, including component parts, that is discarded, ruined, wrecked, or dismantled that, is not lawfully and validly licensed and that remains inoperative or incapable of being driven. A component part of a motor vehicle means 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. A property owner shall remove or shield from public view any community decay on his property.~~

~~If a vehicle is permanently registered and meets the criteria for a junk vehicle except for the license provision, it is a junk vehicle. If a vehicle is permanently registered and meets the criteria for a junk vehicle except for the license provision, it is a junk vehicle.~~

A property owner commits the offense of community decay if the property owner allows community decay on his property that is visible from a public road. Community decay is a public nuisance created by allowing rubble, debris, junk, or refuse to accumulate resulting in conditions that are injurious to health, indecent, offensive to the senses, or obstruct the free use of property so as to interfere with the comfortable enjoyment of life or property. Junk includes junk vehicles as defined in this ordinance. A junk vehicle means a motor vehicle, including component parts, that is discarded, ruined, wrecked, or dismantled that, is not lawfully and validly licensed and that remains inoperative or incapable of being driven. A component part of a motor vehicle means 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.

Community Decay also includes dormant vehicles. Dormant vehicles are defined as those motor vehicles that are intact but are not licensed or operable. Dormant vehicles are not Community Decay if they are: 1) More than 30 years old or, if not more than 30 years old, are considered to be cars generally recognized as collectible—such cars include sports cars, high performance cars, convertibles and other cars that can be shown to be collectible, 2) are neatly arranged in a mannerly array as opposed to random parking and the owner or possessor attempts to conceal them as much as the layout of his/her property reasonably allows, 3) have all doors, hoods and trunks closed provided they are attached, 4) have any detached parts concealed in a reasonable manner and 5) are stored on the owner or possessor's property at least 50 feet from the owner or possessor's property line and the public right-of-way, and 6) are parked with all weeds and vegetation neatly trimmed around the vehicle so as to not create an eyesore, safety, health or fire hazard.

Community Decay shall not include Donor vehicles whether intact or dismantled. To constitute a Donor vehicle, the owner of the Donor vehicle must demonstrate: 1) ownership or lawful custody of an operable or licensed vehicle of the same make or model or must demonstrate direct interchangeability of parts from the Donor vehicle to an owned or lawfully possessed receiving vehicle, 2) that the donor vehicle must be neatly arranged in a mannerly array with other vehicles located on the property as opposed to random parking and the owner or possessor must attempt to conceal them as much as the layout of his/her property reasonably allows, 3) that all doors, hoods and trunks are

closed provided that they are attached, 4) that any detached parts are concealed in a reasonable manner and 5) they are stored on the owner or possessor's property at least 50 feet from the owner or possessor's property line and the public right-of-way, and 6) are parked with all weeds and vegetation neatly trimmed around the vehicle so as to not create an eyesore, safety, health or fire hazard. Should the Donor vehicle not be demonstrated to meet these criteria, the Donor vehicle shall be deemed to meet the definition of Community Decay and the owner or lawful possessor of the Donor vehicle shall be subject to the procedures and penalties contained in this ordinance. ~~If a vehicle is permanently registered and meets the criteria for a junk vehicle except for the license provision, it is a junk vehicle.~~ Community decay is not the normal debris associated with agricultural or shooting range activities. A property owner does not commit the offense of community decay if he screens the community decay from view from a public road with a fence constructed with those materials normally used for fences or some natural barrier like an earth embankment or a hedge of evergreens so long as the fence, hedge or embankment otherwise is in compliance with applicable zoning regulations.

It is unlawful for any person to create or maintain on any premises on or adjacent to a public right-of-way within Yellowstone County any condition which contributes to community decay and is injurious to health or safety, is offensive to the senses, or obstructs the free use of property, so as to interfere with the comfortable enjoyment of life or property, or obstructs a public right-of-way. The following acts are conditions that contribute to community decay and are public nuisances:

1. Maintaining on any premises an Attractive Hazard for more than 24 hours without removing the door, lid, or locking or fastening device from such container;
2. Maintaining a Junk Vehicle(s) on any premises for more than thirty (30) days and in view from an adjacent public right-of-way without removing such vehicle(s) to a legal disposal site or shielding it from an adjacent public right-of-way;
3. Maintaining a collection of Junk (See Definition) on any premises for more than thirty (30) days and in view from an adjacent public right-of-way without removing such material to a legal disposal site or placing such material out of view from the adjacent public right-of-way;
4. Creating or maintaining an obstruction to a public right-of-way;
5. Creating or maintaining on any premises an amount of decaying matter, animal or vegetable, that is not part of an agricultural or farming operation, so as to contaminate the atmosphere and be offensive to the senses and obstruct the free enjoyment of life and property;
6. Maintaining a Dangerous Structure on or adjacent to a public right-of-way (See Definition) for more than thirty (30) days without securing such property against entry, or abating the dangerous condition of such structure.

Penalty

At the discretion of the Yellowstone County Code Officer, a person suspected to have committed the offense of community decay may be either prosecuted civilly or criminally for the offense. The Yellowstone County Attorney's Office shall prosecute the case whether in a civil or criminal forum. A person found liable of civil community decay may at the discretion of the court be ordered to remove the community decay from the property and be permanently enjoined from the placement of community decay on the property in the future. A court may also grant the County permission to enter the property to remove the community decay and to place the cost of the removal on the property taxes of the property owner. A person convicted of criminal community decay may at the discretion of the court be sentenced to six months incarceration in the Yellowstone County Detention Facility and/or a \$500.00 fine.

Enforcement

THIS ORDINANCE IS COMPLAINT DRIVEN ONLY. THE CODE ENFORCEMENT OFFICER OR SHERIFF'S DEPARTMENT DEPUTY SHALL NOT INITIATE ENFORCEMENT OF THIS ORDINANCE UNLESS A CITIZEN COMPLAINT IS MADE FIRST. THE COMPLAINANT SHALL BE REQUIRED TO IDENTIFY HIS/HERSELF AND GIVE HIS/HER ADDRESS BEFORE A COMPLAINT IS INVESTIGATED.

The Yellowstone County Code Enforcement Officer shall be primarily responsible for the enforcement of the

community decay ordinance, but all personnel of the Yellowstone County Sheriff's Department shall also retain jurisdiction over enforcement of this ordinance. Community decay complaints shall be forwarded to the Code Enforcement Officer. The Code Enforcement Officer shall investigate the complaints. If the Code Enforcement Officer finds probable cause does not exist to believe that a violation has occurred, he shall send a letter to the person who filed the complaint that the complaint has been investigated and there was no probable cause to believe a violation has occurred. If the Code Enforcement Officer finds probable cause to believe that a violation has occurred, he shall send a letter to the property owner and the person who filed the complaint that probable cause exists to believe a violation has occurred and the property owner has 30 days to place the property in compliance with the ordinance. The letter should indicate what the property owner needs to do to place the property in compliance with the ordinance and that the Code Enforcement Officer if requested by the property owner will inspect the property prior to the expiration of the 30 day period to determine whether it is in compliance with the ordinance. If the property owner does not place the property in compliance with the ordinance within 30 days after the notice of probable cause has been mailed, the Code Enforcement Officer shall either request the Yellowstone County Attorney's Office initiate a civil action to place the property in compliance with the ordinance or issue a citation to the property owner for criminal community decay unless the property owner files with the Code Enforcement Officer a reasonable plan to abate the Community Decay. The plan shall be submitted in writing and shall be signed by the owner of the property in question. The plan shall list timelines for various stages of abatement, but in no instance shall the plan for the total abatement of the Community Decay exceed sixty (60) days (exclusive of the first thirty (30) day period as otherwise provided in this Ordinance). Should the Code Enforcement Officer determine that the timeline for any stage of abatement has not been met, and there is not good cause shown for the delay, the Code Enforcement Officer may immediately proceed with the processing of the complaint as otherwise provided for in this Ordinance. The Code Enforcement Officer shall provide the Yellowstone County Attorney's Office with the assistance it needs to successfully prosecute either a civil or criminal action against a property owner.

Jurisdiction

The ordinance applies to all of Yellowstone County outside the borders of incorporated cities and towns located in Yellowstone County.

Definitions

"Abate" means to repair, replace remove, destroy or otherwise remedy the condition in question by such means, in such a manner and to such an extent that is determined necessary in the interest of the health, safety and general welfare of the affected community.

"Agricultural or farming operation" means the use of land for agriculture purposes including farming, dairying, pasturage agriculture, grazing land, animal and poultry husbandry, horticulture, floriculture, viticulture and forestry including all uses customarily incidental thereto including any agriculture industry or business including but not limited to commercial feed lots, animal hospitals, food processing plants, fur farms or similar uses. Agricultural and farming operations also include any property used for crops, livestock or wood lots maintained for the personal use or enjoyment of the property owner and family members. Any open storage of materials or equipment on such property must be related and incidental to the normal operation of such farm, ranch or woodlot.

"Attractive Hazard" means the open storage on property that may attract children, of any container having a compartment of more than 1 ½ cubic feet capacity and a door or lid that locks or fastens automatically when closed and cannot be easily opened from the inside.

"Community Decay" means a public nuisance created by allowing rubble, debris, junk, junk vehicle(s), dangerous structure(s) or refuse to accumulate on or adjacent to a public right-of-way so that it 1) 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 or 2) a condition which renders dangerous for passage any public right-of-way.

"Component parts" means 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.

“Dangerous Structure” means any dangerous, decaying, unkempt, falling or damaged residential dwelling or any other type of structure designed for human occupancy including but not limited to housetrailers, mobile homes and manufactured homes, that is vacant with damaged or open doors, windows or other openings not secured to prevent unauthorized entry excluding any structure related to an agricultural or farming operation.

“Dormant vehicles” are defined as those motor vehicles that are intact but are not licensed or operable.

“Donor vehicle is defined as a motor vehicle that is unlicensed and inoperable with the primary use being the donation of parts to a non-junk vehicle.

“Enforcement Officer” means any County employee so designated by the Board of County Commissioners.

"Housetrailer" means a form of housing designed to be moved from one place to another by an independent power connected to the housetrailer, which is either 8 feet wide or less or 45 feet long or less.

“Junk” includes the open storage of old appliances, broken or neglected machinery and equipment or parts thereof, old iron or other scrap metal, automobile or truck tires, cardboard, old lumber, rags, rope, paper, debris, rubble, batteries, rubber debris, mattresses or any worn out, cast off or discarded 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 and is not part of an approved commercial or public salvaging or recycling operation.

“Junk Vehicle” means any motor vehicle, including component parts, that is discarded, ruined, wrecked, or dismantled motor vehicle that is not lawfully and validly licensed and remains inoperative or incapable of being driven.

"Manufactured home" means a residential dwelling built in a factory in accordance with the United States department of housing and urban development code and the federal Manufactured Home Construction and Safety Standards. A manufactured home does not include a mobile home or a housetrailer.

"Mobile home" means forms of housing known as "trailers", "housetrailers", or "trailer coaches" exceeding 8 feet in width or 45 feet in length, designed to be moved from one place to another by an independent power connected to the mobile home or any trailer, housetrailer, or trailer coach up to 8 feet in width or 45 feet in length used as a principal residence.

“Obstruction to the Public Right-of-Way” means the placement of any debris, refuse, rubble, dirt, gravel, soil, fence, junk, junk vehicle or other personal property so as to obstruct traffic, drainage, pedestrians or otherwise safe and open access to such right-of-way.

“Person” means any individual, firm, association, partnership, corporation or any entity, public or private.

“Premises” means any lot, parcel of land, building, parcel, real estate, land or portion of land whether improved or unimproved including any portion of any street, right-of-way or alley lying between such lot or parcel of land and the center of such street, right-of-way or alley.

“Public right-of-way” means any path, road or highway which anyone (public) may use or has the right to pass along at any time.

"Public view" means any point 6 feet above the surface of the center of a public right-of-way from which items can be seen.

“Receiving vehicle” is defined as an operable or licensed vehicle of the same make or model as that of a Donor vehicle in which the owner or custodian must demonstrate direct interchangeability of parts from the Donor vehicle.

“Responsible Person” means any agent, lessee, owner or other person occupying or having charge or control of any premises.

"Shielding" means the construction or use of a sight-obscuring fence or other man-made barriers (made of sound building materials) or natural barriers to conceal items from public view.

"Sound building materials" means rough dimensional lumber or other materials of equivalent performance, attractiveness and shielding qualities; does not include railroad ties, wood pallets, tires, rubble or salvaged material.

History of Adoption

Chronology

Resolution of Intent – March 1, 2011

1st Publication and Posting of Notices for Public Hearing – March 3, 2011

2nd Publication of Notices of Public Hearings – March 10, 2011

1st Public Hearing & Vote – March 15, 2011

2nd Public Hearing, Vote and Ordinance Adoption – March 29, 2011

Ordinance Effective – April 28, 2011

Ordinance Documents

Ordinance

Resolution of Intent

Minute Meetings for Resolution of Intent

Notice of Public Hearings

Affidavit of Publication and Posting of Hearings

Minute Meetings for 1st Hearing and Vote

Resolution

Minute Meetings for 2nd Hearing, Vote and Resolution

Minute Meetings for Announcement of Effective Date

Prior Community Decay-Ordinances

This ordinance shall become effective 30 days following its passage on 2nd reading. Upon this ordinance becoming effective, the prior Community Decay Ordinance dated May 21, 2002 shall be repealed.

Applicable Montana Code Annotated Sections

7-5-2110 Community decay defined.

(1) In 7-5-2111, "community decay" means a public nuisance created by allowing rubble, debris, junk, or refuse to accumulate resulting in conditions that are injurious to health, indecent, offensive to the senses, or obstruct the free use of property so as to interfere with the comfortable enjoyment of life or property.

(2) "Community decay" as used in 7-5-2111 may not be construed or defined to apply to:

- (a) normal farming, ranching, or other agricultural operations or to a farm, ranch, or other agricultural facility, and any appurtenances thereof, during the course of its normal operations; or
- (b) normal activities at a shooting range.

7-5-2111 Control of community decay.

(1) The governing body of a county may regulate, control, and prohibit conditions that contribute to community decay on or adjacent to any public roadway within the county by adoption of an ordinance that substantially complies with the provisions of 7-5-103 through 7-5-107.

(2) An ordinance adopted under subsection (1) may include time limits for removal or shielding of such conditions as considered appropriate by the governing body.

(3) Nothing in this section restricts the governing body from enacting community decay controls affecting only portions of the county.

(4) Nothing in this section or 7-5-2110 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 section or 7-5-2110.

(5) For the purposes of enforcing an ordinance adopted under subsection (1), the county governing body may provide that, after giving due notice, in writing, of violation and upon the failure of the property owner to comply with the ordinance, officers and employees of the county may enter upon the property for the specific purpose of abating the violation of the ordinance and may assess the property owner for the actual costs for the abatement. Nonpayment of such an assessment becomes a lien upon the property and is enforceable in the same manner as the nonpayment of property taxes is enforced.

Passed and Adopted on the 15th day of March 2011 and the 29th day of March 2011.
Effective the 28th day of April 2011.

BOARD OF COUNTY COMMISSIONERS
YELLOWSTONE COUNTY, MONTANA

John Ostlund, Chairman
Yellowstone County Commissioner

James E. Reno, Member
Yellowstone County Commissioner

Bill Kennedy, Member
Yellowstone County Commissioner

ATTEST:

Tony Nave
Yellowstone County Clerk and Recorder

State of Montana }
 ss.
County of Yellowstone }

On March 29th, 2011, John Ostlund, James E. Reno and Bill Kennedy, members of the Yellowstone County Board of County Commissioners, and Tony Nave, the Yellowstone County Clerk and Recorder, acknowledged to me that they executed the attached Yellowstone County Community Decay Ordinance on behalf of Yellowstone County in their official capacities as Board Members and the Clerk and Recorder.

Notary Public For the State of Montana

Residing at Billings, Montana.
My commission expires: _____

GALLATIN COUNTY ORDINANCE NO. 2017-001

AN ORDINANCE ADOPTING THE GALLATIN COUNTY COMMUNITY DECAY REGULATIONS AND REPEALING GALLATIN COUNTY ORDINANCE NO. 2004-017

1. Legislative Findings.

A. Title 7, Chapter 5, Part 21 of the Montana Code Annotated (MCA) authorizes the Gallatin County Board of County Commissioners (“County Commission”) to regulate, control, and prohibit conditions that contribute to community decay.

B. Previous versions of the Community Decay Ordinance were adopted by the County Commission on March 16, 1993 (Ordinance No. 93-01) and September 7, 2004 (Ordinance No. 2004-017).

C. The County Commission has determined that Ordinance No. 2004-017 includes certain provisions that are not provided for by law and other provisions that are more restrictive than required by law.

2. Purpose. The County Commission desires to repeal Ordinance No. 2004-017 and adopt the Gallatin County Community Decay Regulations to better address the regulation, control, and prohibition of conditions that contribute to community decay on or adjacent to public roadways within Gallatin County, Montana.

3. Authority. Sections 7-5-2110 and 7-5-2111, MCA authorize the governing body of a county to enact an ordinance to regulate, control, and prohibit conditions that contribute to community decay on or adjacent to any public roadway within the county.

4. Gallatin County Community Decay Regulations Adopted. This Ordinance hereby adopts the Gallatin County Community Decay Regulations attached hereto and which are incorporated into this Ordinance by reference.

5. Penalty. Pursuant to § 7-5-109(1), MCA, a violation of this Ordinance shall constitute a misdemeanor and is punishable by a fine not to exceed \$500, imprisonment not to exceed six (6) months, or both the fine and imprisonment.

6. Severability. If any provision of this Ordinance is found to be invalid or unenforceable, such invalidity or unenforceability shall not affect the Ordinance as a whole or any part thereof that can be given effect without the invalid or unenforceable provision.

7. Compatibility. Nothing in this Ordinance may be construed to abrogate or affect the provisions of any lawful ordinance, regulation, or resolution that is more restrictive than the provisions of §§ 7-5-2110 or 7-5-2111, MCA.

8. Repeal and Ratification. Upon the effective date of this Ordinance, Gallatin County Ordinance No. 2004-017 and any of its amendments is repealed and replaced with this

Ordinance.

9. **Effective Date.** The Gallatin County Clerk and Recorder shall post a copy of this Ordinance and shall make copies available to the public upon the first reading and approval, as required by § 7-5-103, MCA. Pursuant to § 7-5-105, MCA, this Ordinance shall take effect thirty (30) days after its second reading and approval, which shall take place not less than 12 days apart from the first reading as required by § 7-5-103, MCA. Upon the second reading and approval of this Ordinance, it shall be filed with the Clerk and Recorder.


FIRST READING & APPROVAL

DATED THIS 24th day of January, 2017.

GALLATIN COUNTY BOARD OF COUNTY COMMISSIONERS


Don Seifert, Chairman

ATTEST


Charlotte Mills, Clerk and Recorder

SECOND READING & APPROVAL

DATED THIS 7 day of FEBRUARY, 2017.

GALLATIN COUNTY BOARD OF COUNTY COMMISSIONERS


Don Seifert, Chairman

ATTEST:


Charlotte Mills, Clerk and Recorder

AN ORDINANCE ADOPTING THE GALLATIN COUNTY COMMUNITY DECAY REGULATIONS AND
REPEALING GALLATIN COUNTY ORDINANCE NO. 2004-017

GALLATIN COUNTY COMMUNITY DECAY REGULATIONS

Section 1. Definitions

- A. "Abate" or "Abatement" means to eliminate or remove, or the elimination or removal of, all of the conditions that constitute a violation of these regulations.
- B. "Adjacent to" means directly abutting or sharing a border with.
- C. "Accumulate" means to store, gather, collect, heap, or pile up.
- D. "County Commission" is the Gallatin County Board of County Commissioners.
- E. "Farming, Ranching, or Other Agricultural Operation" is the use of land for agriculture or farming purposes, including pasturage agriculture, dairying, grazing land, animal and poultry husbandry, horticulture, floriculture, viticulture, and forestry, and all uses customarily incidental to the normal operation thereof.
- F. "Community Decay," as defined by § 7-5-2110, MCA, is a Public Nuisance created by allowing rubble, debris, junk or refuse to Accumulate resulting in conditions that are injurious to health, indecent, offensive to the senses, or obstruct the free use of property so as to interfere with the comfortable enjoyment of life or property. Community Decay as used in these regulations may not be construed or defined to apply to:
 - i. normal Farming, Ranching, or Other Agricultural Operations, or to a farm, ranch, or other agricultural facility, and any appurtenances thereof, during the course of its normal operations; or
 - ii. normal activities at a shooting range; or
 - iii. Persons servicing, manufacturing, or processing materials, goods, or products on lots in public view, so long as the materials, goods, or products are used in the normal operation of the business and are neatly stacked or piled.
- F. "Department" is the Gallatin County office or department designated by the County Commission to respond to and enforce complaints of Community Decay, which may include the Compliance Department, Planning Department, and City-County Board of Health.
- G. "MCA" is the Montana Code Annotated.
- H. "Person" is an individual, firm, partnership, company, association, corporation, or other entity, whether organized for profit or not.
- I. "Public Nuisance," as defined by § 27-30-102, MCA, is one 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.

- J. "Public Roadway" is any public road right-of-way in Gallatin County, Montana, however created.
- K. "Public View" means visible from a Public Roadway.
- L. "Responsible Person" is a Person who violates these regulations.
- M. "Shielding" is a barrier comprised of natural and/or artificial materials and used to conceal conditions contributing to Community Decay from Public View.

Section 2. Prohibition

- A. A Person violates these regulations by allowing or maintaining conditions that contribute to Community Decay on, or on property Adjacent to, a Public Roadway within Gallatin County, Montana.
- B. Conditions that may contribute to Community Decay include, but are not limited to, any discarded substance, item, or material, such as cardboard, paper, pallets, tires, iron, or metal; demolition waste; construction or building material, such as bricks, concrete, or wood; junk vehicles or trailers; vehicle or machine parts; dead animals or animal parts; appliances; furniture; branches, logs, or yard trimmings; and any other similar materials, items, waste, parts, or substances.

Section 3. Shielding

- A. A Person does not violate these regulations by allowing or maintaining conditions that contribute to Community Decay on, or on property Adjacent to, a Public Roadway if the conditions do not pose a threat to public health and safety and the conditions are concealed from Public View in accordance with the following standards:
 - i. All plans for shielding must be approved by the Department prior to commencing construction of the shielding.
 - ii. Shielding must conform to the requirements of any zoning, planning, building, or restrictive covenant provisions applicable to the property.
 - iii. Shielding must be of sufficient height so that no conditions contributing to Community Decay are within Public View.
 - iv. Shielding must be maintained by the Responsible Person in a neat and workmanlike manner and must be replaced or repaired when necessary.
 - v. Artificial Shielding. No more than one Shielding material may be used on any

one side of a barrier. The boards of a fence may be spaced or slanted to reduce wind load. The vertical space between adjacent boards may not be more than 1½ inches wide. Chain link fences with standard fiberglass or similar inserts are acceptable, provided the vertical space between adjacent inserts does not exceed 1½ inches.

- vi. Natural Shielding. Natural Shielding such as trees or shrubs must provide concealment from Public View at all times of the year. A berm may be used, provided the slopes of the berm are covered and graded smooth with not less than three inches of top soil and are seeded with a weed-free seed mix.

Section 4. Enforcement & Abatement

- A. Upon receipt of a signed written complaint or the discovery of an alleged violation by other means, the Department shall commence an investigation to determine if a violation exists. The Department may inspect the subject premises by any lawful means. If a violation of these regulations exists, the Department shall take appropriate action as provided herein to resolve the violation.
- B. The Department shall notify the Responsible Person of the violation in writing. The notice of violation should state the following:
 - i. the nature and location of the violation;
 - ii. the actions needed to Abate the violation;
 - iii. the date Abatement must be completed in the absence of an approved Plan of Abatement;
 - iv. that failure to comply with the notice within the time specified, unless extended by an approved Plan of Abatement, enables the County to enter the property to Abate the violation; and
 - v. that the County is authorized to assess the Responsible Person for the actual costs of the Abatement, and nonpayment of the assessment becomes a lien upon the property enforceable in the same manner as the nonpayment of property taxes.
- C. Within thirty (30) calendar days from the receipt of the notice of violation, the Responsible Person may submit a written Plan of Abatement to the Department. The proposed Plan of Abatement must include, at a minimum:
 - i. a complete description of the Abatement proposed;
 - ii. the date for commencement of the Abatement;

- iii. any reason why the Abatement cannot be completed within thirty (30) days from the receipt of the notice of violation; and
 - iv. the date for completion of the Abatement.
- D. The Department may accept or reject the Plan of Abatement, accept the Plan with modifications, or request additional information before making a final decision. The Department shall notify the Responsible Person in writing of its final decision.
- E. The Responsible Person shall have thirty (30) calendar days from the receipt of the notice of violation to Abate the violation or have a Plan of Abatement, approved by the Department, in place.
- F. If the Responsible Person fails to Abate the conditions contributing to Community Decay within thirty (30) calendar days from receipt of the notice of violation or the time period specified in the approved Plan of Abatement, the Department shall notify the Responsible Person in writing of the failure to Abate the violation.
- G. If the Responsible Person fails to completely Abate the violation within fifteen (15) calendar days of the notice described in subsection (F), the Department or its agents may enter upon the subject property to assess the extent of the violation. In addition, the County Commission or its agents may Abate the violation and may assess the Responsible Person for the actual costs of the Abatement. Nonpayment of such an assessment becomes a lien upon the property and is enforceable in the same manner as the nonpayment of taxes.
- H. Notwithstanding any enforcement action taken pursuant to this section, the County Commission, through the County Attorney or otherwise, may bring any legal or equitable action in the name of Gallatin County to enforce this Ordinance.

Section 5. Appeals

- A. An alleged violator may appeal a final decision of the Department in writing to the County Commission within fifteen (15) calendar days of the final decision.
- B. The County Commission shall hold a hearing regarding the appeal and shall, in writing, affirm, modify, or withdraw the Department's decision within thirty (30) calendar days after the hearing.
- C. Once an appeal for a hearing has been made, the Department's decision is stayed until the County Commission has held the hearing and affirmed, modified, or withdrawn the determination of the Department.