

RESOLUTION NO. 90-037

ORDINANCE TO CONTROL COMMUNITY DECAY

WHEREAS, the Board of Commissioners of Missoula County is authorized, pursuant to Sections 7-5-2110 and 7-5-2111, M.C.A., to adopt and enforce an ordinance to control community decay; and

WHEREAS, the Board of Commissioners of Missoula County, Montana, has determined after hearings and public input that there is a need for an ordinance to control community decay in Missoula County and wishes to enact such an ordinance.

NOW, THEREFORE, BE IT RESOLVED that effective thirty days after final adoption hereof, the following Ordinance shall be in full force and effect in Missoula County:

Section 1. Definitions. In this Ordinance the following terms have the meanings indicated below:

- (a) "Agencies" means the agencies designated by Missoula County to enforce the Community Decay Ordinance.
- (b) "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 which obstruct the free use of property so as to interfere with the comfortable enjoyment of life or the values of property. Community decay shall apply to the accumulation of rubble, debris, junk or refuse on agricultural land which is not necessary to the normal operation of the agricultural land. Community decay does not include properly permitted construction and demolition projects during the time any necessary permits are in effect. Community decay 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. Community decay does not include normal residential maintenance or landscaping.
- (c) "In public view" means any area visible from a point up to six feet above the surface of the center of a public roadway.
- (d) "Person" means an individual, firm, partnership, company, association, corporation, city, town or any other entity whether organized for profit or not.
- (e) "Public nuisance" means a nuisance which 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.
- (f) "Shielding" refers to fencing or other manmade barriers to conceal a facility from public view. It also refers to natural barriers. Any shielding barrier must conform to all local zoning, planning, building and protective covenant provisions.

Section 2. Purpose. The purpose of this Ordinance is to regulate, control, and prohibit conditions that contribute to community decay on or adjacent to all public roadways within Missoula County.

Section 3. Prohibitions. It shall be a violation of this Ordinance to own or maintain any public nuisance or community decay.

- (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 agency 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 wastes including wood, bricks, concrete, used road black top and 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 a fill material, it may contain only dirt, bricks, concrete, and/or used road black top and all such material must be completely covered with clean fill material once every thirty (30) days and the fill area adequately fenced to restrict access to the area.

(d) No person shall store or accumulate iron, metal, machine parts, household appliances, barrels and 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 Ordinance.

Section 4. Shielding. The maintenance of materials that would be considered a public nuisance under this Ordinance shall be lawful if such materials are 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 provisions applicable to the property and shall be sufficient height that none of the nuisance materials on the premises is visible to public view.

(b) Trees and shrubs may be used as shielding.

(c) No more than one shielding material shall be used on any one side of a shielding fence unless approved by the designated agency.

Section 5. Penalty. A person convicted of violating this Ordinance is guilty of a misdemeanor punishable by a fine not to exceed \$500.

Section 6. 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 industrial or commercial 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 may be mitigated in accordance with the provisions of this section.

(a) Abatement or mitigation proceedings shall be initiated by the designated agency.

(b) Within thirty (30) days of receiving a written, signed complaint that a condition of community decay exists, the designated agency shall conduct an inspection of the property alleged to be in violation of this Ordinance to determine whether there is a violation of this Ordinance.

(c) If it is determined that there is a violation of this Ordinance, the designated agency shall notify the owner of the property in writing of the violation by certified mail and order its abatement or mitigation or submission of a plan for abatement or mitigation within thirty (30) days. The notice of violation shall:

(i) include a statement specifically describing the violation;

(ii) specify that the owner, manager, or lessee has thirty (30) 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 conditions; and

(iii) advise the owner, manager, or lessee that if the violation is not abated or mitigated, the designated agency may undertake abatement or mitigation and assess the costs of that abatement to the owner.

(d) The owner, manager, or lessee may, after receipt of a notice of violation, submit a plan of abatement or mitigation to the designated agency which shall include:

- (i) the type of abatement, shield or mitigation to be undertaken;
- (ii) the date for commencement of action; and
- (iii) the date for completion of the abatement or mitigation.

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

(e) In enforcing this Ordinance, the County shall first pursue criminal sanctions and shall pursue abatement or mitigation procedures when necessary to protect the health, safety and welfare of residents of the County.

(i) The County may assess the property owner, manager or lessee for the actual costs of the abatement or mitigation.

(ii) If the assessment is not paid, it shall become a lien upon the property and may be enforced as is nonpayment of property taxes.

(f) In the event that the owner fails to comply with an abatement or mitigation order or an approved abatement or mitigation plan, the designated agency may enter upon the owner's property with the specific purpose of abating, mitigating or shielding the violation.

Section 7. Jurisdiction. This Ordinance applies to all of Missoula County.

Section 8. Effective Date. This Ordinance shall be in full force and effect thirty (30) days after its final passage and adoption by the Board of Commissioners of Missoula County, Montana.

Section 9. Compatibility. Nothing in this Ordinance or Section 7-5-2110 MCA 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 Section 7-5-2110 MCA.

Section 10. Severability. If any provision of this Ordinance is held to be invalid, such invalidity shall not affect other provisions which can be given effect without the invalid provision. To this end, the provisions of this Ordinance are to be severable.