

YELLOWSTONE COUNTY BOARD OF COUNTY COMMISSIONERS

Resolution No. 11- 24

Resolution to Amend Community Decay Ordinance

WHEREAS, pursuant to Section 7-5-2111 of the Montana Code Annotated, a board of county commissioners has the authority to enact a community decay ordinance. The Yellowstone County Board of County Commissioners adopted a Yellowstone County Community Decay Ordinance. Periodically, the Board has reviewed and amended the Ordinance. It has been several years since the Board last reviewed and amended the Ordinance. The Board believes that the Ordinance should be reviewed and amended. Both substantive and stylistic changes to the Ordinance could help better achieve the intent of the Ordinance.

WHEREAS, on March 1, 2011, the Yellowstone County Board of County Commissioners passed a resolution of intent to amend the Yellowstone County Community Decay Ordinance and set public hearings and votes on the Ordinance for March 15, 2011 and March 29, 2011. On March 1, 2011, the Yellowstone County Clerk and Recorder posted the Ordinance and made copies of it available to the public. On March 3, 2011 and March 10, 2011, the Clerk and Recorder published notice of the public hearings in the *Billings Outpost*. On March 15, 2011, the Board held a public hearing on the Ordinance. The Board heard comments on the Ordinance. The Board determined that it would be in the best interest of the public to adopt the Ordinance. The Board voted to adopt the Ordinance. On March 29, 2011, the Board held a public hearing on the Ordinance. The Board heard comments on the Ordinance. The Board determined that it would be in the best interest of the public to adopt the amended Ordinance. The Board voted to adopt the amended Ordinance.


NOW THEREFORE, BE IT RESOLVED,


The Yellowstone County Board of County Commissioners amends the Yellowstone County Community Decay Ordinance. Attached is a copy of the Ordinance. The ordinance shall be effective 30 days from the second vote to adopt the Ordinance, May 13, 2011, and shall continue until otherwise amended or repealed. The Ordinance supercedes all prior resolutions or ordinances related to litter. The Board orders the Yellowstone County Clerk and Recorder to place the Ordinance in the book of ordinances for the County. On May 17, 2011, at the first Board meeting after the Ordinance becomes effective, the Board will reiterate that the Ordinance become effective on May 13, 2011.

Passed and Adopted on the 12th day of April 2011.

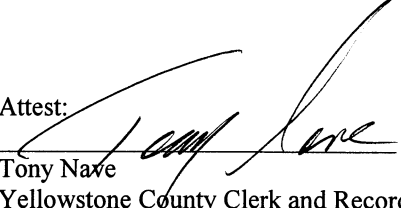
BOARD OF COUNTY COMMISSIONERS
YELLOWSTONE COUNTY, MONTANA


John Ostlund, Chairman
Yellowstone County Commissioner


Bill Kennedy, Member
Yellowstone County Commissioner


James E. Reno, Member
Yellowstone County Commissioner

Attest:

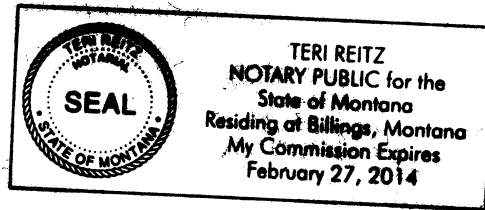

Tony Nave
Yellowstone County Clerk and Recorder

State of Montana }
 ss.
County of Yellowstone }

On April 12, 2011, John Ostlund, Bill Kennedy and James E. Reno, 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 Resolution to Amend Community Decay Ordinance on behalf of Yellowstone County in their official capacities as Board Members and the Clerk and Recorder.

Teri Reitz

Notary Public For the State of Montana
Residing at Billings, Montana.
My commission expires: 2-27-2014



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 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. 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. Unless otherwise prohibited in zoned areas of the county by Section 27-604 (e) of the Unified Zoning Regulations of Yellowstone County, material that would otherwise be defined as Community Decay may be shielded by the use of railroad ties as fencing to conceal the material.

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 up to 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 housetrailer, 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.

"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.

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

"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 house trailer.

"Mobile home" means forms of housing known as "trailers", "house trailers", 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, house trailer, 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 except as otherwise provided for in this ordinance, wood pallets, tires, rubble or salvaged material. Prohibited salvage material shall not include materials commonly used as fencing 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 – March 15, 2011
1st Reading Passed and Adopted - March 22, 2011
2nd Public Hearing – March 29, 2011
2nd Reading Passed and Adopted - April 12, 2011
Ordinance Effective – May 13, 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

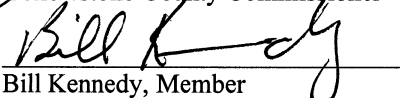
with the ordinance, officers and employees of the county may enter upon the property for the specific purpose of abating the violation of the ordinance and may assess the property owner for the actual costs for the abatement. Nonpayment of such an assessment becomes a lien upon the property and is enforceable in the same manner as the nonpayment of property taxes is enforced.


Passed and Adopted on the 22nd day of March 2011 and the 12th day of April 2011.
Effective the 13th day of May 2011.

BOARD OF COUNTY COMMISSIONERS
YELLOWSTONE COUNTY, MONTANA


John Ostlund, Chairman
Yellowstone County Commissioner

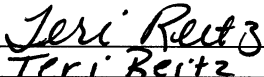

James E. Reno, Member
Yellowstone County Commissioner


Bill Kennedy, Member
Yellowstone County Commissioner

ATTEST.

Tony Nave
Yellowstone County Clerk and Recorder

State of Montana }
 ss.
County of Yellowstone }

On April 12th, 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.



Teri Reitz
Notary Public For the State of Montana
Residing at Billings, Montana.
My commission expires: 2-27-2014

