

**ORDINANCE NO. 2004-017**

**ORDINANCE TO CONTROL COMMUNITY DECAY**

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WHEREAS, Mont. Code Ann. § 7-5-2110 and § 7-5-2111 authorize the Gallatin County Commissioners to enact an ordinance to control community decay; and

WHEREAS, the Gallatin County Commissioners adopted an Ordinance to Control Community Decay, Ordinance Number 93-01 on March 16, 1993; and

WHEREAS, in May 2003 the Gallatin County Code Compliance Specialist proposed a new community decay ordinance that would clarify the definition of community decay, provide reasonable remedies for resolving violations, and add the Compliance Department as lead Department for administering the Ordinance; and

WHEREAS, the Gallatin County Commissioners have determined that there is a continued need for an ordinance to control community decay in Gallatin County, Montana, and desire to enact a new comprehensive ordinance; and

WHEREAS, the Gallatin County Commissioners desire to rescind and replace Ordinance Number 93-01 and adopt the following as a new Ordinance.

**NOW THEREFORE, BE IT ORDAINED BY THE COUNTY COMMISSIONERS OF GALLATIN COUNTY, STATE OF MONTANA THAT THE FOLLOWING SHALL BE THE ORDINANCE TO CONTROL COMMUNITY DECAY:**

## SECTION 1. DEFINITIONS

In this Ordinance the following terms have the meanings indicated below:

- (1) "Accumulate" means to store, gather; collect; heap; or pile up.
- (2) "Agriculture" means the art or science of cultivating the ground, including harvesting of crops and rearing and management of livestock; tillage; husbandry; farming; horticulture; and forestry; the science and art of the production of plants and animals useful to man.
- (3) "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 property. It must affect more than one person and/or establishment.

Community decay does not include:

- a) Normal farming, ranching or other agricultural operations, or apply to a farm, ranch, or other agricultural facility, or any appurtenances, thereof, during the course of its normal operation;
  - b) Normal activities at a shooting range;
  - c) 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;
  - d) Normal residential maintenance or landscaping;
- (4) "Department" means the Gallatin County office that will respond to Community Decay complaints including the Compliance, Planning, and City-County Health Departments, or any other office designated by the Gallatin County Commission.
  - (5) "Governing Body" means Gallatin County Commission.
  - (6) "Nuisance" means anything which is injurious to health, indecent or offensive to the senses, or an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property, or which unlawfully obstructs the free passage or use, in the customary manner, of any navigable lake, river, bay, stream, canal or basin or any public park, square, street, or highway.

A nuisance does not include anything which is done or maintained under authority of a statute, nor does it include the normal operations of an agricultural or farming operation that have been in operation longer than the complaining residents and/or establishments. (§ 27-30-101, MCA)

- (7) "Person" means an individual, firm, partnership, company association, corporation, city, town or any other entity whether organized for profit or not.

- (8) "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.  
(§ 27-30-102, MCA)
- (9) "Public view" means any area visible from a point up to six feet above the surface of the center of a public roadway as defined in § 60-1103(22), MCA.
- (10) "Shielding" refers to fencing or other manmade barriers to conceal community decay from public view. It also refers to natural barriers. Any shielding barrier must conform to all local zoning, planning, building and protective covenant provisions. Any shielding is to be of sufficient height so that none of the violations on the premises is visible to public view. This is not intended to require that permanent buildings, other structures, utility poles or any farm buildings, ranch buildings, or other agricultural facilities or appurtenances are to be included in this and be shielded.

## **SECTION 2. PURPOSE AND GOVERNING BODY**

- A. Pursuant to § 7-5-2111, MCA, 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 Gallatin County.
- B. The governing body to administer this Ordinance is the Gallatin County Commission through its designated department.

## **SECTION 3. PROHIBITIONS**

It shall be a violation of this Ordinance to own or maintain any public nuisance that results in community decay visible from a public roadway.

No person shall accumulate rubble, debris, or refuse that, upon investigation, is deemed to be a public nuisance as defined by this Ordinance. Material that may constitute community decay includes, but is not limited to, bricks, concrete, wood, cardboard, paper, pallets, tires, dead animals/animal parts, dirt, demolition waste, junk vehicles, wrecked trailers, iron, metal, machine parts, appliances, and barrels.

## **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.

- (1) All plans for shielding shall be approved by Gallatin County prior to commencing construction of shielding.
- (2) When fences are used for shielding, the boards may be spaced and/or slanted to reduce wind load. The space between boards when viewed from a broad-side may not be more than 1½ inches wide. Chain link fences with standard fiberglass or similar inserts are acceptable, provided the gap between adjacent inserts does not exceed 1½ inches.
- (3) No more than one of the approved shielding materials shall be used on any one side of a shielding fence.
- (4) The fencing is to be maintained by the property owner or occupant in a neat and workmanlike manner and shall be replaced and/or repaired when necessary.
- (5) Screening with trees and shrubs must provide a similar degree of shielding at all times of the year. Trees and shrubs may best be used in conjunction with other shielding materials. A berm may also be used, provided the slopes of the berm are covered and graded smooth, with not less than three inches of top soil, and seeded with a weed free seed mix.
- (6) 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.
- (7) The material being shielded may not present a threat to public health and safety.

## **SECTION 5. CORRECTIVE ACTION**

- A. Upon its own initiative, or within thirty (30) days of receiving a completed complaint form (signed by 2 or more people) that a condition of community decay exists, the County shall inspect the subject property to determine whether there is a violation of this ordinance. Complaint forms are available at the Gallatin County Compliance Department.
- B. If it is determined that this ordinance has been violated, the County shall notify the owner, manager or lessee of the property, or other responsible party in writing of the violation by certified mail, return receipt, and order corrective action, or submission of a corrective action plan within thirty (30) days of their receipt of the letter. The notice of violation shall:
  - (1) Include a statement specifically describing the violation.
  - (2) Specify that the owner, manager, or lessee, or other responsible party has thirty (30) days from receipt of such notice to bring the property into compliance, or to submit a corrective action plan that will comply with this Ordinance.
  - (3) Advise the owner, manager, or lessee, or other responsible party that if the violation is not resolved, the County may undertake corrective action, and assess the costs to the owner.
- C. Upon receipt of a notice of violation, the owner, manager or lessee, or other responsible party, may submit a corrective action plan to Gallatin County, which shall include:

- (1) A complete description of the corrective action to be undertaken.
  - (2) The date for commencement of the corrective action.
  - (3) The date for completion of the corrective action. An extension may be granted at the discretion of Gallatin County.
- D. The county may accept or reject the plan, accept the plan with modifications, or request additional information before making a final determination.
- E. The owner, manager or lessee, or other responsible party may appeal Gallatin County's final decision according to the procedure set forth in Section 6.

## **SECTION 6. APPEAL PROCESS**

- A. An alleged violator may appeal a department's decision in writing via certified mail to the Gallatin County Commission within ten (10) days of the department's final decision regarding:
- 1) A determination that a community decay violation exists,
  - 2) Rejection of a corrective action plan, or
  - 3) The assessment of a fine for noncompliance.

The Commission shall hold a hearing within forty-five (45) days from the date that the appeal was received. The Commission shall, in writing, affirm, modify or withdraw the department's decision within thirty (30) days after the hearing. Once an appeal for a hearing has been made, the department's decision shall be stayed until the Commission has held the hearing and affirmed, modified or withdrawn the determination of the department.

If a violator fails to resolve a violation upon order from the Commission, the department shall be authorized to remedy the violation, and assess costs to the property owner, manager, or lessee. In the event that a violator does not appeal the department's decision, and fails to resolve the violation, the department will bring the matter before the Commission for authorization to complete the corrective action, and assess costs to the property owner, manager, or lessee. If the assessment is not paid, it shall become a lien upon the property and may be enforced, as is non-payment of property taxes.

- B. A violator may appeal to the Eighteenth Judicial District Court from any final order or determination of the Commission.

## **SECTION 7. ENFORCEMENT AND PENALTIES**

- A. Criminal Penalty

A violation of this Ordinance, or plan approved under this Ordinance or order issued under this ordinance shall constitute a misdemeanor. A person convicted of a violation

under this Section shall be fined not more than \$500. Each day of violation shall constitute a separate offense and be punishable as such.

**B. Injunction**

Action under Section 5 of this Ordinance does not bar enforcement of this Ordinance or orders issued under it by injunction or other appropriate remedy.

**C. Fines**

1. The department may assess violators fines of up to \$500 per day of violation for noncompliance. When determining a fine, the department shall consider the nature, circumstances, extent and gravity of the violation, any prior history of such violations, the degree of culpability, and such other matters as justice may require. In addition, the violator may be required to pay all costs and expenses involved in the case.
2. An alleged violator may appeal the assessment of a fine to the County Commission as set forth in Section 6.

**SECTION 8. JURISDICTION**

This Ordinance applies to all of Gallatin County, except incorporated municipalities.

**SECTION 9. EFFECTIVE DATE**

This Ordinance shall be in full force and effect thirty (30) days after its final passage and adoption by the Gallatin County Commissioners.

**SECTION 10. COMPATIBILITY**

Nothing in this Ordinance or § 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 § 7-5-2110, MCA.

**SECTION 11. 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.

The Gallatin County Clerk and Recorder shall post a copy of this ordinance and shall make copies available to the public upon 1<sup>st</sup> Reading and Approval of this ordinance.

This ordinance shall take effect thirty (30) days after its 2<sup>nd</sup> Reading and Approval.

**1<sup>st</sup> Reading and Approval: August 24, 2004.**

**GALLATIN COUNTY COMMISSION**

/s/ John Vincent  
John Vincent, Chairman

/s/ Bill Murdock  
Bill Murdock, Member

excused  
Jennifer Smith Mitchell, Member

ATTEST:

/s/ Shelley Vance  
Shelley Vance  
Clerk and Recorder

**2nd Reading and Approval: September 7, 2004.**

**GALLATIN COUNTY COMMISSION**

/s/ John Vincent  
John Vincent, Chairman

Excused  
Bill Murdock, Member

/s/ Jennifer Smith Mitchell  
Jennifer Smith Mitchell, Member

ATTEST:

/s/ Shelly Vance  
Shelley Vance  
Clerk and Recorder