

YELLOWSTONE COUNTY COMMUNITY DECAY ORDINANCE AS AMENDED

Section ---. 101. Purpose

WHEREAS, the purpose of this Ordinance is to exercise the Board of County Commissioners power in relation to controlling conditions in Yellowstone County that contribute to community decay and the abatement of such nuisances, to protect the public health, safety and welfare and to promote the economic development of the County; and

WHEREAS, it is also the purpose of this Ordinance to prevent and prohibit those conditions which reduce the value of private property, interfere with the enjoyment of public and private property, create and constitute public nuisances and contribute to the degradation of the character of neighborhoods and town sites and the depreciation of property values. It is necessary for the public health, safety and welfare to regulate, prevent and prohibit conditions on or adjacent to public rights-of-way that may effect the comfortable enjoyment of life or property; and

Section ---102 Definitions.

WHEREAS, for the purposes of this ordinance the following definitions shall apply:

1. **“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 effected community.
2. **“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.
3. **“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.
4. **“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.
5. **“Dangerous Structure”** means any dangerous, decaying, unkempt, falling or damaged residential dwelling or other structure designed for human occupancy that are unattached

to a permanent foundation excluding any structure related to an agricultural or farming operation.

6. **"Enforcement Officer"** means any County employee so designated by the Board of County Commissioners.
7. **"Junk"** includes the open storage of old appliances, equipment, or parts thereof, old iron or other scrap metal weighing in excess of 50 pounds, automobile or truck tires, cardboard, old lumber stored for more than 180 days, 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.
8. **"Junk Vehicle"** means any discarded, ruined, wrecked, or dismantled motor vehicle, including any component parts, which is not lawfully and validly licensed and remains inoperative or incapable of being driven.
9. **"Obstruction to the Public Right-of-Way"** means the placement 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.
10. **"Person"** means any individual, firm, association, partnership, corporation or any entity, public or private.
11. **"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.
12. **"Responsible Person"** means any agent, lessee, owner or other person occupying or having charge or control of any premises.

Section---103 Prohibitions.

WHEREAS, 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. Such condition shall be deemed a nuisance if it affects an entire community or neighborhood or any considerable number of persons. 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 or vehicles on any premises for more than thirty (30) days and in view from an adjacent public right-of-way without removing such

to a permanent foundation excluding any structure related to an agricultural or farming operation.

6. **“Enforcement Officer”** means any County employee so designated by the Board of County Commissioners.
7. **“Junk”** includes the open storage of old appliances, equipment, or parts thereof, old iron or other scrap metal weighing in excess of 50 pounds, automobile or truck tires, cardboard, old lumber stored for more than 180 days, 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.
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2. Maintaining a Junk Vehicle or vehicles 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 them 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.

WHEREAS, nothing that is done or maintained under the express authority of a statute can be deemed a condition of community decay or public nuisance; and

WHEREAS, no agricultural or farming operation, place, establishment, or facility or any of its appurtenances or the operation thereof is a public nuisance;
and

WHEREAS, noises resulting from the shooting activities at a shooting range during established hours of operation are not considered a public nuisance or a contributor to community decay; and

Section---104. Enforcement – Right of Entry - Voluntary Abatement -- Appeal to the Board of County Commissioners.

A. Enforcement

WHEREAS, upon written or oral complaint of any citizen so affected by an alleged condition of community decay, the Enforcement Officer shall investigate such complaint within a reasonable period of time. The Enforcement Officer shall determine whether such condition contributes to community decay and is a public nuisance. If the officer finds it is a condition of community decay as defined herein he or she shall notify in writing by certified mail the owner of the premises and the Responsible Person, if different from the owner, who is maintaining or creating such violation and the specific nature of the violation; and

B. Right of Entry

WHEREAS, the Enforcement Officer will contact the owner of the premises and the Responsible Person, if different from the owner, either in writing or by telephone prior to entry upon an individual's property. The purpose of this contact is to receive affirmative permission to be on the property. If the Enforcement Officer does not acquire prior permission to enter onto the property, the officer will immediately contact the owner and/or the Responsible Person upon entry on private property to explain the purpose of the visit and

receive permission to remain on the premises to conduct the legitimate business of the county. Any combination of (a) a "No Trespassing" sign and a gate or chain on private property or (b) the securing of a gate or chain (other than by a simple latching or closure device) shall be considered controlling. Entry shall not be made upon such property without the express permission of the property owner and/or the Responsible Person or in response to legal process (search warrant). No Enforcement Officer shall be required to enter a posted or gated piece of property if the officer feels threatened, intimidated or otherwise in fear of his or her personal safety; and

C. Voluntary Abatement

WHEREAS, the Enforcement Officer shall afford the owner of the premises and the Responsible Person (if different than the owner) a reasonable period of time, not to exceed thirty (30) days, to voluntarily abate the condition of community decay. The Enforcement Officer must notify the owner of the premises and the Responsible Person (if different than the owner) in writing by certified mail of the specific condition to be abated and the specific abatement required. Such written notice shall include a voluntary abatement agreement for the owner of the premises' signature and the Responsible Person's (if different than the owner) signature and return to the Enforcement Officer and a form to be completed by the owner of the premises if he or she chooses to appeal the order of abatement to the Board of County Commissioners. Any owner of a premises or Responsible Person (if different than the owner) agreeing to voluntarily abate a condition of community decay shall do so in writing in a standardized format as approved by the Board of County Commissioners. Any owner of a premises contesting the condition of community decay and abatement order by an Enforcement Officer shall do so in writing in a standardized format as approved by the Board of County Commissioners; and

D. WHEREAS, the owner of the premises or the Responsible Person (if different than the owner) must sign and return the voluntary abatement form within thirty (30) days of the notice to abate the condition of community decay. If the owner of the premises and the Responsible Person contest the order to abate a condition of community decay a written appeal to the Board of County Commissioners must be filed within thirty (30) days of the notice to abate by the Enforcement Officer. If the Responsible Person is different than the owner of the premises, both parties must sign and submit a written appeal. If an appeal is filed within thirty (30) days, the Board of County Commissioners shall schedule a hearing on such appeal within forty-five (45) days of such appeal. The Board of County Commissioners shall notify in writing the Enforcement Officer, the owner of the premises and the Responsible Person of the location, date and time of such hearing. The Enforcement Officer shall transmit to the Board any documentation, evidence or other material related to the property in question. At the hearing the Board may hear testimony from any interested party. The Board may affirm, modify or reverse the order of abatement. An appeal of the decision of the Board may be made to District Court within thirty (30) days of the filing of the written decision of the Board; and.

Section --105. Abatement and collection of costs.

A. WHEREAS, the Board of County Commissioners may order the abatement of the condition of community decay by any agent or officer of the County after the written abatement notice has been served and the 30 days for voluntary abatement has expired and the Responsible Party or the property owner has not performed the required abatement. The designated County agent or

receive permission to remain on the premises to conduct the legitimate business of the county. Any combination of (a) a "No Trespassing" sign and a gate or chain on private property or (b) the securing of a gate or chain (other than by a simple latching or closure device) shall be considered controlling. Entry shall not be made upon such property without the express permission of the property owner and/or the Responsible Person or in response to legal process (search warrant). No Enforcement Officer shall be required to enter a posted or gated piece of property if the officer feels threatened, intimidated or otherwise in fear of his or her personal safety; and

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D. WHEREAS, the owner of the premises or the Responsible Person (if different than the owner) must sign and return the voluntary abatement form within thirty (30) days of the notice to abate the condition of community decay. If the owner of the premises and the Responsible Person contest the order to abate a condition of community decay a written appeal to the Board of County Commissioners must be filed within thirty (30) days of the notice to abate by the Enforcement Officer. If the Responsible Person is different than the owner of the premises, both parties must sign and submit a written appeal. If an appeal is filed within thirty (30) days, the Board of County Commissioners shall schedule a hearing on such appeal within forty-five (45) days of such appeal. The Board of County Commissioners shall notify in writing the Enforcement Officer, the owner of the premises and the Responsible Person of the location, date and time of such hearing. The Enforcement Officer shall transmit to the Board any documentation, evidence or other material related to the property in question. At the hearing the Board may hear testimony from any interested party. The Board may affirm, modify or reverse the order of abatement. An appeal of the decision of the Board may be made to District Court within thirty (30) days of the filing of the written decision of the Board; and.

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officer shall certify the cost of the abatement thereof to the Board. That cost shall be assessed to the property owner. 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. If a written appeal of an abatement order is filed with the Board, the Board may still order the condition of community decay to be abated by any agent or officer of the County. In such case, the Board may not order this abatement until after the hearing on the appeal. The designated County agent or officer shall certify the cost of the abatement thereof to the Board. That cost shall be assessed to the property owner. 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; and

B. WHEREAS, In the event the County orders an Involuntary Abatement of a Condition of Community Decay the procedure for financing such abatement will be as follows:

- 1) Code Enforcement staff will secure at least 3 quotes (or bids if necessary) from qualifying contractors, to perform the ordered abatement.
- 2) Contractors' quotes will be forwarded to County Purchasing Department for review along with proof of current Liability Insurance and Workman's Compensation Insurance for each contractor.
- 3) Qualifying contractors' quotes will be forwarded to the Board of County Commissioners with a recommendation from Planning and County Purchasing for review and quote selection.
- 4) A contract will be prepared and then signed by Board of County Commissioners for the selected Contractor with an agreement to disperse payment to contractor within 30 days after submission of bill(s).
- 5) Code Enforcement staff will coordinate the abatement project with the contractor, and oversee the work as it is being performed.
- 6) After the Planning Director and Code Enforcement staff's approval of finalized bill it will be forwarded to County Finance Department for payment.
- 7) A copy of approved bill(s) and proof of disbursement is placed in the Code Enforcement File maintained by Code Enforcement Staff. These documents, along with the itemized Abatement Expense Report are used to determine the total cost of abatement for the property. Costs that may be included on the Abatement Expense Report are shown in Subsection C below.
- 8) The Abatement Expense Report is then certified and transmitted to the Board of County Commissioners for approval of assessment on the real property being abated.
- 9) The property owner is sent notice of Abatement Expense Report and notice that any assessment that is not paid shall become a lien upon the property and is enforceable in the same manner as the nonpayment of property taxes. Payments made within 30 days of notice will have the interest fee waived.
- 10) A summary listing of the assessments, tax codes, and property owners will be kept by the clerk and recorder through August 31 of each year, and the list presented to the Department of Revenue for billing on the next real property tax statement.
- 11) A special abatement fund will be established to account for costs, collections, and transactions necessary to the efficient operation of the program. Assessment funds collected are returned to the designated abatement account for future use on other involuntary property abatements OR for transfer back to the County general fund.

C. WHEREAS, the County shall determine the actual costs of cleanup and involuntary abatement actions and document such costs. The following expenses will be assessed as the actual costs of abatement of a Condition of Community Decay:

1. PLANNING STAFF TIME / MILEAGE / OTHER COSTS
2. SHERIFF DEPT STAFF TIME / MILEAGE
3. OTHER INVOLVED COUNTY STAFF TIME / MILEAGE / OTHER COSTS
4. POSTAGE / MAILING COSTS
5. OTHER DIRECT COSTS ASSOCIATED WITH ABATEMENT

AN INTEREST FEE OF 6% COMPUTED ON ABOVE COSTS - WILL BE WAIVED IF THE TOTAL COST OF ABATEMENT IS PAID BY THE PROPERTY OWNER WITHIN 30 DAYS OF NOTICE.

The Code Enforcement staff has the discretion to coordinate and incur reasonable costs and services necessary for the safe, effective, and efficient cleanup of designated involuntary abatement properties. The code enforcement staff will notify the County before any additional contracted costs in excess of \$1,000 are incurred.

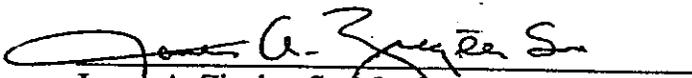
NOW THEREFORE BE IT HEREBY RESOLVED by the Board of County Commissioners, Yellowstone County, Montana, that the above Ordinance is hereby adopted, with the effective date being June 21st, 2002.

DONE BY ORDER of the Board of County Commissioners, Yellowstone County, Montana, the 21st day of May, 2002.

BOARD OF COUNTY COMMISSIONERS
YELLOWSTONE COUNTY, MONTANA



Jim E. Reno, Chairman



James A. Ziegler, Sr. Member



Bill Kennedy, Member

(SEAL)
ATTEST:


Tony Nave, Clerk and Recorder