

**ORDINANCE NO. 2022-002
RESOLUTION NO. 2022-076**

AMENDED ORDINANCE TO CONTROL COMMUNITY DECAY

Section 1 Findings and Purpose

Whereas, on April 25, 1990, the Missoula County Commissioners enacted Resolution No. 90-037.

Whereas, the Missoula City-County Health Department and County Attorney's Office has recommended amendments to the previous ordinance based on changes to applicable state law and enforcement approaches.

Whereas, pursuant to authority set forth in state law, the Board of Commissioners would like to address situations in which community decay is negatively impacting the community, public health, safety or the enjoyment of Missoula County by community members.

Whereas, on June 2, 2022 public comment was received prior to and during the hearing on first adoption and considered by the Commissioners, and on June 23, 2022 the Commissioners adopted this Amended Ordinance.

Whereas, on June 23, 2022, public comment was received prior to and during the hearing on final adoption and considered by the Commissioners.

Section 2 Authority

Pursuant to Mont. Code Ann. §7-5-2111 the Board of Commissioners is authorized to 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 Mont. Code Ann. §7-5-103 through 7-5-109.

Section 3 Definitions

- (a) "Community Decay" means a public nuisance created by allowing rubble, debris, junk, refuse, discarded, ruined, wrecked, or dismantled vehicle(s), discarded, ruined, wrecked, or dismantled mobile home(s) no longer fit for human habitation to accumulate on property adjacent to any public roadway within the county 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.
 - (1) The following are explicitly excluded from the definition of "Community Decay"
 - 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; and
 - b) normal activities at a shooting range.
- (b) "Person" means an individual, firm, partnership, company, association, corporation, corporate entity, city, town or any other entity whether organized for profit or not.
- (c) "Public Roadway" means a road improved, designed, or ordinarily used for vehicular travel. The term includes highways, roads, and streets, irrespective of whether the road is privately maintained, publicly maintained or unmaintained. The term excludes a privately owned and maintained road used for vehicular travel to two or fewer properties,

and the property owners and those with express or implied permission of either owner are the only persons who may use the road.

- (d) "Public Nuisance" means:
- (1) a condition that 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 by an entire community or neighborhood or by any considerable number of persons;
 - (2) any premises where persons gather for the purpose of engaging in unlawful conduct; or
 - (3) a condition that renders dangerous for passage any public highway or right-of-way or waters used by the public.

Section 4 Prohibition on Community Decay

No Person shall maintain Community Decay or allow Community Decay to be maintained on their property.

Section 5 Enforcement, Abatement and Mitigation

- (a) The Missoula City County Health Department ("the Department") shall have the power and authority to administer and enforce the provisions of this Ordinance.
- (b) Whenever the Department has knowledge or evidence that a violation of this ordinance has occurred, the department may issue a Notice of Violation to be served personally, by certified mail, or by email with read-receipt on the alleged violator or its agent. This Notice of Violation shall specify:
 - (1) The provision of the ordinance alleged to be violated,
 - (2) A plain statement of facts summarizing the alleged violation,
 - (3) Potential penalties for non-compliance, including advising Person that if violation is not corrected the Department may undertake abatement or mitigation and assess the costs to Person, and
 - (4) What steps must be taken to come into compliance.
- (c) This Notice may also include an Order for Corrective Action, which shall specify:
 - (1) The specific nature of corrective action required, which may include, without limitation:
 - a) The type of abatement or mitigation to be undertaken
 - b) The date for commencement of abatement and/or mitigation and
 - c) The date for completion of the abatement or mitigation.
- (d) The Department or its agent may, after giving due notice, in writing, of violation and upon the failure of the property owner to comply with the ordinance, seek consent to 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 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 property taxes is enforced.
- (e) If the resident or owner of the property on which the community decay exists does not consent to the Department entering property for the specific purpose of abatement, the Department shall request a Court Order authorizing the Department or its agent to enter the property for the specific purpose of abatement.
- (f) Where, in the Department's opinion, an emergency situation exists that warrants immediate action to prevent negative impacts to human health and the environment, the

Department may enforce this ordinance through judicial action without providing a notice of violation.

- (g) The department may take action to enforce this ordinance or orders made pursuant thereto, by injunction or other appropriate remedy.
- (h) Pursuant to Montana Code Ann. § 7-5-109, penalties for violations of this ordinance include a fine up to \$500. Such penalty does not preclude and may be pursued in addition to civil actions seeking injunctive relief to enjoin violations of this Ordinance. All fines collected shall be deposited in the general fund.

Section 6 Jurisdiction

This Ordinance applies to all of Missoula County

Section 7 Effective Date

Pursuant to Montana Code Annotated §7-5-105, the effective date of this ordinance is 30 days after second and final adoption.

Section 8: 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.

Section 9: 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 shall be severable.

DATED THIS 23RD DAY OF JUNE, 2022.

APPROVED AS TO FORM

Anna Conley

Anna Conley, Deputy County Attorney

BOARD OF COUNTY COMMISSIONERS

Juanita Vero

Juanita Vero, Chair

Josh Slotnick

Josh Slotnick, Commissioner

ATTEST:

Tyler Gernant

Tyler R. Gernant, Clerk and Treasurer

David Strohmaier

David Strohmaier, Commissioner

