

GALLATIN COUNTY ORDINANCE NO. 2017-001

AN ORDINANCE ADOPTING THE GALLATIN COUNTY COMMUNITY DECAY REGULATIONS AND REPEALING GALLATIN COUNTY ORDINANCE NO. 2004-017

1. Legislative Findings.

A. Title 7, Chapter 5, Part 21 of the Montana Code Annotated (MCA) authorizes the Gallatin County Board of County Commissioners (“County Commission”) to regulate, control, and prohibit conditions that contribute to community decay.

B. Previous versions of the Community Decay Ordinance were adopted by the County Commission on March 16, 1993 (Ordinance No. 93-01) and September 7, 2004 (Ordinance No. 2004-017).

C. The County Commission has determined that Ordinance No. 2004-017 includes certain provisions that are not provided for by law and other provisions that are more restrictive than required by law.

2. Purpose. The County Commission desires to repeal Ordinance No. 2004-017 and adopt the Gallatin County Community Decay Regulations to better address the regulation, control, and prohibition of conditions that contribute to community decay on or adjacent to public roadways within Gallatin County, Montana.

3. Authority. Sections 7-5-2110 and 7-5-2111, MCA authorize the governing body of a county to enact an ordinance to regulate, control, and prohibit conditions that contribute to community decay on or adjacent to any public roadway within the county.

4. Gallatin County Community Decay Regulations Adopted. This Ordinance hereby adopts the Gallatin County Community Decay Regulations attached hereto and which are incorporated into this Ordinance by reference.

5. Penalty. Pursuant to § 7-5-109(1), MCA, a violation of this Ordinance shall constitute a misdemeanor and is punishable by a fine not to exceed \$500, imprisonment not to exceed six (6) months, or both the fine and imprisonment.

6. Severability. If any provision of this Ordinance is found to be invalid or unenforceable, such invalidity or unenforceability shall not affect the Ordinance as a whole or any part thereof that can be given effect without the invalid or unenforceable provision.

7. 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 than the provisions of §§ 7-5-2110 or 7-5-2111, MCA.

8. Repeal and Ratification. Upon the effective date of this Ordinance, Gallatin County Ordinance No. 2004-017 and any of its amendments is repealed and replaced with this

Ordinance.

9. **Effective Date.** The Gallatin County Clerk and Recorder shall post a copy of this Ordinance and shall make copies available to the public upon the first reading and approval, as required by § 7-5-103, MCA. Pursuant to § 7-5-105, MCA, this Ordinance shall take effect thirty (30) days after its second reading and approval, which shall take place not less than 12 days apart from the first reading as required by § 7-5-103, MCA. Upon the second reading and approval of this Ordinance, it shall be filed with the Clerk and Recorder.


FIRST READING & APPROVAL

DATED THIS 24th day of January, 2017.

GALLATIN COUNTY BOARD OF COUNTY COMMISSIONERS


Don Seifert, Chairman

ATTEST


Charlotte Mills, Clerk and Recorder

SECOND READING & APPROVAL

DATED THIS 7 day of FEBRUARY, 2017.

GALLATIN COUNTY BOARD OF COUNTY COMMISSIONERS


Don Seifert, Chairman

ATTEST:


Charlotte Mills, Clerk and Recorder

AN ORDINANCE ADOPTING THE GALLATIN COUNTY COMMUNITY DECAY REGULATIONS AND
REPEALING GALLATIN COUNTY ORDINANCE NO. 2004-017

GALLATIN COUNTY COMMUNITY DECAY REGULATIONS

Section 1. Definitions

- A. "Abate" or "Abatement" means to eliminate or remove, or the elimination or removal of, all of the conditions that constitute a violation of these regulations.
- B. "Adjacent to" means directly abutting or sharing a border with.
- C. "Accumulate" means to store, gather, collect, heap, or pile up.
- D. "County Commission" is the Gallatin County Board of County Commissioners.
- E. "Farming, Ranching, or Other Agricultural Operation" is the use of land for agriculture or farming purposes, including pasturage agriculture, dairying, grazing land, animal and poultry husbandry, horticulture, floriculture, viticulture, and forestry, and all uses customarily incidental to the normal operation thereof.
- F. "Community Decay," as defined by § 7-5-2110, MCA, 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. Community Decay as used in these regulations may not be construed or defined to apply to:
 - i. 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
 - ii. normal activities at a shooting range; or
 - iii. Persons servicing, manufacturing, or processing materials, goods, or products on lots in public view, so long as the materials, goods, or products are used in the normal operation of the business and are neatly stacked or piled.
- F. "Department" is the Gallatin County office or department designated by the County Commission to respond to and enforce complaints of Community Decay, which may include the Compliance Department, Planning Department, and City-County Board of Health.
- G. "MCA" is the Montana Code Annotated.
- H. "Person" is an individual, firm, partnership, company, association, corporation, or other entity, whether organized for profit or not.
- I. "Public Nuisance," as defined by § 27-30-102, MCA, is one that 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.

- J. "Public Roadway" is any public road right-of-way in Gallatin County, Montana, however created.
- K. "Public View" means visible from a Public Roadway.
- L. "Responsible Person" is a Person who violates these regulations.
- M. "Shielding" is a barrier comprised of natural and/or artificial materials and used to conceal conditions contributing to Community Decay from Public View.

Section 2. Prohibition

- A. A Person violates these regulations by allowing or maintaining conditions that contribute to Community Decay on, or on property Adjacent to, a Public Roadway within Gallatin County, Montana.
- B. Conditions that may contribute to Community Decay include, but are not limited to, any discarded substance, item, or material, such as cardboard, paper, pallets, tires, iron, or metal; demolition waste; construction or building material, such as bricks, concrete, or wood; junk vehicles or trailers; vehicle or machine parts; dead animals or animal parts; appliances; furniture; branches, logs, or yard trimmings; and any other similar materials, items, waste, parts, or substances.

Section 3. Shielding

- A. A Person does not violate these regulations by allowing or maintaining conditions that contribute to Community Decay on, or on property Adjacent to, a Public Roadway if the conditions do not pose a threat to public health and safety and the conditions are concealed from Public View in accordance with the following standards:
 - i. All plans for shielding must be approved by the Department prior to commencing construction of the shielding.
 - ii. Shielding must conform to the requirements of any zoning, planning, building, or restrictive covenant provisions applicable to the property.
 - iii. Shielding must be of sufficient height so that no conditions contributing to Community Decay are within Public View.
 - iv. Shielding must be maintained by the Responsible Person in a neat and workmanlike manner and must be replaced or repaired when necessary.
 - v. Artificial Shielding. No more than one Shielding material may be used on any

one side of a barrier. The boards of a fence may be spaced or slanted to reduce wind load. The vertical space between adjacent boards may not be more than 1½ inches wide. Chain link fences with standard fiberglass or similar inserts are acceptable, provided the vertical space between adjacent inserts does not exceed 1½ inches.

- vi. Natural Shielding. Natural Shielding such as trees or shrubs must provide concealment from Public View at all times of the year. A berm may be used, provided the slopes of the berm are covered and graded smooth with not less than three inches of top soil and are seeded with a weed-free seed mix.

Section 4. Enforcement & Abatement

- A. Upon receipt of a signed written complaint or the discovery of an alleged violation by other means, the Department shall commence an investigation to determine if a violation exists. The Department may inspect the subject premises by any lawful means. If a violation of these regulations exists, the Department shall take appropriate action as provided herein to resolve the violation.
- B. The Department shall notify the Responsible Person of the violation in writing. The notice of violation should state the following:
 - i. the nature and location of the violation;
 - ii. the actions needed to Abate the violation;
 - iii. the date Abatement must be completed in the absence of an approved Plan of Abatement;
 - iv. that failure to comply with the notice within the time specified, unless extended by an approved Plan of Abatement, enables the County to enter the property to Abate the violation; and
 - v. that the County is authorized to assess the Responsible Person for the actual costs of the Abatement, and nonpayment of the assessment becomes a lien upon the property enforceable in the same manner as the nonpayment of property taxes.
- C. Within thirty (30) calendar days from the receipt of the notice of violation, the Responsible Person may submit a written Plan of Abatement to the Department. The proposed Plan of Abatement must include, at a minimum:
 - i. a complete description of the Abatement proposed;
 - ii. the date for commencement of the Abatement;

- iii. any reason why the Abatement cannot be completed within thirty (30) days from the receipt of the notice of violation; and
 - iv. the date for completion of the Abatement.
- D. The Department may accept or reject the Plan of Abatement, accept the Plan with modifications, or request additional information before making a final decision. The Department shall notify the Responsible Person in writing of its final decision.
- E. The Responsible Person shall have thirty (30) calendar days from the receipt of the notice of violation to Abate the violation or have a Plan of Abatement, approved by the Department, in place.
- F. If the Responsible Person fails to Abate the conditions contributing to Community Decay within thirty (30) calendar days from receipt of the notice of violation or the time period specified in the approved Plan of Abatement, the Department shall notify the Responsible Person in writing of the failure to Abate the violation.
- G. If the Responsible Person fails to completely Abate the violation within fifteen (15) calendar days of the notice described in subsection (F), the Department or its agents may enter upon the subject property to assess the extent of the violation. In addition, the County Commission or its agents may Abate the violation and may assess the Responsible Person 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 taxes.
- H. Notwithstanding any enforcement action taken pursuant to this section, the County Commission, through the County Attorney or otherwise, may bring any legal or equitable action in the name of Gallatin County to enforce this Ordinance.

Section 5. Appeals

- A. An alleged violator may appeal a final decision of the Department in writing to the County Commission within fifteen (15) calendar days of the final decision.
- B. The County Commission shall hold a hearing regarding the appeal and shall, in writing, affirm, modify, or withdraw the Department's decision within thirty (30) calendar days after the hearing.
- C. Once an appeal for a hearing has been made, the Department's decision is stayed until the County Commission has held the hearing and affirmed, modified, or withdrawn the determination of the Department.