

## ORDINANCE NO. 6

### (Control of Community Decay)

WHEREAS, the Board of Commissioners of Flathead County is authorized, pursuant to Sections 7-5-2110 and 7-5-2111, M.C.A., to pass and enforce an ordinance to control community decay; and

WHEREAS, the Board of Commissioners of Flathead County, Montana, has determined that there is a need for an ordinance to control community decay in Flathead County and wishes to enact such an ordinance.

NOW, THEREFORE, BE IT RESOLVED that effective thirty (30) days after the second reading and final adoption thereof, the following ordinance shall be in full force and effect in Flathead County.

**Section 1. Definitions.** In this ordinance the following terms have the meanings indicated below:

- (a) "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; provided, however, that "community decay" may not be construed or defined to apply to 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 operation.
- (b) "In public view" means any area visible from a point up to six feet above the surface of the center of any public roadway.
- (c) "Person" means an individual, firm partnership, company, association, corporation, city, town or any other entity whether organized for profit or not.
- (d) "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.
- (e) "Shielding" refers to fencing or other manmade barriers to conceal a facility from public view. It also refers to natural barriers.

**Section 2. Purpose.** 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 Flathead County.

**Section 3. Prohibition.** No person shall maintain a public nuisance by allowing rubble, debris, junk or refuse to accumulate on property owned by him, or under his control, resulting in conditions that are injurious to health, indecent, offensive to the senses or obstructive of the free use of property so as to interfere with the comfortable enjoyment of life or property. For purposes of this ordinance, a public nuisance includes any of the following conditions that exists within public view:

- (a) The dumping, piling, or stacking of bricks, concrete blocks, waste wood and similar material on open lots or fields, unless said material is stacked in neat piles and all waste materials from the cleaning of such items, such as mortar, wood splinters, broken and unusable bricks, are removed;
- (b) The storage or accumulation of a significant amount of cardboard boxes, broken packing boxes, paper, or other similar items on lots or fields;
- (c) The piling, dumping or depositing of any dirt, demolition wastes including wood, bricks, concrete, used road black top and other similar materials on any open lots or fields, unless such material is to be utilized for fill material to fill a land depression, and provided that, if such material is used as fill material, all such material is completely covered with clean fill material once every ten (10) days and the fill area is adequately fenced to restrict access to the area; and further provided that the failure to comply with the periodic cover and access control requirements shall constitute a violation of this ordinance.

- (d) The storage and accumulation of iron, metal, component vehicle and machine parts, junk vehicles, household appliances, barrels and other salvaged metal items, unless such material is stored in an approved, licensed, and shielded Motor Vehicle Wrecking Facility;
- (e) The accumulation and storage of any other rubble, debris, junk, or refuse that, upon investigation, is deemed to be a public nuisance as defined in this ordinance.

**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.

- (a) Any shielding must conform to all local zoning, planning, building and protective covenant provisions and shall be of sufficient height that none of the violation on the premises is visible to public view.
- (b) 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 broadside view shall not be more than one and one-half (1 ½) inches and the interval between spaces shall not be less than seven and one-half (7 ½) inches. Rough dimensional lumber or better is acceptable. Chain link fencing with standard fiberglass or other inserts are acceptable, provided the gap between adjacent slats does not exceed one and one-half (1 ½) inches. The fencing is to be maintained by the property owner or occupant in a neat and workmanlike manner and shall be replaced when necessary.
- (c) Shielding with shrubs and trees shall provide a degree of shielding similar to that produced by fencing at all times of the year. Dirt berms are acceptable for shielding purposes, provided the berm slopes are graded smooth and seed with an adequate grass seed formula.
- (d) Other types of fencing of equivalent permanence, attractiveness, and shielding qualities, including corrugated metal, are also acceptable.
- (e) No more than one of the approved shielding materials shall be used on any one side of a shielding fence.

**Section 5. Penalty.** A person convicted of the offense of maintaining a public nuisance under this ordinance is guilty of a misdemeanor punishable by a fine not to exceed \$500 or imprisonment not to exceed six months, or by both fine and imprisonment.

**Section 6. Abatement.** The abatement of conditions which constitute a public nuisance prohibited by this ordinance shall be accomplished under the provision of this section.

- (a) The Flathead County Zoning Administrator shall be responsible for initiating abatement proceedings.
- (b) When the Zoning Administrator receives a complaint that a condition of community decay exists, he, or his agent, shall inspect the property alleged to be in violation of this ordinance to determine whether there is a violation of this ordinance.
- (c) If he determines that there is a violation of this ordinance, the Zoning Administrator shall notify the owner of the property in writing of the violation by certified mail and order its abatement within (30) days. The notice of violation shall:
  - (i) include a statement specifically describing the violation;
  - (ii) specify that the owner has thirty (30) days from receipt of such notice to bring the property into compliance with this ordinance by means of removal or shielding of the conditions; and
  - (iii) advise the owner that if the violation is not abated, the County may undertake abatement and assess the costs of that abatement to the owner.
- (d) The owner may, after receipt of the notice of violation, submit a plan of abatement to the Zoning Administrator which shall include:
  - (i) the type of abatement or shielding to be undertaken;
  - (ii) the date for commencement of action; and

- (iii) the date for completion of the abatement.

The Zoning Administrator may accept such plan and defer further proceedings under this ordinance pending the date of completion of the abatement.

- (e) In the alternative, the Owner may, within fourteen (14) days of the date of the issuance of the Order, appeal the abatement order to the Board of Commissioners of Flathead County, Montana. Upon receipt of a timely notice of appeal, the Board shall schedule a hearing within ten (10) days, but may postpone that hearing at the request of a party. Following the hearing, the Board may either:
  - (i) determine that a violation exists and order abatement within thirty (30) days; or
  - (ii) determine that no violation exists and dismiss the proceedings.
- (f) In the event that the owner fails to comply with an abatement order, or an abatement plan approved by the Zoning Administrator under Section 6 (c) hereof, the Zoning Administrator and/or his agent(s) may enter upon the owner's property with the specific purpose of abating or shielding the violation, which ever the Zoning Administrator deems appropriate:
  - (i) The County may assess the property owner/user for the actual costs of the abatement by the Zoning Administrator.
  - (ii) If the assessment is not paid, it shall become a lien upon the property and enforced as is nonpayment of property taxes.

**Section 7. Jurisdiction.** This ordinance applies to all of Flathead County outside the city limits of the Cities of Kalispell, Columbia Falls and Whitefish.

**Section 8. Effective Date.** This ordinance shall be in full force and effect thirty (30) days after its final passage and adoption by the Board of Commissioners of Flathead County, Montana.

**Section 9. Compatibility.** This ordinance will not affect previously enacted state and local statues and ordinances.

**Section 10. 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.

Dated this 9<sup>th</sup> day of August, 1989.

BOARD OF COUNTY COMMISSIONERS  
Flathead County, Montana

ATTESTED:

Susan W. Haverfield, Clerk

By/S. L. Stratton  
Deputy

By/Howard W. Gipe  
Howard W. Gipe, Chairman