

Community Decay

This publication is provided to help you assemble the information and materials required to remove a community decay and/or junk car nuisance from your neighborhood.

What is Community Decay? The answer may vary by locale, neighborhood, Zoning, and history. As an example, a collection of farming equipment, regardless of condition and area covered may be a nuisance, an eyesore, and even an embarrassment – but in an agricultural, or even a past agricultural district it does not necessarily constitute Community decay. Piles of household garbage, construction or demolition debris, discarded appliances and vehicles may be Community Decay, no matter in which Zone the property lies, or even in unzoned areas of the county. Another measure of Community Decay is the tolerance a specific neighborhood has demonstrated, in the past, for ‘clutter’ and discarded personal property. If a neighborhood has been tolerant in the past, of non-operable vehicles, equipment, and building materials stored on private property, a new property owner moving into the neighborhood with less tolerance of the overall conditions may not suddenly declare that any single piece of property is ‘in decay’, unless that property is beyond the norm for the area, or is in violation of specifics of the Community Decay Ordinance (No. 6)

Another area of conflict among neighbors is the ‘grandfathered’, or continuing non-conforming use of a property within a zoned neighborhood. Zoning was enacted in Flathead County on September 27, 1993. Any land or structure use that predates the enactment of zoning may continue, subject to the conditions of Chapter 2.07 of the Flathead County Zoning Regulations. Providing that such uses do not violate the specifics of the Community Decay Ordinance (No. 6), such on-going use does not constitute a violation.

The creation of Community Decay has varied roots, which can vary from a stalled construction project allowed to sit until deterioration sets in, to severe mental illness and ‘pack rat syndrome’. Regardless of the origins, the effects of a single property that is allowed to deteriorate do not end at the property lines, and may affect residents for some distance. ‘Collectors’ are often ill-informed about potential hazards that may be created on their, and neighboring properties, and sometimes inadvertently transport and deposit hazardous and toxic materials into their own property.

Children can be placed at risk by untended clothes dryers, refrigerators or freezers if the latches and locking mechanisms have not been removed from the appliance. Derelict vehicles can leach lubricating fluids into ground water, and batteries retain the potential to explode or cause serious acid burns of improperly handled, leaking antifreeze is attractive to animals, both wild and domestic, and is invariably fatal if ingested. Abandoned tires create ideal breeding grounds for mosquitoes, which can transmit diseases, and auto upholstery makes ideal rodent habitat, and increases potential exposure to hanta virus, and other rodent-borne disease.

Accumulations of household garbage can create serious health problems, ranging from noxious odors and flies, to the creation of disease vectors such as rodents and mosquitoes. Even piles of excavated materials and topsoil can be a problem by offering starter environments for noxious weeds, which can spread to yards and valuable agricultural land. Private property rights do not grant the landowner or tenant the freedom to engage in activities that may create hazards, whether isolated or with potential expansion beyond property boundaries. Air, water and animals (or even kids, for that matter) are not respecters of property lines.

So – what can you, as a resident and concerned citizen of Flathead County DO about a problem that affects your neighborhood? Do you just grit your teeth and ignore the problem because, “It’s their property and they have a right to do whatever they want on their own land.” Or, do you look the other way because you don’t want to intrude into other people’s business, or even fear the consequences of ‘ratting’ on a potentially hostile neighbor.

The Planning and Zoning office is one, but not the only resource available to support you in your efforts to improve your quality of life and restore/protect property values. Part of our duty is to regulate appropriate land use, including alleviating potentially destructive or hazardous conditions, either by direct action, or through inter-agency cooperation, ranging from county Public Health Services up to State of Montana and Federal government agencies.

The Clean-Up Action Kit, available at the Flathead County Planning & Zoning office, has been designed to help you find the most effective tools to help YOU effect change within your neighborhood. We’ll help you define, report, and explain your specific concerns to the proper agency for direct action and/or referral to affect

solutions as regulated by county ordinance, state statute and federal law. Forms are provided, and instructions to obtain all the information you may need to complete the notification and/or violation report process. If you don't have access to a computer or the internet, don't worry, just skip over those instructions and tell us, we'll access that information for you.

HOW TO:

This section will explain the process and forms/filing to enlist the appropriate agencies to help you affect Clean-Up solutions for problem properties you may be encountering in your neighborhood. You'll find the most common violations listed below, with instructions following. Violations may encompass more than one category.

JUNK CARS:

- Accumulations of inoperable and unregistered motor vehicles
- Accumulations of car parts, components, tires
- Accumulations of heavy equipment, parts, components when not a part of a permitted business
- Accumulations of farm equipment, parts, components in an area no longer associated with agriculture

DECAY (Clutter, junk, hazardous materials):

- Accumulations of appliances, furniture, implements, scrap and trash
- Piles of discarded building materials or structure components parts
- Piles of tree stumps, branches, root balls and slash when not part of on-going silviculture

DEPOSITED FILL AND RUBBLE:

- Piles of un-vegetated soils when not part of an on-going excavation, fill or reclamation project
- Accumulations of concrete or asphalt rubble, including imbedded rebar
- Piles of sand, pebbles or cobble when not part of an on-going construction project

LAKE AND LAKESHORE:

- Observed work in the lake or shoreline without permit
- Mechanical equipment in lake waters
- Uncontrolled run-off or soil deposit in lake or on shoreline

FLOOD PLAIN, WETLANDS & STREAMS:

- Damming or bridging a streambed without permit
- Residential construction within a flood plain
- Filling or excavating within a floodplain, wetlands or stream bed

ZONING:

- Business or other activity apparently not allowed in a zoned district
- Addition of excess dwelling or temporary habitation (e.g. occupied camper or recreational vehicle)

NOXIOUS WEEDS:

- Uncontrolled growth
- Introduction of weed bearing soils

UNSANITARY CONDITIONS:

- Accumulations of household trash, garbage, waste
- Animals kept in confined and unclean conditions

SEWAGE AND SEPTIC PROBLEMS (including additional unpermitted dwellings or occupied RV):

- Dwelling or temporary habitation (e.g. occupied camper or recreational vehicle) without septic or sewer connection, or unpermitted connection
- Apparent outflows

NOTIFICATION

Our county agencies are tasked with the enforcement of county regulations at all levels.

We rely on concerned citizens to protect their own interests by notifying our regulatory and permitting agencies of apparent or suspected problems, through direct notification. This doesn't mean that we expect citizens to 'spy' on one another, nor does it mean that our various offices and county employees are available as tools of dispute resolution between neighbors, except as relates directly to issues of public health, welfare, or protection

of property and personal rights. We do expect our neighbors, in their own enlightened self-interest to be observant, proactive, and responsible in ensuring a safe, healthy and stable community environment for all.

VIOLATION FORM, Community Decay and Zoning Violation.

In order to take action in what may be as simple as a phone call to inform an unknowing resident of a problem, to a complicated and long-reaching as a major court action, fines, and even incarceration we require a written Violation Notice. Be advised that a received Notice of Violation is a filed document, and upon the opening of an action, becomes a public document, that could be used in a court of law.

When the form is completed

1. VIOLATION FORM – used to report apparent or suspected Zoning, Floodplain, Subdivision and Lake/Lakeshore Violations. This form is included in the kit because often property deterioration and zoning violations are concurrent. If you know your zoning, and feel that the subject property is in violation of Zoning Regulation, please use this form.
2. COMMUNITY DECAY FORM – use this form to address conditions as noted in the above introduction.
3. NEIGHBORHOOD PETITION – If no form is available, or if you have concerns that a neighbor may respond in a direct negative manner to a complaint, we recommend circulating a petition to other concerned neighbors. In most cases you are not the only person disturbed by inappropriate or illegal conditions on a nearby property. A petition has the advantage of clarifying that the problem is a true neighborhood concern and not a personal retaliation for unstated and perhaps unassociated grievances, the power of numbers in presentation, and a ‘shield’ against personal and pointed retribution. There is no fixed petition form, make up your own and submit it with a letter of concern and our office will complete the appropriate form and not the complainant as ‘by petition’.

Once a file is entered into our office for action it becomes available to any person requesting access. While we do not respond to a question such as; “Who turned me in?”, if there is a direct request to view the case file we are bound to present all materials. If there is any reluctance to become individually noted as the complainant, we recommend a neighborhood Petition, of your own devising.

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 in final adoption hereof, 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 operations.
- (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 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 or other similar materials on any open lots or fields unless such materials 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 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, 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 seeded 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 provisions of this section.

- (a) The Flathead 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 the property in writing of the violation by certified mail and order its abatement within thirty (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 of the 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 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 69(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 non-payment 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 statutes 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 9th day of August, 1989.

BOARD OF COUNTY COMMISSIONERS
Flathead County Montana

Signed by: Howard W. Gipe, Chairman

Attested by: S. L. Stratton, Deputy, for:
Susan W. Haverfield, Clerk