

## AN ORDINANCE TO CONTROL COMMUNITY DECAY

WHEREAS, Section 7-5-2111, MCA (2005) give counties the authority to regulate, control, and prohibit conditions that contribute to community decay; and

WHEREAS, the Powell County Commissioners have determined there is a need for an ordinance to control community decay in Powell County within rural community districts; and

WHEREAS, the Powell County Commissioners desire to adopt a community decay ordinance:

NOW, THEREFORE, BE IT ORDAINED BY THE COUNTY COMMISSIONERS OF POWELL COUNTY, STATE OF MONTANA:

### 1. PURPOSE

The purpose of this ordinance is to regulate, control, and prohibit conditions that contribute to community decay within the rural community districts of Powell County.

### 2. DEFINITIONS

The following definitions apply to this ordinance:

- (a) "BOCC" means the Powell Board of County Commissioners.
- (b) "Community decay" means a situation created by allowing rubble, debris, junk, or refuse to accumulate or permitting structures or mobile vehicles to deteriorate, resulting in conditions that are injurious to the health and safety of the community at large. "Community Decay," as used in this ordinance, 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; or to logging or sawmill operations or facilities; or to a commercial business; or any appurtenances of any of the foregoing, during the course of their normal operations; or to normal activities at a shooting range.
- (c) "Department" means the County Health Department or its designee.
- (d) "Garbage receptacle" means a hard-sided enclosed container with a removable lid in place designed for holding garbage, trash or refuse.
- (e) "Owner" means an individual, firm, partnership, company, association, corporation, city, town, or any other entity, whether organized for profit or not, owning any land, easement, or right-of-way as recorded in the official record of the clerk and recorder.
- (f) "Person" means an individual, firm, partnership, company, association, corporation, city, town, or any other entity, whether organized for profit or not.
- (g) "Rural Community District" has the meaning contained in the Powell County Zoning and Planning Regulations currently defined in Chapter VI, Section A-1 and as amended hereafter and are currently shown on the maps in the Growth

Policy on Figures 7 through 12, depicting the geographical boundaries of Avon, Elliston, Garrison, Helmville, Ovando and Racetrack.

### 3. VIOLATIONS

It shall be a violation of this ordinance to allow or maintain conditions that contribute to community decay and present a human health or safety hazard within the Rural Community Districts within Powell County.

### 4. ENFORCEMENT AND ABATEMENT

This ordinance shall be enforced pursuant to the following procedures:

- (a) Upon receipt of a signed written complaint or upon observation of conditions showing that community decay may exist upon a property within a Rural Community District in Powell County, the Department shall inspect the property alleged to be in violation of this ordinance and shall determine whether a violation exists.
- (b) If the Department determines that a violation of this ordinance exists, the Department shall notify the owner of the property, in writing, of the violation. The notice shall be sent by certified mail or served on the owner of the property by a law enforcement officer and shall conform to the "Contents of Notice" section of this ordinance.
- (c) The owner of the property in violation shall have thirty (30) days from the receipt of the notice to abate the violation or be in the process of abatement in accordance with an abatement plan approved by the Department.
- (d) Within fifteen (15) working days from the receipt of the notice, the owner of the property in violation may submit, in writing, a plan of abatement to the Department. Such plan may be approved, approved with modifications, or disapproved by the Department. If approved or approved with modifications, further enforcement under this ordinance shall be deferred for the period specified in the abatement plan. The proposed abatement plan shall include the following:
  1. type of abatement proposed;
  2. date abatement is to commence;
  3. reasons abatement cannot be completed within thirty (30) days after receipt of the notice of violation;
  4. date abatement is to be complete.
- (e) After thirty (30) days from the receipt of the notice by the owner of the property in violation, the Department shall determine whether the violation has been abated or is in the process of abatement in accordance with an approved abatement plan.

- (f) If the property owner fails to abate the conditions constituting community decay within thirty (30) days or within the time period specified in the approved abatement plan, the Department shall send the property owner written notification of the property owner's failure to abate the violation. The notification shall be sent by certified mail and shall provide the property owner with ten (10) additional days to complete abatement.
- (g) If the property owner fails to complete abatement of the violation within ten (10) days, the Department or its agents may enter upon the property and abate the violation.
- (h) The Department shall assess the actual costs of abatement incurred by the Department to the property owner. Nonpayment of the assessment shall become a lien upon the property and is enforceable in the same manner as the nonpayment of property taxes.

## 5. CONTENTS OF NOTICE

The notice of violation shall state the following:

- (a) That the Department has determined a violation of this ordinance exists on the property;
- (b) The nature of the violation and its location;
- (c) The name of the property owner and any other person the Department determines to be responsible for abatement;
- (d) The steps necessary to abate the violation;
- (e) The date abatement must be completed in the absence of an approved abatement plan;
- (f) That failure to comply with the notice within the time specified, unless extended by an approved abatement plan, enables officers and employees of Powell County to enter upon the property for the specific purpose of abating the violation.
- (g) That Powell County is authorized to assess the property owner for the actual costs of the abatement and nonpayment of the assessment becomes a lien upon the property and is enforceable in the same manner as the nonpayment of property taxes.

## 6. APPEAL PROCESS

**Board of County Commissioners.** Persons aggrieved by a decision of the Department may appeal to the BOCC. Such a person must submit a petition for review to the BOCC within 30 days of the date of the decision of the Department. The Petition must set forth the specific grounds for review. The BOCC shall, in writing, affirm, modify, or withdraw the decision of the Department.

**District Court.** Persons aggrieved by a decision of the BOCC may petition the Third Judicial District Court, Powell County, for review. The petition must set forth the specific grounds for the petition. The petition must be filed within 30 days after the day the Findings of Fact, Conclusions of Law, and Order are signed by the Chair of the BOCC.

### 7. COMMUNITY DECAY FUND

Any liens collected under the provisions of this ordinance shall be paid to the Powell County Treasurer and placed to the credit of a fund to be known as the "Community Decay Fund."

### 8. SEVERABILITY

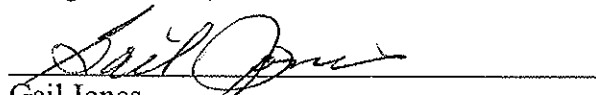
Should any court declare any part of this ordinance unconstitutional or invalid, the ordinance as a whole, or any part thereof, other than the part so declared to be unconstitutional or invalid, shall remain in effect.

Dated this 28<sup>th</sup> day of March, 2008.

COUNTY COMMISSIONERS

  
Rem Mannix

  
Dwight O'Hara, Chairman

  
Gail Jones