

ORDINANCE NO. 2024-01

**TO CONTROL COMMUNITY DECAY
CAUSED BY AN ACCUMULATION OF RUBBLE, DEBRIS, JUNK OR REFUSE,
AND ESTABLISHING PROCEDURES FOR ITS ENFORCEMENT**

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

WHEREAS, the Custer County Commissioners have determined there is a need for a comprehensive ordinance to control community decay in Custer County outside the boundaries of incorporated cities; and

WHEREAS, the Custer County Commissioners have determined the community decay ordinance passed by the Board of Commissioners on 2000-01, is inadequate to address current needs in the county; and

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

NOW, THEREFORE, BE IT ORDAINED BY THE COUNTY
COMMISSIONERS OF CUSTER COUNTY, STATE OF MONTANA.

1. PURPOSE

The purpose of this ordinance is to regulate, control, and prohibit conditions that contribute to community decay on or adjacent to public roadways within the unincorporated areas of Custer County.

2. DEFINITIONS

The following definitions apply to this ordinance:

(a) "Abate" means to eliminate or remove all of the conditions that constitute a violation of this ordinance.

(b) "Adjacent to any public roadway" means a property that directly abuts or shares a border with a public road right-of-way.

(c) "BOCC" means the Custer County Board of County Commissioners

(d) "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 as to interfere with the comfortable enjoyment of life or property. "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 any appurtenances thereof, during the course of its normal operations, or to normal activities at a shooting range.

(e) "Department" means the Custer County Sheriff or its designee.

(f) (1) "Junk Vehicle" means a motor vehicle, including component parts:

(i) that is discarded, ruined, wrecked, or dismantled;

(ii) that, except as provided in subsection (f)(2), is not lawfully and validly licensed, and

(iii) that remains inoperative or incapable of being driven.

(2) If a vehicle is permanently registered under § 61-3-562, MCA, and meets the criteria for a junk vehicle under subsection (f)(1), the vehicle is a junk vehicle.

(g) "Nuisance" has the meaning contained in § 27-30-101, MCA (2005).

(h) "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.

(i) "Person" means an individual, firm, partnership, company, association, corporation, city, town, or any other entity, whether organized for profit or not.

(j) "Public nuisance" means a nuisance that affects, at the same time, an entire community or neighborhood or any number of persons, although the extent of the annoyance or damage inflicted upon individuals may be unequal.

3. VIOLATIONS

It shall be a violation of this ordinance to allow or maintain conditions that contribute to community decay on or adjacent to any public roadway within Custer County. Conditions that may contribute to community decay include, but are not limited to, the following:

(a) Metal Fixtures, Vehicles, Appliances, and Related Items. The storage or accumulation of iron, metal, component vehicle and machine parts, junk vehicles, household appliances, barrels, and other salvaged metal items.

(b) Boxes, Building Materials and Related Items. The storage or accumulation of cardboard, packing material, construction and building material, demolition waste, concrete or concrete blocks, or other similar materials.

(c) Recreational Vehicles. The storage or accumulation of wrecked, ruined, or dismantled snowmobiles, four wheelers, camp trailers, pedal bikes, motorbikes, and boats or their component parts.

(d) Modular or Mobile Homes, Sheds, Buildings. The storage, accumulation, or presence of mobile or permanent structures that are uninhabited and dilapidated due to neglect or inattention.

(e) Garbage or Trash. The storage or accumulation of trash or garbage that is not contained in a garbage receptacle.

(f) Furniture. The storage, accumulation, or presence of household furniture not designed for outdoor use.

(g) The storage or accumulation of raw materials, equipment parts, or bulk commodities.

(h) Other Rubble, Debris, Junk, or Refuse. The storage or accumulation of any other rubble, debris, junk, or refuse meeting the definition of community decay.

4. ENFORCEMENT AND ABATEMENT

This ordinance may be enforced pursuant to the following procedures:

(a) Upon receipt of a complaint or upon observation of conditions showing that community decay may exist upon a property within Custer 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) 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.

(d) 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.

(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 failed 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 or served on the owner of the property by a law enforcement officer and shall provide the property owner within ten (10) additional days to complete abatement.

(g) If the property owner fails to complete abatement of the violation within ten (10) days, as described in subsection (f), the Custer County Attorney may petition the Justice Court for a show cause hearing. At the hearing, the Justice Court shall determine whether proper notice as made and whether a violation of this ordinance existed at the end of the 10-day period referenced in subsection 4(f). If the Justice Court determines a violation existed at the end of the 10-day period, the court shall issue an order authorizing the Department to 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 Custer County to enter upon the property for the specific purpose of abating the violation.
- (g) That Custer County is authorized to process 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

District Court. Persons aggrieved by a decision of the Justice Court may appeal to the Sixteenth Judicial District Court for review pursuant to § 3-10-115, MCA. The appeal must be filed within 30 days after the decision of the Justice Court.

7. COMMUNITY DECAY FUND

Any liens collected under the provisions of this ordinance shall be paid to the Custer 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.

9. PUBLIC NUISANCE

Enforcement of this Ordinance does not preclude prosecution for public nuisance, as

set forth in MCA 45-8-111 and MCA 45-8-112/

PASSED on first reading the 2nd day of November, 2023, and passed on second and final reading this 21st day of November, 2023, by the Board of County Commissioners, Custer County, State of Montana.

CUSTER COUNTY BOARD OF COMMISSIONERS



Jason Strouf, Chairman

EFFECTIVE DATE OF ORDINANCE:

ATTEST:



Linda Corbett, Clerk and Recorder