



# LINCOLN COUNTY MONTANA

## Ordinance 2018-05

### AN ORDINANCE TO CONTROL COMMUNITY DECAY WITHIN LINCOLN COUNTY AND ESTABLISH PROCEDURES FOR ITS ENFORCEMENT

#### THE BOARD OF COUNTY COMMISSIONERS FOR LINCOLN COUNTY, MONTANA FINDS:

1. Sections 7-5- 2110 and 7-5-2111, MCA, authorizes counties to adopt an ordinance to control community decay.
2. The Board of County Commissioners has determined that there is a need for an ordinance to control community decay in Lincoln County and wishes to enact such an ordinance.
3. This ordinance is necessary to control and prohibit conditions that contribute to community decay on or adjacent to all public roadways within Lincoln County, including conditions that negatively affect public health, safety, and enjoyment.

#### THE BOARD ORDAINS:

##### 1. TITLE

This ordinance may be cited as the "Lincoln County Community Decay Ordinance"

##### 2. DEFINITIONS

As used in this ordinance, the following definitions apply:

- (1) "Abatement" means physical removal of all community decay constituting a violation of this ordinance.
- (2) "Adjacent" means beside, next to, contiguous, or nearby. Properties adjacent to any public roadway include properties contiguous with those abutting a public roadway and properties within public view, as defined within this ordinance.
- (3) "Community decay" means anything that is injurious to health, indecent, offensive to the senses, or an obstructive of the free use of property, so as to interfere with the comfortable enjoyment of life or property 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. "Community decay" may not be construed to apply to normal farming, ranching, or other agricultural operations or to a farm, ranch,



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or other agricultural facility, and any appurtenances thereof, during its normal operation. "Community decay" may include, but is 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; ruined or unusable boats, trailers, campers, or mobile homes; vehicle or machine parts; dead animals or animal parts; appliances; furniture; branches, logs, yard trimmings, or garden waste; and any other similar materials, items, waste, parts, or substances.

- (4) "Department" means the Lincoln County Health Department.
- (5) (a) "Junk vehicle" means a motorized vehicle or it's component parts, including recreational vehicles such as dirt bikes, ATVs, or snowmobiles:
  - (i) that is discarded, ruined, wrecked, or dismantled;
  - (ii) that, except as provided in subsection (4)(b), is not lawfully and validly licensed; and
  - (iii) that remains inoperative or incapable of being driven.
- (b) If a vehicle is permanently registered but otherwise meets the criteria for a junk vehicle under subsection (4)(a), the vehicle is a junk vehicle.
- (6) "Officer" means any duly appointed law enforcement officer having jurisdiction within Lincoln County or an employee or duly appointed agent of the Lincoln County Health Department.
- (7) "Owner" means the person presently living on the property, including persons occupying or in control of that property, as well as any person holding legal possession or title to the property.
- (8) "Person" means an individual, firm, partnership, company, association, corporation, city, town, or any other entity whether organized for profit or not.
- (9) "Public roadway" means any highway, road, alley, lane, parking area, or other public or private place adapted and fitted for public travel that is in common use by the public.
- (10) "Public view" means any area visible from any point up to six feet above the surface of the center of any public roadway.
- (11) "Shielding" means fencing or other natural or manmade barriers used to conceal junk vehicles from public view, whether permanent or temporary.

### 3. COMMUNITY DECAY PROHIBITION

It is unlawful for any person to maintain conditions that contribute to community decay on property owned, occupied, or controlled by him or her on or adjacent to any public roadway within the county.



**4. ABATEMENT**

- (1) When the Department receives notice that a condition of community decay exists, an Officer may inspect the property alleged to be in violation of this ordinance to determine whether there is a violation of this ordinance.
- (2) If the Officer determines that there is a violation of this ordinance, the Department will notify the owner of the property in writing of the violation and order its abatement within thirty (30) days. The notice of violation and abatement order may be sent by certified mail or personal service as prescribed by Rule 4 of the Montana Rules of Civil Procedure. The notice and order will include the following:
  - (a) a specific description of the violation;
  - (b) a statement specifying that the owner has thirty (30) days from receipt of the notice to bring the property into compliance with this ordinance by means of removal or shielding of the conditions; and
  - (c) an advisement that if the violation is not abated, the County may undertake abatement and assess the costs of that abatement to the owner.
  - (d) an advisement that violation of this ordinance may subject the owner to a fine of up to \$500 or 6 months imprisonment or both, pursuant to MCA § 7-5-109, and that each day of violation, after notice of violation has been given, constitutes a separate offense.
- (3) Compliance with this ordinance and any abatement order issued pursuant to this ordinance requires the outright removal of all conditions comprising community decay as defined under this ordinance. Failure to comply with an abatement order is a violation of this ordinance.
- (4) In the alternative, the owner may, within fourteen (14) days of the date of the issuance of the order, submit a plan of abatement to the Department. Any proposed plan must include:
  - (a) the type of abatement or shielding to be undertaken;
  - (b) the date for commencement of action; and
  - (c) the date for completion of the abatement.
- (5) The Department, in its sole discretion, may accept a proposed plan and defer further proceedings under this ordinance pending the date of completion of the abatement, negotiate modifications to that plan, or reject that plan. The Department must communicate its acceptance or rejection of the proposed plan to the owner within fourteen (14) days of receiving the proposed plan. If the Department rejects the proposed plan, the owner has thirty (30) days from the receipt of the Department's final decision to comply with the abatement order.



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- (6) If the owner fails to comply with an abatement order or an abatement plan approved by the Department under subsection (4) of this section, Officers may enter the owner's property with the specific purpose of abating or shielding the violation, in a manner deemed appropriate by the Department.
- (7) The County may assess the owner for the actual costs of the abatement by the Department.
- (8) If the assessment is not paid, it will be taken as a lien on the property and enforced as is nonpayment of property taxes.

## 5. APPEALS

- (1) An owner may appeal a final decision of the Department in writing to the Board of Commissioners of Lincoln County within fourteen (14) days of the final decision.
- (2) Within fourteen (14) days of receiving a timely notice of appeal, the Board must schedule a hearing to determine whether a violation exists. The Board may postpone that hearing at the request of a party or for good cause.
- (3) Once an appeal for a hearing has been made, the Department's decision is stayed pending the hearing and decision by the Board.
- (4) Within fourteen (14) days after the hearing, the Board must either affirm, modify, or withdraw and dismiss the Department's order. The Board's final decision must be provided to the Department and the owner in writing.

## 6. SHIELDING

The maintenance of junk vehicles on private property that would be considered community decay under this ordinance may be lawful if such materials are shielded from public view in accordance with the following standards.

- (1) 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.
- (2) 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.



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- (3) Shielding with shrubs and trees must 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 either seeded with an adequate grass seed formula or otherwise covered by an approved landscaping material.
- (4) Other types of fencing of equivalent permanence, attractiveness, and shielding qualities, including corrugated metal, are also acceptable.
- (5) No more than one of the approved shielding materials and color may be used on any one side of a shielding fence.

## 7. ENFORCEMENT

- (1) The Department is primarily responsible for initiating violation notices and abatement proceedings, with cooperation and aid of law enforcement officers as necessary.
- (2) The Department and the County Attorney may exercise complete discretion in enforcing any provisions of this ordinance. The Department or County Attorney may determine that a condition otherwise meeting the criteria of this ordinance is not considered Community Decay because of its existence prior to changed residential conditions in or around its locality if the condition existed longer than the complaining resident has been in possession of the effected property. Nothing within this section is intended to provide a grandfathered status to conditions in existence before this ordinance's adoption.
- (3) All approvals or variances from the requirements of this ordinance must be granted by the Department.
- (4) All Officers as defined in this ordinance are authorized to enforce the provisions of this ordinance.
- (5) The Officer has the following authorities and responsibilities, in addition to responsibilities otherwise outlined in this ordinance:
  - (a) The authority to investigate a complaint or potential violation of this ordinance;
  - (b) The authority to serve a written Notice of Violation and Abatement Order;
  - (c) The authority to enter the owner's property to abate or shield community decay in violation of this ordinance upon an owner's noncompliance with an abatement order or proposed plan;
  - (d) The authority to serve a written Notice to Appear and Complaint on the person who violates any section of this ordinance, and the responsibility to file the Notice and Complaint in Justice Court;



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- (e) The responsibility to provide the County Attorney with sufficient documentation to enable him or her to prosecute the violation as a misdemeanor. Evidence of a violation of any section of this ordinance may include, but is not limited to, the following:
  - (i) Written affirmation or statement from a witness
  - (ii) Video or audio recording, photographs, or written documentation
  - (iii) Documentation by the Officer.
- (6) It is unlawful for any person to knowingly and intentionally interfere with any Officer in the lawful discharge of the duties prescribed by this ordinance.

## 8. LIABILITY

All persons determined to be owners, as defined under Section 2 of this ordinance, of a property in violation of this ordinance may be held jointly and severally liable.

## 9. PENALTIES

Any violation of this ordinance constitutes a misdemeanor punishable by imprisonment in the Lincoln County Jail not exceeding six (6) months or by a fine not to exceed \$500.00, or both. Each day of violation, after notice of violation has been given, constitutes a separate offense.

### THE BOARD FURTHER ORDAINS:

1. This ordinance applies to the whole of Lincoln County, including all conditions existing at the time of its adoption, with the exception of properties located within incorporated municipalities that have ordinance making powers.
2. If a provision of this ordinance conflicts with a provision of a previously adopted ordinance or resolution, this ordinance will prevail.
3. The various sections and clauses of this ordinance are severable. If any part, sentence, clause, or phrase is adjudged to be unconstitutional or invalid, the remainder of the ordinance will not be affected.
4. Upon first reading and adoption, this ordinance will be posted and made available to the public in accordance with section 7-5-103, MCA.
5. This ordinance will be effective 30 days after its second and final adoption, in accordance with section 7-5-105, MCA.



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6. Upon second and final adoption of this ordinance, this ordinance will be signed by the Board and published by the Clerk in the Register of Ordinances to be kept on file in the Clerk and Recorder's Office, as well as published on the official County website, in accordance with sections 7-5-103 and 7-5-107, MCA.

END OF ORDINANCE

Approved as to Form:

Marcia Boris  
MARCIA BORIS, County Attorney

First reading date 11-28-18 Approved ( ) Disapproved ( ) Amended (✓)  
Second reading date 12-12-18 Approved (✓) Disapproved ( ) Amended ( )

Adopted this 12<sup>th</sup> day of Dec., 2018.

LINCOLN COUNTY BOARD OF COMMISSIONERS

Mike Cole  
MIKE COLE, Chair

Jerry Bennett  
JERRY BENNETT, Member

Mark Peck  
MARK PECK, Member

ATTEST:

Robin A. Benson  
ROBIN BENSON, Clerk of the Board

