



**CASCADE COUNTY ORDINANCE 06-01D**

**RETURN TO COMMISSION**

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

**WHEREAS**, MCA § 7-5-2111 authorizes counties to adopt an ordinance to control, regulate, and prohibit conditions that contribute to community decay on or adjacent to any public roadway, or public right-of-way; and

**WHEREAS**, pursuant to MCA § 7-5-2111, time limits for removal of community decay or shielding of such conditions may be imposed; and

**WHEREAS**, pursuant to MCA § 7-5-2111, for the purpose of enforcing the ordinance, after giving due notice, in writing, of violation and upon the failure of the property owner to comply with the ordinance, officers and employees of the county may enter upon the property for the specific purpose of abating the violation of the ordinance and may assess the property owner for the actual costs for the abatement with nonpayment of such an assessment becoming a lien upon the property is enforceable in the same manner as the nonpayment of property taxes; and

**WHEREAS**, pursuant to MCA § 7-5-109, the Board of Cascade County Commissioners ("Commission") may fix penalties for the violation of an ordinance that do not exceed a fine of \$500 or six (6) months' imprisonment or both the fine and imprisonment; and

**WHEREAS**, the Commission has previously established such an Ordinance in 1985 (See Reel 177, Document 797); and

**WHEREAS**, the Commission amended said Ordinance in 2003 (R0070436); and

**WHEREAS**, the Commission amended said Ordinance in 2006 (R0126203); and

**WHEREAS**, the Commission amended said Ordinance in 2007 (R0156023); and

**WHEREAS**, the Commission amended said Ordinance in 2011 (R0235842); and

**WHEREAS**, the Commission has determined there is a continuing need to control community decay in Cascade County; and

**WHEREAS**, the Commission desires to amend the existing Ordinance to clarify that the Planning Director shall act as the Cascade County Community Decay Program Director under the Cascade County Planning & GIS Department and further clarify the procedures for enforcement, and other minor clarifications.

**NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF CASCADE COUNTY COMMISSIONERS:**

**Section 1: Definitions**

"Abatement" means the physical removal of all community decay.

"Community Decay" means a public nuisance created by allowing rubble, debris, junk or refuse to accumulate resulting in conditions injurious to health, indecent, offensive to the senses or obstructive of free use of property as to interfere with the comfortable enjoyment of life or property.

"Component part" means any identifiable part of a discarded, ruined, wrecked, or dismantled motor vehicle, including but not limited to fenders, doors, hoods, engine blocks, motor parts, transmissions, frames, axles, wheels, tires, and passenger compartment fixtures.

"Junk Vehicle" means a motor vehicle, including component parts, that is (1) discarded, ruined, wrecked, or dismantled; (2) that, except as provided in MCA 75-10-501(4)(b), is not lawfully and validly licensed; and (3) that remains inoperative or incapable of being driven.

"Motor Vehicle Wrecking Facility" a facility that either deals in motor vehicles and/or component parts that is appropriately licensed under MCA § 75-10-511 or considered a *defacto* motor vehicle wrecking facility under MCA § 75-10-502.

"Planning Director" means the Director, or their designee, of the Cascade County Planning and GIS Department, who shall act as the Cascade County Community Decay Program Director.

"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 on such persons may be unequal.

"Public Roadway" means the surface traveled by the public, which does not have to exclusively be considered a county road, federal-aid highway, or state highway.

"Public Right-of-Way" means a private easement, dedication, and/or other road that is adapted and fitted for public travel and is in common use by the public.

"Public View" means, for junk vehicle purposes only, any point six (6) feet above the surface of the center of a public roadway or public right-of-way from which junk vehicles can be seen.

"Shielding" means the construction or use of fencing, or constructed or natural barriers to conceal junk vehicles from public view at any given time on the property.

"Site Obscuring" means materials that are completely opaque and provide coverage without gaps more than 1 ½ inches wide when viewed at any angle between 45 degrees to 90 degrees to the fence.

## **Section 2: Duties of Private Property Owners and the Public**

It shall be unlawful for any person who is an owner of property to allow rubble, debris, junk or refuse to accumulate resulting in conditions that are injurious to health, indecent, offensive to the senses or obstructive of free use of property as to interfere with the comfortable enjoyment of life or property and so constitute community decay on such property. Further, it shall be unlawful for any member of the public to abandon or otherwise dispose or cause to be stored on or about a Public Roadway, Public Right-of-Way or other public areas, including but not limited to Public Parks, rubble, debris, junk or refuse to accumulate resulting in conditions that are injurious to health or safety, indecent, offensive to the senses or obstructive of free use of property as to interfere with the comfortable enjoyment of life or property and so constitute community decay.

### Section 3: Violations

It shall be unlawful for any person to allow community decay on property under their ownership or to establish a condition of community decay on or about a Public Roadway or Right-of-Way. For purposes of this ordinance, a public nuisance includes any of the following conditions that exists:

- (a) The dumping, piling, or stacking of bricks, concrete blocks, wood, and similar materials, 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 cardboard boxes, broken packing boxes, paper, or other similar items, unless said items are stored in enclosed and labeled recycling bins.
- (c) The storage or accumulation of iron, metal, machine parts, household appliances, barrels, and other salvaged metal items.
- (d) The storage or accumulation of vehicle component parts and/or junk vehicles, unless such material is stored in an approved, licensed, and shielded Motor Vehicle Wrecking Facility.
- (e) The accumulation or storage of any other rubbles, debris, junk, or refuse that, upon investigation, is deemed to be a public nuisance as defined in this ordinance.

### Section 4: Shielding of Junk Vehicles and/or Motor Vehicle Wrecking Facilities Only

The storage of no more than three (3) junk vehicles or operation of a licensed Motor Vehicle Wrecking Facility that would be considered a public nuisance under this ordinance shall be lawful if they are shielded from public view in accordance with the following standards:

- (a) Any shielding must conform to all local zoning, building, and protective covenant provisions, and shall be at least six (6) feet tall and site obscuring so that the junk vehicles and/or Motor Vehicle Wrecking Facility is not visible from public view.
- (b) The following types of material can be used for shielding purposes:
  - a. When fences or walls are used for shielding, it shall be maintained by the property owner or occupant in a neat and workmanlike manner, and shall be replaced and repaired when necessary.
  - b. When shielding with shrubs and trees, it shall provide a shielding equivalent to a fence or wall described above. Shrubs and/or trees shall be at least three (3) feet tall when planted and reach at least six (6) feet tall at maturity. Trees and shrubbery shall be maintained and replaced as needed to ensure a continuous site obscuring hedge at all times of the year.
  - c. When shielding with dirt berms, it shall be at least six (6) feet tall and sloping and shall be graded smooth and seeded with an adequate grass seed or ground cover formula. The grass or ground cover should be well-kept and not exceed twelve inches in height.
  - d. Other types of shielding of equivalent permanence, attractiveness, and shielding qualities are acceptable with written approval from the Planning Director, or their designee.
- (c) No more than one of the approved shielding materials shall be used on any one side of the site.

Shielding from public view cannot be utilized to conceal any other types of community decay conditions other than that provided above due to the continued conditions that are injurious to health, indecent,

offensive to the senses or obstructive of free use of property as to interfere with the comfortable enjoyment of life or property.

#### **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 30 days in the County Jail, or both. The court may also issue an order allowing the Planning Director, or their designee, to enter upon the individual's property to abate all community decay that is the source of the conviction. The County Commissioners have determined that a fixed fine in the amount of \$500.00 shall be assessed for each violation found by a court of law, in addition to any administrative costs and orders, which have not been abated in accordance with the abatement procedures provided in this ordinance.

#### **Section 6: Abatement on Private Property**

The abatement of conditions which constitute a public nuisance prohibited by this ordinance shall be accomplished under the following provisions:

- (a) **Signed Complaint.** When the Planning Director, or their designee, receives a signed, *Complaint* that a condition of community decay exists, they shall conduct a site inspection within fifteen (15) business days follow receipt of the *Complaint* of the property to determine whether there is a violation of this ordinance. Site inspections may be made from the public roadway, rights-of-way, or from the Complainant's property with their consent.
- (b) **Determination Letter.** If the Planning Director, or their designee, determines, after a site inspection, that there is no violation of this ordinance, a *Determination Letter* will be sent by US First Class mail to the Complainant(s) and the property owner.
  1. The *Determination Letter* shall contain the following:
    - i. Include a statement specifically describing the alleged violation;
    - ii. The date the site inspection was conducted;
    - iii. Describe the findings made as a result of the site inspection and any other documents provided in the course of investigation by the property owner and Complainant(s).
- (c) **Notice of Violation & Abatement Order.** If the Planning Director, or their designee, determines that there is a violation of this ordinance, the owner of the property shall be notified, in writing, of the violation by certified mail and ordered to abate the violation within thirty (30) days of receipt of the letter.
  1. The *Notice of Violation* shall contain the following:
    - i. Include a statement specifically describing the violation;
    - ii. Specify that the owner has thirty (30) calendar days from receipt of such notice to bring the property into compliance with this ordinance by means of removal of all conditions or shielding when allowed under this ordinance; and
    - iii. Advise the owner that if the violation is not abated, the County may enter the property to undertake the abatement with the owner's consent, and will assess the costs of the abatement to the owner at that time.
  2. In the event service of the *Notice of Violation and Abatement Order* cannot be successfully executed by certified mail, then service will be attempted by process server. Both these service attempts will be documented by affidavit. If both these

services attempts are unsuccessful, the *Notice of Violation* and *Abatement Order* will then be published in a newspaper of general circulation within Cascade County one (1) time per once a week for two (2) consecutive weeks in accordance with MCA § 7-1-2121.

- (d) Abatement by Property Owner.** The owner may, after receipt of the *Notice of Violation*, submit a *Compliance Plan* to the Planning Director, or their designee.
1. The *Compliance Plan* shall include the following:
    - 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.
  2. The Planning Director, or their designee, may accept the *Compliance Plan* and may defer further proceedings under this ordinance pending the date of completion of the *Compliance Plan*.
- (e) Abatement by County.** In the event the owner fails to comply with the *Abatement Order* or a *Compliance Plan* which has been approved by the Planning Director, or their designee, then under the terms of this ordinance the Planning Director, or their designee, may enter the owner's property with the specific purpose of abating or shielding the violation.
1. The County may assess the property owner(s) for the actual costs of the abatement.
  2. If the assessment is not paid, it shall become a lien upon the property and enforced like a nonpayment of property taxes.
- (f) Notice of Appeal.** Alternatively, the Owner may, within fourteen (14) calendar days of the date of issuance of the *Abatement Order*, appeal the *Abatement Order* to the Cascade County Board of Commissioners. Upon receipt of a timely *Notice of Appeal*, the Board of Commissioners shall schedule a hearing for the next regularly scheduled public meeting. Either party may postpone the hearing upon request. Following the hearing, the Board of Commissioners may either:
1. Determine that a violation exists and order abatement within thirty (30) calendar days; or
  2. Determine that no violation exists and dismiss the proceedings.
- (g) Judicial Proceedings.** In the event the Owner does not abate the violation and refuses entry to the property to the Planning Director, or their designee, to abate the violation, then the Planning Director, or their designee, will refer enforcement of the violations to the Cascade County Attorney's Office with the request that they file a public nuisance action against the landowner. The referral will request the following relief under this ordinance: the fine set in this ordinance, a judicial order to abate the public nuisance, any administrative costs incurred by Cascade County, and any other relief deemed fair and equitable under the circumstances.

#### **Section 7: Abatement on Public Roadway, Public Right-of-Way or Public Area when Owner Identified**

The abatement of conditions which constitute a public nuisance on a Public Roadway, Public Right-of-Way or other Public Area prohibited by this ordinance shall be accomplished under the following provisions:

- (a) Signed Complaint.** When the Planning Director, or their designee, receives a signed, *Complaint* that a condition of community decay exists, they shall conduct a site inspection within fifteen (15) business days follow receipt of the *Complaint* of the Public Roadway,

Public Right-of-Way or other Public Area to determine whether there is a violation of this ordinance.

**(b) Determination Letter.** If the Planning Director, or their designee, determines, after a site inspection, that there is no violation of this ordinance, a *Determination Letter* will be sent by US First Class mail to the Complainant(s).

1. The *Determination Letter* shall contain the following:

- i. Include a statement specifically describing the alleged violation;
- ii. The date the site inspection was conducted;
- iii. Describe the findings made as a result of the site inspection and any other documents provided in the course of investigation by the Planning Director, or their designee, and Complainant(s).

**(c) Notice of Violation & Abatement Order.** If the Planning Director, or their designee, determines that there is a violation of this ordinance and is able to identify the owner of the property, the owner of the property shall be notified, in writing, of the violation by certified mail and ordered to abate the violation within five (5) days of receipt of the letter.

1. The *Notice of Violation* shall contain the following:

- iv. Include a statement specifically describing the violation;
- v. Specify that the owner has five (5) calendar days from receipt of such notice to bring the property into compliance with this ordinance by means of removal of all conditions; and
- vi. Advise the owner that if the violation is not abated, the County may enter the property to undertake the abatement with the owner's consent, and will assess the costs of the abatement to the owner at that time.

2. In the event service of the *Notice of Violation and Abatement Order* cannot be successfully executed by certified mail, then service will be attempted by process server. Both these service attempts will be documented by affidavit.

**(d) Abatement by Property Owner.** The owner may, after receipt of the *Notice of Violation*, submit a *Compliance Plan* to the Planning Director, or their designee.

3. The *Compliance Plan* shall include the following:

- i. The type of abatement to be undertaken;
- ii. The date for commencement of action; and
- iii. The date for completion of the abatement.

4. The Planning Director, or their designee, may accept the *Compliance Plan* and may defer further proceedings under this ordinance pending the date of completion of the *Compliance Plan*.

**(e) Abatement by County.** In the event the owner fails to comply with the *Abatement Order* or a *Compliance Plan* which has been approved by the Planning Director, or their designee, then under the terms of this ordinance the Planning Director, or their designee, may abate the violation.

5. The County may assess the property owner(s) for the actual costs of the abatement and pursue all legal recourse for recovery of said costs.

## Section 8: Abatement on Public Roadway, Public Right-of-Way or Public Area when No Owner Identified

The abatement of conditions which constitute a public nuisance on a Public Roadway, Public Right-of-Way, or Public Area prohibited by this ordinance shall be accomplished under the following provisions:

- (a) **Signed Complaint.** When the Planning Director, or their designee, receives a signed *Complaint* that a condition of community decay exists, they shall conduct a site inspection within fifteen (15) business days follow receipt of the *Complaint* of the Public Roadway or Right-of-Way to determine whether there is a violation of this ordinance.
- (b) **Determination Letter.** If the Planning Director, or their designee, determines, after a site inspection, that there is no violation of this ordinance, a *Determination Letter* will be sent by US First Class mail to the Complainant(s).
6. The *Determination Letter* shall contain the following:
- i. Include a statement specifically describing the alleged violation;
  - ii. The date the site inspection was conducted;
  - iii. Describe the findings made as a result of the site inspection and any other documents provided in the course of investigation by the Planning Director, or their designee, and Complainant(s).
- (c) **Notice of Violation & Abatement Order.** If the Planning Director, or their designee, determines that there is a violation of this ordinance and is unable to identify the owner of the property, the Planning Director, or their designee, shall prepare a notice of violation for publication and post the property.
2. The *Notice of Violation* shall contain the following:
- iv. Include a statement specifically describing the violation and its location;
  - v. Specify that any person or entity claiming a right to the property shall remove said property within five (5) calendar days from the date of publication of such notice to remove such violation; and
  - vi. Advise that if the violation is not abated, the County shall enter the property and abate the violation according to its exclusive discretion.
- (d) The Planning Director, or their designee, shall also prominently post said notice in the vicinity of the violation for no less than five (5) calendar days commencing no later than the date of publication of the Notice of Violation.
- (e) **Abatement by County.** In the event the violation remains on or after the sixth (6<sup>th</sup>) calendar day following publication and posting, the Planning Director, or their designee may abate the violation.

## Section 9: Jurisdictional Area

This ordinance applies to all of Cascade County with the exception of incorporated municipalities having ordinance making powers.

## Section 10: Effective Date

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

**Section 11: Compatibility**

This ordinance will supersede and supplant all prior iterations of Cascade County's Community Decay Ordinance but is not intended to interfere with, abrogate, or annul any other ordinance, rule or regulation, statute, or other provision of law.

**Section 12: Severability**

If any provision of this ordinance is declared invalid by any court or tribunal, the remaining provisions of this ordinance shall not be affected. To this end, the provisions of this ordinance are to be severable.

**FIRST READ AND ADOPTED** the 9<sup>th</sup> day of November 2022, by the Board of County Commissioners, Cascade County, State of Montana.

BOARD OF COUNTY COMMISSIONERS  
OF CASCADE COUNTY

\_\_\_\_\_  
Joe Briggs, Chair

\_\_\_\_\_  
James L. Larson, Commissioner

\_\_\_\_\_  
Don Ryan, Commissioner

Attest

On this 9<sup>th</sup> day of November 2022, I hereby attest the above-written signatures of the Cascade County Board of Commissioners.

\_\_\_\_\_  
Rina Fontana Moore, Cascade County Clerk and Recorder

\* APPROVED AS TO FORM:  
Josh Racki, County Attorney

\_\_\_\_\_  
Deputy County Attorney


\* The County Attorney has provided advice and approval of the foregoing document language on behalf of the Board of Cascade County Commissioners, and not on behalf of other parties or entities. Review and approval of this document by the County Attorney was conducted solely from a legal perspective and for the exclusive benefit of Cascade County. Other parties should not rely on this approval and should seek review and approval by their own respective counsel.




**PASSED ON SECOND AND FINAL ADOPTION** the 22<sup>nd</sup> day of November 2022, by the Board of County Commissioners, Cascade County, State of Montana.

BOARD OF COUNTY COMMISSIONERS  
OF CASCADE COUNTY

  
\_\_\_\_\_  
Joe Briggs, Chair

  
\_\_\_\_\_  
James L. Larson, Commissioner

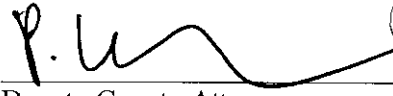
  
\_\_\_\_\_  
Don Ryan, Commissioner

Attest

On this 22<sup>nd</sup> day of November 2022, I hereby attest the above-written signatures of the Cascade County Board of Commissioners.

  
\_\_\_\_\_  
Rina Fontana Moore, Cascade County Clerk and Recorder

\* APPROVED AS TO FORM:  
Josh Racki, County Attorney

  
\_\_\_\_\_  
Deputy County Attorney



\* The County Attorney has provided advice and approval of the foregoing document language on behalf of the Board of Cascade County Commissioners, and not on behalf of other parties or entities. Review and approval of this document by the County Attorney was conducted solely from a legal perspective and for the exclusive benefit of Cascade County. Other parties should not rely on this approval and should seek review and approval by their own respective counsel.

## NOTICE OF PUBLIC HEARING

**NOTICE IS HEREBY GIVEN** that the Board of Cascade County Commissioners will hold a public hearing via Zoom and at the Courthouse Annex, located at 325 2<sup>nd</sup> Ave. N., Room 111, Great Falls, Montana, on Tuesday, November 22, 2022, at 9:30 AM, for the second reading and adoption of Cascade County Ordinance 06-01D, an amendment to Cascade County Ordinance 06-01C, an Ordinance to Control Community Decay.

Any interested person may appear and speak for or against the proposed amendment to the ordinance at the public hearing or submit written comments to the Cascade County Planning & GIS Department by mail or email to [planningcomments@cascadecountymt.gov](mailto:planningcomments@cascadecountymt.gov). Information to attend via Zoom can be found on the calendar at [www.cascadecountymt.gov](http://www.cascadecountymt.gov).

CASCADE COUNTY PLANNING & GIS DEPARTMENT

/s/Charity N. Yonker, Planning Director

Publication Date(s): Sunday, November 13, 2022, and Sunday, November 20, 2022

## NOTICE OF PUBLIC HEARING

**NOTICE IS HEREBY GIVEN** that the Board of Cascade County Commissioners will hold a public hearing via Zoom and at the Courthouse Annex, located at 325 2<sup>nd</sup> Ave. N., Room 111, Great Falls, Montana, on Wednesday, November 9, 2022, at 9:30 AM, regarding the amendment of Cascade County Ordinance 06-01C, an Ordinance to Control Community Decay.

Any interested person may appear and speak for or against the proposed amendment to the ordinance at the public hearing or submit written comments to the Cascade County Planning & GIS Department by mail or email to [planningcomments@cascadecountymt.gov](mailto:planningcomments@cascadecountymt.gov). Information to attend via Zoom can be found on the calendar at [www.cascadecountymt.gov](http://www.cascadecountymt.gov).

CASCADE COUNTY PLANNING & GIS DEPARTMENT

/s/Charity N. Yonker, Planning Director

Publication Date(s): Sunday, October 30, 2022, and Sunday, November 6, 2022