

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

WHEREAS, MCA Section 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; and

WHEREAS, the Pondera County Commissioners have determined there is a continuing need to control community decay in Pondera County; and

WHEREAS, the Pondera County Commissioners desire to define the prohibited nature of conditions that contribute to community decay; and to define the role of the County Sanitarian, the Pondera County Sheriff's Office or other designated agency in serving notices to appear on those who violate this Ordinance.

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

It shall be a violation of this ordinance to own or maintain any public nuisance or community decay on or adjacent to any public roadway within the unincorporated, platted town boundary areas of Pondera County, having more than 200 lots platted currently the platted areas of Brady and Dupuyer.

Definitions

1. (a) **“Agency”** means the Pondera County Sanitarian, the Pondera County Sheriff's Office or other designated agent;
- (b) **“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. “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 appurtenance thereof, during the course of its normal operation.
- (c) **“Person”** means an individual, firm, partnership, company, association, corporation, city or town, or any other entity, whether organized for profit or not.
- (d) **“Public nuisance”** is defined at MCA 27-30-102 and 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 individuals may be unequal.
- (e) **“Public view”** is defined at MCA 75-10-501(8) and, *for the purposes of junk vehicles only*, as any point 6 feet above the surface of the center of a public road from which the community decay can be seen.
- (f) **“Shielding”** is defined at MCA 75-10-501(9) and, *for the purposes of junk vehicles and metal items only*, refers to the fencing or other man-made barriers to conceal facility from public view. It also refers to natural barriers. Any shielding barrier must conform to all local zoning, planning, building, and protective covenant provisions. Any shielding

is to be of sufficient height that none of the violation on the premises is visible to public view.

(g) **“Tract of record”** means an individual parcel of land, irrespective of ownership, that can be identified by legal description, independent of any other parcel of land, using documents on file in the records of the Pondera County Clerk and Recorder’s Office.

(h) **“Violation”** means community decay occurring on each tract of record which is on or adjacent to any public roadway.

(i) **“Abatement”** means physical removal of all community decay.

Duties of Private Property Owners

2. 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 which is on or adjacent to any public roadway.

Powers and Duties of the Agency

3. The county governing board hereby designates the Pondera County Sanitarian, the Pondera County Sheriff’s Office or other designated agent as the agencies which shall have the following powers and duties:
 - (a) The duty to inspect when there has been a written complaint by more than one member of the public that “community decay” is present on either public or private property which is on or adjacent to any public roadway.
 - (b) The power to determine whether or not this ordinance applies after an inspection of the property.
 - (c) The duty to serve a written notice of violation to the owner(s) of the property in violation of this ordinance.
 - (d) The duty to initiate actions, through the County Attorney, in Court for the purpose of enforcing this ordinance and the power, upon obtaining a Court order, to enter upon the property for the specific purpose of abating the violation.
 - (e) The duty to assess, upon order of the Court, the property owner for the actual costs of an abatement made by the Agency or by a third party on behalf of the Agency. Where the Agency is not capable of performing the abatement itself, the Agency shall obtain “quotes” and shall engage the party who submitted lowest “quote”.

Notification

4. (a) When the agency receives a signed complaint by more than one person that a public nuisance has been 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, the agency shall inspect the property alleged to be in violation of this ordinance. Upon inspection, the agency shall determine whether there is a violation of this ordinance.
 - (b) If there appears to be a violation of this ordinance, the agency shall notify the owner of the property in writing of the violation. This notice shall be sent by certified mail or by personal service as prescribed by Rule 4 of the Montana Rules of Civil Procedure. This notice shall include a statement specifically describing the violation. The notice shall also

state that each violation of this Ordinance can subject the owner to a fine of up to \$500, pursuant to MCA 7-5-109.

(c) The notice of violation to the owner shall specify that the owner has thirty (30) days from receipt of such notice within which to become in compliance with this ordinance by means of removal or shielding of the conditions.

(i) The owner may, after notification of violation, submit a plan of abatement to the agency which shall include: 1) Type of abatement or shielding; 2) Date for commencement of work; and 3) Reason, if appropriate, why abatement cannot be completed within the thirty (30) days. The agency, in its sole discretion, may accept such plan and defer further proceedings under this ordinance pending abatement.

(d) After thirty (30) days from receipt of the Notice, or the date agreed to by owner and agency not to exceed 90 days from receipt of the Notice, the agency shall determine whether the violation has been abated by the owner.

(e) If the Agency rejects the owner's(s') plan of abatement or in the event the owner has failed to abate the nuisance within the thirty (30) days after the notice of violation has been received by the owner(s), the Agency, through the County Attorney, may file an action in Court against the owner(s) for the purpose of enforcing this ordinance.

(f) If, after a show cause hearing, the owner has not complied with the court-ordered abatement, the agency may send written notification by certified mail and allow ten (10) days further to complete abatement. Ten (10) days after receipt of notice by owner, the agency may enter upon the owner's property with the specific purpose of abating or shielding the violation, whichever the agency deems appropriate.

(g) The agency may assess the property owner for the actual costs incurred by the Agency if the Agency is compelled to perform the abatement.

(h) Nonpayment of the assessment by the agency may be taken as a lien upon the property and is enforceable as are nonpayment of property taxes.

Jurisdictional Area

5. This ordinance applies solely to the unincorporated, platted areas of Pondera County having more than 200 lots platted, currently the platted areas of Brady and Dupuyer.

Effective Date

6. This ordinance shall be in full force and effect thirty (30) days after final passage and adoption by the Pondera County Commissioners.

Severability

7. If any provision of this ordinance is declared invalid by any court or tribunal, the remaining provisions of this ordinance shall not be affected thereby.

PASSED on first reading this 22nd day of July, 2015, by the Board of Commissioners, County of Pondera, State of Montana.

/s/ Sandra J. Broesder
Sandra J. Broesder, Chair

/s/ Janice Hoppes
Janice Hoppes, Member

/s/ Thomas A. Kuka
Thomas A. Kuka, Member

Attest:

/s/ Kody L. Farkell
Kody L. Farkell
Pondera County Clerk and Recorder

Second and Final Reading: August 5, 2015 at 10:00 a.m., Commissioners' Office