

ORDINANCE 2022-01

AN ORDINANCE REPEALING THE TOWN'S EXISTING PROCEDURES FOR THE CONTROL, ABATEMENT, AND ENFORCEMENT OF NUISANCES AND ESTABLISHING NEW PROCEDURES FOR THE CONTROL, ABATEMENT, AND ENFORCEMENT OF NUISANCES

WHEREAS, § 7-5-4104, authorizes cities to adopt an ordinance to control, regulate and prohibit conditions that contribute to community decay and/or public nuisances;

WHEREAS, the Town Council for the Town of Broadus previously established such an ordinance in 2010; and amended the ordinance in 2010;

WHEREAS, the Town Council has determined there is a continuing need to control public nuisances and community decay; and

WHEREAS, the Town Council desires to amend its existing ordinance found in Title 7, Chapter 7.03 of the Code of Ordinances of Broadus Montana to better clarify, provide definitions of relevant terminology, and better outline enforcement, abatement, and remedies available.

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL FOR THE TOWN OF BROADUS, the following shall be the Town's Ordinance on the Control and Abatement of Nuisances:

SECTION 1. Repealed. Title 7, Chapter 7.03 of the Official Code of the Town of Broadus is repealed in its entirety.

SECTION 2. A new Title to be codified at Title 7, Chapter 7.03 (Control and Abatement of Nuisances) as follows:

Chapter 7.03 CONTROL AND ABATEMENT OF NUISANCES

Sections:

7.03.010	Power to Enact.
7.03.020	Purpose.
7.03.030	Definitions.
7.03.040	Prohibitions.
7.03.050	Shielding.
7.03.060	Reporting and Complaints.
7.03.070	Enforcement.
7.03.080	Right of Entry.
7.03.100	Municipal Infraction, Penalties.
7.03.110	Procedures, Remedies and Costs.

7.03.010 Power to Enact

For the statutory provisions giving the Town power to define and abate nuisances, see § 7-5-4104, MCA.

7.03.020 Purpose

The purpose of this Chapter is to regulate, control, and prohibit conditions that constitute public nuisances and community decay which:

- A. "Abate" means to repair, replace, remove, destroy or otherwise remedy the condition in question by such means, in such a manner and to such an extent that is determined necessary in the interest of the health, safety and general welfare of the Town.
- B. "Accumulate" means to store, gather, collect, heap or pile up.
- C. "Attractive hazard" means the open storage on property of any container that may attract children and having a compartment of more than one and one-half (1 ½) cubic feet capacity and a door or lid that locks or fastens automatically when closed and cannot be easily opened from the inside.

- 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 which obstructs the free use of property so as to interfere with the comfortable enjoyment of life or property.

Community decay as used in this Ordinance should not be constructed or define to apply to:

1. Normal farming, ranching, or other agricultural operations or to a farm, ranch, or other agricultural facility, and any appurtenances thereof, during the course of its normal operations;
 2. Properly permitted construction or demolition projects during the time any necessary permits are in effect;
 3. Person's servicing, manufacturing or processing materials, goods, or products on lots in public view, so long as the materials used in the normal operation of the business are neatly stacked or piled; or
 4. Normal residential maintenance or landscaping.
- E. "Dangerous structure" means any dangerous, decaying, unkempt, falling or damaged residential dwelling or other structure suitable for human occupancy excluding any structure related to an agricultural or farming operation.
- F. "Enforcement office" means the Town of Broadus and/or its designee.
- G. "Junk" includes the open storage of old appliances, equipment, or parts thereof, old iron or other scrap metal, automobile or truck tires, cardboard, old lumber or scrap wood, rags, rope, paper, debris, rubble, batteries, rubber debris, mattresses or any worn out, cast off or discarded article or material which is ready for destruction or has been collected or stored as salvage, for conversion to some other use or for reduction into components and is not part of a commercial or public salvaging or recycling operation.
- H. "Junk farm or lawn and garden equipment" means any farm or lawn and garden equipment, including component parts, that is discarded, ruined, wrecked or dismantled; that is not lawfully and validly licensed; and remains inoperative or incapable of being driven.
- I. "Junk recreational equipment" includes any discarded, wrecked, ruined, scrapped, junked, dismantled, or inoperable recreation vehicles and/or their component parts (including, but not limited to, snowmobiles, four-wheelers, recreational vehicles (RVs), camp trailers, travel trailers, pedal bikes, motorbikes and boats) or such recreational vehicles that are not otherwise capable of immediate and legal operation on public roads, if applicable;
- J. "Junk vehicle" means any motor vehicle, including component parts, that

- (1) Is discarded, ruined, wrecked, or dismantled,
- (2) Is inoperable,
- (3) Is not capable of being promptly started and driven under its own power,
- (4) Is not currently licensed, or
- (5) Lacks any of the following items, which is otherwise standard factory equipment:

*Windshield

*Side or rear window(s)

*Fender(s)

*Headlamp(s)

*Muffler(s)

*Door(s)

*Wheel(s)

*Inflated tires

- K. "Nuisance" means a situation created or allowed to continue by the owner or occupant of real property which is injurious to health; indecent or offensive to the sense; an obstruction to the free use of another's property, so as to interfere with the comfortable enjoyment of life or property; renders any public right-of-way dangerous for passage; or adversely affects the property values of adjacent properties.
- L. "Nuisance weeds" means uncontrolled growth of vegetation over twelve inches (12") in height.
- M. "Obstruction to the public right-of-way" means the placement of any debris, refuse, rubble, dirt, gravel, soil, fence, junk, vehicles or other personal property so as to obstruct traffic, drainage, pedestrians or otherwise safe and open access to such right-of-way.
- N. "Open storage" means exposed to the elements or not stored inside an enclosed structure which includes walls on all sides and a roof.
- O. "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 Powder River County Clerk and Recorder.
- P. "Person" means individual, firm, partnership, company, association, corporation, or any entity, public or private.
- Q. "Premises" means any lot, parcel of land, building, parcel, real estate, land or portion of land whether improved or unimproved including any portion of any street, right-of-way or alley lying between such lot or parcel of land and the center of such street, right-of-way or alley.
- R. "Public Nuisance" means a nuisance 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.
- S. "Public View" means any area visible from a point up to six feet (6') above the surface of the center of any public roadway or right-of-way.
- T. "Responsible person" means any agent, lease, owner or other person occupying or having charge or control of any premises.
- U. "Shielding" means any natural barriers, fencing, other manmade barriers used to conceal from public view.

7.03.040 Prohibitions.

It is unlawful under this Chapter for any owner or other responsible person on the premises that they occupy or control within the limits of the Town of Broadus, or adjacent to any Town of Broadus property to create, continue, suffer, maintain, or in any manner allow any condition that contributes to the creation of a public nuisance and is injurious to health or safety, is offensive to the senses, or obstructs the free use of property, so as to interfere with the comfortable enjoyment of life or property, or obstructs a public right-of-way. Such condition shall be deemed a nuisance if it affects an entire community or neighborhood or any considerable number of persons.

- A. Conditions that may contribute to public nuisances include, but are not limited to, the following:
 - 1. The open storage, accumulations, or presence in public view for more than five (5) consecutive days of:
 - a. Metal fixtures, appliances, and related items (including, but not limited to, iron metal, component vehicle and machine parts, household appliances, barrels, and other salvaged metal items);

- b. Boxes, building materials, and related items (including, but not limited to, cardboard, packing material, construction and building materials, demolition waste, concrete or concrete blocks, or other similar and/or related materials);
 - c. Modular or mobile homes, sheds, and buildings (including, but not limited to, mobile or permanent structure) that are dilapidated due to neglect or are uninhabitable;
 - d. Garbage or trash that is not contained in a garbage receptacle;
 - e. Household furniture not designed for outdoor use;
 - f. Raw materials, equipment parts, or bulk commodities;
 - g. Other rubble, debris, junk, or refuse without removing such material to a legal disposal site or placing such collection inside a storage building or garage.
2. Maintaining a junk vehicle(s) on any premises in public view for more than thirty (30) days without removing such vehicle(s) to a legal disposal site or placing said junk vehicle(s) inside a storage building or garage.

However, up to two junk vehicles may be stored on a residential property if (1) they are parked in the side or rear yard and (2) screened from public view as required by Section 7.03.050.

3. Maintaining junk farm equipment on any premises in public view for more than (30) days without removing such equipment to a legal disposal site or placing said equipment inside a storage building or garage.
4. Maintaining junk recreational vehicles or equipment on any premises in public view for more than thirty (30) days without removing such equipment to a legal disposal site or placing said junk recreational vehicles or equipment inside a storage building or garage.
5. Maintaining an attractive hazard on any premises for more than twenty-four (24) hours without removing the door, lid, or locking or fastening device from such container.
6. Maintaining a dangerous structure for more than thirty (30) days without securing such property against entry or abating the dangerous condition of such structure.
7. Creating or maintaining on any premises an amount of decaying matter, animal or vegetable, which is not part of an agricultural or farming operation, so as to contaminate the atmosphere and be offensive to the senses and obstruct the free enjoyment of life and property.
8. Allowing a structure to:
 - a. Remain unsecured from authorized entry; or
 - b. Become an eyesore or blight on a neighborhood by neglect or failure to make necessary repairs; or
9. Allowing a residential structure to become unsuitable for human habitation, by failure to maintain the structure in compliance with applicable building, technical, and model codes.
10. Allowing the growth of nuisance weeds;
11. Not regularly cutting or mowing grass, weeds, and lawns and maintaining in a neat and attractive condition.

12. Not maintaining in a neat and attractive condition fences and/or buildings which are allowed to deteriorate.

13. Creating or maintaining an obstruction to a public right-of-way.

B. Violations of this section may be grounds for a civil abatement action as provided in this Chapter or for a criminal citation as provided for under Montana Law, § 45-8-111, MCA.

7.03.050 Shielding.

The open storage, accumulations, or presence of items or materials that would be considered a public nuisance under Section 7.03.040 shall be lawful if such materials are shielded from public view in accordance with the following standards:

- A. All shielding barriers must conform to all local zoning, planning, building and protective covenant requirements.
- B. All shielding barriers shall be of sufficient height and density to conceal any violation on the premises from public view.
- C. Any manmade shielding barriers must be constructed of sound building materials. Lumber or better is required. Other types of fencing of equivalent performance, attractiveness, and shielding qualities are also acceptable. The barriers must be maintained by the property owner or occupant in a neat and workmanlike manner and shall be replaced when necessary.
- D. Shielding with shrubs and trees, while not subject to precise measurements, must provide a similar degree of shielding at all times of the year.
- E. A maximum of two of the approved shielding materials may be used on any one side of the property.
- F. Plastics or other materials placed over junk vehicles are not acceptable, except that reasonably attractive car covers specifically designed to attach tightly to and cover motor vehicles is acceptable for shielding up to two junk vehicles at a single residential location as provided in Section 7.03.040(A)(2). Car covers must be maintained and secured at all times and cannot be ripped, torn, or blowing.

7.03.060 Reporting and Complaints.

Any citizen so affected by a nuisance and/or community decay is entitled to make a written complaint to the Town. Such complaint shall include, whenever possible:

- A. The nature of the nuisance and/or community decay;
- B. The location of the nuisance, including the address;
- C. The name of the owner, occupant, or manager of the premises;
- D. The duration of the nuisance and/or community decay; and
- E. The name and address of the complainant.

7.03.070 Enforcement.

Upon receipt of a written complaint as contemplated in 8.15.040, or if an enforcement officer becomes aware of a condition or situation that may constitute a nuisance, the enforcement officer shall investigate the condition or situation within a reasonable period of time. Upon conclusion of the investigation, the enforcement officer will report to the Town Attorney who will determine if a violation exists.

If it is determined that a nuisance exists as defined herein, the Town will give written notice of the violation of the property owner and the responsible person who is maintaining or creating such nuisance of the specific nature of the violation.

7.03.080 Right of Entry.

If entry upon the property is necessary by the enforcement officer, the enforcement officer will contact the owner of the premises and the responsible person, either in writing or by telephone, prior to entry upon the premises. The purpose of this initial contact is to request consent to be on the property. If the owner or responsible person does not consent to entry onto the property, a

search warrant or other court order will be obtained prior to any entry onto private property, unless exigent circumstances exist that require immediate entry.

7.03.090 Abatement.

A. Emergency Abatement

1. Whenever an enforcement officer has reason to believe that a nuisance exists, and that such nuisance constitutes an emergency presenting imminent danger of serious injury to persons or property, the enforcement officer, his/her authorized representative, a fire marshal, or law enforcement, may immediately enter into any building or upon any premises within the jurisdiction of the Town of Broadus for purposes of inspection or abatement.
2. Whenever a nuisance
3. If the owner

B. Voluntary Abatement

1. Unless a nuisance constitutes an emergency presenting imminent danger of serious injury to persons or property, the Town shall contact the property owner and the responsible person who is maintaining or creating such nuisance and provide a written notice of the violation and afford thirty (30) days to voluntarily abate the nuisance.
2. Included in the written notice must be the specific condition or conditions to be abated and the specific abatement required to be undertaken.
3. The written notice shall be served by personal service or certified mail, return receipt requested, to the owner and responsible person.
4. If, after good faith efforts have been made, the notice is unable to be served by personal service or certified mail, the notice may be served by mailing the notice to the owner and responsible person's last known address via standard U.S. Mail and posting the notice conspicuously on the premises where the violation exists.
5. Included with the notice shall be a voluntary abatement agreement for the owner of the premises' signature and the responsible person's (if different than the owner) signature. The signed agreement shall be returned to the Town and will be placed in the public record of the complaint. If the responsible person is different than the owner of the premises, both parties must sign the voluntary abatement agreement.
6. If the owner believes abatement cannot be completed within the thirty (30) days provided for in the notice, the owner may submit a written request to the Town for additional time to abate beyond the thirty (30) days.
 - a. The written request must include:
 - i. A plan of abatement;
 - ii. An explanation of why abatement cannot be completed within thirty (30) days;
 - iii. The date for commencement and completion; and
 - iv. If the responsible person is different than the owner of the premises, both parties must sign the request.

- b. The Town Council may accept such plan and defer further proceedings under this Chapter.
- c. The plan shall not exceed ninety (90) days.
- d. The written request and the Town's acceptance will be placed in the public record of the complaint.

7.03.100 Municipal Infraction, Penalties.

Violations of this Chapter are civil municipal infractions within the exclusive jurisdiction of the City Court of the Town of Broadus. Violations are punishable by a civil penalty of not more than \$300 for each violation.

Any condition that constitutes a nuisance condition where the same, or substantially similar, condition has been the subject of two or more enforcement actions within any twelve-month period is deemed to be a continuing violation. Continuing violations are punishable by a penalty not to exceed \$500 for each repeat violation.

7.03.110 Procedures, Remedies and Costs.

- A. The remedies specified in this section shall be in addition to all other remedies provided by law.
- B. When a nuisance has not been voluntarily abated within the time specified in the notice to abate, or the voluntary abatement agreement the following procedures apply:
 - 1. The Town may bring a civil action in the City Court of the Town of Broadus, in the name of the citizens of the Town, by filing a Complaint to have the nuisance declared as such by the Court and for an order enjoining the public nuisance or authorizing its restraint, removal, termination or abatement.
 - 2. The Complaint shall be verified or supported by an affidavit. Summons shall be issued and served as provided by state law for civil cases. If the owner or responsible person cannot be personally served after good faith efforts, service may be made by publication as provided in the state law for matters concerning real property.
 - 3. A Notice of Appearance shall be served with the Summons and Complaint. The appearance date shall not be less than twenty-one (21) days from the date of service of the Summons and Complaint. The trial shall be held upon the appearance date, unless the Court grants a continuance for good cause shown.
 - 4. The Respondent shall file a response on or before the appearance date set forth in the Notice of Appearance.
 - 5. Upon the date and the time set for appearance and trial, if the Respondent has filed no response and fails to appear and if the Town proves that proper service was made on the Respondent at least twenty-one (21) days prior to the appearance date, the Court shall order that enforcement by the Town be stayed for ten (10) days and that a copy of the Court's order be mailed to the Respondent at his/her last known address. Failure to appear on any other date set for trial shall be grounds for entering a default and judgment thereon against a non-appearing party. For good cause shown, and prior to enforcement, the Court may set aside an entry of default and the judgment entered thereon.
 - 6. The prevailing party in a proceeding pursuant to this Chapter may bring an action in the City Court for attorney fees and costs and the City Court may, in its discretion, allow the prevailing party reasonable attorney fees and costs.
 - 7. The judgement of the Town Court may be appealed to the District Court.

8. The enforcement officer will coordinate the abatement project and oversee the work as it is being performed.

9. The enforcement officer has the discretion to coordinate and incur reasonable costs and services necessary for the safe, effective, and efficient cleanup of designated involuntary abatement properties.

10. The procedure for determining the cost of abatement of a nuisance will be as follows:

a. The Town will secure a contract for removal of the nuisance by following the usual Town procurement process and/or may use Town resources, including staff and equipment, to complete some or all components of a Court ordered abatement.

b. The enforcement officer will notify the Town Clerk/Treasurer before any additional contracted costs in excess of five hundred dollars (\$500.00) are incurred.

c. After the enforcement officer has approved the final bill(s) it will be forwarded to the Town Clerk/Treasurer for payment.

d. A copy of approved bill(s) and proof of disbursement will be placed in the enforcement file.

e. The Town shall determine the actual costs of cleanup and involuntary abatement actions and document such costs on an itemized abatement expense report which will determine the total cost of abatement for the property.

f. Costs that may be included on the abatement expense report are:

i. The assessment of the fair market value for the use of staff and equipment.

ii. Town staff time, mileage and other costs;

iii. Postage/mailing and service costs

iv. Other direct costs associated with abatement; and

v. An interest fee of six (6) percent per annum will be computed on above costs.

g. When complete, the abatement expense report must be certified and transmitted to the Town Clerk/Treasurer for the approval of assessment on the real property being abated.

h. The property owner will then be sent the abatement expense report for the subject property and will be given notice that any assessment that is not paid within thirty (30) days shall become a lien upon the property and is enforceable in the same manner as the nonpayment of property taxes.

i. Any interest fees will be waived for any payments made within thirty (30) days of notice.

11. A summary listing of the assessments, tax codes, and property owners will be kept by the Clerk and Recorder through August 31 of each year, and the list shall be presented to the Department of Revenue for billing on the next real property tax statement.

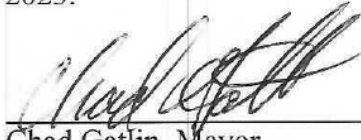
12. A special abatement fund will be established to account for costs, collections, and transactions necessary to the efficient operation of the program. Assessment funds collected are returned to the designated abatement account for future use on other involuntary property abatements or for transfer back to the Town general fund.


SECTION 3. Effective Date. [This Ordinance] is effective 30 days following passage and approval on the second reading.

First Reading: December 6, 2022

Second Reading: December 20, 2022

PASSED AND ADOPTED by the Town Council of the Town of Broadus, Montana, and approved by the mayor of said Town this 20th day of December, 2022. Effective January 20, 2023.


Chad Gatlin, Mayor


Attest: Josie Morris, Clerk/Treasurer



13. A special abatement fund will be established to account for special collections and transactions necessary to the efficient operation of the program. Assessment funds collected are returned to the designated abatement account for future use or other financing property abatements or for transfer back to the town general fund.

SECTION 2. Effective Date. (This Ordinance) is effective 30 days following passage and approval on the second reading.

First Reading: December 6, 2022

Second Reading: December 10, 2022

PASSED AND ADOPTED by the Town Council of the Town of Broadus, Montana, and approved by the mayor of said town this 20th day of December, 2022. Effective January 20, 2023.


Chad Carter, Mayor


Attest: Joann Morris, Clerk/Treasurer

