

UNSAFE BUILDINGS AND LANDS ORDINANCE

ORDINANCE # _____

AN ORDINANCE OF THE COUNTY COMMISSION OF RANDOLPH COUNTY, WEST VIRGINIA, REGULATING THE REPAIR, ALTERATION, IMPROVEMENT, VACATING, CLOSING, REMOVAL, OR DEMOLITION OF UNSAFE OR UNSANITARY STRUCTURES AND THE CLEARANCE AND REMOVAL OF REFUSE OR DEBRIS, OVERGROWN VEGETATION, TOXIC SPILLAGE OR TOXIC SEEPAGE ON PRIVATE LAND AS PROVIDED FOR UNDER CHAPTER SEVEN, ARTICLE ONE, SECTION THREE-ff (§ 7-1-3ff) OF THE WEST VIRGINIA STATE CODE, AS AMENDED.

WHEREAS, the Randolph County Commission, hereafter referred to as "County Commission" has been authorized under the above referenced Code section to enact an ordinance regulating the repair, alteration, improvement, vacating, closing, removal or demolition of unsafe or unsanitary structures and the clearance and removal of refuse or debris, overgrown vegetation, toxic spillage or toxic seepage on private land; and

WHEREAS, the County Commission deems it necessary to enact such an ordinance for the public safety, protection, and general welfare of the citizens of Randolph County;

NOW, THEREFORE, the Randolph County Commission hereby adopts the following ordinance:

1. It shall be unlawful for there to exist on any private land in Randolph County, West Virginia, dwellings or other buildings, except for buildings utilized for farm purposes on land actually being used for farming, which are unfit for habitation due to dilapidation, defects increasing the hazard of fire, accidents or other calamities, lack of ventilation, light or sanitary facilities or any other conditions prevailing in such dwelling or building, whether currently used for human habitation or not, which would cause such dwelling or other building to be unsafe, unsanitary, dangerous or detrimental to the public safety or welfare, whether the result of natural or manmade force or effect.
2. It shall be unlawful for there to exist on any private land in Randolph County, West Virginia, an accumulation of vehicles, refuse or debris, overgrown vegetation or toxic spillage or toxic seepage which is determined to be unsafe, unsanitary, dangerous or detrimental to the public safety or welfare whether the result of natural or manmade force or effect.
3. **SEVERABILITY**
Should any article, section, subsection or provision of this ordinance be declared by a court of competent jurisdiction to be invalid or unconstitutional, such decision shall not affect the validity or constitutionality of the ordinance as a whole or any part thereof other than the part so declared to be invalid or unconstitutional.
4. **DEFINITIONS.**
 - A. Interpretation.
For the purpose of this ordinance, the following interpretations shall apply:
 - 1) Words used in the present tense include the future tense.
 - 2) The singular includes the plural.
 - 3) The plural includes the singular.

- 4) The word "person" includes a corporation, S-corporation, C-corporation, limited liability corporation (LLC), professional limited liability corporation (PLLC), unincorporated association or partnership, chartered association, partnership, limited partnership (LP), natural persons, joint ventures, joint stock company, club, company, business trust, or the manager, agent, servant, officer or employee of any of these entities.
- 5) The term "shall" is mandatory and the term "may" is permissive.

B. Definitions.

- 1) *Building*: any man-made structure on a parcel of land that has one or more walls.
- 2) *County Engineer*: an engineer hired by the county, an engineer licensed by West Virginia, or any other technically qualified county employee or consulting engineer.
- 3) *Unsafe Building or Dwelling*: any building, structure or portion thereof that exhibits one (1) or more of the following defects or dangerous conditions, including but not limited to:
 - 1) a door, passageway, stairway or exit that permits unsafe passage for humans;
 - 2) all or a portion of a building or structure that has been damaged by fire, wind, flood or any other natural or manmade cause including physical deterioration so that the structural strength or stability of the building has been impaired such that it cannot safely support its intended occupancy or its own weight;
 - 3) a part of the building or structure has collapsed or is likely to collapse, become detached or dislodged, or otherwise injure persons or damage another's property;
- 4) *Farm*: land currently being used primarily for farming purposes, whether by the owner thereof or by a tenant, and which has been so used, at least seasonally, during the year next preceding the current tax year, but shall not include lands used primarily for commercial forestry or the growing of timber for commercial purposes; and shall not include one acre surrounding the principal residence situated on a farm, which shall be valued as a homesite in the same manner as surrounding homes and properties not situated on farmland, taking into consideration such variables as location, resale value and accessibility. The commissioner of agriculture shall formulate criteria upon which a parcel of land qualifies as a "farm." The county assessor may require the assistance of the commissioner of agriculture in making a determination of whether a parcel of land qualifies as a "farm." West Virginia Code Chapter 11, Article 1A, Section 3(f) [§ 11-1A-3(f)].
- 5) *Farming Purposes*: the utilization of land to produce for sale, consumption or use, any agricultural products, including, but not limited to, livestock, poultry, fruit, vegetables, grains or hays or any of the products derived from any of the foregoing, tobacco, syrups, honey, and any and all horticultural and nursery stock, Christmas trees, all sizes of ornamental trees, sod, seed and any and all similar commodities or products including farm wood lots and the parts of a farm which are lands lying fallow, or in timber or in wastelands. West Virginia Code Chapter 11, Article 1A, Section 3(g) [§ 11-1A-3(g)].

- 6) *Farm Use Vehicles*: vehicles driven by a farmer, or farm vehicle driver; used to transport either agricultural products, farm machinery, or farm supplies to or from a farm; not used in the operation of a common or contract motor carrier; and used within 150 air miles of the qualifying farm. West Virginia Code Chapter 17E, Article 1, Section 8 [§17E-1-8].
- 7) *Field Inspector*: an individual hired by the enforcement agency to identify violations, have informal conversations with landowners, and report findings to the enforcement agency.
- 8) *Refuse and Debris*: the terms “refuse” and “debris” are defined to mean materials of any kind which are no longer safely or properly useable for the purpose for which they were intended, or which are stored or allowed to remain in open, unsheltered space anywhere within the county in a manner which tends to create a hazard to the health, safety, or welfare of the public. Such refuse or debris shall include, but not be limited to, the following:
 - 1) appliances;
 - 2) bottles;
 - 3) building materials;
 - 4) cans;
 - 5) concrete;
 - 6) furniture;
 - 7) glass;
 - 8) machinery and heavy equipment;
 - 9) paper;
 - 10) plastics;
 - 11) rags;
 - 12) scrap metal;
 - 13) snow blowers;
 - 14) tires;
 - 15) Vehicles, not garaged or otherwise sheltered and obscured from public view that do not meet all of the following requirements:
 - a. is in operating condition;
 - b. has all wheels with inflated tires attached to the vehicle;
 - c. has a working battery installed, if required for proper operation of the vehicle;
 - d. has an operating engine;
 - e. has a functional and operating transmission capable of moving the vehicle; and
 - f. used in the last twelve months for its intended purpose;
 - 16) wire; and
 - 17) wood.
- 9) *Structure*: any building or dwelling, the use of which requires a fixed location on the ground; or, anything attached to something having such fixed location. Structures include prefabricated buildings even if they are not anchored to the ground. A structure does not include fences, individual driveways, or retaining walls.
- 10) *Unfit for Human Occupancy*: unsafe, unlawful or, because of the degree to which the structure is in disrepair or lacks maintenance, is unsanitary, contaminated, vermin or rat infested, or lacks ventilation, illumination, sanitary or heating facilities or other essential equipment, does not provide minimum

safeguards to protect or warn occupants in the event of fire or because the location of the structure constitutes a hazard to the occupants of the structure or to the public.

- 11) *Toxic Substance*: any substance which because of its quantity, concentration or physical, chemical or infectious characteristics may:
 - 1) cause, or significantly contribute to an increase in mortality or an increase in serious irreversible, or incapacitating or reversible illness; or
 - 2) pose a substantial present or potential hazard to human health exclusive of any application of substances for bona fide farming operations.
- 12) *Vehicle*: as defined in West Virginia Code Chapter 17A, Article 1, Section 1 [§ 17A-1-1], including but not limited to the following:
 - 1) all-terrain vehicles (ATV);
 - 2) campers;
 - 3) golf carts;
 - 4) motorcycles;
 - 5) motor homes;
 - 6) recreational vehicles (RVs);
 - 7) snowmobiles;
 - 8) tractors;
 - 9) trailers; and
 - 10) utility terrain vehicles.

5. ENFORCEMENT AGENCY.

For the purpose of enforcing this ordinance, the Randolph County Unsafe Buildings and Lands Enforcement Agency, hereafter referred to as the Enforcement Agency, is hereby created. The Enforcement Agency shall be comprised of the following individuals:

- A. A **COUNTY ENGINEER** (or other technically qualified individual appointed by the County Commission);
- B. The **COUNTY HEALTH OFFICER** or his/her designee;
- C. A Randolph County Fire Department **FIRE CHIEF** or his/her designee;
- D. The **COUNTY LITTER CONTROL OFFICER** (if the Commission chooses to hire one);
- E. **TWO (2) MEMBERS-AT-LARGE**, selected by the County Commission to serve two-year terms; and
- F. The Randolph County **SHERIFF**, who shall serve as an ex officio member of said Enforcement Agency and who is charged with enforcing the orders of the County Commission under this ordinance.

6. PROCEDURES AND STANDARDS.

The Rules of Procedure and Standards to be followed by the Enforcement Agency in its enforcement of this ordinance and the Rules of Procedure for instituting and conducting hearings before the County Commission under this ordinance shall be as follows:

- A. Meetings
 - 1) The members of the Enforcement Agency shall meet in public session on a regular schedule as determined by the Enforcement Agency.
 - 2) Agendas, notice, minutes, and all public meetings shall be in accordance with the West Virginia Open Governmental Meetings Act. (W. Va. Code § 6-9A-1 *et seq.*)

- 3) At the first meeting of each calendar year, the members of the Enforcement Agency shall elect one of its members as Chairman or Chairwoman and one of its members to serve as Secretary, each to serve a term of one (1) year, or until the member resigns or is removed from the agency
 - 4) Emergency meetings must be reported to the County Commission at its next regular meeting and follow the Open Governmental Meetings Act.
 - 5) Three members of the Enforcement Agency in attendance at a regularly scheduled meeting shall constitute a quorum. A majority of members must be present at emergency meetings.
 - 6) The members of the Enforcement Agency may, if a quorum is present, by a majority vote of those present accept the complaint from a citizen for investigation by the Enforcement Agency; or if the complaint is from the County Engineer, and the investigation shall already have been made, the Enforcement Agency may accept the report of the County Engineer and proceed according to Section 7 of this ordinance.
- B. Removal of an at-large member of the Enforcement Agency
- 1) The County Commission may establish procedures for the removal of an at-large member of the Enforcement Agency for inactivity, neglect of duty or malfeasance.
 - 2) The procedures must contain provisions requiring that the person to be removed be provided with a written statement of the reasons for removal and an opportunity to be heard on the matter.
 - 3) Any at-large member shall be replaced by an individual to serve until the term expires.

7. COMPLAINTS

- A. Once notified, whether by citizen complaint, Field Inspector, or otherwise, that property located in Randolph County may be in violation of this ordinance, the Enforcement Agency hereinabove created may investigate with assistance of county employees such property. Any entrance upon the land being investigated by the Enforcement Agency under this Ordinance shall be made in a manner to cause the least possible inconvenience to the person(s) in possession. No entrance shall be made on land without permission of the owner unless a search warrant has been issued; any such entrance under a search warrant must be accompanied by the Sheriff or Sheriff's deputy.
- B. The County Engineer shall, at the conclusion of the investigation, prepare a written investigative report providing a copy to each member of the Enforcement Agency at least three (3) days before a regularly scheduled meeting of the Enforcement Agency where the investigative report shall be considered. The report should include, but is not limited to: a description of the real estate sufficient for identification, the date of the last inspection(s), the name of the inspector(s), a reasonable description of the unsafe, unsanitary, dangerous, or detrimental condition(s) and photographs of the unsafe condition(s). The County Engineer shall, whenever possible, take written statements from the complaining party, the property owner, neighbors and other interested persons and attach these statements to the investigative report.
- C. Upon the completion of the investigation, the members of the Enforcement Agency, by a majority vote of those members present in public session may:
 - 1) Determine that no conditions present are unsafe, unsanitary, dangerous or detrimental to the public safety or welfare exist as described in the complaint and dismiss the complaint; or

- 2) Continue the matter over until a later regularly scheduled meeting to permit further investigation; or
- 3) Determine that:
 - a. A dwelling or building should be repaired, altered, improved, vacated, removed, closed, cleaned, or demolished given that it is unfit for human habitation due to:
 - i. dilapidation,
 - ii. defects increasing the hazard of fire, accidents, or other calamities,
 - iii. lack of ventilation,
 - iv. light or sanitary facilities, or
 - v. any other conditions prevailing in any dwelling or building, whether used for human habitation or not, which would cause the dwellings or other buildings to be unsafe, unsanitary, dangerous, or detrimental to the public safety or welfare.
- 4) Determine that:
 - a. A dwelling or building should be repaired, altered, improved, vacated, removed, closed, cleaned, or demolished given that it is unfit for human habitation due to:
 - i. dilapidation,
 - ii. defects increasing the hazard of fire, accidents, or other calamities,
 - iii. lack of ventilation,
 - iv. light or sanitary facilities, or
 - v. any other conditions prevailing in any dwelling or building, whether used for human habitation or not, which would cause the dwellings or other buildings to be unsafe, unsanitary, dangerous, or detrimental to the public safety or welfare.
 - b. A building, dwelling, the accumulation of refuse or debris, overgrown vegetation, or toxic spillage or toxic seepage should be repaired, altered, improved, vacated, removed, closed, cleaned, or demolished due to conditions being:
 - i. unsafe,
 - ii. unsanitary,
 - iii. dangerous, or
 - iv. detrimental to the public safety or welfare

D. If a determination is made under section 7 (C) 3:

- 1) The County Engineer may propose an agreement between the property owner and the Enforcement Agency whereby the property owner agrees to remedy all deficiencies to the satisfaction of the Enforcement Agency within a designated period of time; or
- 2) The County Engineer shall at the direction of the Enforcement Agency petition the County Commission to serve the property owner with a complaint detailing the findings and recommendations of the Enforcement Agency. The complaint shall notify the property owner of the option to submit a written request for a hearing before the county commission within ten (10) days of receipt of the complaint. Failure to submit a written request for a hearing will result in an order

issued by the County Commission implementing the recommendations of the Enforcement Agency. Written requests for a hearing shall be filed with the Randolph County Clerk.

8. HEARING BEFORE THE COUNTY COMMISSION

- A. If within ten (10) days of being served with such complaint the owner files a written request for a hearing, the County Commission shall issue an Order setting the matter down for hearing within twenty (20) days. Such hearing shall be recorded by electronic device or by Court Reporter. At such hearing the Enforcement Agency will have the burden of proving its allegations by a preponderance of the evidence and has the duty to go forward with the evidence.
- B. The owner may contract with a professional engineer, licensed in the State of West Virginia, to perform any necessary measurements, testing, analysis, calculations or other engineering services to contest the ordinance violation. A technical report prepared by said owner's engineer, stamped and signed, finding that the property is not in violation of this ordinance and submitted to a County Engineer may be submitted, prior to the hearing, for consideration by the County Commission. Prior to the hearing the property owner may request up to a 60-day extension to allow time for the engineering report to be prepared.
- C. The West Virginia Rules of Evidence do not apply to the proceedings, but each party has the right to present evidence and examine and cross-examine all witnesses.
- D. At the conclusion of the hearing, the County Commission shall make findings of fact and determinations and conclusions of law as to:
 - 1) Whether the dwelling or building in question is unfit for human habitation due to dilapidation; has defects that increase the hazard of fire, accidents or other calamities; lacks ventilation, light or sanitary facilities; or whether other conditions exist in said dwelling or building, whether used for habitation or not, and whether the result of natural or manmade force or effect which would cause such dwelling or other building to be unsafe, unsanitary, dangerous or detrimental to the public safety or welfare; or
 - 2) Whether there is an accumulation of refuse or debris, overgrown vegetation, toxic spillage or toxic seepage on such land which is determined to be unsafe, unsanitary, dangerous or detrimental to the public safety or welfare, whether the result of natural or manmade force or effect.
- E. Orders to Vacate.
 - 1) When, during the process of investigation of a complaint, a building or other structure is deemed to unfit for human habitation by the Enforcement Agency, the county commission is authorized to order and require the occupants to vacate the premises forthwith. The Sheriff shall cause to be posted at each entrance to such structure a notice reading as follows:

“Following inspection by the Enforcement Agency, this structure has been determined unsafe and its occupancy has been prohibited by the Randolph County Unsafe Buildings and Lands Enforcement Agency, as authorized by the Randolph County Commission under Chapter 7, Article 1, Section 3ff [§7-1-3ff] of West Virginia Code.”
 - 2) It shall be unlawful for any person to enter a building or structure so posted except for the purpose of securing the structure, making the necessary repairs, removing the hazardous condition, or of demolishing the same.

F. Orders to Repair, Alter, Improve, Remove, Close, Clean, or Demolish.

- 1) If a determination is made under Section 7 (C) 3 that the dwelling, building, accumulation of refuse or debris, overgrown vegetation, toxic spillage, or toxic seepage is unsafe, unsanitary, dangerous or detrimental to the public safety or welfare, the County Commission can publish an order to repair, alter, improve, remove, close, clean, or demolish the property as needed to bring the property into compliance with this ordinance.

G. Failure to Comply with an Order

If the land owner fails to comply with the County Commission's Order within the time specified in the order, the County Commission may do one or more of the following:

- 1) Impose a fine of up to \$100 per day per violation on said owner for each day said owner is in violation of the County Commission's order.
- 2) Advertise for, seek and enter into contracts with architects, engineers, and/or contractors to make the ordered repairs, alterations or improvements; or the ordered demolition, removal or clean-up.
- 3) Bring a Civil Proceeding in the Circuit Court against the owner or owners of the land in question to subject such land to a lien for the amount of the architect's, engineer's, and/or contractor's costs and for any daily civil monetary penalty imposed together with reasonable attorney fees and court costs, and therein seek an order decreeing the sale of said land to satisfy such lien and, if necessary, an order decreeing that the architect, engineer, and/or contractor may enter upon said land at any and all times necessary to make the improvements or ordered repairs, alterations or improvements, or ordered demolition, removal or clean up.
- 4) Institute a Civil Action in a court of competent jurisdiction against the land owner or other responsible party for all costs incurred by the County Commission with respect to the property in question including reasonable attorney fees and court costs incurred in the prosecution of the action.

9. APPEALS TO CIRCUIT COURT

Appeals from the County Commission to the Circuit Court of Randolph County regarding decisions made in accordance to Section 8 hearings shall be in accordance with the provisions of Article Three, Chapter Fifty-eight of the Code of West Virginia, as amended.

10. NOTICES

County Commission shall cause copies of notices, complaints, fines, liens, and orders to be served on the property owner in the manner provided for in Rule 4 of the West Virginia Rules of Civil Procedure.

11. LIABILITY

The Enforcement Agency, a County Engineer, and other officers or employees charged with the enforcement of this ordinance, while acting for the county, shall not be rendered personally liable, and are hereby relieved from all personal or professional liability for any damage accruing to persons or property as a result of an act required or permitted in the discharge of official duties. Any suit instituted against any officer or employee in the lawful discharge of his/her duties and under the provisions of this ordinance shall be defended by the legal representative of Randolph County until

the final termination of the proceedings. The Enforcement Agency, County Engineer, or any subordinate shall not be liable for costs in an action, suit or proceeding that is instituted in pursuance of the provisions of this ordinance; and any officer or employee acting in good faith and without malice, shall be free from liability for acts performed under any of its provisions or by reason of any error or omission in the performance of official duties in connection therewith.\

12. SUNSET

This ordinance is considered valid and enforceable through August 30, 2024, at which time such ordinance, in its entirety, shall automatically be repealed. However, nothing prevents this ordinance from being amended or repealed by the county commission, prior to the noted expiration date.

PASSED AND APPROVED ON FIRST READING: _____, 2019.

PASSED AND APPROVED ON SECOND/FINAL READING: _____, 2019.

Mark D. Scott, Commissioner

ATTEST:

Chris See, Commissioner

Brenda Wiseman
Clerk of the County Commission

David Kesling, Commissioner