

AN ORDINANCE REGULATING THE REPAIR, ALTERATION OR IMPROVEMENT, OR THE VACATING AND CLOSING OR REMOVAL OR DEMOLITION, OR ANY COMBINATION THEREOF, OF ANY DWELLINGS OR OTHER BUILDINGS UNFIT FOR HUMAN 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 ANY DWELLING OR BUILDING, WHETHER USED FOR HUMAN HABITATION OR NOT, WHICH WOULD CAUSE SUCH DWELLINGS OR OTHER BUILDINGS TO BE UNSAFE, UNSANITARY, DANGEROUS OR DETRIMENTAL TO THE PUBLIC SAFETY OR WELFARE, WHETHER THE RESULT OF NATURAL OR MANMADE FORCE OR EFFECT; AND AN ORDINANCE REGULATING THE REMOVAL AND CLEAN UP OF ANY ACCUMULATION OF REFUSE OR DEBRIS, OVERGROWN VEGETATION OR TOXIC SPILLAGE OR TOXIC SEEPAGE LOCATED ON PRIVATE LANDS WHICH IS DEEMED TO BE UNSAFE, UNSANITARY, DANGEROUS OR DETRIMENTAL TO THE PUBLIC SAFETY OR WELFARE WHETHER THE RESULT OF NATURAL OR MANMADE FORCE OR EFFECT; AND AN ORDINANCE DESIGNATING AN ENFORCEMENT AGENCY AND FAIR AND EQUITABLE RULES OF PROCEDURES AND STANDARDS TO GUIDE THE ENFORCEMENT AGENCY AND ITS AGENTS IN CONDUCTING INVESTIGATIONS HEREUNDER; AND AN ORDINANCE PROVIDING FOR FAIR AND EQUITABLE RULES OF PROCEDURE FOR INSTITUTING AND CONDUCTING HEARINGS IN SUCH MATTERS BEFORE THE COUNTY COMMISSION, AND THE BURDEN OF PROOF TO BE MET BY THE

ENFORCEMENT AGENCY IN THE PRESENTATION OF ITS EVIDENCE AND THE FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDERS WHICH MAY BE MADE BY THE COUNTY COMMISSION; AND AN ORDINANCE PROVIDING FOR VARIOUS REMEDIES FOR FAILURE OF THE PROPERTY OWNER OR OWNERS TO COMPLY WITH THE ORDERS OF THE COUNTY COMMISSION; AND AN ORDINANCE PROVIDING FOR AN APPEAL OF THE DECISIONS AND ORDERS OF THE COUNTY COMMISSION TO THE CIRCUIT COURT; AND AN ORDINANCE PROVIDING FOR THE COUNTY COMMISSION TO ENFORCE ITS ORDERS BY CONTRACTS WITH INDEPENDENT CONTRACTORS TO MAKE THE ORDERED REPAIRS, ALTERATIONS, IMPROVEMENTS, DEMOLITIONS, REMOVAL OR CLEAN UP; AND AN ORDINANCE PROVIDING FOR THE ENFORCEMENT OF COUNTY COMMISSION ORDERS AND CONTRACTS IN CIRCUIT COURT, SUBJECTING THE PROPERTY IN QUESTION TO A LIEN FOR THE AMOUNT OF THE CONTRACTOR'S COSTS IN CARRYING OUT THE COMMISSIONS ORDERS AND CONTRACT, TOGETHER WITH ANY DAILY CIVIL MONETARY PENALTY IMPOSED, COURT COSTS AND REASONABLE ATTORNEY FEES AND FOR THE SALE OF THE SUBJECT PROPERTY TO SATISFY THIS LIEN.

BE IT ORDAINED AND ORDERED

BY THE COUNTY COMMISSION OF UPSHUR COUNTY, WEST VIRGINIA, A PUBLIC BODY CORPORATE OF UPSHUR COUNTY, WEST VIRGINIA, AS FOLLOWS:

ARTICLE 1. AUTHORITY, EFFECTIVE DATE, TITLE, PURPOSE, JURISDICTION AND SEVERABILITY

Section 1.0 Authority

This ordinance is adopted by virtue of the authority granted in Chapter Seven (7), Article One (1), Section Three ff (3ff) of the Code of West Virginia as amended.

Section 1.1 Effective Date

This ordinance shall become effective thirty (30) days after the date on which the County Commission of Upshur County, West Virginia acts to adopt and the members of the Enforcement Agency have been selected and appointed.

Section 1.2 Title

This ordinance shall be titled as cited as the Upshur County Safe Structures & Sites Ordinance.

Section 1.3 Purpose

The purpose of this ordinance is to promote the public safety or welfare of Upshur County, West Virginia by requiring, as the case may be, the repair, alteration, improvement, vacating, closing, removal or demolition of dwellings or other buildings, or any combination thereof, unfit for human habitation due to dilapidation, defects increasing the hazard of fire, accidents or other calamities, lack of ventilation, light or sanitary facilities or other conditions prevailing in any dwelling or building, whether used for human habitation or not, which would cause such dwellings or other buildings to be unsafe, unsanitary, dangerous or detrimental to the public safety or welfare, whether the result of natural or manmade force or effect, exclusive of buildings utilized for farm purposes on land actually being used for farming; for purposes of this ordinance, any structure tested for the presence of methamphetamine pursuant to West Virginia Code found to have .1 mg of methamphetamine in said structure and has not been remediated for a period of six months or more from the conclusion of any criminal or civil proceeding, shall be considered an unsafe structure; and by requiring, as the case may be, the removal and clean up of any accumulation of refuse or debris, overgrown vegetation or toxic spillage or toxic seepage located on private lands 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.

Section 1.4 Jurisdiction

This ordinance shall apply to all properties within Upshur County, West Virginia, exclusive of the incorporated towns and cities, properties of the United States Government, and of the West Virginia State Government.

Section 1.5 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.

ARTICLE 2. DEFINITIONS

Section 2.0 Interpretation

For the purpose of this ordinance, the following interpretations shall apply:

- (a) Words used in the present tense include the future.
- (b) The singular includes the plural.
- (c) The plural includes the singular.
- (d) The word "person" includes a corporation, unincorporated association or partnership, chartered associations, partnerships, natural persons, joint ventures, joint stock company, club, company, business trust, or the manager, agent, servant, officer or employee of any of them.
- (e) The term "shall" is mandatory and the term "may" is permissive.
- (f) The word "county" shall refer to Upshur County, West Virginia.

Section 2.1 Definitions

Blighted Area

Blighted area shall mean an area (other than a slum area) which by reason of the predominance of defective or inadequate street layout, faulty lot layout in relation to size, adequacy, accessibility or usefulness, unsanitary or unsafe conditions, deterioration of site improvement, diversity of ownership, tax or special assessment delinquency exceeding the fair value of the land, defective or unusual conditions of title, improper subdivision or obsolete platting, or the existence of conditions which endanger life or property by fire and other causes, or any combination of such factors, substantially impairs or arrests the sound growth of the community, retards the provision of housing accommodations or constitutes an economic or social liability and is a menace to the public health, safety, morals, or welfare in its present condition and use.

Building

Any structure on a parcel of land that has one or more walls.

Commission

The County Commission of Upshur County, West Virginia.

Commissioner

An elected member of the County Commission of Upshur County, West Virginia.

Compliance Officer

A technically qualified county employee or consulting engineer appointed by the County Commission of Upshur County, West Virginia to enforce the provisions of this ordinance.

County Board of Health

An agency of local government either created pursuant to Chapter 16, Article 2 or Chapter 16, Article 2A of the Code of West Virginia to oversee the health needs of the citizens of a county in accordance with law.

County Health Officer

A physician appointed by the County Board of Health pursuant to Chapter 16, Article 2A, Section 4 of the Code of West Virginia, or a physician appointed by the direction of the West Virginia Department of Health pursuant to Chapter 16, Article 2, Section 1 of the Code of West Virginia, who is a member of the Enforcement Agency.

Disaster

Disaster means the occurrence or imminent threat of widespread or severe damage, injury, or loss of life or property resulting from any natural or manmade cause, including fire, flood, earthquake, wind, snow, storm, chemical or oil spill or other water or soil contamination, epidemic, air contamination, blight, drought, infestation or other public calamity requiring emergency action.

Deed

A written instrument, signed and delivered by which a person transfers and conveys title to real estate to another person.

Deed of Trust

A written instrument by which legal title to real estate is placed in one or more trustees to secure the payment of a sum of money or the performance of other conditions, which serves the purpose and function of a mortgage.

Easement

A lawfully acquired right or privilege to use a parcel of land or portion thereof for a specified purpose such as a road.

Enforcement Agency

An Enforcement Agency is that agency of Upshur County Government

charged under Chapter 7, Article 1, Section 3ff of the Code of West Virginia with the investigation and enforcement of violations of that statute and this ordinance. Its membership includes: A duly appointed Compliance Officer, County Health Officer (or his or her designee), Sheriff, an appointed Fire Chief and two other members at large selected by the County Commission to serve a two (2) year term. The Sheriff is an ex officio member and the official charged with enforcing the orders of the County Commission.

Flood-Prone Area

Areas subject to inundation by the one hundred year flood as determined by the Flood Insurance Study prepared by the Federal Insurance Administration for Upshur County.

Historic Site

Any lot, parcel, historic structure or designated area which has been listed on the West Virginia or National Register of Historic Places.

Judgment Lien

A claim, encumbrance or charge on property for payment of some debt, obligation or duty owed to another person as decreed by a court of law and recorded among the land records of Upshur County.

Motor Vehicle

Any vehicle which is self-propelled by use of internal combustion engine or by electrical engine which is intended to be driven upon a highway.

Motor Vehicle, Junked

Any motor vehicle which is discarded, wrecked, ruined, scrapped or dismantled which would not pass the State of West Virginia motor vehicle inspection laws and which is not serving a reasonable functional use or purpose and is not inside an enclosed building.

Owner

A person who holds legal title to any real estate or personal property.

Public Body

Public body shall mean the state or any municipality, county, township, board, commission, authority, district or any other subdivision or public body of the State.

Real Property

Real property shall include all lands including improvements and fixtures thereon and property of any nature appurtenant thereto or used in connection therewith, and every estate, interest and right, legal or equitable therein including terms for years.

Reasonable Time

Shall mean 90 days when used in connection with dwellings or buildings,

and 60 days when used in connection with refuse or debris. The County Commission shall extend said periods of time for good cause shown, namely that the individual is addressing the issue with their property.

Right-of-Way

A right which grants passage across or through a property. A right-of-way is also the (usually dimensioned) path along which the right of passage is granted.

Road

A prepared surface within a right-of-way which is intended for vehicular use. Road does not include shoulders.

Salvage

Old or scrap copper, brass, rope, rags, batteries, paper, rubber, trash, waste, junked, dismantled or wrecked machinery, machine or motor vehicles or any parts of any junked, dismantled or wrecked machinery, machines or motor vehicles, iron, steel, and other old or scrap ferrous or nonferrous materials.

Salvage Yard

Any place which is maintained, operated or used for the storing, keeping, buying, selling, or processing of salvage, or for the operation and maintenance of a motor vehicle graveyard, and the term shall also include garbage dumps and sanitary landfills. Any collection of three or more junked motor vehicles, or combination of ferrous or nonferrous materials together with one or more junked motor vehicles, or a collection or any salvage contained in an area more than one quarter acre in size, shall be considered a salvage yard.

Solid Waste Disposal Facility

Any facility established, modified or operated for the purpose of the disposal of solid waste as defined by West Virginia Department of Natural Resources, Legislative Regulations for Solid Waste Management, as amended.

Structure

Anything constructed, the use of which requires fixed location on the ground; or, anything attached to something having such location. A structure does not include fences, individual driveways, or retaining walls. Structures do include prefabricated buildings even if they are not anchored to the ground.

Slum Area

Slum area shall mean an area in which there is a predominance of buildings or improvements (or which is predominantly residential in character), and which, by reason of dilapidation, deterioration, age or obsolescence, inadequate provision for ventilation, light, air, sanitation, or

open spaces, high density of population and overcrowding, or the existence of conditions which endanger life or property by fire and other causes, or any combination of such factors, is conducive to ill health, transmission of disease, infant mortality, juvenile delinquency and crime, and is detrimental to the public health, safety, morals or welfare.

Subdivision

The partition or division of land into two or more lots, tracts, parcels, plots, sites, areas, units, interests or other division of land, for the purpose, whether immediate or future, of offer, sale, lease, transfer of ownership, building construction, development, or land use. Subdivision applies to all forms of development including residential, commercial and industrial and includes the division of land either by deed, deed of trust, contract of sale, metes and bounds description, devise, intestacy, lease, map, plat or other instrument, or by act of construction or land use. Subdivision includes re-subdivision and, when appropriate to the context, shall relate to the land subdivided.

Toxic Substance

Means 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.

ARTICLE 3. ENFORCEMENT AGENCY

Section 3.0 Membership

The Enforcement Agency shall consist of the following members: A duly appointed Compliance Officer, County Health Officer (or his or her designee), a Fire Chief from a county fire company and two members of the general public. The Sheriff of Upshur County shall serve as an ex-officio member of the Enforcement Agency. The County Commission shall select and appoint two members of the general public to serve two year terms and shall select and appoint a Fire Chief from a county fire company to serve a two (2) year term.

Section 3.1 Meetings

- (a) The members of Enforcement Agency shall meet at least once a month. The Enforcement Agency shall establish and publish a time and location for the regular monthly meeting. The Enforcement Agency must post a notice of any other special meeting in the bulletin board in the Chancery Street Alley and at the Upshur County Administrative Annex no less than

forty-eight (48) hours before such meeting.

- (b) At the first meeting of the Enforcement Agency and on the one (1) year anniversary date thereafter, the members of the Enforcement Agency shall appoint: one of its members to serve as its President, and one of its members to serve as its Vice-President and one of its members to serve as its Secretary. Each member so appointed to the Office of President, Vice-President or Secretary shall serve a one (1) year term of office or until replaced.
- (c) Three members of the Enforcement Agency in attendance at the meeting shall constitute a quorum.
- (d) Meetings of the Enforcement Agency shall comply with any open meeting requirements contained in the West Virginia Code and in general be conducted in accordance with Roberts Rules of Order.
- (e) At any public meeting, the Enforcement Agency shall receive complaints from the general public and/or other individuals or parties concerning: dwellings or other buildings or any combination thereof that may be unfit for human 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 these dwellings or other buildings whether used for human habitation or not, which would cause such dwellings or other buildings to be unsafe, unsanitary, dangerous or detrimental to the public safety or welfare whether the result of natural or manmade force or effect; and complaints concerning accumulation of refuse or debris, overgrown vegetation or toxic spillage or toxic seepage located on private lands which may be deemed to be unsafe, unsanitary, dangerous or detrimental to the public safety or welfare whether the result of natural or manmade force or effect.
- (f) The members of the Enforcement Agency may, if a quorum is present, by a majority vote of those present, accept the complaint for investigation by the Enforcement Agency.
- (g) Upon the completion of the investigation of the citizen's complaint, and without further public input required, the members of the Enforcement Agency, relying upon the investigation report, by a majority vote of those members present in the public session may:
 - (1) Dismiss the citizen's complaint; or
 - (2) Continue the matter over until a later meeting to permit further investigation; or
 - (3) Adopt an agreement to remedy deficiencies and continue the matter over until a later meeting to permit the property owner time to remedy deficiencies in accordance to an agreement between the

Enforcement Agency and the property owner; or

- (4) Continue the matter over until a later meeting; or
- (5) Determine 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 and should be repaired, altered, improved, vacated, removed, closed, cleaned up or demolished as the case may be and direct the Compliance Officer to initiate proceedings before the County Commission by petition/complaint to seek an order of the County Commission; requiring the property owner to repair, alter, improve, vacate, remove, close, clean up or demolish the dwelling or building in question within a reasonable time; or to remove or clean up any accumulation of refuse or debris, overgrown vegetation or toxic spillage or toxic seepage within a reasonable time; and to impose daily civil monetary penalties upon the property owner who fails to obey the order of the County Commission; and if necessary, to request that the County Commission advertise for and seek a contractor to make the ordered repairs, alterations, improvements, demolition, removal or clean up; and to institute a civil proceeding in the Circuit Court of Upshur County, West Virginia to subject the private land in question to a lien to satisfy: the contractor's costs in making the ordered repairs, alterations, improvements, demolition, removal or clean up; the daily civil monetary penalty imposed; reasonable attorney fees and court costs expended and to order the private land in question sold to satisfy this lien; and order and decree that the contractor may enter upon the private land in question to perform the ordered repairs, alterations, improvements, demolition, removal or clean up.

Section 3.2 Condemnation of Unsafe Structures

(a) Unsafe Structures.

An unsafe structure is one that is found to be dangerous to the life, health, property or safety of the public or occupants of the structure by not providing minimum safeguards to protect or warn occupants in the event of fire, or because such structure contains unsafe equipment or is so damaged, decayed, dilapidated, structurally unsafe, or of such faulty construction or unstable foundation, that partial or complete collapse is possible.

(b) Imminent Danger.

When, in the opinion of the Enforcement Agency there is imminent danger of failure or collapse of a building or structure which endangers life, or when any structure or part of a structure has fallen and life is endangered

by the occupation of the structure, or when there is actual or potential danger to the building or building occupants or those in the proximity of any structure deemed dangerous, the Compliance Officer is hereby authorized and empowered to order and require the occupants to vacate the premises forthwith. The Compliance Officer shall cause to be posted at each entrance to such structure a notice reading as follows: "Following inspection by the Upshur County Safe Structures and Sites Enforcement Agency, this structure has been determined unsafe and its occupancy has been prohibited by the County Compliance Officer." It shall be unlawful for any person to enter such structure except for the purpose of securing the structure, making the required repairs, removing the hazardous condition or of demolishing the same.

(c) Structure unfit for human occupancy.

A structure is unfit for human occupancy whenever the Enforcement Agency finds that such structure is unsafe, unlawful, or, because of the degree to which the structure is in disrepair or lacks maintenance, is unsanitary, vermin or rat infested, contains filth and contamination, or lacks ventilation, illumination, sanitary or heating facilities or other essential equipment, or because the location of the structure constitutes a hazard to the occupants of the structure or to the public.

(d) Closing of vacant structure.

If the structure is vacant and unfit for human habitation and occupancy, and is not in danger of structural collapse, the Compliance Officer is authorized to post a placard of condemnation on the premises and order the structure closed up so as not to be an attractive nuisance. Upon failure of the owner to close off the premises within the time specified within the order, the Compliance Officer shall cause the premises to be closed and secured through any available public agency or by contract or arrangement by private persons and the cost thereof shall be charged against the real estate upon which the structure is located and shall be a lien upon such real estate and may be collected by any other legal source.

(e) Temporary Safeguards.

Notwithstanding other provisions of this ordinance, whenever, in the opinion of the Compliance Officer, there is imminent danger due to an unsafe working condition, the Compliance Officer shall order the necessary work to be done, including boarding up of openings, to render such structure temporarily safe whether or not the legal procedure herein described has been instituted; and shall cause such other action as the Enforcement Agency deems necessary to meet such an emergency.

(f) Structural Members.

All structural members shall be maintained free from deterioration, and

shall be capable of safely supporting the imposed dead and live loads. Structures severely damaged by fire, or other calamity, should be demolished if not deemed structurally safe.

(g) Notice.

Whenever the Enforcement Agency has condemned a structure under the provisions of this section, notice shall be posted in a conspicuous place in or about the structure affected by such notice and served on the owner or the person or persons responsible for the structure via personal service or first class U.S. Certified Mail with Return Receipt. If the property owner disagrees with the Enforcement Agency's determination and designation, the property owner may contract with a licensed (in the State of West Virginia), structural engineer to analyze the structure and to complete the necessary engineering calculations. The property owner could then use this technical report to object to the "dilapidated" or "condemned" designation.

(h) Placarding.

Upon failure of the owner or person responsible for the structure to comply with the notice provisions within the time given, the Compliance Officer shall post on the premises a placard bearing the word "Condemned" and a statement of the penalties provided for occupying the premises or removing the placard.

(i) Placard Removal.

The Compliance Officer shall remove the condemnation placard whenever the defect or defects upon which the condemnation and placarding action were based have been eliminated. Any person who defaces or removes a condemnation placard without the approval of the Compliance Officer shall be subject to the penalties provided by Section 3.2 (l) of this ordinance.

(j) Prohibited Occupancy.

Any person who shall occupy a placarded premises, and any owner or any person responsible for the premises who shall let anyone occupy a placarded premises shall be subjected to the penalties provided by Section 3.2 of this ordinance.

(k) Liability.

The Compliance Officer, while acting for the County, shall not thereby be rendered liable personally, and is hereby relieved from all personal 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 duties pursuant to the provisions of this ordinance shall be defended by the legal representative of the county until the final termination of the proceedings. The Compliance Officer, 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 omission in the performance of official duties in connection therewith.

(I) Violation Penalties.

Any person who shall violate a provision of this ordinance, or fail to comply therewith, or with any of the requirements thereof, shall be prosecuted within the limits provided by West Virginia Code § 17-23-9. Each day that a violation continues after due notice has been served shall be deemed a separate offense. The Upshur County Commission has the right to abate the nuisance and recover costs of abatement with respect to the property owner or person or persons responsible for the property.

Section 3.3 Enforcement Agency Rules for Conducting Investigations

(a) Upon the members of the Enforcement Agency voting to accept the citizen's complaint and conduct an investigation, the Compliance Officer shall contact the following public officials and ascertain the following information, if available:

- (1) Sheriff's tax office to ascertain the property owner's address, the tax district, tax map and parcel number for the property in question; its assessed value for both the lands and buildings; acreage or lot size if known by the Sheriff's tax office and the status of taxes paid or due and owing on this property; any lien information.
- (2) Clerk of the County Commission to ascertain any information about judgment liens, tax liens, mechanics liens or deed of trust liens on the subject property and obtain a copy of the deed, or other document by which the owner obtained title to the property in question.
- (3) Assessor's Office to ascertain lot or parcel size and a copy of a tax map for the property in question.
- (4) County Health Department and/or Public Service District to ascertain the type of water and sewer system serving the property in question.
- (5) County Fire Department(s) and/or E911 Communication Center to ascertain the number of fire service or ambulance calls to that property in the last year.
- (6) Planning Commission (if any) to ascertain the number of improved lots in that or nearby subdivisions; location of the property in question insofar as

flood prone areas, river, streams, ponds, are concerned; the location of nearby schools, hospitals and residences in the immediate area and in the watershed area.

- (7) West Virginia State Police and/or Upshur County Sheriff's Department to ascertain the nature and number of law enforcement problems originating from the property in question in the last year.
- (b) The Compliance Officer shall deliver notice to the property owner by United States Mail postage prepaid and by certified mail, return receipt requested, to the property owner's address as ascertained from the Sheriff's tax office informing the property owner of the general nature of the complaint and informing the property owner that the Compliance Officer, the Upshur County Sheriff and/or other members of the Enforcement Agency will visit the property at a specific time and date to investigate the allegations set forth in the complaint. The notice shall inform the property owner that photographs will be taken of the property in question and/or that soil samples may be taken from the property in question. However, any such entrance upon the property in question shall be made in such a manner as to cause the least possible inconvenience to the persons in possession.
- (c) The Compliance Officer 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.
- (d) The Compliance Officer shall at the conclusion of the investigation, prepare a written investigative report and provide a copy to each member of the Enforcement Agency.
- (e) The Compliance Officer 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.
- (f) The Compliance Officer shall at the direction of the Enforcement Agency initiate by petition/complaint on behalf of the Enforcement Agency, an action before the County Commission to seek an order of the County Commission requiring the property owner to repair, alter, improve, vacate, remove, close, clean up or demolish the dwelling or building in question within a reasonable time; or to remove or clean up any accumulation of refuse or debris, overgrown vegetation or toxic spillage or toxic seepage within a reasonable time; and to impose daily civil monetary penalties upon the property owner who fails to obey the order of the County Commission; and if necessary, to request that the County Commission advertise for and seek a contractor to make the ordered repairs, alterations, improvements, demolition, removal or clean up; and to institute a civil proceeding in the Circuit Court of Upshur County, West Virginia to subject the private land in question to a lien to satisfy; the contractor's costs in making the ordered repairs, alterations, improvements, demolition, removal or clean up; the daily civil monetary penalty imposed; reasonable attorney fees and

court costs expended and to order the private land in question sold to satisfy this lien; and order and decree that the contractor may enter upon the private land in question to perform the ordered repairs, alterations, improvements, demolition, removal or clean up.

The petition/complaint shall state the findings and recommendations of the Enforcement Agency and inform the property owner that upon being served with this petition / complaint unless the owner or owners of the property shall file with the Clerk of the County Commission of Upshur County at the address of 40 West Main Street, Room 101, Buckhannon, West Virginia, 26201, a written request for a hearing before the County Commission within twenty (20) days of receipt of the complaint/petition, an order will be issued by the County Commission implementing the recommendations of the Enforcement Agency.

ARTICLE 4. PROCEEDINGS BEFORE THE COUNTY COMMISSION

Section 4.0 Institution of Proceeding Before the County Commission

The Compliance Officer may file in the Office of the Clerk of the County Commission of Upshur County, a petition/complaint on behalf of the Enforcement Agency seeking an order of the County Commission requiring the property owner to repair, alter, improve, vacate, remove, close, clean up or demolish the dwelling or building in question within a reasonable time; or to remove or clean up any accumulation of refuse or debris, overgrown vegetation or toxic spillage or toxic seepage within a reasonable time; and to impose daily civil monetary penalties upon the property owner who fails to obey the order of the County Commission; and if necessary, to request that the County Commission advertise for and seek a contractor to make the ordered repairs, alterations, improvements, demolition, removal or clean up; and to institute a civil proceeding the Circuit Court of Upshur County, West Virginia to subject the private land in question to a lien to satisfy: the contractor's costs in making the ordered repairs, alterations, improvements, demolition, removal or clean up; the daily civil monetary penalty imposed; reasonable attorney fees and court costs expended and to order the private land in question sold to satisfy this lien; and order and decree that the contractor may enter upon the private land in question to perform the ordered repairs, alterations, improvements, demolition, removal or clean up.

The petition/complaint shall state the findings and recommendations of the Enforcement Agency and inform the property owner that upon being served with this petition/complaint, unless the owner or owners of the property shall file with the Clerk of the County Commission of Upshur County at the address of 40 West Main Street, Room 101, Buckhannon, West Virginia, 26201, a written request for a hearing before the County Commission within twenty (20) days of receipt of the complaint/petition, an order will be issued by the County Commission implementing the recommendations of the Enforcement Agency.

Section 4.1 Service of a Copy of the Enforcement Agency Petition/Complaint Upon the Property Owner

The Clerk of the County Commission of Upshur County shall receive and file the petition/complaint of the Enforcement Agency and shall cause a copy thereof to be served upon the property owner in the manner provided in Rule Four (4) of the West Virginia Rules of Civil Procedure. The Clerk of the County Commission of Upshur County shall note on the original petition/complaint the date service was accomplished if by personal service, and cause the person making personal service to certify that personal service was performed on that date. A copy of this return of service shall be provided by the Clerk of the County Commission to the Compliance Officer. If personal service cannot be accomplished, then service shall be made in accordance with the remaining provisions in Rule Four (4) of the West Virginia Rules of Civil Procedure. In the event it becomes necessary to use subsequent services, the address of any mailing(s) shall be the address maintained on the tax records by the tax department in the Office of the Upshur County Sheriff.

Section 4.2 Failure of the Property Owner to Request a Hearing Before the County Commission Upon the Petition/Complaint of the Enforcement Agency

If the property owner or owners shall fail to file with Clerk of the County Commission of Upshur County, within twenty (20) days of service of the petition/complaint upon said owner or owners, a written request for a hearing before the County Commission upon the petition/complaint of the Enforcement Agency, the County Commission may enter an order implementing the determinations and recommendations of the Enforcement Agency and ordering, as the case may be, the property owner to repair, alter, improve, vacate, remove, close, clean up or demolish the dwelling or building in question within a reasonable time or to remove or clean up any accumulation of refuse or debris, overgrown vegetation or toxic spillage or toxic seepage within a reasonable time and to impose daily civil monetary penalties on any owner or owners who fail to obey such an order. The Clerk of the County Commission of Upshur County shall cause such an order to be filed and an attested copy of such order to be served upon the property owner or owners by United States mail postage prepaid and by certified mail, return receipt requested, at the same address used by the Sheriff to mail the property owner their tax bill. The Clerk of the County Commission of Upshur County shall note on the file copy of the order the date of the mailing and the address to which it was mailed.

Section 4.3 Setting a Date and Time for a Hearing on the Petition/Complaint of the Enforcement Agency When Requested by the Property Owner

After receipt of a written request for a hearing upon the Enforcement Agency's

petition/complaint by the property owner, the County Commission at its next regular meeting shall enter an order setting this matter down for hearing at a particular time and date within twenty (20) days of the receipt of the written request. In that regard the Clerk of the County Commission shall note the date of the filing of the written request upon the face of the written request. Upon the entry of the order setting this matter down for hearing, the Clerk of the County Commission shall file the original order and mail attested copies thereof to the property owner, United States Mail postage prepaid and by certified mail, return receipt requested, to the address of the property owner at the return address specified in the property owner's written request or the address utilized by the Sheriff for the property owner's tax bill. The Clerk of the County Commission shall note on the filed order the address, date and method of mailing of each attested copy mailed.

Section 4.4 Hearing Before the County Commission

The hearing before the County Commission upon the petition/complaint of the Enforcement Agency shall be either recorded by electronic device or by court reporter. The President of the County Commission will call the hearing to order and note on the record, each member of the County Commission in attendance and whether a quorum exists to proceed. The President will note on the record of presence or absence of each of the litigants in person, *pro se* and or by their respective counsel. Witnesses will be administered an oath by the President prior to testifying. The President of the County Commission will conduct the hearing and rule on matters of procedure and law. The West Virginia Rules of Evidence shall not apply to the proceedings, but each party shall have the right to present evidence and examine and cross examine all witnesses. Documentary evidence will be marked as exhibits and if relevant and probative admitted into evidence. The County Commission shall have the right to recess the hearing and visit the property in question for a view. Facts discerned by Commission members on the view are evidence that may be considered. Each party shall have the right to make an opening and a closing statement. The Enforcement Agency has the burden of proving its allegations by a preponderance of the evidence and shall have the burden to move forward with the evidence.

Section 4.5 Findings of Fact, Determinations, Conclusions of Law, Orders, Civil Monetary Penalties by the County Commission

(a) At the conclusion of the Section 4.4 hearing, the County Commission shall by a majority vote, make findings of fact, determinations and conclusions of law as to whether a dwelling or building:

(1) Is unfit for human habitation due to dilapidation, whether the result of natural or manmade force or effect, which would cause the dwelling or other buildings to

be unsafe, unsanitary, dangerous and/or detrimental to the public safety or welfare; and/or

(2) Has defects that increase the hazard of fire, accidents or other calamities, whether the result of natural or manmade force or effect, which would cause the dwelling or other building to be unsafe, unsanitary, dangerous or detrimental to the public safety or welfare; and/or

(3) Lacks ventilation, light or sanitary facilities whether the result of natural or manmade force or effect which would cause the dwelling or other building to be unsafe, unsanitary, dangerous or detrimental to the public safety or welfare; and/or

(4) Has other conditions prevailing therein whether used for human 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.

If these findings of fact, determinations and conclusion of law are made, the County Commission may by majority vote, order the property owner or owners to repair, alter, improve, vacate, remove, close, clean up or demolish the dwelling or building in question within a reasonable time and to impose a daily civil monetary penalty of fifty dollars (\$ 50.00) upon the property owner or owners jointly and severally for each day after the time limitation has passed for the ordered work to be performed and completed to the satisfaction of the County Commission and the ordered work has not been completed, or for any other failure to obey the order of the County Commission beyond the time limitation set for that compliance to have occurred.

ARTICLE 5. APPEAL OF THE DECISION BY THE UPSHUR COUNTY COMMISSION TO CIRCUIT COURT

Section 5.0 Appeals of Decisions of County Commission to Circuit Court

Appeals from the County Commission of decisions made in the Section 4.4 hearings to Circuit Court shall be in accordance with the provisions of Article Three (3), Chapter Fifty-eight (58) of the Code of West Virginia as amended.

ARTICLE 6. PROCEDURES FOR CONTRACTING WITH VENDORS TO PERFORM ORDERED REPAIRS, ALTERATIONS, IMPROVEMENTS, DEMOLITION, REMOVAL OR CLEAN UP UPON THE FAILURE OF THE PROPERTY OWNER TO COMPLY WITH THE ORDER OF THE COMMISSION.

Upon the failure of the property owner or owners to perform the ordered duties and obligation as set forth in the order of the County Commission within the time limitation set by said order, the County Commission may advertise for and seek contractors to make the ordered repairs, alterations, improvements, demolition, removal or clean up, and may enter into any contract with any such contractor to accomplish the ordered repairs, alteration, improvements, demolition removal or clean up. The County Commission may make this contract contingent upon the order and decree of the Circuit Court making the contractor's costs or the contract amount in making these ordered repairs a lien upon the private land in question and ordering the private land in question be sold to satisfy this lien, and ordering that the contractor may enter upon the private land in question to make these ordered repairs.

ADOPTED this 13th day of April, 2000 upon motion made by Commissioner Rick E. Rice, which motion was seconded by Commissioner Joyce L. Harris-Thacker and upon Commissioners Donnie R. Tenney, Rick E. Rice and Joyce L. Harris-Thacker voting for the adoption motion and none voting against.

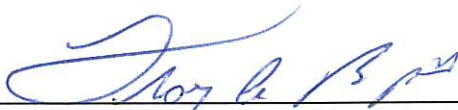
Amended Ordinance Passed on First Reading the 8th day of November, 2018.
Amended Ordinance Passed on Second Reading this the 15th day of November, 2018.
Amended Ordinance Passed on Third & Final Reading this the 13th day of December, 2018.



Samuel R. Nolte, President




Terry B. Cutright, Commissioner



Troy A., Brady, III, Commissioner

ATTEST:



Carol J. Smith, Clerk for the
County Commission of Upshur County

