

# **CABELL COUNTY UNSAFE STRUCTURE AND PROPERTY ENFORCEMENT ORDINANCE**

## **ESTABLISHING THE CABELL COUNTY BUILDING ENFORCEMENT AGENCY IN ACCORDANCE WITH WEST VIRGINIA CODE §7-1-3ff**

**WHEREAS**, the Cabell County Commission has determined that there are severely dilapidated and abandoned structures located throughout the county which present a safety or health hazard, and which have deteriorated to such a degree as to be significantly unsafe and depressive of the value of the adjacent properties or uses of such properties; and

**WHEREAS**, the Cabell County Commission has been conferred plenary power and authority by Section 3ff, Article 1, Chapter 7 of the West Virginia to adopt ordinances 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, except for buildings utilized for farm purposes on land actually being used for farming, 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; overgrown vegetation or toxic spillage or toxic seepage located on private lands which is deemed unsafe, unsanitary, dangerous, or detrimental to the public safety or welfare whether the result of natural or manmade force or effect; which would cause the 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.

**WHEREAS**, the Cabell County Commission has been conferred plenary power and authority by West Virginia Code Chapter 7, Article 1, Section 3ff to adopt ordinances 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 determined to be unsafe, unsanitary, dangerous, or detrimental to the public safety or welfare, whether the result of natural or manmade force or effect.

**WHEREAS** this ordinance shall apply to all properties within Cabell County, West Virginia, exclusive of the incorporated towns, cities, villages, and properties of the United States Government, and of the West Virginia State Government.

**THEREFORE**, the Cabell County Commission hereby orders the creation of the Cabell County Unsafe Structure and Property Enforcement Agency which shall consist of the county engineer (or other technically qualified county employee or consulting engineer), county health officer or said officer's designee, a fire chief from a county volunteer fire department, the county litter control officer, and two members from the public at large selected by the county commission to serve two-year terms. The county sheriff shall serve as an ex officio member of such agency and the county officer

charged with enforcing the orders of the Cabell County Commission under this ordinance.

The Unsafe Structure and Property Enforcement Agency shall be charged with the responsibility 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, except for buildings utilized for farm purposes on land actually being used for farming, unfit for human habitation due to dilapidation and not currently inhabited, defects increasing the hazard of fire, accidents or other calamities, lack of ventilation, or sanitary facilities or any other conditions prevailing in any dwelling or building, used for human habitation, which would cause the 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. Additional responsibilities shall include regulating the removal and clean-up of any accumulation of refuse or debris, 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. For purposes of this ordinance, any structure tested for the presence of methamphetamine pursuant to the West Virginia Code found to have 0.1µg of methamphetamine in said structure and has not be remediated for a period of six months or more from the conclusion of any criminal or civil proceeding, shall be considered an unsafe structure.

For purposes of this ordinance a building used for “farming purposes” shall include buildings used to shelter livestock or poultry, store farming equipment, livestock or poultry feed, and/or gardening supplies or equipment. For purposes of this ordinance the “farming purposes” exception shall include buildings used for storage of personal property.

The procedure to be implemented by the Unsafe Structure and Property Enforcement Agency, on behalf of the County Commission, shall include the following:

- a. The Unsafe Structure and Property Enforcement Agency (hereinafter “Enforcement Agency”) shall accept and review written complaints from the general public and other county agencies concerning any dwellings or other buildings, except for buildings utilized for farm purposes on land actually being used for farming, unfit for human habitation due to dilapidation, defects increasing the hazard of fire, accidents or other calamities, lack of ventilation, or sanitary facilities or any other conditions prevailing in any dwelling or building, not used for human habitation, which would cause the 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 shall identify said structures and/or property. Additionally, the Enforcement Agency shall accept complaints and identify property with any accumulation of refuse or debris, 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

- b. The Enforcement Agency shall investigate any complaints or identify structures or properties within thirty (30) days of receiving a written complaint or after identifying such a structure or property. Any investigation by the Enforcement Agency that requires entrance upon premises shall be made in such a manner as to cause the least possible inconvenience to the persons in possession. Any entry onto private property must comply with State and Federal law, and the constitution of the United States and the constitution of West Virginia.
- c. Complaints authorized by this ordinance shall be brought before the County Commission. Complaints shall be initiated by citation issued by the county litter control officer or petition of the county engineer (or other technically qualified county employee or engineer) on behalf of and at the direction of the Enforcement Agency, but only after that agency has investigated and determined that any dwelling, building, accumulation of refuse or debris, is unsafe, unsanitary, dangerous or detrimental to the public safety or welfare and should be repaired, altered, improved, vacated, closed cleaned or demolished.
- d. Complaints concerning buildings shall be brought to the County Commission only after it has been determined that no significant repairs have been made to a building for a one (1) year time period. Significant repairs shall include continuous work to make a building habitable or to demolish such a building.
- e. Complaints concerning refuse or debris shall be brought to the County Commission only after it has been determined that said refuse or debris has been present for 90 days. Brush and vegetation shall not be considered refuse and debris.
- f. Prior to any complaint being brought to the County Commission, the Cabell County Unsafe Structure and Property Enforcement Agency shall determine if any complaint would be under the jurisdiction of any agency other than the Cabell County Unsafe Structure and Property Enforcement Agency and if so shall refer the complaint to said agency. Said agencies shall include but not be limited to the West Virginia Department of Environmental Protection, West Virginia Department of Health and Human Resources, or Mid-Ohio Valley Health Department.
- g. The County Commission shall cause the owner or owners of the private land in question to be served with a copy of the complaint. Service shall be accomplished in the manner provided in rule four of the West Virginia Rules of Civil Procedure.

- h. The complaint shall state the findings and recommendations of the Enforcement Agency and that unless the owner or owners of the property file with the clerk of the county commission a written request for a hearing within thirty days of receipt of the complaint, an order may be issued by the county commission implementing the recommendations of the enforcement agency.
  - i. If the owner or owners of the property file a request for a hearing, the county commission shall issue an order setting this matter down for hearing within 30 days. Hearings shall be recorded by electronic device or by court reporter. 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.
  - j. The Enforcement Agency has the burden of proving its allegation by a preponderance of the evidence and has the duty to go forward with the evidence.
  - k. At the conclusion of the hearing the county commission shall make findings of fact, determinations, and conclusions of law as to whether:
    - i. The dwelling or building is unfit for human habitation due to
      - a. Dilapidation which is defined as a dwelling or building falling into a state of disrepair, ruin or decay;
      - b. defects that increase the hazard of fire, accidents or other calamities, lacks ventilation, or sanitary facilities; OR
      - c. any other conditions prevailing in the dwelling or building, not used for human habitation 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
- ii. There is an accumulation of refuse or debris, 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.
  - l. If findings of fact are made as outlined in subparagraph (h) the County Commission has authority to order the owner or owners thereof to repair, alter, improve, vacate, remove, close, clean up or demolish the dwelling or building in question or to remove or clean up any accumulation of refuse or debris, within a reasonable time and to impose daily civil monetary penalties on the owner or owners who fail to obey an order. A reasonable time for dwellings or structures shall be 180 days and a reasonable time for refuse or debris shall be 90 days. The County Commission shall extend said periods of

time if an individual can show a good faith effort is being made to address their property. Civil monetary penalties shall not exceed \$50.00 per day.

- m. Any findings of fact or Order entered by the County Commission may be appealed to the Cabell County Circuit Court and shall be in accordance with the provisions of article three, chapter fifty-eight of the West Virginia Code.
- n. Upon the failure of the owner or owners of the private land to perform the ordered duties and obligations as set forth in the order of the County Commission, the County Commission may advertise for and seek contractors to make the ordered repairs, alterations or improvements or the ordered demolition, removal or clean up. The County Commission may enter into any contract with any contractor to accomplish the ordered repairs, alterations or improvements or the ordered demolition, removal or clean up.

The Cabell County Commission may bring a civil proceeding in the Cabell County Circuit Court against the owner or owners of the private land or other responsible party that the subject matter of the order of the county commission to subject the private land in question: (1) To a lien for the amount of the contractor's costs in making these ordered repairs, alterations or improvements or ordered demolition, removal or clean up, together with any daily civil monetary penalty imposed: (2) to order and decree the sale of the private land in question to satisfy the lien: (3) to order and decree that the contractor may enter upon the private land in question at any and all times necessary to make ordered repairs, alterations or improvements, or ordered demolition, removal or clean up; and (4) to order the payment of all costs incurred by the county with respect to the property and for reasonable attorney fees and courts costs incurred in the prosecution of the action.

This ordinance shall become effective March 1, 2023, and after the members of the enforcement agency have been selected and appointed.

ADOPTED this 22<sup>ND</sup> day of December, 2022.

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Jim Morgan, President

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Kelli Sobonya, Commissioner

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Caleb Gibson, Commissioner

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ATTEST: Phyllis Smith, Clerk