

JENNIFER MAGHAN
COUNTY CLERK

Jennifer S Maghan
JEFFERSON County 02:18:00 PM
Instrument No 2010010179
Date Recorded 05/24/2010
Document Type ORDI*
Book-Page 1079-257

JEFFERSON COUNTY

West Virginia

PROPERTY SAFETY ORDINANCE

**Adopted January 7, 1999
&
Hereby Amended May 20, 2010**

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, 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, 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 JEFFERSON COUNTY, WEST VIRGINIA, A PUBLIC BODY CORPORATE OF JEFFERSON 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 Jefferson County, West Virginia acts to adopt it.

Section 1.2 Title

This ordinance shall be titled as cited as the Jefferson County Property Safety Ordinance.

Section 1.3 Purpose

The purpose of this ordinance is to promote the public safety or welfare of Jefferson 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, 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; and by requiring, as the case may be, the removal and clean up of any accumulation of refuse or debris 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 Jefferson County, West Virginia, exclusive of the incorporated towns and cities, properties of the United States Government, and of the West Virginia State Government and any incorporated Town or City.

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 Jefferson County, West Virginia.

Section 2.1 Definitions

Blighted Area

A 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 Jefferson County, West Virginia.
Commissioner	An elected member of the County Commission of Jefferson County, West Virginia.
Condemn	To adjudge unfit for use or occupancy.
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 Engineer	An engineer employed by Jefferson County Government, who is a member of the Enforcement Agency and who is registered by the West Virginia Board of Registration of Professional Engineers as a Professional Engineer.
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.
Dilapidated	Falling to pieces or into disrepair; broken down; shabby and neglected.

Disaster	A 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 Jefferson 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: County Engineer, County Health Officer, Sheriff, an appointed Fire Chief and two other members at large. The Sheriff is an <u>ex-officio</u> member.
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 Jefferson County.

Garbage	The animal and vegetable waste resulting from handling, preparation, cooking and consumption of food.
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 Jefferson 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 or 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.
Public Safety Or Welfare	A condition of well being, health and safety of a significant number of people in an area, neighborhood or community.

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.
Refuse	Anything thrown away or rejected as worthless or useless; waste; trash; rubbish.
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.
Rubbish	Combustible and noncombustible waste materials and the term shall include garbage, the residue from the burning of wood, coal, coke, and other combustible materials, paper, rags, cartons, boxes, wood excelsior, rubber, leather, tree branches, yard clippings, tin cans, metals, mineral matter, glass, crockery and dust and other similar materials.
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 or 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

A 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.

Ventilation

The natural or mechanical process of supplying conditioned or unconditioned air to or removing air from any space.

ARTICLE 3. ENFORCEMENT AGENCY

Section 3.0 Membership

The Enforcement Agency shall consist of the following members: County Engineer, 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 Jefferson 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 1.5 year term.

Section 3.1 Meetings

- (a) The members of the Enforcement Agency shall meet, at a minimum, on a quarterly basis in public session; and may schedule additional monthly meetings, as deemed necessary by the Enforcement Agency, in accordance with the by-laws.
- (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 monthly meeting shall constitute a quorum.
- (d) Meetings of the Enforcement Agency shall be conducted generally in accordance with Roberts Rules of Order.
- (e) At the monthly public meeting, the Enforcement Agency shall receive complaints from the general public 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, 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 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, the members of the Enforcement Agency, relying upon the investigation report of the Enforcement Agency staff, by a majority

vote of those members present in public session may:

- (1) dismiss the citizen=s complaint; or
- (2) continue the matter over until a later monthly meeting to permit further investigation; or
- (3) adopt an agreement to remedy deficiencies and continue the matter over until a later monthly 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 monthly meeting; or
- (5) determine that the dwelling, building, accumulation of refuse or debris, 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 County Engineer 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 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 Jefferson 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 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 County Engineer shall contact the following public officials and ascertain the following information:
- (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 Officer to ascertain the type of water and sewer system serving the property in question.
- (5) County Fire Departments to ascertain the number of fire service or ambulance calls to that property in the last five (5) years.
- (6) Planning Commission staff 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) United States Department of Agriculture Offices to ascertain the types of farming operations in the area in question and the soil types.
- (8) West Virginia State Police and Jefferson County Sheriff's Department to ascertain the nature and number of law enforcement problems originating from the property in question in the last five (5) years.

B. The County Engineer 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 County Engineer, the Jefferson County Sheriff and 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 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.
- D. 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 the monthly meeting of the Enforcement Agency where the investigative report shall be considered.
- E. 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.
- F. The County Engineer 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 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 Jefferson 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 Jefferson County at the address of PO Box 250, East Washington Street, Charles Town, West Virginia 25414, a written request for a hearing before the county commission within ten (10) 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 County Engineer may file in the Office of the Clerk of the County Commission of Jefferson 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 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 Jefferson 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.

And 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 Jefferson County at the address of PO Box 250, East Washington

Street, Charles Town, West Virginia 25414, a written request for a hearing before the county commission within ten (10) 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 Jefferson 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 Jefferson 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 County Engineer.

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 the Clerk of the County Commission of Jefferson County, within ten (10) 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 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 Jefferson County shall cause such an order to be filed and an attested copy of such order to be served upon the property owner or owner 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 his tax bill. The Clerk of the County Commission of Jefferson 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 regards 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 and County Engineer 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 duty to go 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 building to be unsafe, unsanitary, dangerous 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) 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.

And 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 \$25.00 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.

B. At the conclusion for the Section 4.4 hearing, the County Commission shall by a majority vote make findings of fact, determination and conclusions of law as to whether:

- (1) There is an accumulation of refuse or debris on private land whether the result of natural or manmade force or effect, which would cause such private land to be unsafe, unsanitary, dangerous or detrimental to the public safety or welfare; and/or,
- (2) There is toxic spillage on private lands, whether the result of natural or manmade force or effect, which would cause such private land to be unsafe, unsanitary, dangerous or detrimental to the public safety or welfare; and/or
- (3) There is toxic seepage on private land whether the result of natural or manmade force or effect, which would cause private land to be unsafe, unsanitary, dangerous or detrimental to the public safety or welfare.

And if these findings of fact, determinations and conclusions of law are made, the County Commission may by a majority vote order the property owner or owners to remove or clean up any accumulation of refuse or debris or toxic spillage or toxic seepage from the private land in question within a reasonable time and to impose a daily civil monetary penalty of \$ 25.00 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 DECISION OF THE 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, Chapter Fifty-Eight 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 COUNTY 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.

ARTICLE 7. EXISTING ORDINANCES

This ordinance supercedes all previously adopted property safety ordinances and amendments.

ADOPTED this **20th day of May, 2010**, upon motion duly made by Commissioner Dale Manuel, which motion was seconded by Commissioner Frances Morgan and upon Commissioners: Lyn Widmyer, Patsy Noland, Dale Manuel and Francis Morgan (Commissioner Jim Surkamp was absent) voting for the adoption motion, and no Commissioners voting against the motion.



Lyn Widmyer, President
County Commission of Jefferson County

Attest



Jennifer Maghan
County Clerk

