

CITIZENS' GUIDE
TO THE ENFORCEMENT OF AN ORDINANCE
ENACTED BY THE JEFFERSON COUNTY COMMISSION
REGULATING ABANDONED AND DILAPIDATED PROPERTIES

The West Virginia Legislature passed a bill granting County Commissions the authority to enact ordinances **regulating abandoned and dilapidated property** in their jurisdictions that is determined to be a threat to the public health, safety, and welfare. The Jefferson County Commission enacted such an ordinance on January 7, 1999, said ordinance being called the Property Safety Ordinance. It subsequently appointed a six-member Enforcement Agency to investigate citizens' complaints of potentially hazardous conditions and to report the findings of such an investigation, as needed, to the County Commission for their consideration and potential action. This Citizens' Guide was developed to familiarize the citizens of Jefferson County with this new ordinance and to explain the procedures and remedies that will be followed in the enforcement of the new ordinance. It is based on the Citizens Guide prepared by Monongalia County.

What is the purpose of this new ordinance?

The purpose of this new ordinance is to protect the citizens of Jefferson County from unsafe or unsanitary conditions existing on abandoned and/or dilapidated property that represent a risk to the public health, safety or welfare. Included are any dwelling, building, accumulation of refuse or debris, or toxic spillage or toxic seepage that can be demonstrated to be unsafe, unsanitary, dangerous, or detrimental to the public health, safety, or welfare. The only exception is buildings utilized for farming purposes on land actually being used for farming. If it is determined that any unsafe or unsanitary conditions do exist the Enforcement Agency is to work with the property owner to adopt a remedy. Should this course of action fail to achieve resolution of the situation, the County Commission is authorized to order the repair, alteration, cleanup, or removal of the building or property in question at the property owner's expense, or to impose other remedies if the property owner fails to make the necessary improvements.

What area is covered by this ordinance?

This ordinance applies to all private property in Jefferson County located in unincorporated areas. This ordinance does not apply to property located in incorporated towns and cities, or to any property owned by the federal, state, or local government. Municipal governments in West Virginia currently have the authority to enact an ordinance regulating abandoned and dilapidated property in their jurisdiction.

How will this new ordinance be enforced?

Since the County lacks the capacity to inspect all properties within the County for possible violations, a potentially harmful situation needs to be brought to the attention of the Enforcement Agency via the complaint of a citizen who is concerned about the condition in question. At the monthly meeting of the Enforcement Agency the general public may present complaints. Attached to this guide is a Complaint Form which should be filled out and presented to the Enforcement Agency at the meeting. The merits of every complaint will then be considered at the meeting by the Enforcement Agency. Depending upon the circumstances, the Enforcement Agency may initiate an investigation, table the complaint for later consideration, or reject the complaint for lack of merit. If an investigation is authorized, the following steps will be taken:

1. The County Engineer will collect necessary related information by contacting the following public officials, as needed: Sheriff's tax office, Clerk of the County Commission, Assessor's Office, County Health Office, Emergency Services, Planning and Zoning Office, U.S. Department of Agriculture, West Virginia State Police and the Sheriff' Department.

2. The property owner will be informed of the general nature of the complaint and the plans of the Enforcement Agency to visit the property at a particular time to investigate the allegations set forth in the complaint. Said notification shall be by certified letter.

3. The County Engineer, the County Sheriff and other members of the Enforcement Agency will inspect the site to determine the scope and nature of any health and safety problems. The findings of their investigation will be placed in an investigative report by the County Engineer and forwarded to the Enforcement Agency prior to the next meeting.

4. Where possible, written statements and other evidence from the property owner, the complaining party, neighbors and other interested persons will become a part of the investigative report. Additionally, these persons will be given the opportunity to address the Enforcement

Agency when the investigative report is being considered.

5. Upon its completion, the investigative report will be considered by the Enforcement Agency at its next monthly meeting. Based on the findings of this investigation as well as on any additional public input at the meeting, the Enforcement Agency, by a majority vote of the members present, will decide to either (1) dismiss the citizen's complaint, (2) continue the matter over to a later meeting to permit further investigation, (3) determine that the property in question is a threat to the public health, safety, and welfare and should be repaired, altered, improved, vacated, closed, cleaned up or demolished as the case may be, and, adopt an agreement with the property owner to remedy deficiencies within an agreed- upon time frame. In the event an agreement can not be executed, the Enforcement Agency should incorporate its findings and recommendations into a report to be forwarded to the County Commission for their consideration and action.

6. A designated Enforcement Agency representative may negotiate an agreement between the property owner and the Enforcement Agency to remedy all deficiencies to the satisfaction of the Enforcement Agency within a designated period of time.

7. If indicated, the Enforcement Agency representative shall file in the Office of the Clerk of the County Commission a petition/complaint on behalf of the Enforcement Agency seeking an order of the County Commission requiring the property owner to remedy the identified deficiencies within a reasonable time or to face certain sanctions. A copy of the complaint shall be forwarded to the property owner via a certified letter with notification that the property owner has ten days to request a hearing before the County Commission.

8. If requested, the County Commission will hold a public hearing to consider the Enforcement Agency's petition/ complaint within twenty days. The Enforcement Agency has the burden of proving its allegations by a preponderance of the evidence. The West Virginia rules of evidence do not apply, but each party has the right to present evidence and examine and cross examine all witnesses. At the conclusion of the hearing, the County Commission shall make findings of facts, determinations, and conclusions of law as to the most appropriate course of action.

9. The County Commission has the authority to order the property owner 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, or toxic spillage or toxic seepage within a reasonable time and to impose daily civil monetary penalties on the property owner who fails to obey such an order. The property owner has the right to appeal to the Circuit Court any order of the County Commission.

10. If the property owner fails to perform the ordered duties and obligations prescribed by the County Commission, the Commission may advertise for and secure the services of a contractor to make the ordered repairs, alterations or improvements, or the ordered demolition, removal or clean up.

11. A civil proceeding may then be brought in the Circuit Court by the County Commission against the property owner to secure a lien against the property in question for the amount of the contractor's costs, legal expenses, and the monetary penalty imposed. Additionally, the County Commission will seek permission for the contractor to enter the property in question at any time to make the necessary improvements and for the County Commission to sell the property to satisfy the lien. Finally, the County Commission has the legal authority to institute a civil action against the property owner to recover all costs incurred by the Commission.

Will this new ordinance correct all of the problems in Jefferson County associated with abandoned and dilapidated housing?

The probable answer to this question is "no". The work of the Enforcement Agency will be dependent on citizen reporting and on voluntary compliance by property owners. Case load will affect the time duration of investigations and other aspects of case processing. Where property owners do not comply voluntarily, the capacity of the prescribed sanctions to generate enough resources from the momentary penalties, liens, or the sale of the property in question to cover the costs associated with fixing-up, cleaning-up, or demolishing abandoned or dilapidated housing may vary. In some situations, remediation costs will exceed the capacity of sanctions to generate the necessary resources, making these projects financially unfeasible. Despite this limitation, the Enforcement Agency is committed to correcting problems associated with abandoned and dilapidated housing to the fullest extent possible, and will explore all avenues of opportunity to fulfill this objective.

