

AN ORDINANCE OF THE COUNTY COMMISSION OF PRESTON COUNTY, WEST VIRGINIA, REGARDING REGULATING THE REPAIR, ALTERATION, IMPROVEMENT, VACATING, CLOSING, REMOVAL OR DEMOLITION OF UNSAFE OR UNSANITARY STRUCTURES AND CLEARANCE AND REMOVAL OF REFUSE, DEBRIS, OVERGROWN VEGETATION, TOXIC SPILLS OR TOXIC SEEPAGE ON PRIVATE LAND, ALL UNDER THE AUTHORITY OF CHAPTER 7, ARTICLE 1, SECTIONS 3ff OF THE WEST VIRGINIA CODE, AS AMENDED.

Be it enacted that that the County Commission of Preston County, West Virginia, pursuant to Chapter 7, Article 1, Section 3ff, of the Official Code of West Virginia, enacts this Ordinance, and specifically issues Orders and takes other appropriate and necessary actions to regulate unsafe or unsanitary structures and refuse on private lands in Preston County that are not already subject to any municipal ordinance for the same purpose; to establish an enforcement agency, procedure for complaints, lien and sale of land to recover costs, entry on land to perform repairs or alterations or to satisfy liens; and for the receipt of grants and subsidies.

1. The Preston County Commission hereby enacts procedures for the following:

(a) the repair, alteration, improvement, vacating, closing, removal, or demolition, or any combination thereof, of any dwellings or other buildings, except those buildings on land actively used for agricultural purposes, that are unfit for human habitation due to dilapidation, defects increasing the hazard of fire, accidents, or other calamities, that lack ventilation, light, or sanitary facilities, or any other conditions prevailing in such dwellings or buildings, whether used for human habitation or not, which would cause such dwellings or buildings to be unsafe, unsanitary, dangerous, or detrimental to the public safety or welfare whether the results of natural or manmade force or effect; and

(b) the removal and cleanup of any accumulation of refuse or debris, overgrown vegetation, toxic spillage, or toxic seepage located on private lands that is determined to be unsafe, unsanitary, dangerous, or detrimental to public safety or welfare, whether the result of natural or manmade force or effect.

2. The Preston County Commission hereby designates the Preston County Property Safety Enforcement Agency for this Ordinance, (hereinafter “enforcement agency”) which shall consist of the following:

- (a) a County Engineer or other technically qualified county employee or consultant;
- (b) a County Health Officer or his or her designee;
- (c) a Fire Chief from a Preston County fire company;
- (d) a County Litter Control Officer;

(e) two (2) members shall be selected by the Preston County Commission to serve two-year terms; one member at-large and one member actively engaged in agriculture practices.

(f) the County Sheriff, who shall serve as an *ex officio* member of the enforcement agency, and who shall enforce the orders of the Preston County Commission.

3. The Preston County Commission hereby authorizes Litter Control Officer to issue citations for open dumps, unlawful disposal of litter, and failure to provide proof of proper disposal of solid waste.

4. The Commission adopts the following rules of procedure and standards necessary to guide the Enforcement Agency designated in Paragraph 2 above:

(a) Complaints initiated by this ordinance shall be brought before the County Commission, by a citation issued by the Litter Control Officer, or petitioner of the County Engineer on behalf of the Enforcement Agency, after the Agency has investigated and determined that any dwelling, building, accumulation of refuse or debris, overgrown vegetation, or 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, or demolished.

(b) The Commission shall cause the owner or owners of the private land in question to be served with a copy of the Complaint that shall comply with Rule 4 of the West Virginia Rules of Civil Procedure.

(c) The Complaint shall state the findings and recommendations of the Enforcement Agency. Unless the owner or owners of the property in question file a Request for a hearing within ten (10) days of receipt of the Complaint, an Order may be issued by the County Commission implementing the recommendations of the Enforcement Agency.

(d) Upon proper request for a hearing, the County Commission shall issue an Order setting a hearing within twenty (20) days; the hearing shall be recorded electronically or by a court reporter. Each party shall have the right to present evidence and examine and cross-examine all witnesses; the West Virginia Rules of Evidence will not apply to the proceedings.

(e) At the hearing, the Enforcement Agency shall have the burden of proof of each violation by a Preponderance of the Evidence.

(f) At the conclusion of the hearing, the County Commission shall make findings of fact, determinations, and conclusions of law regarding what defects were proven at the hearing, without regard to whether they were a result of natural or manmade force or effect, and regardless of whether the property or building is used for human habitation. Those defects shall include one or more of the following:

- i. if the property is a building, whether it is unfit for human habitation due to dilapidation;
- ii. if the property is a building, whether it has defects that increase the hazard of fire, accidents, or other calamities;
- iii. if the property is a building, whether it lacks ventilation, light, or sanitary facilities;
- iv. if the property is a building, whether there are any other conditions which would cause it to be unsafe, unsanitary, dangerous, or detrimental to the public safety or welfare; or
- v. whether there is an accumulation of refuse or debris, overgrown vegetation, toxic spillage or toxic seepage on private lands that are unsafe, unsanitary, dangerous, or detrimental to the public safety or welfare,
- vi. the county commission has authority to order the owner or owners thereof to repair, alter, improve, vacate, remove, close, cleanup, or demolish the dwelling or building in question or to remove or cleanup 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 the owner or owner who fail to obey an order.
- vii. the property owner or owners have the right to appeal to the Preston County Circuit Court any order of the Preston County Commission.

5. Upon failure of the owner or owners of private land to perform the ordered duties and obligations as set forth in the Order of the Preston County Commission, the Commission may perform the following:

(a) advertise for and seek contractors to make the ordered repairs, alterations, or improvements or ordered demolition, removal, or cleanup. The Commission may enter into a contract with any contractor, subject to the provisions of W.Va. Code § 5-22-1 et seq., to accomplish ordered repairs, alterations, or improvements or ordered demolition, removal, or cleanup;

(b) subject the property to a lien for the amount of the contractor's costs in making ordered repairs, alterations, or improvements or ordered demolition, removal or clean-up, together with any daily civil monetary penalty imposed;

(c) order and decree the sale of the private land in question to satisfy the lien in (b) above;

(d) 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, and clean-up; and/or

(e) order the payment of all costs incurred by Preston County with respect to the property and for reasonable attorney fees and court costs incurred in the prosecution of the action.

6. A civil proceeding may be brought in Preston County Circuit Court by the Commission against the owner or owners of the private land or other responsible party, who are the subject matter of the order of the Commission to subject the private land in question, or the owner or owners, to any of the following:

(a) a lien for the amount of the contractor's costs in conducting activities ordered in Paragraph 1 above;

(b) an order and decree for the sale of the private land in question to satisfy the lien in subparagraph (a) of this Paragraph;

(c) an order and decree that the contractor may enter upon the private land in question at any and all times necessary to conduct activities ordered in Paragraph 1 above; and/or

(d) order the payment of all costs incurred by the County with respect to the property and for reasonable attorney fees and court costs incurred in the prosecution of the action.


7. The Preston County Commission or its agent have the authority to receive and accept grants, subsidies, donations, or services in kind consistent with the objectives of this Ordinance.

This Ordinance shall become effective on and after passage and upon adoption by the Preston County Commission as follows:


Passed by First Reading on the 7th day of September, 2021;

Passed by Second Reading which included a public hearing and a Class II legal advertisement on the 5th day of October, 2021, and

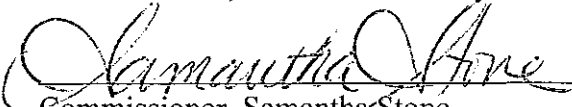
Passed by Third Reading on the 12th day of October, 2021.



President of the Commission, Don Smith



Commissioner, Dave Price



Commissioner, Samantha Stone

Attest:



Clerk of the County Commission

CITIZEN COMPLAINT FORM

The following information **must be submitted complete with Signature of Complainant:**

Unsafe Property Information:

(Need Help Locating Information?: Call County Commission 304-329-1805)

Address of Unsafe Property:

Tax District

Tax Map No.

Tax Parcel No.

Name and Mailing Address
of Owner(s) of above
property in question:
(Owner Phone No. if available)

Describe the scope and nature of any hazardous conditions on this property which threatens the public health, safety and welfare of the community:

continue on back of this sheet if more space is needed

I have submitted a photograph(s) of the unsafe property: () YES, photo(s) attached

If not attached, indicate how photo(s) submitted:

County Resident (or Citizen) Making Complaint:

(Please include telephone so we can to contact you if needed)

Name:

Address:

Telephone:

Signature of Complainant _____

Signature Date _____

Return this form & photo(s) to: Preston County Property Safety Enforcement Agency,
c/o Preston County Litter Control Officer
103 ½ West Main Street
Kingwood, West Virginia

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

The West Virginia Legislature has granted County Commissions the authority under Chapter 7, Article 1, Section 3ff, of the Official Code of West Virginia to enact an ordinance regulating abandoned and dilapidated property in their jurisdiction that is determined to be a threat to the public health, safety and welfare. Preston County Property Safety Enforcement Agency (hereinafter "enforcement agency"). It subsequently appointed a seven (7) member Enforcement Agency to investigate citizens' complaints of potentially hazardous conditions and to report the findings of such an investigation to the County Commission for their consideration and potential action. This **Citizens' Guide** was developed to familiarize the citizens of Preston County with this new ordinance and to explain the procedures and remedies that will be followed in the enforcement of the new ordinance.

What is the purpose of this new ordinance?

The purpose of this new ordinance is to protect the citizens of Preston 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, overgrown vegetation 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 are buildings on lands actively being used for agricultural purposes. If it is determined that any unsafe or unsanitary conditions do exist, 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 Preston County located in unincorporated areas. This ordinance does not apply to property located in incorporated towns and cities nor 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 attentions of the Enforcement Agency via the complaint of a citizen who is adversely impacted by the condition in question. Attached to this guide is a complaint form.

Complaint Form which should be filled out and forwarded to the Preston County Litter Control Officer, a member of the Preston County Property Safety Enforcement Agency. Following the receipt of a complaint, an Enforcement Agency representative will conduct a visual inspection of the property in question and photos will be taken. The merits of every complaint will then be considered by the Enforcement Agency at its next scheduled meeting. The person filling out the complaint may attend the meeting and address the Enforcement Agency, yet this is not required. Depending upon the circumstances, the Enforcement Agency may initiate an immediate 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 Sheriff's tax office will be asked to ascertain the property owner's name and address; tax map and parcel number for the property in question; its assessed value for both the lands and buildings; acreage or lot size if available; and the status of taxes paid or due on this property.
2. The Clerk of the County Commission will be asked to ascertain any information about any liens on the subject property and to provide the Enforcement Agency with a copy of the deed.
3. A certified letter will be mailed to the property owner informing him/her of the general nature of the complaint and plans of the Enforcement Agency to visit the property at a particular time to investigate the allegations set forth in the complaint. To the fullest extent possible, the scheduling of this site inspection will be at the convenience of the property owner.
4. Representatives of a fire department, the County Health Department and Enforcement Agency will be asked to participate in the site inspection to determine the scope and nature of any health and safety problems. The findings of their investigation will be forwarded to the Enforcement Agency to become a part of the investigative report.
5. 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.
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. 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 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) adopt an agreement with the property owner to remedy deficiencies within an agreed upon time frame, or (4) 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. If the latter determination is made, the Enforcement Agency should incorporate its findings and recommendations into a report to be forwarded to the County Commission for their consideration and action.

8. 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 (10) days to request a hearing before the County Commission.
9. If requested, the County Commission will hold a public hearing to consider the Enforcement Agency's petition/complaint within twenty (20) 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.
10. 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, overgrown vegetation 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.
11. 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.
12. A civil proceeding may then be brought in the Circuit Court by the 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 Commission will seek permission for the contractor to enter the property in question at any time to make the necessary improvements and for the Commission to sell the property to satisfy the lien. Finally, the Commission has the legal authority to institute a civil action against the property owner for all costs incurred by the Commission.

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

Unfortunately, the answer to this question is no. The work of the Enforcement Agency will by necessity have to be self-supporting since no funding has been budgeted to support this Agency. Accordingly, the Enforcement Agency is dependent on voluntary compliance by property owners and/or the capacity of the prescribed sanctions to generate enough resources from the momentary penalties, liens and/or the sale of the property in question to cover the costs associated with fixing up, cleaning up or demolishing abandoned or dilapidated housing. In some situations, repetition 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.