

“DRAFT”
BEFORE THE COUNTY COMMISSION OF
BERKELEY COUNTY, WEST VIRGINIA

The Commission, meeting in regular session, on this the ____ day of _____, 2010, having submitted a draft ordinance for public comment and having reviewed and considered such comment, did, on this date, adopt the following Ordinance, which shall become effective on the 1st day of _____, 2010, and shall be known as:

ORDINANCE TO PROVIDE FOR A CLEAN AND SAFE COUNTY

The members of the Berkeley County Commission, believe the residents of this County should have the opportunity to enjoy the County’s beauty to its utmost; should have sufficient and effective regulatory tools with which to fight litter, the accumulation of unsightly debris and refuse, the proliferation of overgrown vegetation and toxic spillage or seepage; should have efficient and effective ways to control unsafe, hazardous, dilapidated structures; and, should have laws which, generally, promote the public welfare and safety of the people of Berkeley County. In that regard and pursuant to West Virginia Code § 7-1-3ff and §§ 22-15A-3 and 22-15A-4, we provide the following:

Unsafe and Unsightly Structures and Land

1. Any dwelling or other building, whether occupied or not, which is found to be dilapidated to an extent which renders such dwelling or other building unfit for human habitation; defective so as to increase the hazard of fire, accident or other calamities; lacking in light, ventilation or working sanitary facilities; or any other condition which would cause the dwelling or other building to be unsafe, unsanitary, dangerous or detrimental to the public safety or welfare is a violation of this Ordinance. Provided, However, That buildings used for farm purposes on land actually being used for farming shall not be found to be violative of the Ordinance despite their condition.
2. Such finding shall be made by appropriately certified building code officials employed in the County’s Department of Land Use Planning and Engineering who shall issue an appropriate citation or citations.
3. In addition, such certified building code officials may require, at the direction of the Safe and Clean County Enforcement Agency, hereinbelow described, the repair, alteration or improvement of the violative dwellings or other buildings by the dwellings’/buildings’ owner(s). All repairs, alterations or improvements shall, at a minimum, result in Code compliant structures. Alternatively, such Agency may, upon investigation and recommendation of the certified building code officials, require vacating and closing or removal or demolition, or any combination thereof, of any violative dwellings or other buildings.

4. Upon direction of the Enforcement Agency, the County Litter Control Officer, by citation, or the County Engineer or any appropriately certified building code official, by petition, shall initiate a complaint before the County Commission but, only after that 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.
5. 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 4 of the West Virginia Rules of Civil Procedure.
6. 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 ten days of receipt of the complaint, an order will be issued by the County Commission implementing the recommendations of the Enforcement Agency.
7. If the owner or owners of the property file a request for a hearing, the County Commission shall issue an Order setting the matter down for hearing within 20 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.
8. 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.
9. At the conclusion of the hearing, the County Commission shall make findings of fact, determinations and conclusions of law as to whether the dwelling or building: Is unfit for human habitation due to dilapidation; has defects that increase the hazard of fire, accidents or other calamities; lacks ventilation, light or sanitary facilities; or any other conditions prevailing in the dwelling or building, 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; or whether there is an accumulation of refuse or debris, overgrown vegetation, toxic spillage or toxic seepage 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.
10. The County Commission may 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, overgrown vegetation or toxic spillage or toxic seepage within a reasonable time, according to its discretion.

11. In addition, the County Commission may assess a civil penalty, in the amount of \$100.00 for each day of non-compliance, against the owner or owners who fail to obey its Order.
12. Appeals from the County Commission to the Circuit Court shall be in accordance with the provisions of West Virginia Code § 58-3-1 *et seq.*
13. The County Commission hereby establishes the Safe and Clean County Enforcement Agency. Said Agency shall be comprised of the County Engineer, the County Health Officer or his/her designee, the Chief of one of the County fire companies, the County Litter Control Officer, and two members at large selected by the County Commission, each to serve two-year terms. The County Sheriff shall serve as an ex officio member of the Enforcement Agency and the officer charged with enforcing the Orders of the County Commission, under this Ordinance.
14. 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.
15. The County Commission may bring a civil proceeding in Circuit Court against the owner or owners of the private land or other responsible party to subject the private land in question: (1) To a lien for the amount of the contractor's costs in making the ordered repairs, alterations or improvements or ordered demolition, removal or clean up, together with any daily civil 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 court costs incurred in the prosecution of the action.

Open Dumps, Unlawful Disposal of Litter, Failure to Provide Proof of Proper Disposal of Solid Waste

1. County Litter Control Officers, certified by the Department of Environmental Protection, are hereby authorized to issue citations for open dumps, unlawful disposal of litter, and failure to provide proof of proper disposal of solid waste.
2. No person shall place, deposit, dump, throw or cause to be placed, deposited, dumped or thrown any litter as defined by West Virginia Code § 22-15A-2, in or upon any public or private highway, road, street or alley, any private property; any public property; or the waters of the State or within one hundred feet of the waters of this State, except in a proper litter or other solid waste receptacle.

3. If any litter is placed, deposited, dumped, discharged, thrown or caused to be placed, deposited, dumped or thrown from a motor vehicle, boat or other conveyance, within Berkeley County, it is prima facie evidence that the owner or the operator of the motor vehicle, boat, or other conveyance intended to violate the provisions of this section of the Ordinance.
4. Any person who violates the provisions of this Ordinance by placing, depositing, dumping or throwing or causing to be placed, deposited, dumped or thrown any litter, not collected for commercial purposes, in an amount not exceeding one hundred pounds in weight or twenty-seven cubic feet in size, is guilty of a misdemeanor. Upon conviction, he or she is subject to a fine of not less than \$100 nor more than \$1000, or in the discretion of the Court, sentenced to perform community service by cleaning up litter from any public highway, road, street, alley or any other public park or public property, or waters of the state, as designated by the court, for not less than eight nor more than sixteen hours, or both.
5. Any person who violates the provisions of this Ordinance by placing, depositing, dumping or throwing or causing to be placed, deposited, dumped or thrown any litter, not collected for commercial purposes, in an amount greater than one hundred pounds in weight or twenty-seven cubic feet in size, but less than five hundred pounds in weight or two hundred sixteen cubic feet in size is guilty of a misdemeanor. Upon conviction he or she is subject to a fine of not less than \$1000 nor more than \$2000, or in the discretion of the Court, may be sentenced to perform community service by cleaning up litter from any public highway, road, street, alley or any other public park or public property, or waters of the state, as designated by the Court, for not less than sixteen nor more than thirty-two hours, or both.
6. Any person who violates the provisions of this Ordinance by placing, depositing, dumping or throwing or causing to be placed, deposited, dumped or thrown any litter in an amount greater than five hundred pounds in weight or two hundred sixteen cubic feet in size or any amount which had been collected for commercial purposes is guilty of a misdemeanor. Upon conviction, the person is subject to a fine not less than \$2,500 or not more than \$25,000 or confinement in jail for not more than one year or both. In addition, the violator may be guilty of creating or contributing to an open dump as defined in West Virginia Code § 22-15A-2 and subject, therefore, to additional penalties found in State Code.
7. Any person convicted of a second or subsequent violation of this Ordinance is subject to double the authorized range of fines and community service for the applicable violation.
8. The sentence of litter clean up shall be verified by the County Litter Control Officers. Any defendant receiving the sentence of litter clean up shall provide, within a time to be set by the Court, written acknowledgment from the Litter Control Officer that the sentence has been completed and the litter has been disposed of lawfully.

9. Any person who has been found by the Court to have willfully failed to comply with the terms of a litter clean up sentence imposed by the Court pursuant to this Ordinance is subject to, at the discretion of the Court, double the amount of the original fines and community service penalties ordered by the Court.
10. No portion of this section of the Ordinance restricts an owner, renter or lessee in the lawful use of his or her own private property or rented or leased property or prohibits the disposal of any industrial and other wastes into waters of this State in a manner consistent with the provisions of West Virginia Code § 22-11-1 *et seq.* But if any owner, renter or lessee, private or otherwise, knowingly permits any such materials or substances to be placed, deposited, dumped or thrown in such location that high water or normal drainage conditions will cause any such materials or substances to wash into any waters of the State, it is prima facie evidence that the owner, renter or lessee intended to violate the provisions of this Ordinance: Provided, That if a landowner, renter or lessee, private or otherwise, reports any placing, depositing, dumping or throwing of these substances or materials upon his or her property to the Prosecuting Attorney, County Commission, the Division of Natural Resources or the Department of Environmental Protection, the landowner, renter or lessee will be presumed to not have knowingly permitted the placing, depositing, dumping or throwing of the materials or substances.
11. Any indication of ownership found in litter shall be prima facie evidence that the person identified violated the provisions of this Ordinance: Provided, That no inference may be drawn solely from the presence of any logo, trademark, trade name or other similar mass reproduced things of identifying character appearing on the found litter.
12. Every person who is convicted of or pleads guilty to disposing of litter in violation of this Ordinance shall pay a civil penalty in the sum of not less than \$200 nor more than \$1,000 as costs for clean up, investigation and prosecution of the case, in addition to any other court costs that the Court is otherwise required by law to impose upon a convicted person.
13. The Clerk of the Court in which these extra costs are imposed shall, on or before the last day of each month, transmit the proceeds of such civil penalties as directed by the West Virginia Code § 22-15A-4 © and (d).
14. Any State or County law enforcement officer with authority to write citations shall, in addition to the County Litter Control Officers, have full authority to enforce the provisions herein set forth pertaining to unlawful dumping, littering and disposal of litter.

Adopted this the ____ day of _____, 2010. Effective on the ____ day of _____, 2010.

Ronald K. Collins, President

ATTEST:

William L. Stubblefield, Commissioner

Anthony J. Petrucci, Commissioner

John W. Small, Jr., Clerk
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