

UNSAFE BUILDINGS AND LANDS ORDINANCE

ORDINANCE #153

AN ORDINANCE OF THE COUNTY COMMISSION OF GILMER COUNTY, WEST VIRGINIA, REGULATING THE REPAIR, ALTERATION, IMPROVEMENT, VACATING, CLOSING, REMOVAL, OR DEMOLITION OF UNSAFE OR UNSANITARY STRUCTURES AND THE CLEARANCE AND REMOVAL OF REFUSE OR DEBRIS, OVERGROWN VEGETATION, TOXIC SPILLAGE OR TOXIC SEEPAGE ON PRIVATE LAND AS PROVIDED FOR UNDER CHAPTER SEVEN, ARTICLE ONE, SECTION THREE-ff (§ 7-1-3ff) OF THE WEST VIRGINIA STATE CODE, AS AMENDED.

WHEREAS, the Gilmer County Commission, hereafter referred to as "County Commission" has been authorized under the above referenced Code section to enact an ordinance regulating the repair, alteration, improvement, vacating, closing, removal or demolition of unsafe or unsanitary structures and the clearance and removal of refuse or debris, overgrown vegetation, toxic spillage or toxic seepage on private land; and

WHEREAS, the County Commission deems it necessary to enact such an ordinance for the public safety, protection, and general welfare of the citizens of Gilmer County;

NOW, THEREFORE, the County Commission hereby adopts the following ordinance:

1. It shall be unlawful for there to exist on any private land in Gilmer County, West Virginia, dwellings or other buildings, except for buildings utilized for farm purposes on land actually being used for farming, which are unfit for 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 such dwelling or building, whether used for human habitation or not, which would cause such dwelling or other building to be unsafe, unsanitary, dangerous or detrimental to the public safety or welfare, whether the result of natural or manmade force or effect.
2. It shall be unlawful for there to exist on any private land in Gilmer County, West Virginia, an accumulation of refuse or debris, overgrown vegetation or toxic spillage or toxic seepage 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.
3. **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.
4. **DEFINITIONS.**
 - A. **Interpretation.**
For the purpose of this ordinance, the following interpretations shall apply:
 - 1) Words used in the present tense include the future tense.
 - 2) The singular includes the plural.
 - 3) The plural includes the singular.
 - 4) The word "person" includes a corporation, S-corporation, C-corporation, limited liability corporation (LLC), professional limited liability corporation (PLLC), unincorporated association or partnership, chartered association, partnership,

limited partnership (LP), natural persons, joint ventures, joint stock company, club, company, business trust, or the manager, agent, servant, officer or employee of any of these entities.

- 5) The term "shall" is mandatory and the term "may" is permissive.

B. Definitions.

- 1) *Building*: any man-made structure on a parcel of land that has one or more walls.
- 2) *Building Code*: as defined in West Virginia Code of State Rules Title 87, Series 4 [87CSR4].
- 3) *Dangerous Building*: any building, structure or portion thereof that exhibits one (1) or more of the following defects or dangerous conditions, including but not limited to:
 - a) a door, passageway, stairway or exit that permits unsafe passage for humans, and that is required to meet the minimum number of exits as required by the Building Code;
 - b) all or a portion of a building or structure that has been damaged by fire, wind, flood or any other cause including physical deterioration so that the structural strength or stability of the building has been impaired such that it cannot safely support its intended occupancy or its own weight;
 - c) a part of the building or structure has or is likely to fall, become detached or dislodged, or collapse and injure persons or damage another's property;
- 4) *Farm or Farming Operations*: as defined in West Virginia Code Chapter 11, Article 1A, Section 3(f) [§ 11-1A-3(f)].
- 5) *Farming Purposes*: as defined in West Virginia Code Chapter 11, Article 1A, Section 3(g) [§ 11-1A-3(g)].
- 6) *Gun Range*: An area on private property designated by the owner for the use of firearms, bow and arrow, crossbow, lawful explosives, and other weapons.
- 7) *Imminent Danger*: When, in the opinion of the County Engineer, there is an immediate hazard of failure or collapse of a building or structure which endangers life, or when any structure or part of a structure has fallen and life is endangered by the occupation of the structure, or when there is actual or potential danger to the building or to the building occupants or those in the proximity of any structure deemed dangerous, the Enforcement Agency is hereby authorized and
- 8) *Political Signage*: Any bill, board, post, sign or other similar fixture intended to convey one or more political concepts or positions, including candidates for political office and elected officials.
- 9) *Refuse and Debris*: the terms "refuse" and "debris" are defined to mean materials of any kind which are no longer safely or properly useable for the purpose for which they were intended, or which are stored or allowed to remain in open, unsheltered space anywhere within the county in a manner which tends to create a hazard to the health, safety, or welfare of the public. Such refuse or debris shall include, but not be limited to, the following:
 - a) appliances;
 - b) bottles;
 - c) building materials;
 - d) cans;
 - e) concrete;
 - f) furniture;
 - g) glass;

- h) machinery;
 - i) paper;
 - j) plastics;
 - k) rags;
 - l) scrap metal;
 - m) snow blowers.
 - n) tires;
 - o) vehicles, not including Farm Use vehicles, not garaged or otherwise sheltered and obscured from public view that do not meet all of the following requirements:
 - i. is in operating condition;
 - ii. has all wheels with inflated tires attached the vehicle;
 - iii. has a working battery installed, if required for proper operation of the vehicle;
 - iv. has an operating engine;
 - v. has a functional and operating transmission capable of moving the vehicle;
 - p) wire; and
 - q) wood.
- 10) *Structure*: anything constructed, the use of which requires a fixed location on the ground; or, anything attached to something having such location. Structures include prefabricated buildings even if they are not anchored to the ground. A structure does not include fences, individual driveways, or retaining walls.
- 11) *Structure unfit for human occupancy*: a structure that has been found by the County Engineer to be unsafe, unlawful or, because of the degree to which the structure is in disrepair or lacks maintenance, is unsanitary, contaminated, vermin or rat infested, or lacks ventilation, illumination, sanitary or heating facilities or other essential equipment, or because the location of the structure constitutes a hazard to the occupants of the structure or to the public.
- 12) *Toxic Substance*: any substance which because of its quantity, concentration or physical, chemical or infectious characteristics may:
- a) cause, or significantly contribute to an increase in mortality or an increase in serious irreversible, or incapacitating or reversible illness; or
 - b) pose a substantial present or potential hazard to human health exclusive of any application of substances for bona fide farming operations.
- 13) *Unsafe Structure*: any structure that is found to be dangerous to the life, health, property or safety of the public or the occupants of the structure by not providing minimum safeguards to protect or warn occupants in the event of fire, or because such structure contains unsafe equipment or is so damaged, decayed, dilapidated, structurally unsafe, or of such faulty construction or unstable foundation, that partial or complete collapse is likely.
- 14) *Vehicle*: as defined in West Virginia Code Chapter 17A, Article 1, Section 1 [§ 17A-1-1], including but not limited to the following:
- a) all-terrain vehicles (ATV);
 - b) campers;
 - c) golf carts;
 - d) motorcycles;
 - e) motor homes;
 - f) recreational vehicles (RVs);
 - g) snowmobiles;
 - h) tractors;

- i) trailers; and
- j) utility terrain vehicles.

5. **ENFORCEMENT AGENCY.**

For the purpose of enforcing this ordinance the Gilmer County Unsafe Buildings and Lands Enforcement Agency, hereafter referred to as the Enforcement Agency, is hereby created. The Enforcement Agency shall be comprised of the following citizens:

- A. the **COUNTY ENGINEER** (or other technically qualified County Employee or consulting engineer, as appointed by the County Commission);
- B. the **COUNTY HEALTH OFFICER** or his/her designee;
- C. the Gilmer County Volunteer Fire Department **FIRE CHIEF** or his/her designee;
- D. the **COUNTY LITTER CONTROL OFFICER** (if the Commission chooses to hire one);
- E. **ONE (1) MEMBER-AT-LARGE FROM EACH DISTRICT WITHIN THE COUNTY**, selected by the County Commission to serve two year terms, of which at least two (2) such at-large members shall be seated on the Enforcement Agency at any given time; and
- F. the Gilmer County **SHERIFF**, whom shall serve as an ex officio member of said Enforcement Agency and whom is charged with enforcing the orders of the County Commission under this ordinance.

6. **PROCEDURES AND STANDARDS.**

The Rules of Procedure and Standards to be followed by the Enforcement Agency in its enforcement of this ordinance and the Rules of Procedure for instituting and conducting hearings before the County Commission under this ordinance shall be as follows:

A. **Meetings**

- 1) The members of the Enforcement Agency shall meet in public session on a regular schedule as determined by the Enforcement Agency and made public.
- 2) At the first meeting of each calendar year, the members of the Enforcement Agency shall elect one of its members as Chairman or Chairwoman and one of its members to serve as Secretary, each to serve a term of one (1) year, or until the member resigns.
- 3) Emergency meetings may be called to order by the Chairman or Chairwoman at any time, so long as they are reported to the County Commission at its next regular meeting.
- 4) Three members of the Enforcement Agency in attendance at a regularly scheduled meeting shall constitute a quorum. A majority of members must be present at emergency meetings.
- 5) The members of the Enforcement Agency may, if a quorum is present, by a majority vote of those present accept the complaint from a citizen for investigation by the Enforcement Agency; or if the complaint is from the County Engineer, and the investigation shall already have been made, the Enforcement Agency may accept the report of the County Engineer and proceed according to 6.A.7 of this ordinance.
- 6) Once notified, whether by citizen complaint or otherwise, that property located in Gilmer County is or may be in violation of this ordinance, the Enforcement Agency hereinabove created may investigate such property; and if it determines that said property is in violation of this ordinance, a letter shall be sent by Certified Mail from the Enforcement Agency to the land owner(s) informing him/her of such violation, giving such land owner(s) thirty (30) days (or such additional amount of time as the Enforcement Agency may deem appropriate) within which to correct the problem. Any entrance upon the land being investigated by the Enforcement Agency under this Ordinance shall be made in a

manner to cause the least possible inconvenience to the person(s) in possession. No entrance shall be made on land posted by the owner or under the objection of the owner unless a search warrant has been issued; any such entrance under a search warrant must be accompanied by the Sheriff.

7) Upon the completion of the investigation of the citizen's complaint, 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:

- a) dismiss the citizen's complaint; or
- b) continue the matter over until a later regularly scheduled meeting to permit further investigation; or
- c) adopt an agreement by the owner(s) to remedy deficiencies and continue the matter over until a later regularly scheduled meeting to permit the property owner time to remedy deficiencies in accordance to an agreement between the Enforcement Agency and the property owner; or
- d) continue the matter over until a later regularly scheduled meeting; or
- e) determine that no conditions unsafe, unsanitary, dangerous or detrimental to the public safety or welfare exist as described in the complaint; or
- f) determine that the dwelling, building, accumulation of refuse or debris, overgrown vegetation, 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 to:

- i. vacate, remove, close, clean up or demolish the dwelling or building in question within a reasonable time; or
- ii. remove or clean up any accumulation or refuse or debris, overgrown vegetation or toxic spillage or toxic seepage within a reasonable time; and
- iii. impose daily civil monetary penalties upon the property owner who fails to obey the order of the County Commission; and
- iv. if necessary, request that the County Commission advertise for and seek an architect, engineer and/or contractor to make the ordered repairs, alterations, improvements, demolition, removal or clean up; and
- v. institute a civil proceeding in the Circuit Court of Gilmer County, West Virginia to subject the private land in question to a lien to satisfy the architect's, engineer's, and/or 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 to order the private land in question sold to satisfy this lien; and order and decree that the architect, engineer, and/or contractor may enter upon the private land in question to perform the ordered repairs, alterations, improvements, demolition, removal or clean up.

B. Condemnation of Unsafe Structures.

- 1) When, during the process of investigation of a complaint, a building or other structure is deemed to be an imminent danger, the Enforcement Agency is hereby authorized and empowered to order and require the occupants to vacate the

premises forthwith. The Sheriff shall cause to be posted at each entrance to such structure a notice reading as follows:

"Following inspection by the County Engineer, this structure has been determined unsafe and its occupancy has been prohibited by the Gilmer County Unsafe Buildings and Lands Enforcement Agency, as authorized by the Gilmer County Commission under Chapter 7, Article 1, Section 3ff [§7-1-3ff] of West Virginia Code."

- 2) It shall be unlawful for any person to enter a building or structure so posted except for the purpose of securing the structure, making the necessary repairs, removing the hazardous condition, or of demolishing the same.
- 3) Notwithstanding other provisions of this ordinance, whenever, in the opinion of the County Engineer, there is imminent danger due to an unsafe condition, the Enforcement Agency may order the necessary work to be done, including boarding-up of openings, to render such structure temporarily safe and secure from entry whether or not the legal procedure described herein has been instituted; and the Enforcement Agency may cause such other action to be taken as the County Engineer deems necessary to meet such an emergency.

C. Closing of Vacant Structures.

- 1) If, during the process of investigation of a complaint, a building is found vacant and unfit for human occupancy, and at the determination of the County Engineer is not in danger of structural collapse, the Enforcement Agency or County Engineer is authorized to post a placard of condemnation on the premises and order the structure securely closed so as not to be accessible.
- 2) Upon failure of the owner to securely close the premises within the time specified in Section 6.A of this ordinance, the Enforcement Agency may cause the premises to be closed and secured through any available public agency or by contract or arrangement by private persons and the cost thereof shall be charged against the real estate upon which the structure is located; a lien may be placed for the cost of such contract or arrangement and if placed, shall be recorded with the Clerk of Gilmer County.

- D. If within the time period set forth in said Notice the property owner or owners have neither corrected the problem nor obtained from the Enforcement Agency an extension of time within which to correct the problem, the County Engineer (or other technically qualified county employee or consulting engineer) shall by petition file a complaint with the County Commission on behalf of and at the direction of the Enforcement Agency which shall state the findings and recommendations of said Agency and contain a notice to the property owner that unless such owner files with the Clerk of the County Commission a written request for a hearing within ten (10) days of receipt of the complaint, an order will be issued by the County Commission implementing the recommendations of the Enforcement Agency.
- E. Upon receipt of such complaint the County Commission shall cause a copy of the same to be served on the property owner in the manner provided for in Rule 4 of the West Virginia Rules of Civil Procedure.
- F. If within ten (10) days of being served with such complaint the landowner has not filed with the Clerk of the County Commission a written request for a hearing, the County Commission may order for the landowner to comply with the recommendations in the Complaint.
- G. If within ten (10) days of being served with such complaint the owner files a written request for a hearing the County Commission shall issue an Order setting the matter down for hearing within twenty (20) days. Such hearing shall be recorded by electronic device or by Court Reporter. At such hearing the Enforcement Agency will have the

burden of proving its allegations by a preponderance of the evidence and has the duty to go forward with the evidence.

- H. At any time after being notified by the Enforcement Agency of a violation of this ordinance and before any judgment of such violation in Circuit Court, the owner may contract with a professional engineer, licensed in the State of West Virginia, to perform the necessary and sufficient measurements, testing, analysis, calculations or other engineering services to contest the violation. A technical report prepared by said owner's engineer, stamped and signed, finding that the property is not in violation of this ordinance and submitted to the County Engineer shall be considered in defense of the property owner. The County Engineer shall notify the committee at the next regularly scheduled meeting that such report has been received and make it available to any Enforcement Agency member for review. If, in the judgment of the County Engineer, such report proves no violation has occurred, the County Engineer shall report his findings to the Enforcement Agency and the complaint shall be dismissed.
- I. At the conclusion of the hearing, the County Commission shall make findings of fact, determinations and conclusions of law as to:
 - 1) Whether the dwelling or building in question 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 whether other conditions exist in said dwelling or building, whether used for 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
 - 2) Whether there is an accumulation of refuse or debris, overgrown vegetation, toxic spillage or toxic seepage on such land 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.
- J. If the land owner fails to comply with the County Commission's Order, the County Commission may do one or more of the following:
 - 1) Impose a fine of up to 0.05% of the property's assessed value per day per violation on said owner for each day said owner is in violation of the County Commission's order.
 - 2) Advertise for, seek and enter into contracts with architects, engineers, and/or contractors to make the ordered repairs, alterations or improvements; or the ordered demolition, removal or clean-up.
 - 3) Bring a Civil Proceeding in the Circuit Court against the owner or owners of the land in question to subject such land to a lien for the amount of the architect's, engineer's, and/or contractor's costs and for any daily civil monetary penalty imposed together with reasonable attorney fees and court costs, and therein seek an order decreeing the sale of said land to satisfy such lien and, if necessary, an order decreeing that the architect, engineer, and/or contractor may enter upon said land at any and all times necessary to make the improvements or ordered repairs, alterations or improvements, or ordered demolition, removal or clean up.
 - 4) Institute a Civil Action in a court of competent jurisdiction against the land owner or other responsible party for all costs incurred by the County Commission with respect to the property in question including reasonable attorney fees and court costs incurred in the prosecution of the action.
 - 5) As provided for in the above mentioned West Virginia Code Section (Chapter 7, Article 1, Section 3ff) the County Commission shall have the power and authority to receive and accept grants, subsidies, donations and services in kind consistent with the objectives of this ordinance.

- K. Nothing in this ordinance shall be construed to regulate Political Signage on private property. The Enforcement Agency shall have no power to investigate Political Signage.
- L. Nothing in this ordinance shall be construed to regulate Gun Ranges on private property. The Enforcement Agency shall have no authority to investigate Gun Ranges.

7. **LIABILITY.**

The Enforcement Agency, County Engineer, and other officers or employees charged with the enforcement of this ordinance, while acting for the county, shall not be rendered personally liable, and is hereby relieved from all personal or professional liability for any damage accruing to persons or property as a result of an act required or permitted in the discharge of official duties. Any suit instituted against any officer or employee in the lawful discharge of his/her duties and under the provisions of this ordinance shall be defended by the legal representative of Gilmer County until the final termination of the proceedings. The Enforcement Agency, County Engineer, or any subordinate shall not be liable for costs in an action, suit or proceeding that is instituted in pursuance of the provisions of this ordinance; and any officer or employee acting in good faith and without malice, shall be free from liability for acts performed under any of its provisions or by reason of any error or omission in the performance of official duties in connection wherewith.

Passed on the FIRST READING: YES ☒ NO ☐ / UNANIMOUS Yes ☒ No ☐ DATE 4/16/2014

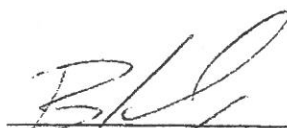
Passed on the SECOND READING: YES ☒ NO ☐ / UNANIMOUS Yes ☒ No ☐ DATE 5/6/2014

Public Hearing Date 5/6/2014

ADOPTED the 6th day of May 2004.

REVISED the 6th day of July 2010.

DULY REVISED AND ADOPTED ON THIS 6th DAY OF May, 2014.



Brian Kennedy, Commissioner

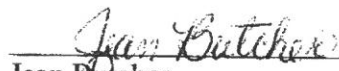
ABSENT

Darrel Ramsey, Commissioner



Larry Chapman, Commissioner

ATTEST:



Jean Butcher,
Clerk of the County Commission