

Monroe County Unsafe or Unsanitary Structures and Refuse Ordinance

WHEREAS, the Monroe County Commission has determined that there are structures located throughout the county which present a safety or health hazard; and,

WHEREAS, the Monroe County Commission has been authorized by Section 3ff, Article 1, Chapter 7 of the West Virginia Code to enact ordinances regulating the repair, alteration, improvement, vacating, closing, removal or demolition of unsafe or unsanitary structures and the clearance and removal of refuse and debris on private land; and,

WHEREAS, the Monroe County Commission seeks to protect the public from hazards created by unsafe or unsanitary structures, refuse and debris,

NOW THEREFORE, the Monroe County Commission hereby **ORDERS**:

1. The creation of the MONROE County Unsafe or Unsanitary Structures and Refuse ENFORCEMENT AGENCY (the "Enforcement Agency") which shall consist of the following individuals: the county engineer (or other technically qualified county employee or consulting engineer); county health officer or designee; a fire chief from a county fire department; two members at large selected by the County Commission to serve two-year terms; and the Sheriff, who shall serve in his or her official capacity and by the county officer charged with enforcing the orders of the County Commission under this Ordinance.
2. The Enforcement Agency shall be charged with the responsibility of requiring the clearance of any unused or unoccupied dwelling, non-farm building, structure, or man made appurtenance, or any remnants thereof, or any refuse or debris on all private lands, with the exception of any structure used for farm purposes on land actually used for farming, that has accumulated as the result of any natural or man made force or effect and which presents a safety or health hazard. For the purposes of this Ordinance, "farm use" is defined as farmland that is qualified and taxed as farmland by the Monroe County Assessor's Office.
3. The procedure to be implemented by the Enforcement Agency, on behalf of the County Commission, shall include the following:
 - (a) The Enforcement Agency shall accept and review written complaints from the general public and other county agencies and shall identify unsafe or unsanitary structures as well as refuse, debris, toxic spills or seepage on private land in Monroe County that pose a hazard to the community.
 - (b) If the Enforcement Agency determines that a complaint alleges any toxic spills or seepage conditions, then the Enforcement Agency shall, within thirty (30) calendar days of receiving the written complaint, refer the matter to the appropriate governmental agencies for action.

(c) If the complaint alleges any of the above-listed conditions other than toxic spills or seepage, then the Enforcement Agency shall conduct an on-site inspection of the identified unsafe or unsanitary structures as well as refuse and debris, on private land within thirty (30) calendar days of receiving a written complaint. Any investigation by the Enforcement Agency that requires entrance upon premises shall be made in such a manner as to cause the least possible inconvenience to the persons in possession, but in every instance the Enforcement Agency shall have the power to enter said property in accordance with this Ordinance.

(d) If the Enforcement Agency determines that any structure or accumulation of refuse or debris on private property exists and that the conditions are unsafe, unsanitary, dangerous, or detrimental to the public safety and health and should be repaired, altered, improved, vacated, removed, closed, cleaned, or demolished, then the Enforcement Agency shall then notify the landowner by certified letter that the property has been identified as a nuisance and a possible health hazard, and that unless the landowner notifies the Enforcement Agency within thirty (30) calendar days of a plan to remedy the matter, a Complaint will be formally filed with the County Commission.

(e) If the landowner fails to respond with an appropriate plan within thirty (30) calendar days, the Enforcement Agency shall reconsider the matter to determine whether its previous findings still exist. If the conditions remain, the Enforcement Agency may direct the county engineer (or other technically qualified county employee or consulting engineer) to prepare a Complaint listing the specific findings of the investigation and making recommendations for cleanup and lawful disposal. All Complaints must contain a statement that unless the landowner(s) file with the Monroe County Commission a written request for a hearing within ten (10) calendar days of receipt of the Complaint, the County Commission will issue an order implementing the recommendations of the Enforcement Agency.

(f) The county engineer (or other technically qualified county employee or consulting engineer) shall then petition the County Commission to accept and file the Complaint.

(g) The County Commission shall review the Complaint and determine whether probable cause exists to believe that the property contains any unsafe or unsanitary structure, refuse or debris that presents a safety or health hazard. If the Commission finds that probable cause exists, the Commission shall then cause a copy of the Complaint to be served on the landowner of the property in accordance with Rule 4 of the West Virginia Rules of Civil Procedure.

(h) If the County Commission receives written notice of a request for a hearing within ten (10) calendar days of the landowner's receipt of the Complaint, then the County Commission shall issue an order setting a hearing on the Complaint within twenty (20) calendar days. If the landowner fails to properly file a written request for a hearing within ten (10) calendar days of receipt of the Complaint,

then the County Commission may order the landowner to comply with the recommendations in the Complaint.

(i) At the hearing, both sides shall be allowed to put on evidence and call and cross-examine witnesses. The West Virginia Rules of Evidence are not applicable. Furthermore, the hearing shall be conducted on the record by either a court reporter or a recording of the audio portion of the proceedings. 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. At the conclusion of the hearing, the County Commission shall make a findings of fact, determinations and conclusions of law as to whether the structure or other hazardous situation as described within this Ordinance: (1) is unfit for human occupancy due to unsafe or unsanitary conditions which pose a public health or safety hazard; (2) has defects that increase the hazard of fire, accidents or other calamities; (3) has an accumulation of refuse or debris that is unsafe, unsanitary, dangerous, or detrimental to the public safety or health; or (4) has any other conditions prevailing in the structure or on the property, whether the result of natural or man made forces or effect, which would cause the structure or property to be unsafe, unsanitary, dangerous, or detrimental to the public safety or health.

(j) The landowner may appeal such finding(s) to the Circuit Court. Such appeal shall be in accordance with the provisions of Article 3, Chapter 58 of the West Virginia Code.

(k) If the County Commission finds by a preponderance of the evidence that any of the conditions exist as set forth in the preceding paragraphs, the Commission may order the landowner to repair, alter, improve, remove, clean up or demolish the structure, refuse and debris within a reasonable time, and may impose daily civil monetary penalties on the landowner who fails to comply with the order.

(l) The landowner must comply with any orders under this Ordinance within a time frame determined by the County Commission in calendar days, unless granted an extension for good cause by the County Commission.

(m) If the landowner fails to comply within the time frame determined by the County Commission the landowner may be subject to a fine in the amount of up to one hundred dollars (\$100.00) per day for each day over the time frame determined by the County Commission, or the additional allotted time, that the landowner is not in compliance with the order.

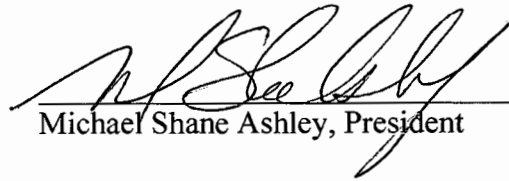
(n) If the landowner fails to comply with the order, then the County Commission may advertise for and seek contractors to bring the property into compliance with the order. The County Commission may authorize the selected contractor to enter the land at any and all times necessary to bring the land into compliance with the order.

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(o) The County Commission may seek reimbursement from the landowner through civil litigation for all monies expended, including but not limited to, contractor's fees, attorney's fees, court costs and civil penalties. Further, the County Commission may cause liens for said amounts to attach to the land, and force the sale of the land to satisfy the debt.

(p) The County Commission may receive and accept grants, subsidies, donations and services in kind consistent with the objectives of this Ordinance.

Adopted this 7th day of March 2012
To be effective May 2, 2012



Michael Shane Ashley, President

Voted No

William Miller, Commissioner

Clyde Gum, Jr.

Clyde Gum, Jr., Commissioner