

## ABANDONED AND DILAPIDATED BUILDING ORDINANCE

March 23, 2021

**WHEREAS**, The County Commission of Mercer County, West Virginia (the "Mercer County Commission") recognizes and declares that certain abandoned and severely dilapidated building are and constitute a public nuisance and hazard to the citizens and residents of Mercer County; and,

**WHEREAS**, the Mercer County Commission finds it desirable to adopt an ordinance, pursuant to the authority granted by Chapter 7, Article 1, Section 3ff of the West Virginia Code, addressing certain abandoned and severely dilapidated buildings, described as follows:

A. Dwellings - Regulating the repair, alteration or improvement, or the vacating and closing or removal or demolition, or any combination thereof, of any dwelling (including mobile homes for which the certificate of title has been surrendered) unfit for human habitation due to: severe dilapidation; significant and material defects increasing the hazard of fire, accidents or other calamities; lack of ventilation, light or sanitary facilities; or any other conditions prevailing in any dwelling, whether currently occupied for human habitation or not, which cause the dwelling to be unreasonably unsafe, unsanitary, dangerous or materially detrimental to the public safety or welfare, whether the result of natural or manmade force or effect;

B. Mobile Homes - Regulating the repair, alteration or improvement, or the vacating and closing or removal or demolition, or any combination thereof, of any single-wide, doublewide or other mobile home, recreational vehicle, or camper, for which a West Virginia or other state certificate of title remains viable, including mobile homes with axles or tongues removed or which have been modified or remodeled subsequent to placement, but excluding modular homes, unfit for human habitation due to: dilapidation; significant and material defects increasing the hazard of fire, accidents or other calamities; lack of ventilation, light or sanitary facilities; or any other conditions prevailing in any mobile home, recreational vehicle, or camper, whether currently occupied for human habitation or not, which cause said mobile home, recreational vehicle, or camper to be unreasonably unsafe, unsanitary, dangerous or materially detrimental to the public safety or welfare, whether the result of natural or manmade force or effect;

C. Certain Other Buildings - Regulating the repair, alteration or improvement, or the vacating and closing or removal or demolition, or any combination thereof, of certain other buildings which are abandoned and severely dilapidated due to: significant and material defects increasing the hazard of fire, accidents or other calamities; or any other conditions prevailing in any such building, which cause the building to be unreasonably unsafe, dangerous or materially detrimental to the public safety or welfare, whether the result of natural or manmade force or effect;<sup>2</sup>

D. Refuse, Debris or Toxic Spillage or Seepage - Regulating the removal and cleanup of any excessive accumulation of refuse, debris, or spillage or seepage of a toxic substance located on private lands on which a structure described above is located and which is deemed to be unreasonably unsafe, unsanitary, dangerous or materially detrimental to the public safety or welfare, whether the result of natural or manmade force or effect, but specifically excluding all grass, weeds, trees, or other vegetation or the products or accumulation thereof;

**WHEREAS**, the Mercer County Commission intends that all agricultural improvements and materials are completely and permanently excluded from regulation under this ordinance, including all buildings, barns, sheds, outbuildings, storehouses, houses, cabins, cribs, silos, bins, shelters, pens, coops, corrals, parlors, houses, fences, gates, or other improvements or appurtenances of any kind or condition utilized, in whole or part, for farm, ranch, other agricultural, or similar purposes, and further excluded from regulation under this ordinance is any accumulation of refuse, debris, equipment, scrap-metal, building materials, lumber, cut timber, manure, hay, grain, silage, vegetation, or other materials or byproducts used, stored, consumed, or produced on land actually being used, in whole or part, for farm, ranch, other agricultural, or similar purposes;

**WHEREAS**, in order to carry out its limited purpose and intent, this ordinance authorizes, designates, and creates:

A. Enforcement Agency - Designating and creating an enforcement agency as set forth and prescribed in Chapter 7, Article 1, Section 3ff(c) of the West Virginia Code;

B. Enforcement Officer - Giving authority to the Mercer County Litter Control Officer(s) to issue citations for violations of the provisions of this ordinance as set forth in Chapter 7, Article 1, Section 3ff(d) of the West Virginia Code;

C. Rules of Procedure - Establishing fair and equitable rules of procedure and any other standards necessary to guide the enforcement agency and its agents in conducting investigations hereunder, and providing for fair and equitable rules of procedure for instituting and conducting hearings in such matters before the Mercer County Commission, including requiring any entrance upon private or public premises for the purpose of making examinations to be made in a manner as to cause the least possible inconvenience to the owner and any persons in possession of such premises and, unless the county official first obtains the permission of the owner of such premises, only upon the prior issuance of an appropriate warrant by a magistrate or Circuit Court judge;

D. Hearing Authority - Authorizing the Mercer County Commission to hear and determine complaints of the enforcement agency, to make findings of fact and conclusions of law as to whether the property is materially detrimental to the public safety or welfare, to order appropriate and reasonable remedies with respect to the property to abate the found detriment to the public safety or welfare, to impose reasonable and appropriate civil monetary penalties upon the possessor(s) or owner(s) (as appropriate) of a premises who fails to obey an Order of 3 the Mercer County Commission, and to establish appeal procedures to the Mercer County Circuit Court;

E. Authority to Contract - Authorizing the Mercer County Commission to enter into contracts (at the expense of the Mercer County Commission) to fulfill any duly entered Order upon the failure of the possessor(s) or owner(s) of the private or public land to comply with such order; and,

F. Civil Proceedings - Authorizing the Mercer County Commission to bring civil proceedings against the possessor(s) or owner(s) (as appropriate) of private or public land which is the subject matter of any Order;

**WHEREAS**, the Mercer County Commission specifically intends that this ordinance shall NOT, in any fashion, implement any zoning restrictions, building code restrictions, visual or beautification standards, or other restriction not specifically addressed and authorized in this ordinance, and further, that this ordinance shall not be used by any County official or other person for any purpose beyond the explicit, express purposes and limitations set forth herein;

**BE IT ORDAINED AND ORDERED** by the County Commission of Mercer County, West Virginia, a public body corporate of Mercer County, West Virginia, as follows:

**ARTICLE 1: AUTHORITY, EFFECTIVE DATE, TITLE, PURPOSE, JURISDICTION AND SEVERABILITY**

Section 1.1 Authority

This ordinance is adopted by virtue of the authority granted in Chapter 7, Article 1, Section 3ff of the Code of West Virginia, as amended.

Section 1.2 Effective Date

This ordinance shall become effective upon passage by the Mercer County Commission.

Section 1.3 Title

This ordinance shall be titled the "Mercer County Abandoned and Dilapidated Building Ordinance."

Section 1.4 Purpose

The purpose of this ordinance is to promote the public safety and welfare of the citizens and residents of Mercer County, West Virginia, but only within the strict limitations of the recitals set forth above.

Section 1.5 Jurisdiction

This ordinance shall apply to all properties within Mercer County, West Virginia, exclusive of the properties located within incorporated towns and cities, properties of the United States Government, properties of the West Virginia State Government, and farm, ranch, or other agricultural properties as set forth in the above recitals.

Section 1.6 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.

**ARTICLE 2: DEFINITIONS**

Section 2.1 Interpretation

For the purpose of this ordinance, the following interpretations shall apply:

- A. Words used in the present tense include the future.
- B. The singular includes the plural and the plural includes the singular.

C. The word "person" includes a corporation, limited liability company, unincorporated association or partnership, chartered association, natural person, joint venture, joint stock company, club, company, business trust, or the manager, agent, servant, officer or employee of any of them.

D. The term "shall" is mandatory, and the term "may" is permissive.

#### Section 2.1 Definitions

**Blighted Area** - "Blighted area" shall mean an area (other than a slum area) which by reason of the predominance of defective or inadequate street layout, faulty lot layout in relation to size, adequacy, accessibility or usefulness, unsanitary or unsafe conditions, deterioration of site improvement, diversity of ownership, tax or special assessment delinquency exceeding the fair value of the land, defective or unusual conditions of title, improper subdivision or obsolete platting, or the existence of conditions which endanger life or property by fire and other causes, or any combination of such factors, substantially impairs or arrests the sound growth of the community, retards the provision of housing accommodations or constitutes an economic or social liability and is a menace to the public health, safety, morals, or welfare in its present condition and use.

**Building** - Any structure on a parcel of land that has one or more walls.

**Commission** - The County Commission of Mercer County, West Virginia.

**Commissioner** - An elected member of the County Commission of Mercer County, West Virginia.

**County Board of Health** - An agency of local government either created pursuant to Chapter 16, Article 2 or Chapter 16, Article 2A of the Code of West Virginia to oversee the health needs of the citizens of a county in accordance with law.

**County Engineer** - An engineer employed by Mercer County Government, who is a member of the Enforcement Agency and who is registered by the West Virginia Board of Registration of Professional Engineers as a "Professional Engineer."

**County Health Officer** - A physician appointed by the County Board of Health pursuant to Chapter 16, Article 2A, Section 4 of the Code of West Virginia, or a physician appointed by the direction of the West Virginia Department of Health pursuant to Chapter 16, Article 2, Section 1 of the Code of West Virginia, who is a member or his/her designee of the Enforcement Agency.

**County Litter Control Officer** - An officer hired to prevent litter and enforce litter control regulations within Mercer County and who is a member of the Enforcement Agency.

**Disaster** - The occurrence or imminent threat of widespread or severe damage, injury, or loss of life or property resulting from any natural or manmade cause, including fire, flood, earthquake, wind, snow, storm, chemical or oil spill or other water or soil contamination, epidemic, air contamination, blight, drought, infestation or other public calamity requiring emergency action.

**Dwelling** - A building or part of a building (including mobile homes for which the certificate of title has been surrendered) used exclusively as a residence for human habitation, in distinction from a store, office, commercial, or other building.

Deed - A written instrument, signed and delivered by which a person transfers and conveys title to real estate to another person.

Easement - A lawfully acquired right or privilege to use a parcel of land or portion thereof for a specified purpose such as a road.

Enforcement Agency - An agency of Mercer County Government charged under Chapter 7, Article 1, Section 3ff of the Code of West Virginia with the investigation and enforcement of violations of that statute and this ordinance. Its membership includes: County Engineer, County Health Officer, County Fire Chief, County Litter Control Officer and two other members at large. The Sheriff of Mercer County shall serve as an ex officio member.

Flood Prone Area - Areas subject to inundation by the "one hundred year" flood as determined by the Flood Insurance Study prepared by the Federal Insurance Administration for Mercer County.

Historic Site - Any lot, parcel, historic structure or designated area, which has been listed on the West Virginia or National Register of Historic Places or is generally recognized as an historic site of local significance. 6

Judgment Lien - A claim, encumbrance or charge on property for payment of some debt, obligation or duty owed to another person as decreed by a court of law and recorded among the land records of Mercer County.

Motor Vehicle - Any vehicle which is self-propelled by use of an internal combustion engine or by an electric motor which is intended to be driven upon a highway.

Junked Motor Vehicle - Any motor vehicle which is discarded, wrecked, ruined, scrapped or dismantled which would not pass the State of West Virginia motor vehicle inspection laws and which is not serving a reasonable functional use or purpose and is not inside an enclosed building.

Owner - A person who holds legal title to any real estate or personal property.

Possessor - A person not the owner who is in possession of any real estate or personal property.

Public Body - Public body shall mean the state or any municipality, county, township, board, commission, authority, district or any other subdivision or public body of the State.

Real Property - Real Property shall include all land, including improvements permanently affixed thereon and appurtenant thereto, and every estate, interest and right, legal or equitable therein including terms for years.

Right-of-way - A right, which grants passage across or through a property. A right-of-way is also the (usually dimensioned) path along which the right of passage is granted.

Salvage - Old or scrap copper, brass, rope, rags, batteries, paper, rubber, trash, waste, junked, dismantled or wrecked machinery, machine or motor vehicles or any parts of any junked, dismantled or wrecked machinery, machines or motor vehicles, iron, steel, and other old or scrap ferrous or nonferrous materials.

Salvage yard - Any place which is maintained, operated or used for the storing, keeping, buying, selling, or processing of salvage, or for the operation and maintenance of a motor vehicle graveyard, and the term shall also include garbage dumps and sanitary landfills. Any collection of three or more junked motor vehicles, or combination of ferrous or nonferrous materials together with one or more junked motor vehicles, or a collection or any salvage contained in an area more than one quarter acre in size, shall be considered a salvage yard.

Solid Waste Disposal Facility - Any facility established, modified or operated for the purpose of the disposal of solid waste as defined by West Virginia Department of Natural Resources Legislative Regulations for Solid Waste Management, as amended.

Structure - Any constructed assembly of materials affixed to a permanent location on the ground, or anything attached to something having such location. A structure does not include fences, individual driveways, or retaining walls. Structures do include prefabricated buildings, even if they are not anchored to the ground.

Slum Area - An area in which there is a predominance of buildings or improvements (which is predominantly residential in character), and which, by reason of dilapidation, age or obsolescence, deterioration, inadequate provision for ventilation, light, air, sanitation, or open spaces, high density of population and over-crowding, or the existence of conditions which endanger life or property, by fire and other causes, or any combination of such factors, is conducive to ill health, transmission of disease, infant mortality, juvenile delinquency and crime, and is detrimental to the public health, safety, morals or welfare.

Subdivision - The partition or division of land into two or more lots, tracts, parcels, plots, sites, areas, units, interests or other division of land, for the purpose, whether immediate or future, of offer, sale, lease, transfer of ownership, building construction, development, or land use. Subdivision applies to all forms of development including residential, commercial and industrial and includes the division of land either by deed, deed of trust, contract of sale, metes and bounds description, devise, intestacy, lease, map, plat or other instrument, or by act of construction or land use. Subdivision includes re-subdivision and, when appropriate to the context, shall relate to the land subdivided.

Toxic Substance - Means any substance which because of its quantity, concentration or physical, chemical or infectious characteristics may cause, or significantly contribute to an increase in mortality or an increase in serious irreversible, or incapacitating or reversible illness; or pose a substantial present or potential hazard to human health exclusive of any application of substances for bona fide farming operations.

## **ARTICLE 3 ENFORCEMENT AGENCY**

### **Section 3.1 Membership**

The Enforcement Agency shall consist of the following members: County Engineer (or other technically qualified county employee or consulting engineer), County Health Officer, a Fire Chief from a county fire company, the County Litter Control Officer, and three (3) members at large (who are not public employees) appointed from the general public by the County Commission. No member of the County Commission may serve on, conspire with, or participate in proceedings of the Enforcement Agency. The Sheriff of Mercer County shall serve as an ex-officio member of the Enforcement Agency and is the county officer charged with enforcing the orders of the County Commission. Enforcement agency members shall be appointed to two (2) year terms.

### **Section 3.2 Meetings**

A. Members of the Agency shall meet monthly in public session. The time and place to be determined by the membership. Four members in attendance at the meeting (two (2) of which must be members at large) shall constitute a quorum.

B. At its first meeting and on the one-year anniversary date thereafter, the members shall appoint a President, Vice-President and Secretary.

C. At the monthly public meeting, the Enforcement Agency shall receive complaints from neighboring residents concerning:

1. Any dwelling unfit for human habitation due to: severe dilapidation; significant and material defects increasing the hazard of fire, accidents or other calamities; lack of ventilation, light or sanitary facilities; or any other conditions prevailing in any dwelling, whether currently occupied for human habitation or not, which cause the dwelling to be unreasonably unsafe, unsanitary, dangerous or materially detrimental to the public safety or welfare, whether the result of natural or manmade force or effect;

2. Any single-wide, double-wide or other mobile home, recreational vehicle, or camper, for which a West Virginia or other state certificate of title remains viable, including mobile homes with axles or tongues removed or which have been modified or remodeled subsequent to placement, but excluding modular homes, unfit for human habitation due to: dilapidation; significant and material defects increasing the hazard of fire, accidents or other calamities; lack ventilation, light or sanitary facilities; or any other conditions prevailing in any mobile home, recreational vehicle, or camper, whether currently occupied for human habitation or not, which cause said mobile home, recreational vehicle, or camper to be unreasonably unsafe, unsanitary, dangerous or materially detrimental to the public safety or welfare, whether the result of natural or manmade force or effect;

3. Any other building which is abandoned and severely dilapidated due to: significant and material defects increasing the hazard of fire, accidents or other calamities; or any other conditions prevailing in any such building, which cause the building to be unreasonably unsafe, dangerous or materially detrimental to the public safety or welfare, whether the result of natural or manmade force or effect;

4 Any accumulation of any excessive accumulation of refuse, debris, or spillage or seepage of a toxic substance located on private lands on which a structure described in subparagraphs 1, 2 or 3, above, is located and which is deemed to be unreasonably unsafe, unsanitary, dangerous or materially detrimental to the public safety or welfare, whether the result of natural or manmade force or effect, but specifically excluding all grass, weeds, trees, or other vegetation or the products or accumulation thereof;

D. Provided, however, at any monthly meeting, or otherwise, the Enforcement Agency shall neither receive, instigate, further, nor pursue complaints which in any way relate to or affect any buildings, barns, sheds, outbuildings, storehouses, houses, cabins, cribs, silos, bins, shelters, pens, coops, corrals, parlors, houses, fences, gates, or other improvements or appurtenances of any kind or condition utilized, in whole or part, for farm, ranch or agricultural or similar purposes, and further excluding any accumulation of refuse, debris, equipment, scrap-metal, building materials, lumber, cut timber, manure, hay, grain, silage, vegetation, or other materials or byproducts used, stored, consumed, or produced on land actually being used, in whole or part, for farm, ranch, agricultural, or similar purposes.<sup>9</sup>

E. The members of the Enforcement Agency may, if a quorum is present, by a majority vote of those present, accept a qualifying complaint for investigation.

F. Upon the completion of the investigation of the complaint, and without further public input, the members of the Enforcement Agency, by a majority vote of members present (at least one (1) of which members voting in the affirmative must be one of the at-large members) in public session may:

1. Dismiss the complaint; or
2. Continue the matter over until a later monthly meeting to permit further investigation; or
3. Adopt an agreement with the property owner to remedy deficiencies and continue the matter over until a later monthly meeting to permit the property owner time to remedy deficiencies in accordance with said agreement between the Enforcement Agency and the property owner; or
4. Determine that the dwelling, mobile home, building, excessive accumulation of refuse, debris, toxic spillage, or toxic seepage is unreasonably unsafe, unsanitary, dangerous or materially 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 Litter Control Officer to issue a citation to the property owner; or
5. Direct the County Engineer, or such other person appointed by the Enforcement Agency, to initiate proceedings before the County Commission by petition to seek an order of the County Commission: requiring the property owner to repair, alter, improve, vacate, remove, close, clean up or demolish the dwelling, mobile home, or building in question within a reasonable time; or to remove or clean up any excessive accumulation of refuse or debris, toxic spillage, or toxic seepage within a reasonable time; and/or to impose reasonable civil monetary penalties upon the property owner who fails to obey the order of the County Commission.



### Section 3.3 Enforcement Agency Rules for Accepting Complaints and Conducting Investigations

#### A. Complaints:

Complainants shall complete the Citizens Complaint Form in its entirety.

The form is located in Appendix A.

#### B. Complaint Investigation:

1. Upon the Enforcement Agency members voting, as aforesaid, to accept the complaint and conduct an investigation, the County Engineer, or such other person appointed by the Enforcement Agency, shall contact the following public officials and ascertain the following information:

A. Sheriff's tax office and County Assessor's office to ascertain the property owner's address; the tax district, tax map and parcel number for the property in question; its assessed value for both the lands and buildings; acreage or lot size if known by the Sheriff's tax office; the status of taxes paid or due and owing on the property; any lien information; and copy of tax map for the property in question.

B. Clerk of the County Commission to ascertain any information about judgment liens, tax liens, mechanics liens, deed of trust liens, or other liens on the subject property and obtain a copy of the deed or other document by which the owner obtained title to the property in question.

2. The County Engineer, or such other person appointed by the Enforcement Agency, shall deliver notice to the property owner by United States Mail, postage prepaid, by certified mail, return receipt requested, to the property owner's address as ascertained from the Sheriff's tax office informing the property owner of the general nature of the complaint and informing the property owner that, unless the property owner objects, the County Engineer and/or other members of the Enforcement Agency will visit the property at a specific time and date to investigate the allegations set forth in the complaint. The notice shall inform the property owner that photographs will be taken of the property in question and/or that soil samples may be taken from the property in question. Any entrance upon premises for the purpose of making examinations shall be made in a manner as to cause the least possible inconvenience to the owner and any persons in possession of such premises. In the event the property owner objects to entrance upon the premises, the County Engineer shall first obtain an appropriate warrant to enter the premises duly issued by a Mercer County Magistrate or Mercer County Circuit Court Judge

3. The County Engineer, or such other person appointed by the Enforcement Agency, shall, whenever possible, take written statements from the complaining party, the property owner, neighbors, and all other interested persons and attach these statements to the investigative report.

4. The County Engineer, or such other person appointed by the Enforcement Agency, shall prepare a written investigative report and present the report to the members of the Enforcement Agency at the monthly meeting of the Enforcement Agency where the investigative report shall be considered.

5. Upon due consideration of the investigative report by the Enforcement Agency as aforesaid, the Enforcement Agency may direct the County Engineer to issue a citation to the property owner. The citation shall be timely served by upon the property owner by personal service by the Sheriff. The citation shall state the findings and recommendations of the Enforcement Agency and inform the property owner that upon being served with this citation, unless the owner or owners of the property shall file with the

Clerk of the County Commission of Mercer County, a written request for a hearing before the County Commission within ten (10) days of service of the citation, an order will be issued by the County Commission implementing the recommendations of the Enforcement Agency.

6. The County Engineer, or such other person appointed by the Enforcement Agency, may propose an agreement between the property owner and the Enforcement Agency whereby the property owner agrees to remedy alleged violations to the satisfaction of the Enforcement Agency within a designated period of time. All such agreements shall be in writing and signed by all parties thereto. Failure by any party to comply with such agreement within the time frames set forth in the agreement shall constitute breach by that party, giving rise to all available legal remedies, including recovery of damages by the non-breaching party. Following breach of any such agreement by the property owner, the Enforcement Agency may have the County Litter Control Officer issue a citation to the property owner.

7. The County Engineer may, at the direction of the Enforcement Agency, initiate by petition, on behalf of the Enforcement Agency, an action before the County Commission seeking an order of the County Commission requiring the property owner: to repair, alter, improve, vacate, remove, close, clean up or demolish, as applicable, the dwelling, mobile home, or building in question within a reasonable time; or to remove or clean up any accumulation of refuse, debris, toxic spillage, or toxic seepage (as applicable) within a reasonable time; and to impose civil monetary penalties not to exceed ten dollars (\$10.00) per day upon the property owner who fails to obey the order of the County Commission without perfecting an appeal to Circuit Court.

8. Upon a property failing to comply with a duly entered order of the County Commission without appeal to Circuit Court, the County Commission may: 1. Advertise for and engage a building, demolition, or remediation contractor to make the ordered repairs, alterations, improvements, demolition, removal or clean up; and, 2. Institute a civil proceeding in the Circuit Court of Mercer County, West Virginia, to subject the property in question to a lien to satisfy any contractor costs actually paid by the County Commission to make the ordered repairs, alterations, improvements, demolition, removal or clean up, and any daily civil monetary penalty imposed by the County Commission; and to order and decree that the County Commission's contractor may enter upon the property in question to perform the ordered repairs, alterations, improvements, demolition, removal or clean up.

9. All complaints, forms, reports, notes, pictures drawings, surveys, orders, advertisements, contracts, letters, notices, electronic communications or records, or other record of any and all kinds generated by or in the possession of the Enforcement Agency, the County Engineer, or such other enforcement person appointed by the Enforcement Agency, the County Commission, or the Clerk of the County Commission related in any way to an enforcement proceeding under this ordinance shall be a matter of public record available to the property owner and any member of the public.<sup>12</sup>

#### **ARTICLE 4: PROCEEDINGS BEFORE THE MERCER COUNTY COMMISSION**

##### **Section 4.1 Institution of Proceeding before the County Commission**

The Enforcement Agency may file in the Office of the Clerk of the County Commission of Mercer County (the "County Clerk") a petition on behalf of the Enforcement Agency seeking an order of the County Commission requiring the property owner to remedy the findings and requirements of the Enforcement Agency.

#### Section 4.2 Service of Copy of Petition Upon Property Owner(s)

The Circuit Clerk shall receive and file the petition of the Enforcement Agency, along with all other items filed with the Circuit Clerk in any proceeding under this ordinance, in the permanent records of the Circuit Clerk and issue a summons requiring the property owner to respond to the summons within the time permitted by Rule Four (4) of the West Virginia Rules of Civil Procedure. The County Commission shall cause a copy thereof to be served upon the property owner(s) in the manner provided in Rule Four (4) of the West Virginia Rules of Civil Procedure. The County Commission shall note the date service was accomplished upon the property owner and cause a return of service to be filed with the County Clerk certifying the manner and date on which personal service was completed.

#### Section 4.3 Failure of the Property Owner(s) to request a Hearing

If the property owner(s) shall fail to file with the County Clerk a written request for a hearing before the County Commission within the time permitted by Rule Four (4) of the West Virginia Rules of Civil Procedure, the County Commission may enter an order implementing the findings and requirements of the Enforcement Agency, including, as the case may be, directing the property owner(s) to repair, alter, improve, vacate, remove, close, clean up, or demolish the dwelling, mobile home, or building in question within a reasonable time, or to remove or clean up any accumulation of refuse, debris, toxic spillage, or toxic seepage within a reasonable time, or to impose civil monetary penalties of up to ten dollars (\$10.00) per day on any owner or owners who fail to obey such an order. The County Commission shall cause such order to be filed with the County Clerk and an attested copy of such order to be served upon the property owner(s) in the manner provided in Rule Four (4) of the West Virginia Rules of Civil Procedure.

#### Section 4.4 County Commission Setting Hearing on the Petition/Citation

Upon receipt of a written response to a petition or request for a hearing upon the Enforcement Agency's petition by the property owner, the County Commission, at its next regular meeting, shall enter an order setting the matter for hearing at a time and date within thirty (30) days of the date of said County Commission meeting. Upon the entry of the order setting the matter for hearing, the County Commission shall file the original order with the County Clerk and send by certified mail, return receipt requested, an attested copy of said order to the property owner(s) at the address of the property owner(s) at the return address specified in the property owner's response or written request. The County Commission shall note on the filed order the address, date and method of mailing of each attested copy mailed.

#### Section 4.5 Hearing Before the County Commission

The hearing before the County Commission upon the petition shall be either recorded by electronic device or by court reporter. The President of the County Commission will call the hearing to order and note on the record each member of the County Commission in attendance and whether a quorum exists to proceed. All witnesses shall be administered an oath by the President prior to testifying. The President of the County Commission will conduct the hearing and rule on matters of procedure and law. The West Virginia Rules of Evidence shall not apply to the proceedings, but each party shall have the right to present evidence and examine and cross-examine all witnesses. Documentary evidence will be marked as exhibits and if relevant and probative admitted into evidence. The County Commission shall have the right to recess the hearing and visit the property in question for any purpose. Each party shall have the right to

make an opening and a closing statement. The Enforcement Agency has the burden of proving all allegations by a preponderance of the evidence.

#### Section 4.6 Findings of Fact, Conclusions of Law, Orders, Civil Monetary

##### Penalties by the County Commission

At the hearing conclusion, the County Commission shall, by a majority vote, make written findings of fact and conclusions of law consistent with this ordinance as to whether the dwelling, building, accumulation of refuse, debris, toxic spillage, or toxic seepage in question is in violation of the provisions of this ordinance, taken as a whole, and should be repaired, altered, improved, vacated, removed, closed, cleaned up or demolished, as the case may be, specifically including:

A. As to dwellings, whether the dwelling in question (including mobile homes for which the certificate of title has been surrendered) is unfit for human habitation due to: severe dilapidation; significant and material defects increasing the hazard of fire, accidents or other calamities; lack of ventilation, light or sanitary facilities; or any other conditions prevailing in any dwelling, whether currently occupied for human habitation or not, which cause the dwelling to be unreasonably unsafe, unsanitary, dangerous or materially detrimental to the public safety or welfare.

B. As to any single-wide, double-wide or other mobile home, recreational vehicle, or camper, for which a West Virginia or other state certificate of title remains viable, including mobile homes with axles or tongues removed or which have been modified or remodeled subsequent to placement, but excluding modular homes, whether the same is unfit for human habitation due to: severe dilapidation; significant and material defects increasing the hazard of fire, accidents or other calamities; lack of ventilation, light or sanitary facilities; or any other conditions prevailing in any mobile home, recreational vehicle, or camper, whether currently occupied for human habitation or not, which cause said mobile home, recreational vehicle, or camper to be unreasonably unsafe, unsanitary, dangerous or materially detrimental to the public safety or welfare;

C. As to buildings which are not dwellings, whether the building in question is abandoned and severely dilapidated due to: significant and material defects increasing the hazard of fire, accidents or other calamities; or any other conditions prevailing in any such building, which cause the building to be unreasonably unsafe, dangerous or materially detrimental to the public safety or welfare.

D. As to property, whether the property in question has an excessive accumulation of refuse, debris, or spillage or seepage of a toxic substance, which is unreasonably unsafe, unsanitary, dangerous or materially detrimental to the public safety or welfare, but specifically excluding all grass, weeds, trees, or other vegetation or the products or accumulation thereof. If by these written findings of fact and conclusion of law, the County Commission, by majority vote, determines that the dwelling, mobile home, other building, or property in question does not require remediation or other action, the County Commission shall dismiss the petition, with prejudice. If by these written findings of fact and conclusion of law, the County Commission, by majority vote, determines that the dwelling, mobile home, other building, or property in question requires remediation or other action, the County Commission may order the property owner or owners to repair, alter, improve, vacate, remove, close, clean up, or demolish the dwelling or building in question within a reasonable time, to the reasonable satisfaction of the County Commission. The County Commission may further impose a daily civil monetary penalty of up to Ten

Dollars (\$10.00) upon the property owner or owners, jointly and severally, for each day after the time limitation has passed for the ordered work to be performed and completed during which the ordered work has not been completed, or for any other failure to obey the order of the County Commission beyond the time limitation set for that compliance.

**ARTICLE 5 APPEAL OF DECISION OF THE COUNTY COMMISSION TO CIRCUIT COURT**

Section 5.1 Property Owner(s) Appeal of County Commission Decision

Any decision by the County Commission pursuant to this Ordinance is appealable, de novo, to the Circuit Court of Mercer County, and shall be in accordance with the provisions of Article Three, Chapter Fifty-eight of the Code of West Virginia, as amended. A timely perfected appeal of any decision of the County Commission to Circuit Court shall stay the enforcement of any order and stay and toll the onset and/or payment of any civil monetary penalty imposed by the County Commission.


**ARTICLE 6 PROCEDURES FOR COUNTY COMMISSION TO CONTRACT WITH VENDORS**

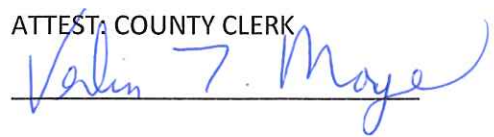
Upon the failure of the property owner(s) to perform the obligations set in any order of the County Commission within the specified time limit set forth in said order, the County Commission may advertise for contractors to make the ordered repairs, alterations, improvements, demolition, removal or cleanup and may enter into any contract with any such contractor to accomplish the ordered repairs, alteration, improvements, demolition removal or clean up and may order the contractor to enter upon the private land in question to make the ordered repairs. The County Commission may make the contractor's costs or the contract amount for making these ordered repairs a lien upon the private land in question. The County Commission may file a petition with the Circuit Court pursuant to the applicable provision of the West Virginia Code requisition the Court to have the private land in question sold to satisfy this lien. If any decision of the County Commission pursuant to this ordinance is appealed to Circuit Court pursuant to Article 5, above, all issues related to a contractor engaged to accomplish the ordered repairs, alteration, improvements, demolition removal or clean up, and order by the County Commission to the contractor to enter upon the private land in question to make the ordered repairs, shall be appealable, de novo, to the Circuit Court.

ADOPTED this 23<sup>rd</sup> day of March 2021, upon motion duly made by Commissioner Greg Puckett, which motion was seconded by Commissioner Bill Archer and upon no Commissioners voting against.

  
\_\_\_\_\_  
Gene Buckner, President

  
\_\_\_\_\_  
Greg Puckett, Commissioner

  
\_\_\_\_\_  
Bill Archer, Commissioner

ATTEST: COUNTY CLERK  
  
\_\_\_\_\_  
Valin T. Moyer

### **CITIZENS COMPLAINT FORM**

Regarding Problems Associated with Abandoned and Dilapidated Properties in Mercer County. The following information must be submitted before a complaint will be accepted and investigated.

1. Complainant Information:

a. Name, Address, Telephone Number

2. Property Owner Information

a. Name and Mailing Address of Property Owner(s)

3. Property Information

Location of Property (Street Address, Town)

Tax District, Tax Map and Tax Parcel Number (Tax ID Information)

4. Pictures of subject property, with description of the hazard(s) that exist.

5. Signed and Dated Complaint Form 18

### **CITIZENS COMPLAINT FORM**

1. Citizen Making Complaint

Name: Telephone:

Address:

2. Name and Address of property Owner(s):

Name:

Address:

3. Location of Property: Physical Street address:

Tax ID Information: Tax District

Tax Map # Tax Parcel(s) #

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

5. Signature of Complainant

6. Signature Date

Return this form to: Mercer County Abandoned and Dilapidated Buildings Enforcement Agency