

MORGAN COUNTY UNSAFE STRUCTURE AND PROPERTY ENFORCEMENT ORDINANCE

ESTABLISHING THE MORGAN COUNTY BUILDING ENFORCEMENT AGENCY IN ACCORDANCE WITH WEST VIRGINIA CODE § 7-1-3ff

WHEREAS, the Morgan County Commission has determined that there are severely dilapidated and abandoned structures located throughout the county which present a safety or health hazard and which have deteriorated to such a degree as to be unsightly, visually offensive and depressive of the value of the adjacent properties or uses of such properties; and

WHEREAS, the Morgan County Commission has been conferred plenary power and authority by Section 3ff, Article 1, Chapter 7 of the West Virginia Code Chapter 7, Article 1, Section 3ff to adopt ordinances regulating the repair, alteration or improvement, or the vacating and closing or removal or demolition, or any combination thereof, of any dwellings or other buildings, (except for buildings utilized for farm purposes on land actually being used for farming), unfit for human 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 any dwelling or building, whether used for human habitation or not, which would cause the dwellings or other buildings to be unsafe, unsanitary, dangerous or detrimental to the public safety or welfare, whether the result of natural or manmade force or effect.

WHEREAS, the Morgan County Commission has been conferred plenary power and authority by West Virginia Code Chapter 7, Article 1, Section 3ff to adopt ordinances regulating the removal and clean up of any accumulation of refuse or debris, overgrown vegetation or toxic spillage or toxic seepage located 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.

WHEREAS, the Morgan County Commission has been authorized by West Virginia Code § 38-10E-1, et seq., to create a statutory lien upon the insurance proceeds payable for an insurance claim as provided in the foregoing W. Va. Code § 38-10E-1, et seq.

THEREFORE, the Morgan County Commission hereby orders the creation of the Morgan County Unsafe Structure and Property Enforcement Agency, which shall consist of the county engineer (or other technically qualified county employee or consulting engineer), county health officer or said officer's designee, a fire chief from a county volunteer fire department, the county litter control officer, and two members from the public at large selected by the county commission to serve two-year terms. The county sheriff shall serve as an ex officio member of such agency and the county officer charged with enforcing the orders of the Morgan County Commission under this ordinance.

The Unsafe Structure and Property Enforcement Agency shall be charged with the responsibility of regulating the repair, alteration or improvement, or the vacating and closing or removal or demolition, or any combination thereof, of any dwellings or other buildings unfit for human habitation due to dilapidation and not currently inhabited, defects increasing the hazard of fire, accidents or other calamities, lack of ventilation, or sanitary facilities or any other conditions prevailing in any dwelling or building, used for human habitation, which would cause the dwellings or other buildings to be unsafe, unsanitary, dangerous or detrimental to the public safety or welfare, whether the result of natural or manmade force or effect. Additional responsibilities shall include regulating the removal and clean-up of any accumulation of refuse or debris, 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, (except for buildings utilized for farm purposes on land actually being used for farming purposes as evidenced by a farm use exemption issued by the Morgan County Assessor's Office). For purposes of this ordinance, any structure tested for the presence of methamphetamine pursuant to the West Virginia Code found to have 0.1µg of methamphetamine in said structure and has not been remediated for a period of six months or more from the conclusion of any criminal or civil proceeding, shall be considered an unsafe structure.

For purposes of this ordinance a building used for "farming purposes" shall include buildings used to shelter livestock or poultry, store farming equipment, livestock or poultry feed, and/or gardening supplies or equipment. For purposes of this ordinance the "farming purposes" exception shall include buildings used for storage of personal property and for buildings utilized for farm purposes on land actually being used for farming purposes as evidenced by a farm use exemption issued by the Morgan County Assessor's Office.

Section 1

Effective Date

This ordinance shall become effective immediately after the date on which the County Commission of Morgan County, West Virginia acts to adopt and the members of the Enforcement Agency have been selected and appointed by the County Commission.

Jurisdiction

This ordinance shall apply to all properties within Morgan County, West Virginia, exclusive of the incorporated towns and cities, properties of the United States Government, and of the West Virginia State Government.

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.

Section 2

A. 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. (c) The plural includes the singular. (d) The word "person" includes a corporation, unincorporated association or partnership, chartered associations, partnerships, limited partnerships, limited liability companies, natural persons, joint ventures, joint stock company, club, company, business trust, or the manager, agent, servant, officer or employee of any of them. (e) The term "shall" is mandatory and the term "may" is permissive. (f) The word "county" shall refer to Morgan County, West Virginia.

B. 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.

Code Enforcement Agency

For the purposes of this section, "Code Enforcement Agency" means either a code enforcement department as defined by 87 CSR 7-2, as may be amended, or an enforcement agency as permitted by subsection (c) of W. Va. Code § 7-1-3ff (2009).

A Code Enforcement Agency is that agency of the Morgan County Commission 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 (or other technically qualified county employee or consulting engineer), County Health Officer (or his or her designee), an appointed Fire Chief, the County Litter Control Officer, and two other members at large selected by the County Commission to serve two-year terms. The Sheriff is an ex officio member and the official charged with enforcing the orders of the County Commission, and includes any lawfully appointed agent of the Enforcement Agency.

Commission

The County Commission of Morgan County, West Virginia.

Commissioner

An elected member of the County Commission of Morgan 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, and shall include the merged health departments of Berkeley County and Morgan County.

County Health Officer

A physician appointed by the Berkeley/Morgan 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.

Disaster

Disaster means 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.

Deed

A written instrument, signed and delivered, by which a person transfers and conveys title to real estate to another person, and recorded (or of record) with the Office of the Clerk of the County Commission of Morgan County.

Deed of Trust

A written instrument by which legal title to real estate is placed in one or more trustees to secure the payment of a sum of money or the performance of other conditions, which serves the purpose and function of a mortgage and is recorded (or of record) in the Office of the Clerk of the County Commission of Morgan County.

Easement

A lawfully acquired right or privilege to use a parcel of land or portion thereof for a specified purpose such as a road, and recorded in the Office of the Clerk of the County Commission of Morgan County, or evidenced by a final Order of the Circuit Court of Morgan County or the West Virginia Supreme Court of Appeals.

Floodplain Area

(1) A relatively flat or low land area, adjoining a river, stream or watercourse which is subject to partial or complete inundation; (2) An area subject to the unusual and rapid accumulation of runoff of surface waters from any source.; (3) Areas subject to inundation by the one hundred year flood as determined by the Federal Emergency Management Agency (FEMA).

Historic Site

Any lot, parcel, historic structure or designated area which has been listed on the West Virginia or National Register of Historic Places.

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 in the Office of the Clerk of the County Commission of Morgan County.

Motor Vehicle

Any vehicle which is self-propelled by use of internal combustion engine or by electrical engine which is intended to be driven upon a highway.

Motor Vehicle, Junked

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

For the purposes of this section, "Owner" or "landowner" means a person who individually or jointly with others:

- a) Has legal title to the property, with or without actual possession of the property;
- b) Has charge, care or control of the property as owner or agent of the owner;
- c) Is an executor, administrator, trustee or guardian of the estate of the owner;
- d) Is the agent of the owner for the purposes of managing, controlling or collecting rents; or
- e) May control or direct the management or disposition of the 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 lands including improvements and fixtures thereon and property of any nature appurtenant thereto or used in connection therewith, and every estate, interest and right, legal or equitable therein including terms for years.

Right-of-Way

See definition of Easement.

Road

A prepared surface within a right-of-way which is intended for vehicular use. Road does not include shoulders.

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, or as defined in the Morgan County Salvage Yard Ordinance.

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 as defined in the Morgan County Salvage Yard Ordinance.

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

Anything constructed, the use of which requires fixed 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

Slum area shall mean an area in which there is a predominance of buildings or improvements (or which is predominantly residential in character), and which, by reason of dilapidation, deterioration, age or obsolescence, inadequate provision for ventilation, light, air, sanitation, or open spaces, high density of population and overcrowding, 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 resubdivision and, when appropriate to the context, shall relate to the land subdivided,

including the definitions contained in the Morgan County Subdivision Ordinance, as amended.

Toxic Substance

Means any substance which because of its quantity, concentration or physical, chemical or infectious characteristics may (1) cause, or significantly contribute to an increase in mortality or an increase in serious irreversible, or incapacitating or reversible illness; or (2) pose a substantial present or potential hazard to human health, exclusive of any application of substances for bona fide farming operations, and shall include the definition of toxic substance as defined as those chemicals defined as hazardous substances under section 313 of the federal Superfund Amendments and Reauthorization Act of 1986 (SARA Title III), including any subsequent amendments, and sections 101(14) and 102 of the federal Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), as amended.

Unsafe, Unsanitary, Dangerous or Detrimental

“Unsafe, unsanitary, dangerous or detrimental to the public safety or welfare” means:

a) Any door, aisle, passageway, stairway, exit or other means of egress that does not conform to the approved building or fire code of the jurisdiction as related to the requirements for existing buildings;

b) The walking surface of any aisle, passageway, stairway, exit or other means of egress is so warped, worn loose, torn or otherwise unsafe as to not provide safe and adequate means of egress;

c) Any portion of a dwelling, building, structure or appurtenance that has been damaged by fire, earthquake, wind, flood, deterioration, neglect, abandonment, vandalism or by any other cause to an extent that it is likely to partially or completely collapse, or to become detached or dislodged;

d) Any portion of a structure or building, or any member, appurtenance or ornamentation on the exterior that is not of sufficient strength or stability, or is not so anchored, attached or fastened in place so as to be capable of resisting natural or artificial loads of one and one-half the original designed value;

e) The dwelling, building or structure, or part of the building or structure, because of dilapidation, deterioration, decay, faulty construction, the removal or movement of some portion of the ground necessary for the support, or for any other reason, is likely to partially or completely collapse, or some portion of the foundation or underpinning of the building or structure is likely to fail or give way;

f) The dwelling, building or structure, or any portion thereof, which is clearly unsafe for its use;

g) The dwelling, building or structure is neglected, damaged, dilapidated, unsecured or abandoned so as to become an attractive nuisance to children, becomes a harbor for vagrants, criminals, criminal activity or enables persons to resort to the dwelling, building or structure for committing a nuisance or an unlawful act;

h) Any dwelling, building or structure constructed, exists or maintained in violation of any specific requirement or prohibition applicable to any dwelling, building or structure provided by the approved building or fire code of the jurisdiction or of any law or ordinance that presents either a substantial risk of fire, building collapse or any other threat to life and safety;

i) A dwelling, building or structure, used or intended to be used for dwelling purposes, because of inadequate maintenance, dilapidation, decay, contamination by any hazardous substance or material including, but not limited to, substance resulting from the illegal manufacture of drugs, damage, faulty construction or arrangement, inadequate light, ventilation, mechanical or plumbing system, or otherwise, is determined by the code enforcement agency to be unsanitary, unfit for human habitation or in such a condition that is likely to cause sickness or disease;

j) Any dwelling, building or structure, because of a lack of sufficient or proper fire resistance-rated construction, fire protection systems, electrical system, fuel connections, mechanical system, plumbing system or other cause, is determined by the code official enforcement agency to be a threat to life or health; or

k) Any portion of a building that remains on a site after the demolition or destruction of the building or structure, or whenever any building or structure is abandoned.

Section 3

A. Meetings

1. The members of Enforcement Agency shall meet at least once a month. The Enforcement Agency shall establish and publish a time, location and agenda for the regular monthly meeting. The Enforcement Agency must post a notice of any other special meeting at or near the entrance to the Morgan County Courthouse no less than forty-eight (48) hours before such meeting and on the Morgan County Commission's website. The Notice, agenda and meetings shall comply with the requirements of the Open Governmental Proceedings Act, W. Va. Code § 6-9A-1 et seq.

2. At the first meeting of the Enforcement Agency and on the one (1) year anniversary date thereafter, the members of the Enforcement Agency shall appoint: one of its members to serve as its President, and one of its members to serve as its Vice-President and one of its members to serve as its Secretary. Each member so appointed to the Office of President, Vice-President or Secretary shall serve a one (1) year term of office or until replaced.

3. Three members of the Enforcement Agency in attendance at the meeting shall constitute a quorum.

4. Meetings of the Enforcement Agency shall comply with the requirements of the Open Governmental Proceedings Act, W. Va. Code § 6-9A-1 et seq., and in general be conducted in accordance with Roberts Rules of Order.

5. At any public meeting, the Enforcement Agency shall receive complaints from the general public and/or other individuals or parties concerning: dwellings or other buildings or any combination thereof that may be unsafe, unsanitary, dangerous or detrimental to the public safety or welfare, or any other conditions prevailing in these dwellings or other buildings whether used for human habitation or not, which would cause such dwellings or other buildings to be unsafe, unsanitary, dangerous or detrimental to the public safety or welfare whether the result of natural or manmade force or effect; and complaints concerning accumulation of refuse or debris, overgrown vegetation or toxic spillage or toxic seepage located on private lands which may be deemed to be unsafe, unsanitary, dangerous or detrimental to the public safety or welfare whether the result of natural or manmade force or effect.

6. The members of the Enforcement Agency may, if a quorum is present, by a majority vote of those present, accept the complaint for investigation by the Enforcement Agency in accordance with the Rules for Conducting Investigations, Section B herein.

7. Upon the completion of the investigation of the citizen's complaint, and without further public input required, the members of the Enforcement Agency, relying upon the investigation report, by a majority vote of those members present in the public session may:

- a) dismiss the citizen's complaint; or
- b) continue the matter over until a later meeting to permit further investigation; or
- c) adopt an agreement to remedy deficiencies and continue the matter over until a later 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 meeting; or
- e) 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 (or other technically qualified county employee or consulting engineer) to initiate proceedings before the County Commission by petition/complaint 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 or building in question within a reasonable time; or to remove or clean up any accumulation of refuse or debris, overgrown vegetation or toxic spillage or toxic seepage within a reasonable time; and to impose daily civil monetary penalties upon the property owner who fails to obey the order of the County Commission; and if necessary, to request that the County Commission advertise for and seek a contractor to make the ordered repairs, alterations, improvements, demolition, removal or clean up; and to institute a civil

proceeding in the Circuit Court of Morgan County, West Virginia to subject the private land in question to a lien to satisfy: the 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 and to order the private land in question sold to satisfy this lien; and order and decree that the contractor may enter upon the private land in question to perform the ordered repairs, alterations, improvements, demolition, removal or clean up. All improvements made to structures/properties must be in compliance with applicable ordinances currently in effect.

B. Enforcement Agency Rules for Conducting Investigations

1. When a code enforcement agency official enters the premises of the property for investigating or inspecting any structure, dwelling or building, the investigation shall be performed to minimize the inconvenience to the owner or persons in possession and shall be consistent with the following:

a) Except in exigent circumstances and as permitted by law, the enforcement agency shall provide reasonable advance notice to the owner and request permission from the owner to enter the property.

b) If the owner cannot be located after reasonable inquiry by the code enforcement agency as required by this section, or if the owner refuses entry, the code enforcement agency may obtain an administrative search warrant from either the magistrate court or the circuit court located in the jurisdiction of the county where the structure, dwelling or building is located. Before obtaining an administrative search warrant, a code enforcement agency official is required to make a sworn statement and prima facie case showing that the code enforcement agency was unable to gain access to the structure, dwelling or building after reasonable and good faith efforts, and that there is a legitimate and substantial safety concern involving the structure, dwelling or building that supports the requested entry.

c) if granted by the court, and if the owner can be located, the code enforcement agency shall provide the owner a copy of the administrative search warrant five days before entering the property. If applicable, the code enforcement agency shall also provide the same notice to any tenant or other person in possession of the structure, dwelling or building.

(1) Entry is for the sole purpose of inspection of the structure, dwelling or building for unsafe or unsanitary conditions and not for the purpose of criminal prosecution or gathering evidence for use in any criminal charge or proceeding unrelated to the unsafe or unsanitary condition of the structure, dwelling or building.

(2) The code enforcement agency shall produce a written notice containing the date of the last inspection, the name of the inspector, a reasonable description of the unsafe, unsanitary, dangerous, or detrimental condition(s), the corrective measures required, the allotted time to correct the substandard condition(s) and the allotted time the owner has to apply to the circuit court for a temporary injunction or other similar relief restraining action by the enforcement agency.

(3) The notice shall be served upon the owner or landowner by conspicuously posting and attaching a copy of the notice to the subject property, and by

servicing the notice on the owner or landowner in the same manner as service of a complaint.

(4) If the code enforcement agency cannot effect personal service on the owner, a code enforcement agency official shall subscribe a written affidavit, to be maintained for a minimum of two years, that demonstrates the structure, dwelling or building is unsafe, unsanitary, dangerous or detrimental to the public safety or welfare, and sets forth the basis in reasonable detail including documentation of same, and memorializes the code enforcement agency official's efforts to contact or get permission for entry and corrective action from the owner; and the code enforcement agency shall publish notice of its intent to enter the property for the purpose of demolition or correction, along with the address of the property, the name of the owner(s) and the date of the proposed action, as a Class II legal advertisement consistent with the requirements of section two, article three, chapter fifty-nine of this code, the first of which shall run at least thirty days before the date of the proposed action by the enforcement agency, and the last being no later than twenty days before the date of the proposed action by the enforcement agency.

(5) If there is no response to the notice by the owner or landowner in the time specified in the notice, then the County shall have the authority to proceed in correction or demolition of the subject dwelling, building or structure.

2. Upon the members of the Enforcement Agency voting to accept the citizen's complaint and conduct an investigation, the County Engineer (or other technically qualified county employee or consulting engineer) shall contact the following public officials and ascertain the following information, if available:

a) Sheriff's tax office to ascertain the property owner's mailing address, the tax district, tax map, parcel number for the property in question, and tax liens if known by the Sheriff's tax office and the status of taxes paid or due and owing on this property.

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

c) Assessor's Office to ascertain lot or parcel size its assessed value for both the lands and buildings.

d) County Health Department and/or Public Service District to ascertain the type of water and sewer system serving the property in question.

e) County Fire Department(s) and/or E911 Communication Center to ascertain the number of fire service or ambulance calls to that property in the last year.

f) Planning Commission or Staff to ascertain the number of improved lots in that or nearby subdivisions; location of the property in question insofar as flood prone areas, river, streams, ponds, are concerned; the location of nearby schools, hospitals and residences in the immediate area and in the watershed area.

g) West Virginia State Police and/or Morgan County Sheriff's Department to ascertain the nature and number of law enforcement problems originating from the property in question in the last year.

3. The County Engineer (or other technically qualified county employee or consulting engineer) shall deliver notice to the property owner by United States Mail postage prepaid and 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 the County Engineer (or other technically qualified county employee or consulting engineer), the Morgan County Sheriff 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 as required by the Enforcement Agency's Rules for Investigations set forth in Section 3, hereof.

4. The County Engineer (or other technically qualified county employee or consulting engineer) shall, whenever possible, take written statements from the complaining party, the property owner, neighbors and other interested persons and attach these statements to the investigative report.

5. The County Engineer (or other technically qualified county employee or consulting engineer) shall at the conclusion of the investigation, prepare a written investigative report and provide a copy to each member of the Enforcement Agency.

6. The County Engineer (or other technically qualified county employee or consulting engineer) may propose an agreement between the property owner and the Enforcement Agency whereby the property owner agrees to remedy all deficiencies to the satisfaction of the Enforcement Agency within a designated period of time.

Section 4

A. Institution of Proceedings before the County Commission

If an agreement for the repair, remediation, restoration, or demolition of the unsafe, unsanitary, or dangerous condition cannot be reached with the Owner, the County Engineer (or other technically qualified county employee or consulting engineer) may file in the Office of the Clerk of the County Commission of Morgan County, a petition/complaint on behalf of the Enforcement Agency seeking an order of the County Commission requiring the property owner to repair, alter, improve, vacate, remove, close, clean up or demolish the dwelling or building in question within a reasonable time; or to remove or clean up any accumulation of refuse or debris, overgrown vegetation or toxic spillage or toxic seepage within a reasonable time; and to impose daily civil monetary penalties upon the property owner who fails to obey the order of the County Commission; and if necessary, to request that the County Commission advertise

for and seek a contractor to make the ordered repairs, alterations, improvements, demolition, removal or clean up; and to institute a civil proceeding the Circuit Court of Morgan County, West Virginia to subject the private land in question to a lien to satisfy: the 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 and to order the private land in question sold to satisfy this lien; and order and decree that the contractor may enter upon the private land in question to perform the ordered repairs, alterations, improvements, demolition, removal or clean up.

The petition/complaint shall state the findings and recommendations of the Enforcement Agency and inform the property owner that upon being served with this petition/complaint, unless the owner or owners of the property shall file with the Clerk of the County Commission of Morgan County at the address of 77 Fairfax Street, Room 101 Berkeley Springs, WV 25411, a written request for a hearing before the County Commission within ten (10) days of receipt of the complaint/petition, an order will be issued by the County Commission implementing the recommendations of the Enforcement Agency.

B. Service of a Copy of the Enforcement Agency Petition/Complaint upon the Property Owner

The Clerk of the County Commission of Morgan County shall receive and file the petition/complaint of the Enforcement Agency and shall cause a copy thereof to be served upon the property owner in the manner provided in Rule Four (4) of the West Virginia Rules of Civil Procedure. The Clerk of the County Commission of Morgan County shall note on the original petition/complaint the date service was accomplished if by personal service, and cause the person making personal service to certify that personal service was performed on that date. A copy of this return of service shall be provided by the Clerk of the County Commission to the County Engineer (or other technically qualified county employee or consulting engineer). If personal service cannot be accomplished, then service shall be made in accordance with the remaining provisions in Rule Four (4) of the West Virginia Rules of Civil Procedure. In the event it becomes necessary to use subsequent services, the address of any mailing(s) shall be the address maintained on the tax records by the tax department in the Office of the Morgan County Sheriff.

C. Failure of the Property Owner to Request a Hearing before the County Commission upon the Petition/Complaint of the Enforcement Agency

If the property owner or owners shall fail to file with Clerk of the County Commission of Morgan County, within ten (10) days of service of the petition/complaint upon said owner or owners, a written request for a hearing before the County

Commission upon the petition/complaint of the Enforcement Agency, the County Commission may enter an order implementing the determinations and recommendations of the Enforcement Agency and ordering, as the case may be, the property owner to repair, alter, improve, vacate, remove, close, clean up or demolish the dwelling or building in question within a reasonable time or to remove or clean up any accumulation of refuse or debris, overgrown vegetation or toxic spillage or toxic seepage within a reasonable time and to impose daily civil monetary penalties on any owner or owners who fail to obey such an order. The Clerk of the County Commission of Morgan County shall cause such an order to be filed and an attested copy of such order to be served upon the property owner or owners by United States mail postage prepaid and be certified mail, return receipt requested, at the same address used by the Sheriff to mail the property owner their tax bill. The Clerk of the County Commission of Morgan County shall note on the file copy of the order the date of the mailing and the address to which it was mailed.

D. Setting a Date and Time for a Hearing on the Petition/Complaint of the Enforcement Agency When Requested by the Property Owner

After receipt of a written request for a hearing upon the Enforcement Agency's petition/complaint by the property owner, the County Commission at its next regular meeting shall enter an order setting this matter down for hearing at a particular time and date within twenty (20) days of the receipt of the written request. In that regards the Clerk of the County Commission shall note the date of the filing of the written request upon the face of the written request. Upon the entry of the order setting this matter down for hearing, the Clerk of the County Commission shall file the original order and mail attested copies thereof to the property owner, United States Mail postage prepaid and by certified mail, return receipt requested, to the address of the property owner at the return address specified in the property owner's written request or the address utilized by the Sheriff for the property owner's tax bill. The Clerk of the County Commission shall note on the filed order the address, date and method of mailing of each attested copy mailed.

E. Hearing before the County Commission

The hearing before the County Commission upon the petition/complaint of the Enforcement Agency 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. The President will note on the record of presence or absence of each of the litigants in person, pro se and or by their respective counsel. Witnesses will 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 a view. Facts discerned by Commission members on the view are evidence that may be considered. Each party shall have the right to make an opening and a closing statement. The Enforcement Agency has the burden of proving its allegations by a preponderance of the evidence and shall have the duty to go forward with the evidence.

F. Findings of Fact, Determinations, Conclusions of Law, Orders, Civil Monetary Penalties by the County Commission

1. At the conclusion of the Section 4 hearing, the County Commission shall by a majority vote, make findings of fact, determinations and conclusions of law as to whether a dwelling or building:

a) Is unfit for human habitation due to dilapidation, whether the result of natural or manmade force or effect, which would cause the dwelling or other buildings to be unsafe, unsanitary, dangerous and/or detrimental to the public safety or welfare; and/or

b) Has defects that increase the hazard of fire, accidents or other calamities, whether the result of natural or manmade force or effect, which would cause the dwelling or other building to be unsafe, unsanitary, dangerous or detrimental to the public safety or welfare; and/or

c) Lacks ventilation, light or sanitary facilities whether the result of natural or manmade force or effect which would cause the dwelling or other building to be unsafe, unsanitary, dangerous or detrimental to the public safety or welfare; and/or

d) Has other conditions prevailing therein 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.

2. If these findings of fact, determinations and conclusion of law are made, the County Commission may by majority vote, 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 and to impose a daily civil monetary penalty of fifty dollars (\$ 50.00) 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 to the satisfaction of the County Commission and 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 to have occurred.

Section 5

Procedures for Contracting with Vendors to Perform Ordered Repairs, Alternation, Improvements, Demolition, Removal or Clean Up upon the Failure of the Property Owner to Comply with the Order of the County Commission

Upon the failure of the property owner or owners to perform the ordered duties and obligations as set forth in the order of the County Commission within the time limitation set by said order, the County Commission shall advertise for and seek contractors to make the ordered repairs, alterations, improvements, demolition, removal or clean up, and may enter into any contract with any such contractor to accomplish the ordered repairs, alteration, improvements, demolition removal or clean up. Any such bids awarded shall require product and debris removed from the site to be deposited in a licensed landfill.

A civil proceeding shall be brought in the Circuit Court of Morgan County, West Virginia, by the county commission against the owner or owners of the private land which is the subject matter of the order of the county commission to subject the private land in question to a lien for the amount of the contractor's costs in making these ordered repairs, alterations or improvements, or ordered demolition, removal or clean up together with any daily civil monetary penalty imposed and reasonable attorney fees and court costs and to order and decree the sale of the private land in question to satisfy the lien, and to order and decree that the contractor may enter upon the private land in question at any and all times necessary to make improvements, or ordered repairs, alterations or improvements, or ordered demolition, removal or clean up. In addition, the county commission shall have authority to institute a civil action in the Circuit Court of Morgan County, West Virginia against the landowner or other responsibility party for 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.

This County Commission shall have the power and authority and accept grants, subsidies, donations, and services in kind consistent with the objectives of this section.

Section 6

Lien on Insurance Proceeds for Debris Removal

1. Notwithstanding any provision of this code to the contrary, the receipt by an insurance company of a claim under a fire insurance policy for a total loss to real

property creates a statutory lien on the insurance proceeds payable for such claim in favor of the county in which the property is situate, in an amount equal to the greater of: (A) \$5,000; or (B) ten percent of the policy limits for loss to the real property, including any coverage for debris removal: Provided, That the amount of the lien may not exceed the policy limits of coverage for the real property plus debris removal, if any: Provided, however, That the lien created by this subsection does not apply to proceeds payable under the policy for any losses other than those to the real property insured, including loss of personal property and payments for temporary housing and related living expenses: Provided, further, That the lien amount imposed against proceeds payable under policies issued by farmers' mutual fire insurance companies pursuant to article twenty-two, chapter thirty-three of this code shall in no event exceed ten percent of the policy limits for loss to the real property, including any coverage for debris removal.

2. Within ten days of a determination by the insurer that a covered claim constitutes a total loss, the insurance company shall send certified letters to the insured and, as applicable, to the sheriff of the county in which the property is situate, stating any amount claimed; the limits and conditions of coverage; the location of the property; the terms and limits of coverage designated by the insurance policy for securing, cleanup and removal, if any; any time limitations imposed on the insured for securing, cleanup and removal; and the policyholder's name and mailing address.

3. The lien created pursuant to this section shall be discharged unless the county, within thirty days of the receipt of the letter sent in accordance with subsection (b) of this section, perfects and preserves such lien by filing a notice thereof with the clerk of the county commission of the county in which such property is situate: Provided, That upon filing of a notice of lien in accordance with this section, the amount of the lien created by this section shall thereafter be for the estimated cost of cleanup contained in such notice of lien, subject to the limitation stated in this section with respect to policies issued by farmers' mutual insurance companies: Provided, however, That the discharge of a lien based on the county's failure to file a notice pursuant to this subdivision does not affect any other remedies the county may have with respect to such property or the liability of the property owner.

a) A notice of lien filed in accordance with this subsection shall include a statement of the estimated cost to the county for the cleanup of the damaged property, removal of any refuse, debris, remnants or remains of the building and appurtenances, and securing the structure: Provided, that such estimated cost may not exceed the amount of the lien created pursuant to subsection (1) of this section.

b) A notice of lien filed in accordance with this section shall be notarized and shall be sufficient if in form and effect as follows:

Notice of Lien for Debris Removal

To (name of insurance company):

You will please take notice that the undersigned, on behalf of the Morgan County Commission, Berkeley Springs, West Virginia, has estimated that the cost of

removing debris and otherwise cleaning up (a certain building, other structure or improvement) on real estate known as (an adequate and ascertainable description of the real estate) would be (estimated cleanup cost).

You are further notified that, in order to secure the payment of the amount allowed by the provisions of subsection (a), section one, article ten-e, chapter thirty-eight of the West Virginia Code, the undersigned, on behalf of the county and pursuant to the provisions of section one, article ten-e, chapter thirty-eight of the West Virginia Code, claims a lien in such amount upon the interest of (policyholder's name) in a fire insurance policy (the policy number or other identifying information) issued by (the insurance company's name and address). (Signature of County officer exercising the power and authority commonly exercised by a sheriff).

The clerk of the county commission shall, upon the filing of such notice, index the same in a book in his or her office called "Debris Removal Liens" as a lien against the insurance proceeds in favor of the municipality or county and shall send a copy of the notice to the insurer. §38-10E-2.

4. Release of Lien.

a) A lien recorded in accordance with section one of this Section 6 shall be released if the county determines that the property has been satisfactorily cleaned up or repaired, the county determines that satisfactory measures have been taken to assure that the property will be repaired or cleaned up within a reasonable time, with the property owner first being given the opportunity to make said clean-up or removal within sixty days, or that the insurance company has paid the amount of the lien to the county or such person designated to receive such moneys: Provided, That if the insurer has paid the amount of the lien to the sheriff and the subsequent cost of cleanup is less than that amount, the difference shall be returned to the insurer.

b) Upon the satisfaction of a lien the sheriff shall sign a release and cause it to be recorded by the clerk of the county commission in the "Debris Removal Liens" book and, immediately upon recordation, he or she shall send a certified copy thereof to the insurance company: Provided, That if a lien has been paid or otherwise satisfied and the sheriff refuses to cause such lien to be released, the insurance company or policyholder may apply to the circuit court for an order compelling the clerk to record a release.

Section 7

Penalties

Anyone who shall have been found to have violated any provisions of this Ordinance, in accordance with the Due Process procedures included herein, shall be

guilty of a misdemeanor and, in addition to the remedies provided for in this Ordinance, shall be fined \$50.00 for each day a violation is found to have occurred and for each day thereafter that said violation is not remediated as provided by this Ordinance. (W. Va. Code § 7-1-3(kk)).

Section 8

Appeals of Decisions of County Commission to Circuit Court

Appeals from the County Commission of decisions made in the Section 4 hearings to Circuit Court shall be in accordance with the provisions of Article Three (3), Chapter Fifty-eight (58) of the Code of West Virginia as amended (W. Va. Code § 58-3-1, et seq.), and shall be filed within four (4) months from the entry of the decision or Order being appealed (W. Va. Code § 58-3-4).

ADOPTED this ____ day of _____ 2018.

Approved:
The County Commission of Morgan County

Joel Tuttle, President

Robert Ford, Commissioner

Ken Reed, Commissioner

MORGAN COUNTY UNSAFE STRUCTURE AND PROPERTY ENFORCEMENT ORDINANCE

Please complete the following form and return to:

Morgan County Commission
Office 77 Fairfax Street, Room 101
Berkeley Springs, WV 25411
Phone: (304)258-8540 Fax: (304)258-7305
Hours: Mon-Fri 9:00am - 5:00pm

Property Owner (if known): _____

Location of Property: _____

Problem and/or Complaint: _____

Contact Information:
Name: _____
Address: _____
Phone Number: _____

Date: _____ Signature: _____

*******(for office use only)*******

Date reviewed by
Board: _____

Approved Rejected

Comments: _____

