#### RALEIGH COUNTY PROPERTY SAFETY ORDINANCE\*

(Formerly Known as "ABANDONED BUILDING ORDINANCE")

\*note: currently appointed members of the Abandoned Building Enforcement Agency shall automatically continue serving their remaining terms under this new ordinance.

Reference: From West Virginia State Code:

\$7-1-3ff. Authority of county commission to regulate unsafe or unsanitary structures and refuse on private land; authority to establish an enforcement agency; county litter control officers; procedure for complaints; lien and sale of land to recover costs; entry on land to perform repairs and alterations or to satisfy lien; receipt of grants and subsidies.

#### AN ORDINANCE TO:

- Regulate Unsafe Structures or Article 1, Section 1.4 (A)
   Unsanitary Structures
- Regulate Refuse on private Article 1, Section 1.4 (B)
- Establish an Enforcement Article 3, Section 3.1 (A) Agency
- Establish County Litter Article 3, Section 3.1 (B) Control Officer(s)
- Establish procedures for the Article 3, Section 3.3 Enforcement Agency
- Establish procedures for Article 4 complaints brought before the County Commission
- Establish procedures for the County Commission to enter on private land and to perform repairs and alterations or to satisfy lien;
- Establish procedures for the County Commission to place liens and to perform sale of lands to recover costs; and
- Establish procedures for the County Commission to receive grants and subsidies.

- Article 5

- Article 6, Section 1.1

- Article 6, Section 1.2

BE IT ORDAINED AND ORDERED by the County Commission of Raleigh County, West Virginia, a Public Body corporate of Raleigh 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 thirty (30) days after the date on which the County Commission of Raleigh County, West Virginia (Commission) acts to adopt it.

Section 1.3 Title

This ordinance shall be titled the <u>RALEIGH COUNTY PROPERTY</u> <u>SAFETY ORDINANCE</u>.

Section 1.4 Purpose

The purpose of this ordinance is to promote the public safety or welfare of Raleigh County, West Virginia by enacting the following:

(A) The Commission shall have authority to regulate Unsafe Structures or Unsanitary Structures: by requiring, as the case may be: the repair, alteration, improvement, vacating, closing, removal or demolition of **Dwellings** or other Buildings or Unsafe Structures or Unsanitary Structures, or any combination thereof, 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 other conditions prevailing in any Dwelling or Building or Unsafe Structures or Unsanitary Structures, 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, exclusive of **Buildings** utilized for farm purposes on land actually being used for farming; and

- (B) The Commission shall have authority to regulate Refuse on private land by requiring, as the case may be: the removal and clean up of any accumulation of Refuse or debris, 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.
- (C) The Commission shall have authority to regulate Vegetation on private land by requiring, as the case may be, the removal and clean up of any Vegetation for the purpose of accessing Structures and Refuse indicated above in (A) and (B).

# Section 1.5 Jurisdiction

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

# 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.
- C. The plural includes the singular.
- D. The word "person" includes a corporation, unincorporated association or partnership, chartered associations, partnerships, 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 Raleigh County, West Virginia.
- G. The defined words in below Section 2.2 are generally presented throughout this entire ordinance in bold Title Case (e.g., Citizen Complaint) to assist the person reading this document.

#### Section 2.2 Definitions

Building Any Structure on a parcel of land that has one or more walls.

Citizen Complaint

A Citizen Complaint is initiated by a County Resident (refer to definition) completing a Citizen Complaint Form in its entirety. This form is located in Appendix A.

**Commission** The County **Commission** of Raleigh County, West Virginia.

#### Commissioner

An elected member of the County **Commission** of Raleigh 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 Raleigh 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 Raleigh County and who is a member of the **Enforcement Agency**.

# County Resident

A person who lives in or regularly visits
Raleigh County, a person who conducts
business within Raleigh County, or a person
who owns **Real Property** within Raleigh
County.

#### Deed

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

#### 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.

#### Dilapidated

Falling to pieces or into disrepair; broken down; shabby and neglected.

#### Dwelling

A Dwelling is any Structure capable of providing shelter to a person(s) and has the potential to be an Unsafe Structure and/or Unsanitary Structure. This includes campers, boats, inoperable Vehicles, box trailers, storage sheds, tree houses, commercial Buildings, storage Buildings, homes, tiny homes, hunting stands, leantos, etc.

#### 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 Raleigh 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 Raleigh County is an ex officio member. (Also known as RCPSEA)

#### 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 Raleigh 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. (See "**Vehicle**")

# 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**. (See "Vehicle")

#### Owner

A person (or persons) who holds legal title to the real estate or personal property. Owner is also the party associated with the property regarding enforcement of this ordinance which can include tenants, occupants, or persons leasing the real estate or property in question.

### Owner's Point of Contact

A person (or persons) representing the Owner such as a family member, friend, or power of attorney. When possible, the County Engineer (or other technically qualified county employee or consulting engineer) should acquire documentation supporting the role of this person(s) regarding the Owner.

#### 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.

#### RCPSEA

Raleigh County Property Safety Enforcement Agency - (refer to definition: Enforcement Agency)

RCPSEA Complaint A document intended for the Commission, generated by the **Enforcement Agency** 

(RCPSEA) stating their findings and recommendations resulting from the investigation of the property in question. Note: this should not be confused with the Citizen Complaint.

Refuse

Anything thrown away or rejected as worthless or useless: waste; trash; rubbish.

Structure

Any constructed enclosure, which involves a stationary location on the ground persisting more than 30-days; or, anything fixed to something having such location. A Structure does not include fences, individual driveways, or retaining walls. Structures can include prefabricated Buildings, tree-stands, tree-houses, automobiles, campers, box trailers, boats and appliances.

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.

Unsafe Structure A Dwelling, Building, or other Structure that due to dilapidation or defects increasing the hazard of: a) fire; b) accidents; or c) other calamities prevailing is therefore dangerous or detrimental to the public safety or welfare, whether used for human habitation or not, whether the result of natural or manmade force or effect. Example: a refrigerator with a locking handle is considered a **Structure** that has the defect known to cause entrapment and suffocation of a child entering the Structure, therefore dangerous or detrimental to the public safety.

# Unsanitary Structure

A Dwelling, Building, or other Structure that due to lack of Ventilation, light or sanitary facilities, or any other conditions prevailing is therefore unsafe for human health or unsanitary for human health, whether used for human habitation or not, whether the result of natural or manmade force or effect. Example: a motor home, unable to move due to deteriorated wheel bearings and flat tires, also moldinfested and containing fecal matter from animals.

#### Vegetation

Trees, shrubs, bushes, vines, grass, etc.

#### Vehicle

A device capable for the transporting of people, goods, shelter, or temporary living quarters. Note: A device that has been determined to not meet the definition of a "Vehicle" can then be evaluated as an Unsafe Structure and/or an Unsanitary Structure. For example, a Dilapidated yacht or camper would be considered a potentially Unsafe Structure (not a Vehicle) if it was deemed immovable (e.g., Owner is not able to demonstrate it can be moved to a new location within a reasonable time frame of 30-days). The Owner has the burden to demonstrate that the device can viably transport people, goods, shelter, or temporary living quarters to the satisfaction of the Enforcement Agency and/or Commission. Alternately, the Owner can meet the "Vehicle" definition by providing proof of up-to-date DMV registration and paid property tax receipts for the device in question.

#### Ventilation

The natural or mechanical process of supplying or circulating conditioned air or unconditioned air to any space, or reproving air from any space.

### ARTICLE 3 Enforcement Agency

# Section 3.1 Membership

- (A) Establishment of an Enforcement Agency: The Commission shall designate an Enforcement Agency (RCPSEA) which shall consist of the County Engineer (or other technically qualified county employee or consulting engineer), County Health Officer (or his or her designee), a Fire Chief from a county fire company, the County Litter Control Officer, if the Commission chooses to hire one, and two members-atlarge selected by the county Commission to serve two-year terms. The county sheriff (or his or her designee) shall serve as an ex officio member of the Enforcement Agency.
- (B) Establishment of County Litter Control Officers: The Commission may choose to hire Litter Control Officer(s). In addition to the powers and duties imposed by this section, County Litter Control Officers shall have authority to issue citations for open dumps, as prohibited by \$22-15-10(a) of this code, unlawful disposal of litter, as prohibited by \$22-15A-4 of this code, and failure to provide proof of proper disposal of solid waste, as prohibited by \$22C-4-10(a) of this code, after completing a training course offered by the West Virginia Department of Environmental Protection: Provided, That any litter control officer who is trained and certified as a lawenforcement officer and whose certification is active has the same authority as any other law-enforcement officer to enforce all litter laws in this code. Nothing in this subsection supersedes the authority or duty of the Department of Environmental Protection or other lawenforcement officers to preserve law and order and enforce the litter control program.

# Section 3.2 Meetings

A. Members of the **Enforcement Agency** shall, at a minimum, meet on a quarterly basis in public session. The time and place to be determined by the membership. Three members in attendance at the meeting 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 public meetings, the **Enforcement Agency** shall receive **Citizen Complaints** from County Residents concerning:
  - 1. Unsafe Structures or Unsanitary Structures or Dwellings or other Buildings, 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.
  - 2. Accumulation of Refuse, debris, Vegetation, 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.
- Section 3.3 Procedures for the Enforcement Agency
  Enforcement Agency Rules for Accepting Citizen
  Complaints and Conducting Investigations
  - A. Submission of Citizen Complaints:
    - Citizen Complaints shall only be accepted from a County Resident(s) affected by the Unsafe Structure, Unsanitary Structure and/or Refuse.
       Refer to definition of "County Resident."
    - 2. Complainants shall complete the **Citizen Complaint** Form in its entirety. The form is located in Appendix A.

- B. Procedure for **Citizen Complaint** Investigation and **Owner** Notification:
  - 1. Upon the members voting to accept the Citizen Complaint and conduct an investigation, the County Engineer or other technically qualified county employee or consulting engineer ascertains the following information for the property in question: the Owner's mailing address (from the Sheriff's tax office), the tax district, tax map and parcel number, Judgment Liens, tax liens, mechanics liens, Deed of Trust liens, status of ownership (by Deed, will, etc.).
  - 2. The County Engineer (or other technically qualified county employee or consulting engineer) shall deliver notice to the Owner by United States Mail postage prepaid and by certified mail, return receipt requested, to the Owner's address as ascertained from the Sheriff's tax office informing the Owner of the general nature of the Citizen Complaint and informing the Owner that 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 Citizen Complaint. The notice shall inform the 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 such entrance upon the property in question shall be made in such a manner as to cause the least possible inconvenience to the persons in possession.
  - 3. The **County Engineer** (or other technically qualified county employee or consulting engineer) shall, whenever possible, take written statements from the complaining party, the **Owner**, neighbors and other interested persons and attach these statements to the investigative report. Written documentation can also establish the **Owner's Point of Contact**.
  - 4. The **County Engineer** (or other technically qualified county employee or consulting engineer) shall prepare a written investigative report and present the report to the members of the **Enforcement Agency**

at the next meeting of the **Enforcement Agency** where the investigative report shall be considered.

- 5. The County Engineer (or other technically qualified county employee or consulting engineer) may propose an agreement between the Owner and the Enforcement Agency whereby the Owner agrees to remedy all deficiencies to the satisfaction of the Enforcement Agency within a designated period of time.
- 6. Should the Owner not remedy the deficiencies to the satisfaction of the Enforcement Agency, then the Enforcement Agency may elect to bring this "Citizen Complaint" before the Commission as a "RCPSEA Complaint" using necessary legal steps—to order the Owner to remedy the deficiencies regarding his/her property as described in ARTICLE 4.

# ARTICLE 4 <u>Procedures for Submission of Complaints</u> (i.e., **RCPSEA**Complaints before the Commission)

# Section 4.1 Preparation for submitting RCPSEA Complaint(s):

- A. The Enforcement Agency shall have completed their investigation and determined that any: Unsafe Structure, Unsanitary Structure, Dwelling, Building, accumulation of Refuse or debris, toxic spillage or toxic seepage is unsafe, unsanitary, dangerous, detrimental to the public safety or welfare, and should be repaired, altered, improved, vacated, removed, closed, cleaned, or demolished. Vegetation inhibiting access to the above items should be indicated on the RCPSEA Complaint.
- B. The County Engineer or the County Litter Control Officer (or other technically qualified county employee or consulting engineer) shall, at the direction of the Enforcement Agency, be directed to initiate by petition/complaint (i.e., RCPSEA Complaint) an action before the Commission to seek an order of the Commission requiring the Owner to repair, alter, improve, vacate, remove, close, clean up, demolish the: Unsafe Structure(s), Unsanitary Structure(s), Dwelling(s), Building(s), accumulation of Refuse or debris, Vegetation, toxic spillage, or toxic seepage within a reasonable time.
- C. In the event the **Owner** does not comply with the order as indicated by the **Commission**, the **Enforcement Agency** shall preemptively include a request (as part of the **RCPSEA Complaint**) that the **Commission** perform the work indicated in the order and institute a civil proceeding in the Circuit Court of Raleigh County, West Virginia, to subject the private land in question to a lien , and eventually a forced sale to satisfy the costs of bringing the property in compliance with the order.

# Section 4.2 Proceedings before the Commission

A. RCPSEA Complaints shall be initiated by citation issued by the County Litter Control Officer or petition of the County Engineer (or other technically qualified county employee or consulting engineer) on behalf of and at the direction of the Enforcement Agency, but only after the Enforcement Agency has investigated and determined that

any: Unsafe Structure, Unsanitary Structure, Dwelling, Building, Structure, accumulation of Refuse or debris, overgrown Vegetation, toxic spillage or toxic seepage is unsafe, unsanitary, dangerous, detrimental to the public safety or welfare, and should be repaired, altered, improved, vacated, removed, closed, cleaned, or demolished.

- B. The **Commission** shall cause the **Owner** of the private land in question to be served with a copy of the **RCPSEA Complaint.** Service shall be accomplished in the manner provided in rule four of the West Virginia Rules of Civil Procedure.
- C. The RCPSEA Complaint shall state the findings and recommendations of the Enforcement Agency and that unless the Owner file a written request for a hearing before the Commission with the Clerk of the County Commission of Raleigh County at the address 215 Main Street, Beckley, West Virginia 25801 within 10 days of receipt of the RCPSEA Complaint, an order will be issued by the Commission implementing the recommendations of the Enforcement Agency. The Commission may also schedule the hearing, service accomplished to the Owner, also allowing the Owner 10 days to file the written request to a different hearing after receipt of the RCPSEA Complaint or date of legal advertisement.
- D. If the **Owner** files a request for a hearing, the **Commission** shall issue an order setting this matter down for hearing within 20 days. Hearings shall be recorded by electronic device or by court reporter. The West Virginia Rules of Evidence do not apply to the proceedings, but each party has the right to present evidence and examine and cross-examine all witnesses.
- E. The **Enforcement Agency** has the burden of proving its allegation by a preponderance of the evidence and has the duty to go forward with the evidence.
- F. At the conclusion of the hearing, the **Commission** shall make findings of fact, determinations, and conclusions of law as to whether the **Unsafe Structure(s)**, **Unsanitary Structure(s)**, **Dwelling** or **Building**: Is unfit for human habitation due to dilapidation; has defects that increase the hazard of fire, accidents, or other calamities; lacks **Ventilation**, light, or sanitary facilities; or any other conditions prevailing in the

Unsafe Structure(s), Unsanitary Structure(s),

Dwelling(s) or Building(s), whether used for human
habitation or not and whether the result of natural or
manmade force or effect, which would cause the Unsafe
Structure(s), Unsanitary Structure(s), Dwelling or other
Building to be unsafe, unsanitary, dangerous, or
detrimental to the public safety or welfare; or whether
there is an accumulation of Refuse or debris,

Vegetation, toxic spillage or toxic seepage on private
lands which is determined to be unsafe, unsanitary,
dangerous, or detrimental to the public safety or
welfare, whether the result of natural or manmade force
or effect.

- G. The Commission has authority to order the Owner thereof to repair, alter, improve, vacate, remove, close, clean up, or demolish the Unsafe Structure(s), Unsanitary Structure(s), Dwelling(s) or Building(s) in question or to remove or clean up any accumulation of Refuse or debris, or toxic spillage or toxic seepage within a reasonable time and to impose daily civil monetary penalties on the Owner(s) who fails to obey an order.
- H. The **Commission** has authority to order the **Owner(s)** to remove **Vegetation** that inhibits access to the **Structures** or area requiring improvement.
- I. Appeals from the **Commission** to the circuit court shall be in accordance with the provisions of the Code of West Virginia §58-3-1 et seq., as amended.

ARTICLE 5 Entry on Land to Perform Repairs and Alterations or to Satisfy Lien

Upon the failure of the **Owner** of the private land to perform the ordered duties and obligations as set forth in the order of the **Commission**, the **Commission** may make the ordered repairs, alterations, or improvements or the ordered demolition, removal, or clean up. The **Commission** may enter into any contract with any contractor to accomplish the ordered repairs, alterations, or improvements or the ordered demolition, removal, or clean up.

The **Commission** may remove: fencing, **Vegetation**, etc. to whatever extent necessary to gain access to the area on the private land to make the ordered repairs, alterations, improvements, demolition, removal, and/or clean up.

#### ARTICLE 6 Cost Recovery and Program Funding

#### Section 1.1 Lien and Sale of Land to Recover Costs

A civil proceeding may be brought in circuit court by the **Commission** against the **Owner** of the private land or other responsible party that the subject matter of the order of the **Commission** to subject the private land in question:

- (1) 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;
- (2) to order and decree the sale of the private land in question to satisfy the lien;
- (3) to order and decree that the contractor may enter upon the private land in question at any and all times necessary to make ordered repairs, alterations,

- or improvements, or ordered demolition, removal, or clean up; and
- (4) to order the payment of all costs incurred by the **Commission** with respect to the property and for reasonable attorney fees and court costs incurred in the prosecution of the action.
  - (5) The County Engineer (or other technically qualified county employee) shall, at the time the Order is issued from the Commission to the Owner, file a lien in the amount of five hundred dollars (\$500.00) against the property to cover the cost of the investigation and notice, and to serve as a record in the courthouse of this on-going legal process to any new person becoming involved with the property in question.

Section 1.2 Receipt of Grants and Subsidies

The **Commission** may receive and accept grants, subsidies, donations, and services in kind consistent with the objectives of this section.

ADOPTED this 19th day of May 2020, upon motion duly made by Commissioner Linda K. Epling, which motion was seconded by Commissioner David L. Tolliver and upon and no Commissioners voting against.

Attest - Daniel W. Moore, Clerk

David L. Tolliver, President

# **CITIZEN COMPLAINT FORM**

The following information must be submitted complete with Signature of Complainant:

Unsafe Property Information:	(Need Help Locating Information?: Call County Commission 304-255-9146)
Address of Unsafe Property:	
Tax District Tax Map No. Tax Parcel No.	
Name and Mailing Address of Owner(s) of above property in question: (Owner Phone No. if available)	
Describe the scope and nature of any hazardous conditions on this property which threatens the public health, safety and welfare of the community:  (continue on back of this sheet if more space is needed)	
I have submitted a photograph(s) of the	e unsafe property: ()YES, photo(s) attached
Thave submitted a photograph(e) of an	If not attached, indicate how photo(s) submitted:
L	
County Resident (or Citizen) Making Co	mplaint: (Please include telephone so we can to contact you if needed)
Name: Address:	
Address.	
Talanhana	
Telephone:	
Signature of Complainant	
Signature Date	
-	

Return this form & photo(s) to: Raleigh County Property Safety Enforcement Agency, 116  $\frac{1}{2}$  North Heber Street, Beckley, WV 25801