

# **PUBLIC NUISANCE AND PROPERTY MAINTENANCE ORDINANCE**

## **Chapter 1**

**The purpose of this ordinance is to promote the public health, safety and welfare of residents of Kanawha County, and to provide for the removal and abatement of unhealthy, noxious, dangerous and hazardous substances and conditions, at private expense.**

### **Section 101**

#### General

101.1 Title. These regulations shall be known as the Property Maintenance Code of Kanawha County, hereinafter referred to as “this code.”

101.2 Scope. The provisions of this code shall apply to all existing residential and nonresidential structures and all existing premises and constitute minimum requirements and standards for premises, structures, equipment, and facilities for light, ventilation, space, heating, sanitation, protection from the elements, life safety, safety from fire and other hazards, and for safe and sanitary maintenance; the responsibility of owners, operators and occupants; the occupants of existing structures and premises, and for administration, enforcement and penalties.

101.3 Intent. This code shall be construed to secure its expressed intent, which is to ensure public health, safety and welfare insofar as they are affected by the continued occupancy and maintenance of structures and premises. Existing structures and premises that do not comply with these provisions shall be altered or repaired to provide a minimum level of health and safety as required herein.

101.4 Severability. If a section, subsection, sentence, clause or phrase of this code is, for any reason, held to be unconstitutional, such decision shall not affect the validity of the remaining portions of this code.

### **Section 102**

#### Applicability

102.1 General. The provisions of this code shall apply to all matters affecting or relating to structures and premises, as set forth in Section 101. Where, in a specific case, different sections of this code specify different requirements, the most restrictive shall govern.

102.2 Maintenance. Equipment, systems, devices and safeguards required by this code or a previous regulation or code under which the structure or premises was constructed, altered or repaired shall be maintained in good working order. The requirements of this code are not intended to provide the basis for removal or abrogation of fire protection and safety systems and devices in existing structures. Except as otherwise specified herein,

the owner or the owner's designated agent shall be responsible for the maintenance of buildings, structures and premises.

102.3 Application of other codes. Repairs, additions or alterations to a structure, or changes of occupancy, shall be done in accordance with the procedures and provisions of other codes as approved and authorized by the Kanawha County Commission.

102.4 Existing remedies. The provisions in this code shall not be construed to abolish or impair existing remedies of the jurisdiction or its officers or agencies relating to the removal or demolition of any structure which is dangerous, unsafe and unsanitary.

102.5 Workmanship. Repairs, maintenance work, alterations or installations which are caused directly or indirectly by the enforcement of this code shall be executed and installed in a workmanlike manner and installed in accordance with the manufacturer's installation instructions.

102.6 Historic buildings. The provisions of this code shall not be mandatory for existing buildings or structures designated by the state or local jurisdiction as historic buildings when such buildings or structures are judged by the code official to be safe and in the public interest of health, safety and welfare.

102.7 Referenced codes and standards. The codes and standards referenced in this code shall be those that are listed in Chapter 8 and considered part of the requirements of this code to the prescribed extent of each such reference. Where differences occur between provisions of this code and the referenced standards, the provisions of this code shall apply.

102.8 Requirements not covered by code. Requirements necessary for the strength, stability or proper operation of an existing fixture, structure or equipment, or for the public safety, health and general welfare, not specifically covered by this code, shall be determined by the code official.

### **Section 103**

#### Department of Property Maintenance Inspection

103.1 General. The department of property maintenance inspection shall be known as the Kanawha County Planning and Development Office, hereinafter referred to as "The Planning Department". The executive official in charge thereof shall be known as the code official.

103.2 Appointment. The code official shall be appointed by the Kanawha County Commission.

103.3 Deputies. In accordance with the prescribed procedures of this jurisdiction and

with the concurrence of the Kanawha County Commission, the code official shall have the authority to appoint a deputy code official, other related technical officers, inspectors, employees, or any law enforcement agency.

103.4 Restriction of employees. An official or employee connected with the enforcement of this code, except one whose only connection is that of a member of the Board of Appeals established under Section 111, shall not be engaged in, or directly or indirectly connected with, the furnishing of labor, materials or appliance for the construction, alteration or maintenance of a building, or the preparation of construction documents thereof, unless that person is the owner of the building; nor shall such officer or employee engage in any work that conflicts with official duties or with the interests of the department.

103.5 Liability. The code official, officer or employee charged with the enforcement of this code, while acting for the county, shall not thereby be rendered liable personally, and is hereby relieved from all personal liability for any damage accruing to persons or property as a result of an act required or permitted in the discharge of official duties.

Any suit instituted against any officer or employee because of an act performed by that office or employee in the lawful discharge of duties and under the provisions of this code shall be defended by the legal representative of the county until the final termination of the proceedings. The code official or any subordinate be liable for costs in an action, suit or proceeding that is instituted in pursuance of the provisions of this code; and any officer of the Planning Department, acting in good faith and without malice, shall be free from liability for acts performed under any of its provisions or by reason of any or omission in the performance of official duties in connection therewith.

## **Section 104**

### **Duties and Powers of the Code Official**

104.1 General. The code official shall enforce the provisions of this code.

104.2 Rule-making authority. The code official shall have authority, as necessary in the interest of public health, safety and general welfare, to adopt and promulgate rules and procedures; to interpret and implement the provisions of this code; to secure the intent thereof; and to designate requirements applicable because of local climatic or other conditions. Such rules shall not have the effect of waiving structural or fire performance requirements specifically provided for in this code, or of violating accepted engineering methods involving public safety.

104.3 Inspections. The code official shall make all of the require inspections, or shall accept reports of inspection by approved agencies or individuals. All reports of such inspections shall be in writing and be certified by a responsible officer of such approved agency or by the responsible individual. The code official is authorized to engage such

expert opinion as deemed necessary to report upon unusual technical issues that arise, subject to the approval of the appointing authority.

104.4 Right of entry. The code official is authorized to enter the structure or premises at reasonable times to inspect subject to constitutional restrictions on unreasonable searches and seizures. If entry is refused or not obtained, the code official is authorized to pursue recourse as provided by law.

104.5. Identification. The code official shall carry proper identification when inspection structures or premises in the performance of duties under this code.

104.6. Notices and orders. The code official shall issue all necessary notices or orders to ensure compliance with this code.

104.7 Department records. The code official shall keep official records of all business and activities of the department specified in the provisions of this code or another code or ordinance, the responsibility or more than one code official of the jurisdiction is involved, it shall be the duty of the code officials involved to coordinate their inspections and administrative orders as fully as practicable so that the owners and occupants of the structure shall not be subjected to visits by numerous inspectors or multiple or conflicting orders. Whenever an inspector from any agency or department observes an apparent or actual violation of some provision of some law, ordinance or code not within the inspector's authority to enforce, the inspector shall report the findings to the code official having jurisdiction.

## **Section 105**

### **Approval**

105.1 Modifications. Whenever there are practical difficulties involved in carrying out the provisions of this code, the code official shall have the authority to grant modifications for individual cases, provided the code official shall first find that special individual reason makes the strict letter of this code impractical and the modification is in compliance with the intent and purpose of this code and that such modification does not lessen health, life and fire safety requirements. The details of action granting modifications shall be recorded and entered in the department files.

105.2 Alternative materials, methods and equipment. The provisions of this code are not intended to prevent the installation of any material or to prohibit any method of construction not specifically prescribed by this code, provided that any such alternative has been approved. An alternative material or method of construction shall be approved where the code official finds that the proposed design is satisfactory and complies with the intent of the provisions of this code, and that the material, method or work offered is, for the purpose intended, at least the equivalent of that prescribed in this code in quality, strength, effectiveness, fire resistance, durability and safety.

105.3 Required testing. Whenever there is insufficient evidence of compliance with the provisions of this code, or evidence that a material or method does not conform to the requirements of this code, or in order to substantiate claims for alternative materials or methods, the code official shall have the authority to require tests to be made as evidence of compliance at no expense to the jurisdiction.

105.31 Test methods. Test methods shall be as specified in this code or by other recognized test standards. In the absence of recognized and accepted test methods, the code official shall approve the testing procedures.

105.3.2 Testing agency. All tests shall be performed by an approved agency.

105.3.3 Test reports. Reports of tests shall be retained by the code official for the period required for retention of public records.

105.4 Material and equipment reuse. Materials, equipment and devices shall not be reused unless such elements are in good repair or have been reconditioned and tested when necessary, placed in good and proper working condition and approved.

#### **Section 106 (A) Public Nuisances enumerated; not exclusive**

The following acts, when committed, or conditions, when existing, are defined and declared to be Public Nuisances:

1. An act done or committed or aided or assisted to be done or committed by any person, or any substance, being or thing kept, maintained, placed or found in or upon any public or private place, which is injurious or dangerous to the public health, safety or good order.
2. All buildings, bridges or other structures of whatsoever character kept or maintained, or which are permitted by any person owning or having control to be kept or maintained, in a condition unsafe, dangerous, unhealthy, injurious or annoying to the public.
3. All ponds or pools of putrid or stagnant water, and all foul or dirty water or liquid found or discharged into or upon any street, public place or lot to the injury or annoyance of the public.
4. All houses or buildings used for special storage of powder, dynamite or other explosive substances, except those maintained pursuant to a permit issued by competent authority.
5. Any unclean, stinking, foul, defective or filthy drainpipe, tank or gutter or any leaking or broken slop, garbage or manure box or receptacle of like character.
6. Any dirt gathered in cleaning yards, waste of factories or any rags, damaged merchandise, wet, broken or leaking containers or any materials which are offensive or tend by decay to become putrid or to tender the atmosphere impure or unwholesome.
7. Any business, trade or activity whereby noisome stenches and odors or noxious gases arise or are generated.

8. Whenever in any cellar, basement, or part of a cellar or basement, or any house or building, there may be found water occasioned by leakage from defective hydrants, water pipes, sewer pipes, cisterns, wells, gutters, drains, running spouts or seepage from the surrounding earth, or whenever the walls of any cellar or basement shall be found to be damp or moist from any cause named in this subsection, such water, leakage, seepage or moisture shall be deemed a nuisance.
9. Every act or thing done or which may be permitted, allowed or continued by the owner, agent, assignee, occupant or tenant of any premises, property or structure, which act or thing done relates to the location, construction, repair, maintenance, use, emptying and cleaning of wall water closets, privies, sinks, plumbing, drains, yards, lots, areaways, pens, stables and other places where offensive, unsightly, unwholesome, objectionable or dangerous substances or liquids are or may be accumulated, to the damage or injury of any of the inhabitants of the county, and not otherwise specified.
10. All open, unguarded or unprotected excavations, refrigerators with intact doors, swimming pools or buildings which, when abandoned or left open or other unprotected, will likely prove dangerous to life or limb, or abandoned, open, uncovered or otherwise unprotected wells, cesspools, cisterns or catchbasins.
11. Any further violation of this code is found to constitute a Public Nuisance under the law and ordinance and shall be subject to the penalties prescribed herein.
12. Any condition or set of circumstances which in the determination of the Planning Director or code official is an obvious and apparent threat to public health and safety.

106.2 The nuisances described shall not be construed as exclusive; and any act of commission or omission and any condition which constitutes a nuisance by statute or common law of the state, when committed, omitted or existing within the unincorporated area of the county, is declared to constitute a nuisance.

106.3 Any nuisances not cleared within thirty (30) days of notification by the Kanawha County Planning and Development Office shall be subject to the penalties prescribed in Section 106.4 (a) as defined herein. Any appeal of such determination shall be made pursuant to Section III.

### **Section 106 (B) Trespass on condemned property, illegal activity, drug houses**

1. The Commission hereby incorporates by reference the following provision of W.Va. Code regarding trespass on government condemned property, effective as June 5<sup>th</sup> 2020

§ W.Va. Code 61-3B-2. Trespass in structure or conveyance.

- (a) Any person who knowingly enters in, upon, or under a structure or conveyance without being authorized, licensed, or invited, or having been authorized, licensed, or invited is requested to depart by the owner, tenant, or the agent of the owner or tenant, and refuses to do so, is guilty of a misdemeanor, and, upon conviction thereof, shall be fined not more than \$100.
- (b) Notwithstanding the provisions of subsection (a) of this section, *any person who, without permission, knowingly and willfully enters a structure which has a clear posting that the structure has been condemned by any municipal or county government as unfit for human habitation or use, is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than \$100, or confined in jail not more than six months, or both fined and confined:* Provided, That for any first violation of this subsection offense of trespass on condemned property, a court may substitute community service or pretrial diversion in lieu of a fine or confinement for trespassing on condemned property.
- (c) If the offender is armed with a firearm or other dangerous weapon while in the structure or conveyance, with the intent to do bodily injury to a human being in the structure or conveyance at the time the offender knowingly trespasses, the offender, notwithstanding the provisions of [§61-7-1](#) of this code, is guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than \$100 nor more than \$500, or be confined in jail for not more than one year, or both fined and confined.

## **2. Illegal activity, drug houses, and other public nuisances**

- (a) Any premises used for prostitution; illegal gambling; illegal possession, storage, or delivery of or trafficking in controlled substances, or other illegal drug activity; is hereby declared to be a Public Nuisance under W.Va. Code 7-1-3kk;
- (b) Any person who owns, manages or controls any premises and who (i) encourages or permits an illegal activity described in subsection (a) to occur or continue on such premises; or (ii) fails to implement reasonable and warranted abatement measures identified in the notice issued pursuant to Section (c) below, or subsequently agreed to, or other abatement measures which successfully abate the nuisance within the 30-day period following the notice, or within any other agreed upon period, shall be subject to a penalty according to the schedule set forth in Section 106.4 (a)
- (c) A Notice of Abatement will comply with Section 107 of this Ordinance and will order the abatement of the illegal activity or nuisance and shall further require that responsible party to take reasonable and warranted measures to prevent the recurrence of the illegal activity or nuisance
- (d) The penalty for violation of this section shall be as prescribed in Section 106.4 (a) of this Ordinance.

## **Section 106 (C) Violations**

Authority: W.Va. Code 7-1-3kk. Authority to provide for the elimination of hazards to public health and safety; penalty.

In addition to all other powers and duties now conferred by law upon county commissions, commissions are hereby authorized to enact ordinances, issue orders and take other appropriate and necessary actions for the elimination of hazards to public health and safety and to abate or cause to be abated anything which the commission determines to be a public nuisance. The ordinances may provide for a misdemeanor penalty for its violation. The ordinances may further be applicable to the county in its entirety or to any portion of the county as considered appropriate by the county commission.

~~106.1 Unlawful acts. It shall be unlawful for a person, firm or corporation to be in conflict with or in violation of any of the provisions of this code.~~

106.1 Unlawful acts, Public Nuisance. It shall be unlawful for a person, firm, or corporation to be in conflict with or in violation of any provision of this code. Any violation of this Ordinance is found to constitute a Public Nuisance under the law shall be subject to the penalties prescribed herein.

106.2 Notice of violation. The code official shall serve a notice of violation or order in accordance with Section 107.

~~106.3 Prosecution of violation. Any person failing to comply with a notice of violation or order served in accordance with Section 107 shall be deemed guilty of a misdemeanor, and the violation shall be deemed a strict liability offense and subject to the penalties of West Virginia State Code Chapter 17-23-9. If the notice of violation is not complied with, the code official shall institute the appropriate proceeding at law or in equity to restrain, correct or abate such violation, or to require the removal or termination of the unlawful occupancy of the structure in violation of the provisions of this code or of the order or direction made pursuant thereto.~~

106.3 Prosecution of violation. Any person failing to comply with a notice of violation or order served in accordance with Section 107 shall be deemed guilty of a misdemeanor, and the violation shall be deemed a strict liability offense and subject to the penalties set forth herein. If the notice of violation is not complied with, the code official shall institute the appropriate proceeding at law or in equity to restrain, correct or abate such violation, or to require the removal or termination of the unlawful occupancy of the structure in violation of the provisions of this code or of the order or direction made pursuant thereto.



#### **106.4 Violation penalties.**

(a) Any person who shall violate a provision of this code, or fail to comply therewith, or with any of orders or notices provided herein, shall be deemed to have created a public nuisance and shall be prosecuted within the limits provided by West Virginia State Code Chapter 17-23-9 under the authority of W.Va. Code 7-1-3kk, W.Va, Code 61-3B-2, or as otherwise allowed by W.Va. Code or as prescribed in this Ordinance. The penalty for violations of the W.Va. Code 7-1-3kk shall be as follows:

**“Any person violating any provision of this article, whether as principal, agent or employee, shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be punished by a fine of not less than one hundred dollars nor more than one thousand dollars”**

(b) Each day that a violation continues after due notice has been served shall be deemed a separate offense. The Kanawha County Commission has the right to abate the nuisance and recover costs of abatement with respect to the property owner.

106.5 Abatement of violation. The imposition of the penalties herein prescribed shall not preclude the legal officer of the jurisdiction from instituting appropriate action to restrain, correct or abate a violation, or to prevent illegal occupancy of a building, structure or premises, or to stop an illegal act, conduct, business or utilization of the building, structure or premises.

### **Section 107**

#### Notices and Orders

107.1 Notice to owner or to person or persons responsible. Whenever the code official determines that there has been a violation of this code or has grounds to believe that a violation has occurred, notice shall be given to the owner or the person or persons responsible therefore in the manner prescribed in Section 107.2 and 107.3. Notices for condemnation procedures shall also comply with Section 108.3

107.2 Form. Such notice prescribed in Section 107.1 shall be in accordance with all of the following:

1. Be in writing.
2. Include a description of the real estate sufficient for identification.

3. Include a statement of the violation or violations and why the notice is being issued.
4. Include a correction order allowing a reasonable time to make the repairs and improvements required to bring the dwelling unit or structure into compliance with the provisions of this code.
5. Inform the property owner of the right to appeal.

107.3 Method of service. Such notice shall be deemed to be properly served if a copy thereof is:

1. Delivered personally;
2. Sent by certified or first-class mail addressed to the last known address; or
3. If the notice is returned showing that the letter was not delivered, a copy thereof shall be posted in a conspicuous place in or about the structure affected by such notice.

107.4 Penalties. Penalties for noncompliance with orders and notices shall be as set forth in Section 106.4.

107.5 Transfer of ownership. It shall be unlawful for the owner of any dwelling unit or structure who has received a compliance order or upon whom a notice of violation has been served to sell, transfer, mortgage, lease or otherwise dispose of such dwelling unit or structure to another until the provisions of the compliance order or notice of violation have been complied with, or until such owner shall first furnish the grantee, transferee, mortgagee or lessee a true copy of any compliance order or notice of violation issued by the code official and shall furnish to the code official a signed and notarized statement from the grantee, transferee, mortgagee or lessee, acknowledging the receipt of such compliance order or notice of violation and fully accepting the responsibility without condition for making the corrections or repairs required by such compliance order or notice of violation.

## **Section 108**

### **Unsafe Structures and Equipment**

108.1. Unsafe structures. An unsafe structure is one that is found to be dangerous to the life, health, property or safety of the public or the occupants of the structure by not providing minimum safeguards to protect or warn occupants in the event of fire, or because such structure contains unsafe equipment or is so damaged, decayed, dilapidated, structurally unsafe, or of such faulty construction or unstable foundation, that partial or complete collapse is possible.

108.1.2 Unsafe equipment. Unsafe equipment includes any boiler, heating equipment, elevator, moving stairway, electrical wiring or device, flammable liquid containers or other equipment on the premises or within the structure which is in such disrepair or condition that such equipment is a hazard to life, health, property or safety of the public or occupants of the premises or structure.

108.1.3 Structure unfit for human occupancy. A structure is unfit for human occupancy whenever the code official finds that such structure is unsafe, unlawful or, because of the degree to which the structure is in disrepair or lacks maintenance, is unsanitary, vermin or rat infested, contains filth and contamination, or lacks ventilation, illumination, sanitary or heating facilities or other essential equipment required by this code, or because the location of the structure constitutes a hazard to the occupants of the structure or to the public.

108.1.3.a Structure unfit for human occupancy – methamphetamine labs

Addendum 1 of the Public Nuisance Ordinance details the specific guidelines for Testing and Decontamination of the Methamphetamine Labs. All property owners of structures or properties containing Methamphetamine Labs will follow the procedures outlined in Addendum 1. Decontamination Contractors will also follow the procedures in this Addendum. All other parts of the Public Nuisance Ordinance also apply to the property containing Methamphetamine Labs.

108.1.4 Unlawful structure. An unlawful structure is one found in whole or in part to be occupied by more persons than permitted under this code, or was erected, altered or occupied contrary to law.

108.2 Closing of vacant structure. If the structure is vacant and unfit for human habitation and occupancy, and is not in danger of structural collapse, the code official is authorized to post a placard of condemnation on the premises and order the structure closed up so as not be an attractive nuisance. Upon failure of the owner to close up the premises within the time specified in the order, the code official shall cause the premises to be closed and secured through any available public agency or by contract or arrangement by private persons and the cost thereof shall be charged against the real estate upon which the structure is located and shall be a lien upon such real estate and may be collected by any other legal resource.

108.3 Notice. Whenever the code official has condemned a structure or equipment under the provisions of this section, notice shall be posted in a conspicuous place in or about the structure affected by such notice and served on the owner or the person or persons responsible for the structure or equipment in accordance with Section 107.3. If the notice pertains to equipment, it shall also be placed on the condemned equipment. The notice shall be in the form prescribed in Section 107.2.

108.4 Placarding. Upon failure of the owner or person responsible to comply with the notice provisions within the time given, the code official shall post on the premises or on defective equipment a placard bearing the word “Condemned” and a statement of the penalties provided for occupying the premises, operating the equipment or removing the placard.

108.4.1 Placard removal. The code official shall remove the condemnation placard whenever the defect or defects upon which the condemnation and placarding action were

based have been eliminated. Any person who defaces or removes a condemnation placard without the approval of the code official shall be subject to the penalties provided by this code.

108.5. Prohibited occupancy. Any person who shall occupy a placarded premises or shall operate placarded equipment, and any owner or any person responsible for the premises who shall let anyone occupy a placarded premises or operate placarded equipment shall be liable for the penalties provided by this code.

## **Section 109**

### **Emergency Measures**

109.1 Imminent danger. When, in the opinion of the code official, there is imminent danger of failure or collapse of a building or structure which endangers life, or when any structure or part of a structure has fallen and life is endangered by the occupation of the structure, or when there is actual or potential danger to the building to the building occupants or those in the proximity of any structure because of explosives, explosive fumes or vapors or the presence of toxic fumes, gases or materials, which specifically includes the manufacture of methamphetamine or other illegal substance, or attempt to manufacture methamphetamine or other illegal substances, or operation of defective or dangerous equipment, the code official is hereby authorized and empowered to order and require the occupants to vacate the premises forthwith. The code official shall cause to be posted at each entrance to such structure a notice reading as follows: "This Structure is Unsafe and Its Occupancy Has Been Prohibited by the Code Official." It shall be unlawful for any person to enter such structure except for the purpose of securing the structure, making the required repairs, removing the hazardous condition or of demolishing the same.

109.2 Temporary safeguards. Notwithstanding other provisions of this code, whenever, in the opinion of the code official, there is imminent danger due to an unsafe condition, the code official shall order the necessary work to be done, including the boarding up of openings, to render such structure temporarily safe whether or not the legal procedure herein described has been instituted; and shall cause such other action to be taken as the code official deems necessary to meet such emergency.

109.3 Closing streets. When necessary for public safety, the code official shall temporarily close structures and close, or order the authority having jurisdiction to close, sidewalks, streets, public ways and places adjacent to unsafe structures and prohibit the same from being utilized.

109.4 Emergency repairs. For the purposes of this section, the code official shall employ the necessary labor and materials to perform the required work as expeditiously as possible.

109.5 Cost of emergency repairs. Costs incurred in the performance of emergency work shall be paid by the jurisdiction. The legal counsel of the jurisdiction shall institute

appropriate action against the owner of the premises where the unsafe structure is or was located for the recovery of such costs.

109.6 Hearing. Any person ordered to take emergency measures shall comply with such order forthwith. Any affected person shall thereafter, upon petition directed to the appeals board, be afforded a hearing as described in this code.

## **Section 110**

### **Demolition**

110.1 General. The code official shall order the owner of any premises upon which is located any structure, which in the code official's judgment is so old, dilapidated or has become so out of repair as to be dangerous, unsafe, unsanitary or otherwise unfit for human habitation or occupancy, and such that it is unreasonable to repair the structure, to demolish and remove such structure; or if such structure is capable of being made safe by repairs, to repair and make safe and sanitary or to demolish and remove at the owner's option; or where there has been a cessation of normal construction of any structure for a period of more than two years, to demolish and remove such structure.

110.2 Notices and orders. All notices and orders shall comply with Section 107.

110.3 Failure to comply. If the owner of a premises fails to comply with a demolition order within the time prescribed, the code official shall cause the structure to be demolished and removed, either through an available public agency or by contract or arrangement with private persons, and the cost of such demolition and removal shall be charged against the real estate upon which the structure is located and shall be a lien upon such real estate.

110.4. Salvage materials. When any structure has been ordered demolished and removed, the governing body or other designated officer under said contract or arrangement aforesaid shall have the right to sell the salvage and valuable materials at the highest price obtainable. The net proceeds of such sale, after deducting the expenses of such demolition and removal, shall be promptly remitted with a report of such sale or transaction, including the items of expense and the amounts deducted, for the person who is entitled thereto, subject to any order of a court. If such a surplus does not remain to be turned over, the report shall so state.

## **Section 111**

### **Means of Appeal**

111.1 Application for appeal. Any person directly affected by a decision of the code official or a notice or order issued under this code shall have the right to appeal to the Kanawha County Commission, provided that a written application for an appeal is filed within twenty (20) days after the day the decision, notice or order was served. An application for appeal shall be based on a claim that the true intent of this code or the rules legally adopted thereunder have been incorrectly interpreted, the provisions of this

code do not fully apply, or the requirements of this code are adequately satisfied by other means, or that the strict application of any requirement of this code would cause an undue hardship.

111.2 Notice of meeting. The Commission shall meet upon notice from the President, within the twenty (20) days of the filing of an appeal, or as stated periodic meetings.

111.3 Open hearing. All hearings before the Commission shall be open to the public. The appellant, the appellant's representative, the code official and any person whose interests are affected shall be given an opportunity to be heard. A quorum shall consist of not less than two-thirds of the Commission membership.

111.4 Postponed hearing. When the full Commission is not present to hear an appeal, either the appellant or the appellant's representative shall have the right to request a postponement of the hearing.

111.5 Commission decision. The Commission shall modify or reverse the decision of the code official only by a concurring vote of a majority of the total number of Commission members.

111.5.1 Records and copies. The decision of the Commission shall be recorded. Copies shall be furnished to the appellant and to the code official.

111.5.2 Administration. The code official shall take immediate action in accordance with the decision of the Commission.

111.6 Court review. Any person, whether or not a previous party of the appeal, shall have the right to apply to the Circuit Court of Kanawha County.

111.7 Stays of enforcement. Appeals of notice and orders (Other than Imminent Danger notices) shall stay the enforcement of the notice and order until the appeal is heard by the County Commission.

## **Chapter 2** **DEFINITIONS**

### **Section 201** **General**

201.1 Scope. Unless otherwise expressly stated, the following terms shall, for the purposes of this code, have the meanings shown in this chapter.

201.2 Interchangeability. Words stated in the present tense include the future; words stated in the masculine gender include the feminine and neuter; the singular number includes the plural and the singular.

201.3 Terms defined in other codes. Where terms are not defined in this code and are defined in the International Building Code, International Fire Code, International Zoning Code, International Plumbing Code, International Mechanical Code or the ICC Electrical Code, such terms shall have the meanings ascribed to them as in those codes.

201.4 Terms not defined. Where terms are not defined through the methods authorized by this section, such terms shall have ordinarily accepted meanings such as the context implies.

**201.5** Parts. Whenever the words “dwelling unit”, “dwelling”, “premises”, “building”, “rooming house”, “rooming unit” or “story” are stated in this code, they shall be construed as though they were followed by the words “or any part thereof.”

## **Section 202**

### General Definitions

**APPROVED.** Approved by the code official.

**BASEMENT.** That portion of a building which is partly or completely below grade.

**BATHROOM.** A room containing plumbing fixtures including a bathtub or shower.

**BEDROOM.** Any room or space used or intended to be used for sleeping purposes.

**CODE OFFICIAL.** The official who is charged with the administration and enforcement of this code, or any duly authorized representative.

**CONDEMN.** To adjudge unfit for occupancy.

**DWELLING UNIT.** A single unit providing complete, independent living facilities for one or more persons, including permanent provisions for living, sleeping, eating, cooking and sanitation.

**EXTERIOR PROPERTY.** The open space on the premises and on adjoining property under the control of owners or operators of such premises.

**EXTERMINATION.** The control and elimination of insects, rats or other pests by eliminating their harborage places; by removing or making inaccessible materials that serve as their food; by poison spraying, fumigating, trapping or by any other approved pest elimination methods.

**GARBAGE.** The animal or vegetable waste resulting from the handling, preparation, cooking and consumption of food.

**GUARD.** A building component or a system of building components located at or near the open sides of elevated walking surfaces that minimizes the possibility of a fall from the walking surface to a lower level.

**HABITABLE SPACE.** Space in a structure for living, sleeping, eating or cooking. Bathrooms, toilet rooms, closets, halls, storage or utility spaces, and similar areas are not considered habitable spaces.

**IMMINENT DANGER.** A condition which could cause serious or life-threatening injury or death at any time.

**INFESTATION.** The presence, within or contiguous to, a structure or premises of insects, rats, vermin or other pests.

**LABELED.** Devices, equipment, appliances, or materials to which has been affixed a label, seal, symbol, or other identifying mark of a nationally recognized testing laboratory, inspection agency or other organization concerned with product evaluation that maintains periodic inspection of the production of the above-labeled items and by whose label the manufacturer attests to compliance with applicable nationally recognized standards.

**LET FOR OCCUPANCY OR LET.** To permit, provide or offer possession or occupancy of a dwelling, dwelling unit, rooming unit, building, premise or structure by a person who is or is not the legal owner of record thereof, pursuant to a written or unwritten lease, agreement or license, or pursuant to a recorded or unrecorded agreement of contract for the sale of land.

**OCCUPANCY.** The purpose for which a building or portion thereof is utilized or occupied.

**OCCUPANT.** Any individual living or sleeping in a building, or having possession of a space within a building.

**OPENABLE AREA.** That part of a window, skylight or door which is available for unobstructed ventilation and which opens directly to the outdoors.

**OPERATOR.** Any person who has charge, care or control of a structure or premises which is let or offered for occupancy.

**OWNER.** Any person, agent, operator, firm or corporation having a legal or equitable interest in the property; or recorded in the official records of the state, county or municipality as holding title to the property; or otherwise having control of the property, including the guardian of the estate of any such person, and the executor or administrator of the estate of such person if ordered to take possession of real property by a court.

**PERSON.** An individual, corporation, partnership or any other group acting as a unit.

**PREMISES.** A lot, plot or parcel of land including any structures thereon.



**ROOMING HOUSE.** A building arranged or occupied for lodging, with or without meals, for compensation and not occupied as one or two family dwelling.

**ROOMING UNIT.** Any room or group of rooms forming a single habitable unit occupied or intended to be occupied for sleeping or living, but not for cooking purposes.

**RUBBISH.** Combustible and noncombustible waste materials, except garbage; the term shall include the residue from the burning of wood, coal, coke, and other combustible materials, paper, rags, cartons, boxes, wood, excelsior, rubber, leather, tree branches, yard trimmings, tin cans, metals, mineral matter, glass, crockery and dust and other similar materials.

**STRICT LIABILITY OFFENSE.** An offense in which the prosecution in a legal proceeding is not required to prove criminal intent as a part of its case. It is enough to prove that the defendant either did an act which was prohibited, or failed to do an act which the defendant was legally required to do.

**STRUCTURE.** That which is built or constructed or a portion thereof.

**TENANT.** A person, corporation, partnership, or group, whether or not the legal owner of record, occupying a building or portion thereof as a unit.

**TOILET ROOM.** A room containing a water closet or urinal but not a bathtub or shower.

**VENTILATION.** The natural or mechanical process of supplying conditioned or unconditioned air to, or removing such air from, any space.

**WORKMANLIKE.** Executed in a skilled manner; e.g., generally plumb, level, square, in line, undamaged and without marring adjacent work.

**YARD.** An open space on the same lot with a structure.

### **Chapter 3.**

#### **General Requirements.**

### **Section 301**

#### **General**

**301.1 Scope.** The provisions of this chapter shall govern the minimum conditions and the responsibilities of persons for maintenance of structures, equipment and exterior property.

**301.2 Responsibility.** The owner of the premises shall maintain the structures and exterior property in compliance with these requirements, except as otherwise provided for in this code. A person shall not occupy as owner-occupant or permit another person to occupy premises which are not in a sanitary and safe condition and which do not comply

with the requirements of this chapter. Occupants of a dwelling unit are responsible for keeping in a clean, sanitary and safe condition that part of the dwelling unit or premises which they occupy and control.

301.3 Vacant structures and land. All vacant structures and premises thereof or vacant land shall be maintained in a clean, safe, secure and sanitary condition as provided herein so as not to cause a blighting problem or adversely affect the public health or safety.

## **Section 302**

### Exterior Property Areas

302.1 Sanitation. All exterior property and premises shall be maintained in a clean, safe and sanitary condition. The occupant shall keep that part of the exterior property which such occupant occupies or controls in a clean and sanitary condition.

302.2 Grading and drainage. All premises shall be graded and maintained to prevent the erosion of soil and to prevent the accumulation of stagnant water thereon, or within any structure located thereon.

Exception: Approved retention areas and reservoirs.

302.3 Sidewalks and driveways. All sidewalks, walkways, stairs, driveways, parking spaces and similar areas shall be kept in a proper state of repair, and maintained free from hazardous conditions.

302.4 Weeds. All premises and exterior property shall be maintained free from weeds or plant growth in excess of 10 inches (254 mm). All noxious weeds shall be prohibited. Weeds shall be defined as all grasses, annual plants and vegetation, other than trees or shrubs provided; however, this term shall not include cultivated flowers and gardens.

302.5 Rodent harborage. All structures and exterior property shall be kept free from rodent harborage and infestation. Where rodents are found, they shall be promptly exterminated by approved processes, which will not be injurious to human health. After extermination, proper precautions shall be taken to eliminate rodent harborage and prevent reinfestation.

302.6 Exhaust vents. Pipes, ducts, conductors, fans or blowers shall not discharge gases, steam, vapor, hot air, grease, smoke, odors, or other gaseous or particular wastes directly upon abutting or adjacent public or private property or that of another tenant.

302.7 Accessory structures. All accessory structures, including detached garages, fences and walls, shall be maintained structurally sound and in good repair.

302.7.1 Swimming pools. Swimming pools shall be maintained in a clean and sanitary condition, and in good repair.

302.8 Motor vehicles. Except as provided for in other regulations, no inoperative or unlicensed motor vehicle shall be parked, kept or stored on any premises, and no vehicle shall at any time be in a state of major disassembly, disrepair, or in the process of being stripped or dismantled. Painting of vehicles is prohibited unless conducted inside an approved spray booth.

Exception: A vehicle or any type is permitted to undergo major overhaul, including bodywork, provided that such work is performed inside a structure or similarly enclosed area designed and approved for such purposes.

302.9 Defacement of property. No person shall willfully or wantonly damage, mutilate or deface any exterior surface of any structure or building on any private or public property by placing thereon any marking, carving or graffiti. It shall be the responsibility of the owner to restore said surface to an approved state of maintenance and repair.

### **Section 303**

#### Exterior Structure

303.1 General. The exterior of a structure shall be maintained in good repair, structurally sound and sanitary so as not to pose a threat to the public health, safety or welfare.

303.2 Protective treatment. All exterior surfaces, including but not limited to , doors, door and window frames, cornices, porches, trim, balconies, decks and fences shall be maintained in good condition. Exterior wood surfaces, other than decay resistant woods, shall be protected from the elements an decay by painting or other protective covering or treatment. Peeling, flaking and chipped paint shall be eliminated and surfaces repainted. All siding and masonry joints as well as those between the building envelope and the perimeter of windows, doors, and skylights shall be maintained weather resistant and water tight. All metal surfaces subject to rust or corrosion shall be coated to inhibit such rust and corrosion and all surfaces with rust or corrosion shall be stabilized and coated to inhibit future rust and corrosion. Oxidation stains shall be removed from exterior surfaces. Surfaces designed for stabilization by oxidation are exempt from this requirement.

303.3 Structural members. All structural members shall be maintained free from deterioration, and shall be capable of safely supporting the imposed dead and live loads.

303.4 Foundation walls. All foundation walls shall be maintained plumb and free from open cracks and breaks and shall be kept in such condition so as to prevent the entry of rodents and other pests.

303.5 Exterior walls. All exterior walls shall be free from holes, breaks, and loose or rotting materials; and maintained weatherproof and properly surface coated where required to prevent deterioration.

303.6 Roofs and drainage. The roof and flashing shall be sound, tight and not have

defect that admit rain. Roof drainage shall be adequate to prevent dampness or deterioration in the walls of interior portion of the structure. Roof drains, gutters and downspouts shall be maintained in good repair and free from obstructions. Roof water shall not be discharged in a manner that creates a public nuisance.

303.7 Overhang extensions. All overhang extensions including but not limited to canopies, marquees, signs, metal awnings, fire escapes, standpipes, and exhaust ducts shall be maintained in good repair and be properly anchored so as to be kept in a sound condition. When required, all exposed surfaces of metal or wood shall be protected from the elements and against decay or rust by periodic application of weather-coating materials, such as paint or similar surface treatment.

303.8 Stairways, decks, porches and balconies. Every extension stairway, deck, porch and balcony, and all appurtenances attached thereto, shall be maintained structurally sound, in good repair, with proper anchorage and capable of supporting the imposed loads.

## **Section 304**

### Interior Structure

304.1 General. The interior of a structure and equipment therein shall be maintained in good repair, structurally sound and in sanitary condition. Occupants shall keep that part of the structure which they occupy or control in a clean and sanitary condition. Every owner of a structure containing a rooming house, a hotel, a dormitory, two or more dwelling units or two or more nonresidential occupancies, shall maintain, in a clean and sanitary condition, the shared or public areas of the structure and exterior property.

304.2 Structural members. All structural members shall be maintained structurally sound, and be capable of supporting the imposed loads.

304.3 Interior surfaces. All interior surfaces, including windows and doors, shall be maintained in good, clean and sanitary condition. Peeling, chipping, flaking, or abraded paint shall be repaired, removed, or covered. Cracked or loose plaster, decayed wood, and other defective surface conditions shall be corrected.

304.4 Stairs and walking surfaces. Every stair, ramp, landing, balcony, porch, deck or other walking surface shall be maintained in sound condition and good repair.

## **Section 305**

### Rubbish and Garbage

305.1 Accumulation of rubbish or garbage. All exterior property and premises, and the interior of every structure, shall be free from any accumulation of rubbish or garbage.

305.2 Disposal of rubbish. Every occupant of a structure shall dispose of all rubbish in a clean and sanitary manner by placing such rubbish in approved containers.

305.2.1 Rubbish storage facilities. The owner of every occupied premises shall supply approved covered containers for rubbish, and the owner of the premises shall be responsible for the removal of rubbish.

305.3 Disposal of garbage. Every occupant of a structure shall dispose of garbage in a clean and sanitary manner by placing such garbage in an approved garbage disposal facility or approved garbage containers.

305.3.1 Garbage facilities. The owner of every dwelling shall supply one of the following: an approved mechanical food waste grinder in each dwelling unit; and approved incinerator unit in the structure available to the occupants in each dwelling unit; or an approved leakproof, covered, outside garbage container.

305.3.2 Containers. The operator of every establishment producing garbage shall provide, and at all times cause to be utilized, approved leakproof containers provided with close-fitting covers for the storage of such materials until removed from the premises for disposal.

## **Section 306**

### Extermination

306.1 Infestation. All structures shall be kept free from insect and rodent infestation. All structures in which insects or rodents are found shall be promptly exterminated by approved processes that will not be injurious to human health. After extermination, proper precautions shall be taken to prevent reinfestation.

306.2 Owner. The owner of any structure shall be responsible for extermination within the structure prior to renting or leasing the structure.

306.3 Single occupant. The occupant of a one-family dwelling or of a single-tenant nonresidential structure shall be responsible for extermination on the premises.

306.4 Multiple occupancy. The owner of a structure containing two or more dwelling units, a multiple occupancy, a rooming house or a nonresidential structure shall be responsible for extermination in the public or shared areas of the structure and exterior property. If infestation is caused by failure of an occupant to prevent such infestation in the area occupied, the occupant shall be responsible for extermination.

306.5 Occupant. The occupant of any structure shall be responsible for the continued rodent and pest-free condition of the structure.

Exception: Where the infestations are caused by defects in the structure, the owner shall be responsible for extermination.

**Section 400.**

**Liens**

401. The Kanawha County Planning and Development Office shall then be authorized to record a Notice of Lien in the Office of the County Clerk against any property in which corrective action and its costs are incurred by the Kanawha County Planning and Development Office and the Kanawha County Commission. Said lien shall specify the Tax Map and Parcel of the property and the property owner and shall further specify the amount expected.

402. The Kanawha County Planning and Development Office shall further be authorized and see reimbursement of all costs for corrective action included under the ordinance by all legal methods available including the aforementioned liens and court action.

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