
PART SEVENTEEN — BUILDING, LAND USE AND SUBDIVISION CODE

ARTICLE 1759 Vacant and Uninhabitable Vacant Structures

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CROSS REFERENCES

Authority to regulate—see WV Code 8-12-16, 8-12-16a, and 8-12-16c

1759.01 Purpose and scope.

The purpose of this article is to ensure that each Vacant Structure in the Corporation of Harpers Ferry is properly monitored and maintained, does not pose a hazard to persons or property, is suitable for occupancy and use, and is safe for entry by police officers, fire fighters, and other emergency personnel in times of emergency. This article provides for registration and inspection of Vacant Structures, and corrective action to address deficient structures that pose a hazard to life, limb, health, property, safety, or welfare of the general public and diminish property values of adjacent properties.

1759.02 Definitions.

When used in this article, the following capitalized words and phrases have the meanings indicated:

Building Code. Collectively, all governing guidelines applicable to housing and property as contained in the Codified Ordinances of Harpers Ferry and other applicable regulations.

Certified Mail. Certified mail, return receipt requested, addressed to the last known address of the property owner according to the records of the Jefferson County Sheriff and, if different, the records of the Jefferson County Assessor.

Code or Ordinance Compliance Officer. The Town official or employee charged with the administration and enforcement of applicable Codified Ordinances of Harpers Ferry.

Lawfully Served means that the referenced items are served upon the owner of the subject property in the same manner as service of process in a civil action under West Virginia law, and also sent by Certified Mail.

Uninhabitable. Unfit for human use because, for example:

- (a) It is dangerous to the life, health, property, or safety of the public or the occupants of the structure because:
 - (1) It does not provide minimum safeguards to protect or warn occupants in the

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- event of fire;
- (2) It contains any equipment (including, without limitation, any boiler, heating equipment, elevator, moving stairway, electrical wiring or device, flammable liquid containers, or other equipment) that 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 structure; or
- (3) It is so damaged, decayed, dilapidated, structurally unsafe, or of such faulty construction or unstable foundation, that partial or complete collapse is possible or readily apparent;
- (b) It is occupied by more persons than permitted under health department guidelines or other governing regulations, or it was erected, altered, or occupied contrary to law;
- (c) Of the degree to which it is in disrepair or lacks maintenance, it is unsanitary, is vermin or rat infested, contains filth and contamination, or lacks ventilation, illumination, sanitary or heating facilities, or other equipment deemed essential for safe and / or healthful use;
- (d) The location of the structure constitutes a hazard to the occupants of the structure or to the public; or
- (e) It has any or all of the conditions or defects described below:
 - (1) Any door, aisle, passageway, stairway, exit, or other means of egress that does not conform to reasonable safety standards and related requirements for existing buildings;
 - (2) 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;
 - (3) Any portion of the structure has been damaged by fire, earthquake, wind, flood, deterioration, neglect, abandonment, vandalism, or by any other cause to such an extent that it is likely to partially or completely collapse, or to become detached or dislodged;
 - (4) Any portion of the structure, or any member, appurtenance, or ornamentation on the exterior thereof, 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-half the original designed value;
 - (5) The structure, or part of the 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;
 - (6) The structure, or any portion thereof, is clearly unsafe for its use and occupancy;
 - (7) The structure is neglected, damaged, dilapidated, unsecured, or abandoned so as to become an attractive nuisance to children who might play in the structure to their danger, become a harbor for vagrants, criminals, or immoral persons, or enable persons to resort to the building or structure for committing a nuisance or an unlawful act;
 - (8) The structure has been constructed, exists, or is maintained in violation of any specific requirement or prohibition applicable to such structure provided by the Codified Ordinances of Harpers Ferry or of any other applicable law or ordinance, to such an extent as to present either a substantial risk of fire, building collapse, or any other threat to life and safety;
 - (9) The structure, if used or intended to be used for dwelling purposes, because of

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- inadequate maintenance, dilapidation, decay, damage, faulty construction or arrangement, inadequate light, ventilation, or mechanical or plumbing system, or otherwise, is unsanitary or in a condition that is likely to cause sickness or disease;
- (10) The 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 a threat to life or health; or
 - (11) Any portion of the structure remains on a site after the partial demolition or destruction of the remainder of the structure, or whenever the structure is abandoned so as to constitute the structure or a portion thereof as an attractive nuisance or hazard to the public.

Vacant Structure. Any residential building that has not been occupied lawfully as a residence, or any non-residential building or other structure that has not been occupied lawfully for its ordinary expected or licensed use, during the immediately preceding six consecutive months or, in the case of seasonal structures, such as vacation homes, one year. Non-occupancy may be evidenced by the status and use of utilities, property condition, and similar factors.

- (a) A structure may not be considered occupied merely due to entry for purposes not consistent with its ordinary expected use.
- (b) A structure that is unsecured and occupied by one or more unauthorized persons may not be considered occupied lawfully for purposes of the above definition.
- (c) A new structure under construction is not considered a Vacant Structure while a building permit for the construction is issued and unexpired.

Vacant Structures Board or Board. The body charged with enforcing this article, which consists of the Mayor or his / her designee, the Ordinance Compliance Officer, and one individual member at-large selected by, and to serve at the will and pleasure of, the Mayor. The Fire Chief of the Friendship Fire Company and a representative from the Jefferson County Health Department are nonvoting members.

Violative Conditions. The conditions causing a structure to be Uninhabitable and violate provisions of governing ordinances, West Virginia Code, Health Department regulations, or other applicable guidelines.

1759.03 Registration of Vacant Structures; enforcement.

- (a) Registry. The Vacant Structures Board will establish and maintain a Vacant Structures Registry.
- (b) Voluntary registration. The owner of any real property containing a Vacant Structure must register the real property by filing a notice with the Vacant Structures Board.
- (c) Involuntary registration.
 - (1) Upon referral by any person of real property not on the Vacant Structures Registry as containing a possible Vacant Structure, the Vacant Structures Board will investigate and determine whether the subject structure is a Vacant Structure. If inspection of a structure is necessary to an investigation, the provisions of Section 1759.04(b)(1) and (2) apply. Upon determination that a structure is a Vacant Structure, the Vacant Structures Board must set forth in a written statement its findings supporting the determination and issue an order that the real property be placed on the Vacant Structures Registry and that

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registry fees specified in Subsection (e) below be assessed against the owner of the real property. The Board must cause a copy of the order to be Lawfully Served upon the owner of the subject real property and posted on the front door or another conspicuous location on the structure.

- (2) The Board may, in its discretion, delegate to the Ordinance Compliance Officer and / or, if necessary, assisted by the Harpers Ferry Police Department, authority to conduct investigations and make determinations under the foregoing subsection (c) hereof.
- (d) Reasonable standard. The Corporation of Harpers Ferry may require that the owner maintain the vacant structure to a standard deemed reasonable by the governing body. Such a standard of reasonableness will be noticed to the owner, to act to bring the vacant structure into compliance with the reasonable standard noted or otherwise eliminate the public nuisance caused by the noncompliant condition.
- (e) Exemption from registration. The owner of real property containing a Vacant Structure may submit in writing to the Harpers Ferry Town Council a request for exemption from registration due to inability to occupy the structure for a period stated and for reasons stated in the request. Upon a finding of good cause shown, the Town Council must exempt the real property from registration. Examples of circumstances when good cause for an exemption may exist include when real property is being actively marketed for sale following the owner's move to other property, or when a resident is deployed on active military duty or when substantial renovations and corrective actions are being undertaken. A schedule of such corrective actions must be submitted and approved by the Ordinance Compliance Officer for exemption.
- (f) Registry fee. When real property is placed on the Vacant Structures Registry, a registry fee will be assessed to the owner of the property in the amount of \$250.00. Thereafter, while the real property remains on the Vacant Structures Registry, an annual registry fee of \$400.00 will be assessed on each anniversary of the date that the property was placed on the registry. Registry fees are due on the 30th day after notice of the assessment is sent by Certified Mail.
 - (1) If a registry fee is delinquent, the Corporation of Harpers Ferry may:
 - A. Institute a civil action in the Circuit Court of Jefferson County against the real property owner for the delinquent fees and reasonable attorney fees and court costs incurred relative to the civil action. Not less than 10 days prior to commencing such a civil action, the Corporation of Harpers Ferry must send by Certified Mail written notice advising that the Town intends to institute such a civil action; provided that, if such mailing is returned without evidence of proper receipt, the Town must cause the notice to be published as a Class III-0 legal advertisement and also posted on the front door or another conspicuous location on the Vacant Structure; and / or
 - B. File a lien against the subject real property in the Office of the Clerk of the County Commission of Jefferson County, for the full amount of the delinquent fees and filing fees. Before filing a lien, the Town must send by Certified Mail written notice advising that the Town will file the lien unless the delinquent fees are paid by a date stated in the notice, which date must be no less than 30 days from the date of receipt of the notice as shown on a signed return receipt card; provided that, if such mailing is returned without evidence of proper receipt, the Town must cause the notice to be published as a Class III-0 legal advertisement and also posted on the front door or another conspicuous location on the Vacant Structure, in which case the due date for payment must be no less than

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30 days following such publication. A copy of the filed notice of lien must be sent by Certified Mail to the real property owner.

- (2) A registry fee paid must be refunded if, on timely appeal, the Board, Town Council, or the Circuit Court of Jefferson County, as the case may be, reverses the Vacant Structure Board's determination that the subject structure was a Vacant Structure and / or the resulting order placing the subject real property on the Vacant Structures Registry.
- (g) Removal from registry. If a structure becomes occupied lawfully or is removed or demolished, the owner of the subject real property or the Ordinance Compliance Officer upon visual observation and inspection may notify the Vacant Structures Board of the change of status, and the Board must remove the real property from the Vacant Structures Registry upon the Board's confirmation of the change in status, determination that all registry fees have been duly paid, and determination that the structure is not Uninhabitable, all following due investigation by the Board or its designee.

1759.04 Inspection of Vacant Structures.

- (a) Review of Vacant Structures Registry.
 - (1) At least annually, the Vacant Structures Board must review the Vacant Structures Registry and determine which of the Vacant Structures on the real properties on the Registry, if any, require inspection for Uninhabitable status. The Board must base such determinations on visual observations, public records, and such other facts as may reasonably evidence that a structure is Uninhabitable.
 - (2) The Board may, in its discretion, delegate to the Ordinance Compliance Officer authority to make determinations under this subsection (a).
- (b) Inspection. At least annually, the Board, by such of its members as it determines, must inspect each Vacant Structure determined to require inspection for Uninhabitable status.
 - (1) Entrance upon property and into structures for the purpose of conducting inspections must be made in a manner that minimizes inconvenience to any person in possession of the property or its owner.
 - (2) If a property owner or the person in possession of a property or structure refuses to consent to and schedule inspection, the Town must seek a search warrant from the Circuit Court of Jefferson County to authorize inspection for determining whether a Vacant Structure on the property is Uninhabitable.

1759.05 Determination of Uninhabitable status; corrective actions.

- (a) Determination of Uninhabitable status. Following inspection of a Vacant Structure, the Vacant Structures Board must determine whether the structure is Uninhabitable, based upon the criteria in the definition of the term above and the following additional criteria:
 - (1) No structure may be determined Uninhabitable unless it violates a provision of the Codified Ordinances of Harpers Ferry;
 - (2) All determinations must be made with due consideration of the ordinary expected lawful use of the subject structure (for example, a garage for vehicles would not be expected to contain sanitary facilities, utilities, and serve as a habitable structure);
 - (3) Structures under active construction or ongoing renovation, as evidenced by a valid and current building permit, may not be deemed Uninhabitable merely due to conditions that will be rectified by such construction or renovation; and

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- (4) Determinations of Uninhabitable status must be set forth in a written statement of findings specifying the Violative Conditions observed.
- (b) Order of corrective actions. Upon determining that a structure is Uninhabitable, the Vacant Structures Board may issue an order requiring the owner of the subject real property to take specified corrective actions to rectify or address the Violative Conditions and specifying the time in which such corrective actions must be taken. The owner of the subject real property must make the ordered corrective actions within the time specified.
- (1) Corrective actions that may be ordered to rectify or address Violative Conditions are: repair, alteration, or improvement of the structure; vacating and closing of the structure; removal or demolition of the structure; or any combination of the above. Removal and / or demolition of structures will not be allowed without the required review and approval process, including, when appropriate, review by the Board of Zoning Appeals.
 - (2) The Board must strive to order the least severe corrective actions necessary and appropriate to rectify or address the Violative Conditions, taking into account the severity of the conditions, the economics of the possible actions, the historical or cultural value of the structure, and such other factors as the Board determines relevant.
 - (3) The Board must specify a reasonable period of time in which corrective actions must be taken, taking into consideration any risk of imminent harm, immediate environmental impact, and the impact on the general health and welfare of adjacent property owners and others.
- (c) Notice of Uninhabitable Property. Within five days of a determination that a structure is Uninhabitable, the Board must post on the structure's front door or another conspicuous location, and cause to be Lawfully Served upon the owner of the subject real property, a written Notice of Uninhabitable Property and a copy of any order of corrective actions issued by the Board. The Notice of Uninhabitable Property must contain the following:
- (1) A description of the structure and the parcel of real property on which it is located;
 - (2) An explanation of the Violative Conditions observed;
 - (3) An explanation of any corrective actions required under the Board's order and the date by which actions must be taken;
 - (4) A statement that failure to take corrective actions ordered within the time required may result in the Town having the required actions undertaken, with the real property owner being required to reimburse all costs and expenses of such actions and with a lien on the subject real property for such costs and expenses;
 - (5) A description of the Registry of Uninhabitable Properties;
 - (6) The date the registry fee will be assessed against the real property owner;
 - (7) An explanation of how real property may be removed from the Registry;
 - (8) An explanation of the appeals process; and
 - (9) A statement that failure to pay the registry fee, or failure to reimburse the Town for costs and expenses incurred to rectify or address Violative Conditions, may result in a civil action.
- (d) Delegation to Ordinance Compliance Officer. The Board may, in its discretion, delegate to the Ordinance Compliance Officer authority to make determinations, order corrective actions, and issue Notices of Uninhabitable Property under the preceding subsections (a), (b), and (c) hereof.

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- (e) Consideration of possible Nuisance. If the Vacant Structures Board determines that a property or structure may constitute a public Nuisance, as defined in the Codified Ordinances of Harpers Ferry, the Board must report the same to the Ordinance Compliance Officer or Town Council for further consideration.

1759.90 Enforcement of corrective action.

- (a) Town's performance of corrective action. If specified corrective actions have not been completed within the time specified in an order of corrective action, the Town may have the required corrective actions performed, and the real property owner must promptly reimburse the Town for all costs and expenses incurred with respect to such actions.
- (1) After having required corrective actions performed, the Town must send to the real property owner by Certified Mail a written notice summarizing all costs and expenses incurred with respect to such actions, which amounts the real property owner must reimburse to the Town.
 - (2) The Town may file a lien against the subject real property in the Office of the Clerk of the County Commission of Jefferson County for the full amount of all such costs and expenses. A copy of the filed notice of lien must be sent by Certified Mail to the real property owner.
 - (3) Civil action.
 - A. The Town may institute a civil action in the Circuit Court of Jefferson County against the real property owner for all costs and expenses incurred by the Town with respect to the subject property, including reasonable attorney fees and court costs incurred relative to the civil action.
 - B. Not less than 10 days prior to commencing such a civil action, the Town must send by Certified Mail written notice advising that the Town intends to institute such a civil action; provided that, if such mailing is returned without evidence of proper receipt, the Corporation of Harpers Ferry must cause the notice to be published as a Class III-0 legal advertisement and also posted on the front door or another conspicuous location on the Vacant Structure.
- (b) Registry of Uninhabitable Properties; registry fee. The Vacant Structures Board must establish and maintain a Registry of Uninhabitable Properties. After the passage of 90 days following a real property owner's receipt of a Notice of Uninhabitable Property, the Vacant Structures Board may place the subject real property upon the Registry of Uninhabitable Properties unless: (i) within 45 days of receipt of said notice, the real property owner completes required corrective actions so that the structure is no longer Uninhabitable, as determined by the Board following inspection at the request of the property owner; (ii) the real property owner provides to the Board within 45 days of receipt of said notice written information evidencing that required corrective actions will be completed in a reasonable period, as determined by the Board, and such corrective actions are thereafter completed in said period so that the structure is no longer Uninhabitable, as determined by the Board following inspection at the request of the property owner; or (iii) the real property owner appeals the Board's determination of Uninhabitable status under Section 1759.91(b), and the Board's determination is reversed on such appeal or is reversed on appeal to the Circuit Court of Jefferson County under Section 1759.91(b)(1).
- (1) If real property is placed on the Registry of Uninhabitable Properties, a registry fee of \$3,000 must be assessed to the owner of the real property on the date specified in the Notice of Uninhabitable Property. Thereafter, while the real

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property remains on the Registry of Uninhabitable Properties, an annual registry fee of \$5,000.00 must be assessed on each anniversary of the date that the property was placed on the registry. Registry fees are due on the 30th day after notice of the assessment is sent by Certified Mail.

- (2) A notice of the registry fee must be sent to the real property owner by Certified Mail and also be filed and recorded in the Office of the Clerk of the County Commission of Jefferson County in the same manner as a lien. Upon payment of the registry fee, a release of the notice of the registry fee must be filed in said Clerk's Office.
 - (3) If a registry fee remains unpaid on any anniversary of the date the fee was originally assessed, the notice of the registry fee must be posted on the subject real property and also sent to the real property owner by Certified Mail.
 - (4) If a registry fee remains unpaid after the second anniversary of the date the notice of the registry fee was originally recorded, the Town may institute a civil action in the Circuit Court of Jefferson County against the real property owner or other responsible party for the delinquent fee and all costs and expenses incurred by the Town with respect to the subject real property, including reasonable attorney fees and court costs incurred relative to the civil action.
- (c) Follow-Up inspections. The Vacant Structures Board may, from time to time, inspect any real property containing a structure determined to be Uninhabitable to monitor the progress of required corrective actions.
- (d) Building permits. No building permit may be issued with respect to any real property on the Registry of Uninhabitable Properties unless the work authorized by the contemplated building permit will rectify all Violative Conditions on the property.
- (e) Joint owners. Each person possessing an ownership interest in real property, whether as joint tenants, tenants in common, or otherwise, is jointly and severally liable for all fees and obligations provided for in this article.
- (f) General penalty. Violations of any provisions of this article are subject to the general penalty specified in the applicable sections of the Codified Ordinances of Harpers Ferry.

1759.91 Rights of appeal; injunction.

- (a) Appeal of Vacant Structure determination.
- (1) A determination by the Vacant Structures Board that a structure is a Vacant Structure and the resulting order placing the subject property on the Vacant Structures Registry may be appealed by the owner of the property to either the Board, Town Council, or the Circuit Court of Jefferson County, as the property owner elects, within 30 days of the property owner's first receipt of said order.
 - (2) If, on appeal to the Board or Town Council, the prior determination and order of the Board is affirmed, the property owner may further appeal that decision to the Circuit Court of Jefferson County within 30 days of the decision.
- (b) Appeal of determination of Uninhabitable status.
- (1) A determination by the Vacant Structures Board that a structure is Uninhabitable and a resulting order of corrective actions may be appealed by the owner of the subject property to either the Board, Town Council, or the Circuit Court of Jefferson County, as the property owner elects, within 90 days of the property owner's first receipt of the Notice of Uninhabitable Property.
 - (2) If, on appeal to the Board or Town Council, the prior determination and order of the Board is affirmed, the property owner may further appeal that decision to the Circuit Court of Jefferson County within 30 days of the decision.

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- (c) Procedures. Appeals to the Vacant Structures Board or Town Council are subject to the following procedural rules:
- (1) The appealing property owner must receive at least 10 days prior notice of the time, date, and place of the appellate hearing;
 - (2) Appeal proceedings must be recorded by electronic device or court reporter;
 - (3) The appealing property owner must have the right to appear, testify, present evidence and witnesses (including experts), examine and cross-examine witnesses, and be represented by an attorney at law admitted to practice in West Virginia;
 - (4) A presiding officer must be appointed and must conduct generally the proceedings, including administering oaths, ruling on evidentiary matters, and regulating the course of the proceeding;
 - (5) The Vacant Structures Board must have the burden of proving its case by a preponderance of the evidence; and
 - (6) Upon completion of the proceeding, the appellate body must render a written decision that sets forth its findings of fact and conclusions.
- (d) Injunctive relief. A property owner affected by any action or determination of the Vacant Structures Board may seek before the Circuit Court of Jefferson County temporary injunctive relief restraining the Board from taking specified actions until the matter is finally resolved.

1759.92 Use of registry fees.

All registry fees assessed under Section 1759.03(e) or Section 1759.90(b) must, when collected, be deposited in a separate account and be used for only the following purposes, as the Town Council may determine from time to time:

- (a) To improve public safety with respect to vacant and uninhabitable properties, particularly in ways that will mitigate risk to public safety personnel;
- (b) To monitor and administer this article; and
- (c) To have performed under Section 1759.90(a) corrective actions ordered pursuant to Section 1759.05(b).