



**CORPORATION OF HARPERS FERRY, WEST VIRGINIA**

**ORDINANCE No. 2014-05**

An ORDINANCE to establish a 45-day moratorium on issuance of project permits to allow for proper transition to a new issuance process, in compliance with the laws of West Virginia.

[Introduced to Town Council by Planning Commission, November 2014. Effective ordinance review and approval procedure suspended by action of Town Council, 13 November 2014, to allow for first reading in December 2014. Reviewed by Attorney Mark Sadd, November 2014. Ordinance is of temporary duration and will not be codified.]

*Be it enacted by the Town Council of the Corporation of Harpers Ferry:*

That this Ordinance 2014-05 be enacted as follows:

**2014 Ordinance for a 45-Day Moratorium on Project Permits**

**Section 1. Title.**

The Ordinance shall be known as the "2014 Ordinance for a 45-Day Moratorium on Project Permits".

**Section 2. Authority.**

Section 2.1. Grant of Power.

The authority of the Town Council to enact the Ordinance is established under §8A-7-8 of the Code of West Virginia of 1931, as amended, and the laws of the State of West Virginia.

Section 2.2. Territorial Limits.

The Ordinance shall apply to and be effective within the Territorial Limits, as defined in Section 4.

**Section 3. Findings; Purpose.**

The Town and the Harpers Ferry Historic District contain some of the most important Historic Sites and Historic Structures in the State of West Virginia. The historic character of the Town and its architecture are inextricably entwined. The Town's important tourism industry and private real property values depend largely on the historic character of the Town and its historic architecture.

The Comprehensive Plan states as one of its Goals [Sec. IV (a)]: "To preserve and protect the town's historically diverse character and historic integrity for present and future generations."

In furtherance of that Goal, the Comprehensive Plan states a number of Objectives, including the following:

"Map the historic resources included in the 1983 building inventory by age, style and significance to assist in refining the historic design guidelines."

"Adopt uniform design guidelines for improvements within the public right-of-way and on town-owned property, including sidewalks, lighting, street trees, and directional signs."

"Revise the development guidelines to remove any requirements that historic design be imitated in construction of new buildings and, instead, provide that new construction be compatible in size, scale, material, and character with surrounding historic structures in accordance with the guidelines of the Department of Interior."

"Develop guidelines to allow appropriate uses of modern building materials."

"Consider a process such as a Certificate of Appropriateness issued by the Historic Landmarks Commission as a means of preserving the historic character of Resources within the Town and a way of guiding redevelopment and new construction for consistency with our heritage."

"Consider that not more than one principal structure be erected per each lot designated on the original S. Howell Brown plat map, even after subdivision of an original lot, in order to control the residential building density of the town and to preserve its character."

After substantial investigation, the Harpers Ferry Planning Commission, with the aid of the Harpers Ferry Historic Landmarks Commission, has advised the Town Council in a report and recommendations that the Town's land use ordinances and regulations do not adequately protect or preserve the Historic Sites and the Historic Structures within the Harpers Ferry Historic District.

Further, the Planning Commission, with the aid of the Historic Landmarks Commission, has devoted substantial time and resources to preparing and drafting proposed land use ordinances and regulations for the Town Council's consideration and possible adoption. Its report and recommendations have been received.

In the meantime, in the absence of regulatory controls, the Historic Sites and the Structures within the Town are vulnerable to modification, alteration or demolition that will negatively change the historic character of the Town.

The purpose of the Ordinance is to impose the Moratorium on the Town's issuance of any Project Permit or government authorization to any Person to alter, modify, demolish, construct or reconstruct any Historic Structure or non-Historic Structure within the Harpers Ferry Historic District, for a period of 45 days so that the Planning Commission, with the assistance of the Historic Landmarks Commission, may make formal recommendations to the Town Council for the adoption of ordinances or regulations or amendments to existing ordinances or regulations; and the Town Council may consider the formal recommendations of the Planning Commission for adoption and enactment.

It is not the purpose of the Ordinance to delay or stop any *bona fide* application for a Project Permit or government authorization properly filed and pending before the Town, the Historic Landmarks Commission, the Planning

Commission or the Board of Zoning Appeals submitted before the Effective Date.

It is not the purpose of the Ordinance to permanently bar the alteration, modification, demolition, construction or reconstruction of any Historic Structure or non-Historic Structure within the Territorial Limits.

**Section 4. Definitions.**

**Building.** Any Structure that is permanently affixed to the land and has one or more floors and a roof, including a Manufactured Home Dwelling and a Modular Home Dwelling.

**Effective Date.** The date on which the Ordinance is passed.

**Existing Use.** The use or uses to which a Lot or Lots or a parcel or parcels of land within the Territorial Limits, or part or all of any Improvement thereon, before the Effective Date are lawfully pursued under local, State and Federal law.

**Historic District.** A geographically definable area, designated as historic on a national, state or local register, possessing a significant concentration, linkage or continuity of sites, buildings, structures or objects united historically or aesthetically by plan or physical development.

**Historic Landmarks Commission.** The public body established by the Town by ordinance under §8A-4-26 of the Code of West Virginia of 1931, as amended.

**Historic Site.** The location of a significant event, a prehistoric or historic occupation or activity, or a building or structure whether standing, ruined or vanished, where the location itself possesses historical, cultural or archaeological value regardless of the value of any existing structure and designated as historic on a national, state or local register.

**Historic Structure.** Any Structure that is: (a) listed individually on the National Register of Historic Places or preliminarily determined by the United States Secretary of Interior as meeting the requirements for individual listing on the National Register; (b) certified or preliminarily determined by the United States Secretary of Interior as contributing to the historical significance of a registered historic district; (c) individually listed on the West Virginia inventory of historic places; (d) individually listed on a Town, City, County, or other local inventory of historic places that has been certified by an approved State program as determined by the United States Secretary of Interior.

**Improvement.** Modifications to land that increases its value or utility, including but not limited to Buildings and structures, road grading, road surfacing, fences, retaining walls, curbs, street gutters, below- or above-grade utility lines and facilities, storm sewers and drains, sidewalks, signs, modifications to watercourses, water supply facilities, sewage disposal facilities, and park and recreation equipment.

**Lot.** In Harpers Ferry, a lot is a parcel of land within the municipal boundaries that is described by metes and bounds, the description of which has been placed of record in the County, or a parcel of land platted and numbered by S. Howell Brown as shown on maps of the town dated 16 April 1869, copies of which may be seen on the wall of the office of the Clerk of the Jefferson County Commission and on the wall of the offices of the Town of

Harpers Ferry along with subsequent modification to plat boundaries as recorded in the County Deed Books and on the Zoning Map.

Moratorium. A period of prohibition of a prescribed use or uses of land or any Improvement.

Ordinance. This Harpers Ferry Ordinance 2014-05, entitled "2014 Ordinance for a 45-Day Moratorium on Project Permits".

Person. Any individual, association, company, corporation, limited liability company, general partnership, limited partnership, firm, organization or partnership, singular or plural, of any kind.

Project Permit. A document or building permit which includes approval for construction, improvement or demolition, whether or not conditional, issued by the Town or its agents, commissions or boards upon the application of any person seeking an approval to undertake such construction activity within the Town for which official approval is required under an ordinance, law, rule, regulation, order or decree.

Structure. Anything constructed or erected for use, occupancy or ornamentation whether installed on, above or below the surface of land or water that requires the location on the ground or that is attached to something having location on the ground, excluding vehicles designed and used only for the transportation of people or goods, and excluding utility poles and towers constructed by a public utility and surface treatments such as parking lots, patios and driveways. A Structure does not include such things as garden ornaments or other non-permanent objects. Structure shall include a Building.

Territorial Limits. Those portions of land or area within the boundaries of the Town of Harpers Ferry that are not situated within the limits of the Harpers Ferry National Historical Park.

Town. The municipal corporation of Harpers Ferry, West Virginia.

Use. Any purpose for which a Building or other Structure of a tract of land may be maintained or occupied; or any activity, occupation, business, or operation carried on in a Building or other Structure or on a tract of land.

Use, Existing. The use of a Lot or Structure at the time the Moratorium was enacted.

**Section 5. Moratorium.**

Section 5.1.

During the Moratorium, no Person shall modify, alter or demolish any Historic Structure or non-Historic Structure within the Harpers Ferry Historic District except upon obtaining a Project Permit in conformance with Section 5.2.

Section 5.2.

During the Moratorium, no Project Permit shall issue unless by a decree or order of a court of competent jurisdiction or from the Town in the event of an emergency that threatens the life, safety or welfare of any individual

Person because of imminent danger posed by the condition or state of a Structure.

Section 5.3.

During the Moratorium, any *bona fide* application for a Project Permit properly filed and pending shall not be barred or denied solely because of the Moratorium.

**Section 6. Administration and Enforcement.**

Section 6.1.

It shall be the duty of the Planning Commission or Code Enforcement Official to administer and enforce the provisions of the Ordinance, except as otherwise expressly provided in the Ordinance.

Section 6.2.

It shall be the duty of the Planning Commission or the Code Enforcement Official to:

- (a) Conduct investigations as necessary to determine compliance with or violation of the Ordinance;
- (b) Abate any violation of the Ordinance;
- (c) Seek the assistance of the office of the Sheriff of Jefferson County or the office of the Prosecuting Attorney of Jefferson County, as the case may be, to abate or prosecute any violation of the Ordinance;
- (d) Assist law enforcement officers to abate or prosecute any violation of the Ordinance; and
- (e) Provide information about the Ordinance upon the request of citizens and public agencies.

Section 6.3. Procedures for Violations.

- (a) Whenever a violation of the Ordinance occurs, or is alleged to have occurred, any person may file a written complaint. Such complaint stating fully the causes and basis thereof shall be filed with the Planning Commission or Code Enforcement Official. The Planning Commission or Code Enforcement Official shall record properly such complaint, conduct appropriate investigation, and take action thereon as the Ordinance provides.
- (b) If the Planning Commission or Code Enforcement Official finds that any of the provisions of Ordinance are violated, whether reported by citizens or by any commission, board, agency, officer or employee of the Town, or by their own observation, they shall notify in writing the person responsible for such violation. Service of the written notice shall be deemed complete upon sending the notice by certified mail to the last known address of the person or by personal service by the office of the Recorder of the Town.
- (c) Any such notice of a violation of the Ordinance shall include the following:

- (i) Street address or legal description of the property involved, including identification by the tax district and tax map and parcel numbers;
  - (ii) A statement of the nature of the violation;
  - (iii) A description of the action required to correct the violation;
  - (iv) A statement of the time within which compliance with the Ordinance must be accomplished; and
  - (v) A statement that upon failure to comply with the requirements of the notice, the Planning Commission or Code Enforcement Official shall take such enforcement actions as the Ordinance authorizes.
- (d) The Planning Commission or Code Enforcement Official may order discontinuance of any use of a parcel or parcels of land or any Building or Structure that does not conform to the Ordinance by issuing a written order. The Planning Commission or Code Enforcement Official may seek other remedies provided by law, including, without limitation, injunction, abatement by judicial proceeding in the Circuit Court of Jefferson County.
- (e) The Planning Commission or Code Enforcement Official may impose a monetary fine not to exceed \$500.00 a day against any person or persons who violate the Ordinance or any order or decree issued thereunder.
- (f) Nothing contained in the Ordinance shall be deemed to prevent the Town from pursuing other lawful actions to prevent or remedy violations of the Ordinance.

**Section 7. Existing uses safeguarded.**

The Moratorium shall not prohibit the continuance of the Existing Use of any land or Improvement for the purpose for which such land or Improvement is used on the Effective Date. The Moratorium shall not prohibit the alternation or replacement of any Improvement for the purpose for which such Improvement is used on the Effective Date, except that the use shall not be expanded or enlarged unless it shall conform to the Ordinance.

Passed FIRST READING the 8th day of December, 2014.

Passed SECOND and FINAL READING the 5th day of January, 2015.

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Gregory F. Vaughn, Mayor

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Kevin Carden, Recorder