

ORDINANCE 19

AN ORDINANCE REGULATING THE REPAIR, CLOSING AND DEMOLITION OF CERTAIN DWELLINGS OR BUILDINGS AND PROCEDURES AND PENALTIES THEREFOR

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF PLEASANT VALLEY:

WHEREAS, the legislature of West Virginia, by West Virginia Code 8-12-16, has conferred upon every municipality plenary power and authority to adopt ordinances regulating the repair, alteration or improvement, or vacating and closing or removal, or demolition, or any combination thereof, of any dwellings or other buildings unfit for human habitation due to dilapidation, defects, increasing the hazard of fire, accidents or other calamities, lack of ventilation, light or sanitation facilities, or any other conditions prevailing in any dwelling or building for the use of human habitation or not, which would cause such dwellings to be unsafe, unsanitary, dangerous or detrimental to the public welfare; and

WHEREAS, it appears and the council of the City of Pleasant Valley hereby finds that the public interest and the public welfare will be served by the adoption of such an ordinance as authorized by the West Virginia Code;

SECTION ONE. Definitions.

For the purpose of this ordinance, the following words and phrases shall have the meanings respectively ascribed to them by this section, unless a different meaning clearly appears from the context:

Agency. The City Housing Enforcement Agency established by this ordinance.

Dwelling or other Building. Any building or structure, or part thereof, whether used for human habitation or not, including any outhouses and appurtenances belonging thereto, or usually thereto, or usually enjoyed therewith.

Officer. The officers authorized by this ordinance to exercise the powers of the agency prescribed hereby.

Owner. The holder of the title in fee simple and every mortgagee of record.

Parties in interest. All individuals, firms, associations and corporations who have interests of record in a building or structure and any who are in possession thereof.

SECTION TWO. Housing Enforcement Agency Created: Composition of Agency.

There is hereby created the City of Pleasant Valley Housing Enforcement Agency (hereinafter referred to in this ordinance as the "agency"), which shall consist of the mayor, the municipal engineer or building inspector, and one member at large to be selected by, and to serve at the will and pleasure of the mayor.

SECTION THREE. Powers of Agency Generally.

The agency shall exercise such powers as may be necessary or convenient to carry out and effectuate the purposes of this ordinance, including the following powers in addition to others herein granted.

(a) To investigate the dwelling and other building conditions in the city in order to determine which dwellings or other buildings therein are unfit for human habitation due to dilapidation, defects increasing the hazard of fire, accidents or other calamities, lack of ventilation, light or sanitary facilities or any other conditions prevailing in any dwelling or building, whether used for human habitation or not, which would cause such dwellings or other buildings to be unsafe, unsanitary, dangerous or detrimental to the public safety or welfare;

(b) To administer oaths affirmations, examine witnesses and receive evidence;

(c) To enter upon premises for the purpose of making examinations; provided, however, that any entrance upon premises for the purpose of making examinations shall be made in such a manner as to cause the least possible inconvenience to the persons in possession;

(d) To appoint and fix the duties of such officers, agents, and employees as it deems necessary to carry out the purpose of this ordinance; and

(e) To delegate any of its functions and powers under this ordinance to such officers and agents as it may designate.

SECTION FOUR. Enforcement Officer Generally.

Upon the adoption of this article the agency may designate and appoint an officer to exercise the powers granted it hereby, and such officer shall serve at the will and pleasure of the agency and shall be paid such compensation as the agency may prescribe.

SECTION FIVE. Complaint, Notice and Hearing Upon Filing of Petition; Order Upon Determination; Repair, Alteration, Demolition, Etc., by City Upon Failure of Owner to Comply with Order.

(a) Whenever a petition is filed with the agency or officer by at least three residents of the city who are property owners, charging that any dwelling or other building is unfit for human habitation due to dilapidation, defects increasing the hazard of fire, accidents or other calamities, lack of ventilation, light or sanitary facilities, or other conditions prevailing in any dwelling or building, whether used for human habitation or not, which would cause such dwellings to be unsafe, unsanitary, dangerous, or detrimental to the public safety or welfare, or whenever it appears to the agency or officer that any dwelling or other building is unfit for human habitation due to dilapidation, defects increasing the hazard of fire, accident or other calamities, lack of ventilation, light or sanitary facilities, or any other conditions prevailing in any dwelling or building, whether used for human habitation or not, which would cause such dwellings or other buildings to be unsafe, unsanitary, dangerous, or detrimental to the public safety or welfare, or if the state fire marshal has made such a determination as provided in West Virginia Code 29-3-12 et seq; if the preliminary investigation discloses a basis for such charges; issue and cause to be served upon the owner of and parties in interest in such dwelling or building a complaint stating the charges in that respect and containing a notice that a hearing will be held before the agency, at a place therein fixed, not less than ten nor more than thirty days after the serving of the complaint. The owner and parties in interest shall have the right to file an answer to the complaint and to appear in person, or otherwise, and give testimony at the time and place fixed in the complaint. The hearing should be informal and strict rules of procedure shall not be followed or required.

(b) If, after such notice and hearing, the agency determines that the dwelling or building under construction is unfit for human habitation, whether used for human habitation or not, or is unsafe, unsanitary, dangerous or detrimental to the public safety or welfare, it shall in issue writing its findings of fact in support of such determination and shall issue and cause to be served upon the owner and parties of interest thereof and order requiring:

(1) If the repair, alteration, or improvement of the dwelling or building can be made at a cost of not more than twenty-five percent of the value of the dwelling or building, exclusive of the real

estate upon which it stands, the owner shall within the time specified in the order repair, alter or improve such dwelling or building as to render it fit for human habitation or eliminate those things causing it to be unsafe, unsanitary, dangerous or detrimental to the public safety or welfare; or

(2) If the repair, alteration or improvement of the dwelling or building cannot be made at a cost of not more than twenty-five percent (25%) of the value of the dwelling, exclusive of the real estate upon which it stands, the owner shall within the time specified in order remove or demolish such building.

(c) If the owner fails to comply with the order of the agency to repair, alter or improve, vacate and close, the dwelling or building, the agency may cause such dwelling or building to be repaired, altered, or improved, or to be vacated and closed, and from the date specified in the order of the agency or repair, alteration, or improvement, or vacation and closing of the dwelling or building, the officer may cause to be posted on such dwelling or building a placard with the following words: "This building is unfit for human habitation or is unsafe, unsanitary, dangerous or detrimental to the public safety or welfare, and the use or occupation of this building is prohibited and unlawful."

(d) If the owner fails to comply with an order of an agency to remove or demolish the dwelling, the agency may cause such dwelling to be removed or demolished upon such condition as the agency may prescribe.

SECTION SIX. Cost of Repairs, Improvements, Demolition, Etc., to be Lien; Sale of Materials of Removed or Demolished Dwelling and Disposition of Proceeds.

The amount of the costs of repairs, alterations, or improvements, or vacating and closing, or removal or demolition, as provided for by the preceding section shall be a lien against the real estate upon which such cost was incurred on the property as recorded in the Office of the County Assessor. The city shall also have the right to institute a civil action in the Marion County Circuit Court against the landowner or other responsible parties for all the costs incurred by the city with respect to the property and for all reasonable attorney fees and court costs incurred in the prosecution of the action. Not less than ten (10) days prior to instituting a civil action as provided for this section, the City Council shall send notice to the landowner by certified mail, return receipt requested, advising the landowner of the town Council's intention to institute such action. The notice shall be sent to the most recent address of the landowner of record in the Office of the Assessor of Marion County. If, for any reason, such certified mail is returned without evidence of proper receipt thereof, then in such event the city shall cause a Class III-O legal advertisement to be published in the Times-West Virginian, a newspaper of general circulation in Marion County, West Virginia, and shall post the notice on the front door or other conspicuous location on the subject property.

SECTION SEVEN. Power of Agency to Determine Dwelling Unfit or Unsafe Condition.

The agency may determine that a dwelling or building is unfit for human habitation due to dilapidation, defects increasing the hazard of fire, accident or other calamities, lack of ventilation, lights, or sanitary facilities, or any other facilities, or any other conditions prevailing in any dwelling or buildings, whether used for human habitation or not, which would cause such dwellings or other buildings to be unsafe, unsanitary, dangerous, or detrimental to the public safety or welfare.

SECTION EIGHT. Service of Complaints and Orders.

All complaints or orders issued by the enforcement agency shall be served in accordance with the law of this state concerning the service of process in civil actions, and shall in addition thereto, be posed in a conspicuous place on the premises affected by the complaint or order. A copy of such complaint or order may also be filed for record in the Office of the Clerk of the County Commission of Marion County, and such filing of a copy of such complaint or order shall have the same force and effect as other lis pendens notices have under the laws of this state.

SECTION NINE.

Appeals from Orders.

Any person affected by an order issued by the agency or its officer may petition the Circuit Court of the county in which the premises affected are located for an injunction restraining the agency and officer from carrying out the provisions of such order, and the court may, upon such petition, issue a temporary injunction restraining the agency pending the final disposition of the cause; provided, however, that such petition shall be filed not more than sixty days after the service and posting of the order. Hearings may be had by the court on such petitions within twenty (20) days after the filing of the same, or as soon thereafter as possible, and upon the application of any party in interest may, in the discretion of the court, be given preference over other matters on the court's calendar. The court shall hear and determine the issues raised and shall enter such final order or decree as law and justice may require. In all such proceedings the findings of the agency as to facts, if supported by evidence, shall be conclusive. Costs shall be assessed in the discretion of the court against the party substantially prevailing in the proceeding.

The remedies herein provided shall be exclusive remedies and no person affected by an order of the agency shall be entitled to recover any damages for action taken pursuant to its order, or because of noncompliance by such person with any order of the agency.

SECTION TEN.

Agency Equipment, Personnel and Supplies, Grants and Donations.

The cost of equipment, personnel and supplies necessary for periodic examinations and investigations for the purpose of determining the fitness of dwellings in the city for human habitation, and for the enforcement and administering of this ordinance, shall be made by appropriations from the revenues of the city as the city council may deem necessary, and the agency may accept and apply grants or donations to assist it in carrying out the provisions hereof.

SECTION ELEVEN.

Liability of City Officers, Agents and Employees.

No officer, agent or employee of the city shall be personally liable for any damage incurred or alleged to be incurred as a result of any act required, permitted or authorized to be done or performed in the discharge of this duties pursuant to this ordinance, and any suit brought against any officer, agent or employee of the city as a result of any act required, permitted or authorized in the discharge of his duties under this article may be defended by the city.

SECTION TWELVE.

Authority; Construction of Article.

This article is enacted pursuant to the authority of the Code of the State of West Virginia, and nothing herein contained shall be construed to abrogate or impair the powers of any department of the city to enforce any provisions of its ordinances or regulations, nor to prevent to punish violations thereof; and the powers conferred by this article shall be in addition and supplemental to the powers conferred by any other law of state or ordinance of the city.

SECTION THIRTEEN.

Violations and penalties.

(a) The owner or the person having dominion and control over any dwelling determined by the agency to be unfit for human habitation, who shall willfully fail to comply with any order to repair, or demolish such dwelling shall be guilty of a misdemeanor, and upon conviction thereof shall be fined not exceeding One Hundred Dollars (\$100.00) for each offence, and the further sum of Twenty-Five Dollars (\$25.00) for each day such failure to comply continues beyond the date fixed for compliance.

(b) The occupant or lessee in possession who willfully fails to comply with any order to vacate and who fails to repair such dwelling in accordance with any order given, as provided for in this ordinance, shall be guilty of a misdemeanor, shall be fined not exceeding One Hundred Dollars (\$100.00) for each offense, and a further sum on Twenty-Five Dollars (\$25.00) for each day such failure to comply continues beyond the date fixed for compliance.

(c) Any person who removes any notice or order of the agency posted as required under any of the provisions of this ordinance shall be guilty of a misdemeanor, and upon conviction thereof shall be fined not exceeding One Hundred Dollars (\$100.00).

(d) Any person who shall willfully obstruct, impede or interfere with the agency, or any representative or officer of the agency, or with any person who owns or holds any estate or interest in any dwelling or building which has been ordered by the agency to be vacated, demolished or removed, or with any person to whom such dwelling or building has been lawfully sold, pursuant to the provisions of this article, whenever any such representative or officer of the agency, purchaser or person having an interest or estate in such dwelling or building, is engaged in repairing, vacating, closing or demolishing any such dwelling or building, or in performing any necessary act preliminary to or incidental to such work, shall be guilty of a misdemeanor, and upon conviction thereof shall be fined not exceeding One Hundred Dollars (\$100.00) for each offense.

SECTION FOURTEEN. This ordinance shall be effective immediately upon passage.

Passed by the City Council this 10th day of October, 2003.

signed by Jack Bish
Mayor

ATTEST:

signed by Mary E. Kramer
City Clerk