

**ORDINANCE NO. ____ OF THE CITY OF SHINNSTON, WEST VIRGINIA,
AMENDING PART SEVENTEEN, ESTABLISHING ARTICLE 1725, OF THE
CODIFIED ORDINANCES OF THE CITY OF SHINNSTON, PROVIDING
FOR ENACTMENT OF A VACANT BUILDINGS REGISTRATION
PROGRAM; REGARDING REGISTRATION FEES; PROCEDURES FOR
ADMINISTRATION AND ENFORCEMENT.**

WHEREAS, the provision of Chapter 8 Article 12, Section 16 of the West Virginia Code, as amended, confer plenary power and authority upon municipalities, including The City of Shinnston, to adopt ordinances regulating the repair, alteration, improvement, or the 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 sanitary facilities or an 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; and,

WHEREAS, West Virginia Code § 8-12-16c grants a municipality the power and authority to provide for the establishment of a vacant building registration program; and,

WHEREAS, the State Legislature amended the immediately foregoing authorizing state statute in 2008; and,

WHEREAS, the State Legislature further enacted (1) the provisions of Chapter 8, Article 12, Section 16a. of the West Virginia Code, entitled “Registration of uninhabitable property” in 2008, and (2) the provisions of Chapter 8, Article 12, Section 16c. of the West Virginia Code, entitled “Registration of vacant buildings; registration fees; procedures for administration and enforcement” in 2010; and,

WHEREAS, the Council desires to implement by ordinance the statutory provisions of both Chapter 8, Article 12, Section 16a. and 16c. of the West Virginia Code; and,

WHEREAS, the Council of the City of Shinnston is committed to becoming more vigilant respecting all matters involving dwellings or buildings determined to be unfit for human habitation, or alternatively vacant buildings or other structures due to said dwellings, buildings or other structures threatening the health, safety and general welfare of the residents of the City of Shinnston.

WHEREAS, In order to facilitate the public good and promote the general public welfare, the Council of the City of Shinnston has determined that Chapter 17 of The City’s Codified Ordinance should be amended by adding the following:

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF SHINNSTON, AS FOLLOWS:

THAT ARTICLE 1725 OF THE CODIFIED ORDINANCES OF THE CITY OF SHINNSTON BE ENTITLED “VACANT STRUCTURES” IS HEREBY ENACTED AS FOLLOWS:

(1) There is hereby created the City of Shinnston Housing Enforcement Board which shall consist of the City Manager, the City Building Official, the Shinnston Fire Chief or designee, and one

member at large to be selected by and to serve at the will and pleasure of the Council of The City of Shinnston. The Harrison County Health Officer may serve as an ex officio member of the Housing Enforcement Board, receiving notice of meeting agenda items by providing comments to the Board, but shall have no voting rights or privileges on the Board.

(2) The City Manager shall designate and appoint an officer to be known as the City of Shinnston Housing Enforcement Officer. The Housing Enforcement Officer shall exercise the powers herein granted along with any and all other powers currently granted or as may be granted in the future to such officer pursuant to the statutory provisions of Chapter 8, Article 12, Sections 16, 16a., and 16b. Of the West Virginia Code as amended. The Housing Enforcement Officer shall serve at the will and pleasure of the City Manager. The Housing Enforcement Officer may or may not be one and the same person as the City of Shinnston's Building Official.

(3) The Housing Enforcement Officer is charged with the responsibility and authority to formally investigate any and all dwellings or other buildings or structures alleged to be 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 other buildings or structures, whether used for human habitation or not, which would cause such dwellings or other buildings or structures to be unsafe, unsanitary, dangerous or detrimental to the public safety or welfare. The initiation of any investigation by the Housing Enforcement Officer may occur either

- (a) as a consequence of the Housing Enforcement Officer's own observation;
- (b) from a citizen complaint lodged with the Housing Enforcement Officer or
- (c) as referred by the City Manager.

The Housing Enforcement Officer in conducting investigations or discharging any duties established pursuant to this Ordinance shall have the right upon granting reasonable notice to the occupants thereof, i.e., a minimum of twenty-four (24) hours written notice delivered to the occupants thereof, to enter upon and within at all reasonable times, any lots, dwellings and other buildings and structures situated within the corporate limits of the City of Shinnston. Any entrance upon or within any premises by the Housing Enforcement Officer for the purpose of making any investigation authorized by this Ordinance shall be made in a manner as to cause the least possible inconvenience to the persons in possession of the premises. In the event that there are no occupants of the premises to be investigated, then reasonable written notice shall be delivered to the owner of the premises.

(4) (A) Upon any determination by the Housing Enforcement Officer that any dwelling or other building or structure 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 any other conditions prevailing in any dwelling or other buildings or structures, whether used for human habitation or not, which would cause such dwellings or other buildings or structures to be unsafe, unsanitary, dangerous or detrimental to the public safety or welfare, the Housing Enforcement Officer then promptly shall submit to the Housing Enforcement Board a written, preliminary report concerning the condition of such dwelling or other building or structure and the Housing Enforcement Board thereafter shall conduct a hearing respecting the investigation and report.

(B) Written notice of not less than ten (10) days shall be served upon both the owner and any occupants of the premises, and which notice shall establish:

- (a) the date, time and place for the hearing;
- (b) the nature of the complaint;
- (c) the opportunity of the owner and/or occupants to present testimony and other evidence concerning the matter; and

(d) the possible ordering by the Housing Enforcement Board of the razing and demolition of the dwelling or other building or structure if the violating conditions are not abated within a reasonable period of time, i.e., a minimum of thirty (30) days following the hearing date and commencement of razing and demolition.

(C) The hearing before the Housing Enforcement Board on the matter shall be an informal hearing and strict rules of procedure or evidence shall be followed or required. The owner and/or occupants may be represented by legal counsel. Any owner or occupant of the premises involved, or their legal counsel, or any other interested person, shall have the right to examine the written report of the Housing Enforcement Officer and further shall have the right to file a written answer to such report and to appear in person or by counsel, and offer testimony and other evidence at the time and place fixed in the notice for the hearing on the matter.

(5) If following the hearing, the Housing Enforcement Board determines by a majority vote that the investigated dwelling or other building or structure 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 any other conditions prevailing in any dwelling or other buildings or structures, whether used for human habitation or not, which would cause such dwellings or other buildings or structures to be unsafe, unsanitary, dangerous or detrimental to the public safety or welfare, then the Housing Enforcement Board shall state in writing its findings of fact in support of such determination, and then shall issue and cause to be served upon the owner, occupants and any other interested parties, an order requiring the owner to undertake the following:

(A) The repair, alteration or improvement of the dwelling or other building or structure within a specified time to permit the repair, alteration or improvement of the premises so as to abate the violating conditions, said repair, alteration or improvement period to be a minimum of thirty (30) days, or

(B) The razing, demolition and removal of the dwelling or other building or structure.

(6) (A) If the owner fails to comply with the order of the Housing Enforcement Board to repair, alter or improve, or alternatively to raze, demolish and remove the dwelling or other building or structure, the Housing Enforcement Board may cause said dwelling or other building or structure to be repaired, altered or improved, or to be vacated and closed from and after the date specified in the order of the Housing Enforcement Board for the repair, alteration or improvement of the premises. The Housing Enforcement Officer then shall cause to be posted upon the premises a notice bearing the following: "This building has been determined to be 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 the dwelling or other building or structure, whether used for human habitation or not, which would cause such dwelling or other building or structure to be unsafe, unsanitary, dangerous or detrimental to the public safety or welfare. The use or occupancy of this dwelling or other building or structure is prohibited and unlawful."

(B) If the owner fails to comply with an order of the Housing Enforcement Board to repair, alter or improve, or raze, demolish and remove, the Housing Enforcement Board may cause such dwelling or other building or structure to be razed, demolished and removed upon such conditions as the Housing Enforcement Board may prescribe and at the exclusive cost and expense of the owner thereof.

(7) All costs of any repairs, alterations, improvements, vacating, closing, razing, demolition and/or removal of any dwelling or other building or structure under orders of the Housing

Enforcement Board shall constitute a lien against the subject real estate upon which such costs were incurred. Any and all cost incurred respecting asbestos inspection and/or abatement shall be deemed to be a cost of any razing, demolition and/or removal. If the dwelling or other building or structure is razed, demolished and removed by the Housing Enforcement Board, the Board shall attempt to sell such materials from such premises as can be salvaged and shall credit the proceeds of such sale against the cost of the razing, demolition and removal.

(8) All notices or orders issued by the Housing Enforcement Board shall be served upon the owner and/or occupants thereof in such a manner as prescribed by the laws of the State of West Virginia for service of legal documents, and in addition thereto, all such notices and orders shall be posted in a conspicuous place upon the premises. A copy of all such complaints or orders further shall be filed for record in the Office of the Clerk of the Municipal Court of Shinnston, West Virginia, and such filing shall be deemed to have the same legal force and effect as a lis pendens notice authorized pursuant to the laws of the State of West Virginia.

(9) Any owner or other person affected by an order issued by the Housing Enforcement Board may petition the Municipal Court of Shinnston, West Virginia for an injunction restraining the Housing Enforcement Board and/or the Housing Enforcement Officer from carrying out the provisions of such order, and the Housing Enforcement Board and/or Housing Enforcement Officer shall fully comply in all respects with any order issued by the Municipal Court in connection with any injunction hearing. The City Attorney shall represent the Housing Enforcement Board and/or Housing Enforcement Officer in any such proceedings before the Harrison County Circuit Court.

(10) (A) The owner or other person exercising dominion or control over any dwelling or other building or structure determined by the Housing Enforcement Board to be unfit for human habitation, and who shall fail to comply with any order of the Housing Enforcement Board, shall be guilty of a misdemeanor, and upon conviction thereof shall be fined not less than One Hundred Dollars (\$100.00) nor more than Five Hundred Dollars (\$500.00) for each offense, and in addition thereto, may be ordered confined for a period not exceeding thirty (30) days.

(B) Any occupant or lessee or any other person who fails to comply with any order to vacate any dwelling or other building or structure, or who remains in occupancy or possession of any building or structure that has been ordered to be vacated, shall be guilty of a misdemeanor and shall be fined not less than One Hundred Dollars (\$100.00) nor more than Five Hundred Dollars (\$500.00) for each offense, and in addition thereto, may be ordered confined for a period not exceeding thirty (30) days.

(C) Any person who removes any notice or order of the Housing Enforcement Board posted as required pursuant to this Ordinance shall be guilty of a misdemeanor and upon conviction thereof shall be fined not less than One Hundred Dollars (\$100.00) nor more than Five Hundred Dollars (\$500.00) for each offense, and in addition thereto, may be ordered confined for a period not exceeding thirty (30) days.

(D) Any person who obstructs, impedes or interferes with the Housing Enforcement Officer or any other person in their performance and discharge of duties and requirements of this Ordinance shall be guilty of a misdemeanor and upon conviction thereof shall be fined not less than One Hundred Dollars (\$100.00) nor more than Five Hundred Dollars (\$500.00) for each offense, and in addition thereto, may be ordered confined for a period not exceeding thirty (30) days.

(11) No officer, agent or employee of the City of Shinnston, or any member of the Housing Enforcement Board of the City of Shinnston or the Housing Enforcement Officer shall be held personally liable for any damage incurred or alleged to have been incurred as a result of any act

required, permitted or authorized to be performed in the discharge of duties pursuant to this Ordinance or any notice or order issued by the Housing Enforcement Board. Any suit brought against any such officer, agent or employee of the City, or any member of the Housing Enforcement Board or the Housing Enforcement Officer shall be defended by the City of Shinnston.

ARTICLE II – REGISTRATION OF UNINHABITABLE PROPERTY:

(1) There is hereby created the City of Shinnston's Registry of Uninhabitable Property. The owner of any real property improved by a structure that has been determined to be uninhabitable and violates the City's Building Code shall register their property with the Housing Enforcement Officer, said Housing Enforcement Officer being hereby specifically designated and appointed by the City Manager as being the City's Code Enforcement Officer.

(2) The Housing Enforcement Officer shall investigate and determine whether any real property situated within the corporate limits violates the provisions of the City's Building Code.

(3) After inspecting property, if the Housing Enforcement Officer determines the property is uninhabitable and violates the City's Building Code, then:

(A) The Housing Enforcement Officer shall post a written notice on the property which shall include:

- (1) an explanation of the violation(s);
- (2) a description of the registration;
- (3) the date the fee will be assessed;
- (4) an explanation of how to be removed from the registration;
- (5) an explanation of the appeals process;
- (6) a statement that if the fee is not paid, then the property is subject to forfeiture;

and,

(B) Within five (5) business days of the inspection and the posting of property, the Housing Enforcement Officer shall by certified mail, send a copy of the notice that was posted to the owner(s) of the property at the last known address according to the county property tax records.

(4) Within forty-five (45) days of receipt of the notification by the owner(s), the property owner may:

(A) Make and complete any repairs to the property that violate the City's Building Code;

or

(B) Provide written information to the officer showing that repairs are forthcoming in a reasonable period of time.

(5) After the repairs are made, the owner may request a re-inspection of the property to ensure compliance with the applicable building code. If the Housing Enforcement Officer finds the violations are fixed, the owner is not subject to the registration and no fee will be incurred.

(6) The Housing Enforcement Officer may reinspect the property at any time to determine where in the process the repairs fall.

(7) Within ninety (90) days of receipt of the notification by the owner(s), the property owner has the right to appeal the decision of the officer to the Housing Enforcement Board.

(8) If an appeal is not filed within ninety (90) days, the property is registered and the fee is assessed to the owner(s) on the date specified in the notice. The notice of the fee shall be recorded in the Harrison County Clerk's Office.

(9) If the Housing Enforcement Board affirms the registration and assessment of the registration fee, the property owner has the right to appeal the decision of the enforcement agency to the Shinnston Municipal Court within thirty (30) days of the decision. If the decision is not appealed in a timely manner to the court, then the property is registered and the fee is assessed on the date specified in the notice. The notice of the fee shall be recorded in the Harrison County Clerk's Office.

(10) After all fees are paid, and at such time as the property is no longer determined to be uninhabitable either as a result of improvements to the property that make the property habitable, or the uninhabitable structure being razed and removed, the municipality shall record a release of the fee in the Harrison County Clerk's Office.

(11) If an owner fails to pay the fee, then the Housing Enforcement Officer shall annually post the written notice on the property and send the written notice to the owner(s) by certified mail.

(12) If a registration fee remains delinquent for two years from the date it was placed on record in the Harrison County Clerk's Office, the City may take action to receive the subject property by means of forfeiture. In the event the City takes the steps necessary to receive the subject property, the City then becomes the owner of record and takes the property subject to all liens and real and personal property taxes.

(13) An owner subject to property registration pursuant to this Article II, shall be assessed a monthly fee in the amount of \$0.02 per square foot of the uninhabitable structure, said square footage to be determined from the records maintained by the Harrison County Assessor's Office.

(14) Any and all funds realized from the imposition of the fee authorized pursuant to this Article II are hereby declared to be dedicated to a special account to be established by the City Finance Director for the purpose of facilitating the City's razing, demolition and removal of uninhabitable dwellings and other buildings and structures situated within the corporate limits, or may otherwise be expended to discharge the functions, duties and expenses of the City's Housing Enforcement Board and/or Housing Enforcement Officer.

ARTICLE III – REGISTRATION OF VACANT BUILDINGS; REGISTRATION FEES; PROCEDURES FOR ADMINISTRATION AND ENFORCEMENT:

(1) There is hereby created the City of Shinnston's Registry of Vacant Buildings. For purposes of this Article III, the term "vacant building" means a building or other structure that has been unoccupied for six months or longer, or unsecured and occupied by one or more unauthorized persons for six months or longer, PROVIDED, that a new building under construction or a building that by definition is exempted by ordinance of the municipality, is not deemed a vacant building: PROVIDED FURTHER, however, that the City Council shall on a case by case basis, upon the written request of the property owner, exempt vacant buildings from registration upon a finding for good cause shown that a person will be unable to occupy the buildings for a determinate period of time.

(2) An owner subject to property registration pursuant to this Article III, shall be assessed a monthly fee in the amount of \$0.01 per square foot of all vacant buildings, said square footage to be determined from the records maintained by the Harrison County Assessor's Office.

(3) Any owner subject to property registration pursuant to this Article III upon six months of their property becoming vacant, shall register their property as being vacant with the City's Housing Enforcement Officer. The Housing Enforcement Officer shall determine the appropriate monthly fee after conferring with the Harrison County Assessor's Office.

(4) In any event that the owner of a vacant building resides outside the State of West Virginia, then the owner shall designate a person residing within the State who shall be authorized to accept service of process and notices of fees due and owing pursuant to this Article III on behalf of the owner and who shall be designated by the owner as a responsible, local party or agent for the purposes of notification in the event of any emergency affecting the public health, safety or welfare as attributable to the owner's vacant building.

(5) The City is authorized to institute a civil action against the owner of any vacant property and/or file a lien on real property for unpaid and delinquent vacant building registration fees. Before any lien is filed, the City shall give notice to the property owner or owner's agent, by certified mail, return receipt requested, stating that the City will file the lien unless the delinquent fees are paid by a date stated in the notice, which shall be not less than thirty (30) days from the date the notice is received by the owner or the owner's agent, which shall be the date of delivery shown on the signed certified mail return receipt card. If service of the notice cannot be attained by certified mail, notice may be affected by posting of the notice at the property or by publication.

(6) Within thirty (30) days of receipt of the notification by the owner(s), the property owner has the right to appeal the decision of the officer to the Housing Enforcement Board.

(7) If an appeal is not filed within thirty (30) days, the property is registered and the fee is assessed to the owner(s) on the date specified in the notice.

(8) If the Housing Enforcement Board affirms the registration and assessment of the registration fee, the property owner has the right to appeal the decision of the enforcement agency to the Shinnston Municipal Court within thirty (30) days of the Board's decision. If the decision is not appealed in a timely manner to the Municipal Court, then the property is registered and the fee is assessed on the date specified in the notice.

(9) The City shall deposit all fees collected pursuant to this Article III into a special account, which funds shall be used to:

- (A) improve public safety efforts, especially for police and fire personnel, who most often contend with the dangerous situations manifested in vacant properties;
- (B) monitor and administer this Article III; and,
- (C) repair, close or demolish a vacant structure as authorized pursuant to Article I of this Ordinance.

(10) After all fees are paid, and at such time as the property is no longer determined to be uninhabitable either as a result of improvements to the property that make the property habitable, or the uninhabitable structure being razed and removed, the municipality shall record a release of the fee in the Harrison County Clerk's Office.

(11) If an owner fails to pay the fee, then the Housing Enforcement Officer shall annually post the written notice on the property and send the written notice to the owner(s) by certified mail.

(12) If a registration fee remains delinquent for two years from the date it was placed on record in

the Harrison County Clerk's Office, the City/Town may take action to receive the subject property, the City/Town then becomes the owner of record and takes the property subject to all liens and real and personal property taxes.

(13) An owner subject to property registration pursuant to this Article shall be assessed an annual fee in accordance with the following schedule:

Less Than One Year -	No Fee
One Year -	\$200.00
Two Years -	\$400.00
Three Years -	\$600.00
Four Years -	\$800.00
Five Years -	\$1600.00
Five Years or More -	\$1600.00 plus \$300.00 for each additional year

ARTICLE IV – SEVERABILITY:

The provisions of this Ordinance are severable and if any provision or part thereof shall be held invalid for any reason by a court of competent jurisdiction, such invalidity shall not affect or impair any of the other provisions or parts of this Ordinance. It is hereby declared to be the intent of the City Council that this Ordinance nevertheless would have been adopted if such invalid provision or part thereof had not been included herein.

ARTICLE V-EFFECTIVE DATE:

This Ordinance shall become effective upon passage.

Passed by The Shinnston City Council on FIRST READING on this ____ day of ____ 2016.

Passed by The Shinnston City Council on SECOND AND FINAL READING on this ____ day of ____ 2016.

Sammy DeMarco, Mayor

CERTIFICATE OF ENACTMENT

I, Kathleen Panek, City Clerk, do hereby certify that the foregoing Ordinance No. ____ was lawfully ordained and enacted by the Council of the City of Shinnston at a regular meeting of the said Council assembled on _____, 2016.

Kathleen Panek, City Clerk