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## **AN ORDINANCE REPEALING AND REENACTING CHAPTER 8 IN ITS ENTIRETY OF THE CODE OF THE TOWN OF SUTTON**

**WHEREAS**, the Town Council of the Town of Sutton, West Virginia, is authorized under West Virginia Code §§ 8-11-3, 8-11-4, and 8-12-5, and other applicable provisions of state law, to adopt, amend, repeal, and reenact ordinances governing municipal affairs; and

**WHEREAS**, the Town Council finds that the existing provisions of Chapter 8, in its entirety contain outdated, unclear, or fragmented language that no longer reflects current Town policy or best practices; and

**WHEREAS** the Town Council finds it in the best interest of the Town and its residents to repeal the existing provisions and adopt a consolidated, modernized replacement that is clear, enforceable, and consistent with current West Virginia law;

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF SUTTON, WEST VIRGINIA, THAT:

**Section 1.** Repeal Chapter 8, in its entirety of the Code of the Town of Sutton previously enacted and amended, is hereby repealed in its entirety.

**Section 2.** Reenactment and Replacement Chapter 8, in its entirety of the Code of the Town of Sutton is hereby reenacted in its entirety to read as follows:

## **Chapter 8**

### **Health, Sanitation, Safety, Nuisances and Vacant and Dilapidated Properties**

#### **Article One**

#### **Litter, Rubbish, and Garbage Disposal**

##### **8-101 Authority**

This Article is adopted pursuant to the authority granted to municipalities under the laws of the State of West Virginia, including but not limited to:

- West Virginia Code § 8-12-5
- West Virginia Code § 22-15-4
- West Virginia Code § 22-15A-4
- West Virginia Code § 7-1-3kk (as applicable)

Pursuant to these provisions, the Town is authorized to enact ordinances to protect the public health, safety, and welfare by regulating the storage, accumulation, collection, and disposal of garbage, refuse, and litter.

##### **8-102 Purpose**

This chapter is enacted by the Town Council of Sutton for the purpose of protecting the inhabitants of the city and promoting their wellbeing, health and protecting their property to make illegal the accumulation of garbage, rubbish, and other unsanitary, unsightly, and harmful waste substances, and the improper disposal thereof; to prevent injury or annoyance to the public or to individuals from things dangerous, offensive, or unwholesome; to compel the abatement and removal of nuisances caused by unauthorized accumulations and disposal of refuse; and, in general, to preserve and promote the public health by providing regulations for the disposal of refuse and ensure fair notice and due process for residents and property owners.

##### **8-103 Definitions**

For purposes of this article, the following definitions shall apply:

Litter- includes all discarded waste materials such as garbage, refuse, trash, packaging, cans, bottles, paper products, ashes, tobacco remnants, animal remains, and any other unsightly or offensive substances, excluding waste generated from primary industrial activities such as mining, logging, agriculture, or manufacturing.

Litter receptacle- refers to containers intended for the disposal of litter in designated public locations.

Public area- refers to any place made available for general public access.

Private area- refers to any place not open to public access.

Rubbish- refers to non-food waste materials, whether combustible or non-combustible, that are discarded aside from typical household garbage.

Garbage- refers to food-related waste, including animal and vegetable matter resulting from preparation or consumption.

Approved garbage or trash containers- A portable metal or plastic container that is watertight, equipped with a tight-fitting lid and handles, designed to prevent access by animals and pests, and meeting any size or weight standards established by the Town or its contracted service provider.

Dwelling unit- refers to an independent residential space providing complete living accommodations, including areas for sleeping, cooking, eating, and sanitation.

Premises- refers to every residential household, apartment(s) trailer court, RV or Camper Park, motel, hospital, hotel, restaurant, cafe, market, wholesale or retail store, other establishment, property or place of business in the Town of Sutton in which garbage or trash accumulates.

(Section last amended 2022)

#### 8-104 Premises to be kept clean

All persons and businesses within the corporate limits of the town of Sutton are hereby required to keep their premises in a clean and sanitary condition, free from accumulation of refuse except when stored as provided in this article. Residents and business owners of the town should be free from nuisances of unsightly deposits of garbage, trash, refuse and the noxious odors that accompany such.

(Section last amended 2022)

#### 8-105 Accumulation of Rubbish, Garbage, Discarded Appliances, or Tires

- A. No owner or occupant shall allow refuse originating on any premises within the town of Sutton to accumulate in such quantity or condition as to constitute a fire hazard, safety risk, or threat to public health, or to create unsightly or offensive conditions affecting neighboring properties. Garbage and trash shall be disposed of regularly, and all other waste shall be promptly removed and disposed of in a lawful and sanitary manner.
- B. Garbage and trash to be collected shall be stored in a leak-proof container with close fitting cover until removed from the premises for disposal.
- C. Discarded or unused appliances not in operation shall be disposed of properly or stored within an enclosed building with a locked door. It shall be unlawful to store unused discarded appliances outdoors, or on decks or porches, which are not enclosed.
- D. Refuse shall not accumulate for longer than the normal interval between scheduled collections.
- E. No person shall store refuse or litter except as permitted by this article
- F. No person within the town of Sutton shall place or deposit any old vehicle tire upon the right-of-way of any public highway or upon any other public property; nor abandon upon any private

property which he or she does not own, lease, rent, or otherwise control, unless it is a licensed salvage yard or at the business establishment of a demolisher.

- G. No person shall cause or permit any vehicle containing garbage to stand upon any street, alley, or thoroughfare within the town of Sutton corporate limits.
- H. No person shall dispose of garbage or trash or other refuse by dumping it into any dumpster or container located on a property that they do not own.
- I. No person shall scavenge or withdraw any substance from a dumpster, trash can, or other trash container located on private property or public property for the purpose of converting such substance to his or her own use.

(Section last amended 2022)

#### 8-106 Disposal of Offensive Liquids and Waste Prohibited

No person or business shall throw, pour, drain, or deposit water, slop, offal, grease, waste liquids, or other offensive or noxious substances from any house, building, or premises onto any street, alley, sidewalk, public ground, river or onto property not owned or lawfully controlled by that person.

Owners and occupants shall be responsible for preventing such disposal by persons under their control.

#### 8-107 Litter

- A. No person shall dispose of, or allow the disposal of, litter at any location within the City except in designated receptacles intended for that purpose.
- B. Owners and occupants are responsible for disposing of litter from their property in accordance with 8-102 of this chapter.
- C. Litter shall not be placed or allowed to remain in any location where it may be scattered by children, animals, weather conditions, or other forces.
- D. No person shall store litter except as permitted by this article

#### 8-108 Prohibited littering on streets, sidewalks, and public spaces.

No person shall

- A. (a) Leave or place grass, scrap metal, nails, tacks, wire, litter, or other harmful or offensive materials on any street, sidewalk, or public area if it could injure people, animals, or damage vehicle tires.
- B. (b) Scavenge or remove materials from refuse containers without permission from the owner or the Town.

Authority of Town Council to enact this section, see W. Va. Code 8-12-5(3)

#### 8-109 Duty to remove debris or refuse; Collection of refuse on vacant lots.

Building contractors, excavators, and any other persons who, in the course of their work, cause debris or refuse to accumulate within the town of Sutton shall remove and properly dispose of such materials at reasonable intervals so as to prevent them from becoming a threat to public health, safety, or welfare. Upon completion of any project, all debris and refuse shall be fully removed and disposed of in a lawful and sanitary manner.

If debris or refuse accumulates on a vacant lot to the extent that it constitutes a nuisance, and no responsible contractor or person removes it as required, the Town of Sutton may remove and dispose of such materials. The cost of such removal and disposal shall be charged to the property owner, shall constitute a lien against the property, and shall be collected in the same manner as municipal taxes.

#### 8-110 Obligation of Property owners to maintain trash service.

It is the owner's responsibility to maintain garbage or trash service and shall make sure its stored and disposed of only in the manner authorized by this article

#### 8-111 Enforcement, Notice to Property Owner

See Chapter 8, article 4 for the standards set for enforcement, notification, and penalties.

The Town of Sutton may also issue a citation for the violation and may report the matter to appropriate federal, state, or county authorities for any related violations.

#### 8-112 Penalty for Litter

Any person who places, dumps, throws, or allows litter to be placed on any public or private property, including roads, streets, alleys, or other areas, without permission from the property owner or governing authority, commits a misdemeanor offense.

Upon conviction, the person shall be fined between fifty dollars (\$50.00) and five hundred dollars (\$500.00). The court may also require the person to clean up litter from public areas designated by the court, including litter placed before the conviction.

#### 8-113- Severability

If any section, subsection, clause, phrase, or provision of this ordinance or the reenacted provisions is held invalid or unenforceable, such invalidity shall not affect the remaining provisions, which shall remain in full force and effect.

## **Chapter 8**

### **Article Two**

#### **External Sanitation and Property Maintenance**

##### **8-201 Authority**

This Article is enacted pursuant to the authority granted to municipalities under the laws of the State of West Virginia, including but not limited to:

- West Virginia Code § 8-12-5, which authorizes municipalities to enact ordinances to protect the public health, safety, and welfare; to prevent and abate nuisances; to regulate the use and condition of property; and to adopt and enforce ordinances necessary for the good order of the municipality;
- West Virginia Code § 8-12-5(23), which specifically authorizes municipalities to prevent, abate, or remove nuisances and to require property owners to correct unsanitary or unsafe conditions;
- West Virginia Code § 8-12-5(31), which authorizes municipalities to regulate the construction, repair, and maintenance of buildings and structures, including conditions affecting sanitation and safety;
- West Virginia Code § 8-12-13, which authorizes municipalities to require property owners to maintain sidewalks, curbs, and adjoining areas in a safe and sanitary condition;
- West Virginia Code § 8-12-16, which authorizes municipalities to perform necessary work to correct unsafe or unsanitary property conditions and to assess the cost as a lien against the property;
- West Virginia Code § 16-13-1 et seq., which recognizes the authority of municipalities to enact measures necessary to protect public health and sanitation.

Pursuant to these provisions, the Town is authorized to regulate external sanitation, property maintenance, and conditions affecting the health, safety, and welfare of the community, including the control of nuisances, accumulation of waste, and the maintenance of structures and premises.

##### **8-202 Definitions**

Weeds- for the purpose of this article shall be defined as all noxious weeds to include all rank vegetable growth which exhales unpleasant and noxious odors, and undergrowth which can create breeding habitats for insects, reptiles, and rodents.

##### **8-203 General Requirements**

(a) Owners, occupants, and those responsible for property must not allow grass or weeds to grow taller than twelve (12) inches, including on sidewalks next to the property.

(b) Properties must be kept free of overgrown vegetation that could attract pests such as insects, reptiles, or rodents. Grass on non-agricultural land must be kept at twelve (12) inches or less.

(c) Grass, weeds, and other vegetation that are cut must be removed and disposed of, so they do not create a nuisance or attract insects, reptiles and rodents.

#### 8-204 Fallen trees, stumps, yard or garden debris

Fallen trees, stumps, and yard waste or debris that are not on a public right-of-way shall be removed promptly and disposed of in a sanitary and lawful manner by the owners or occupants of the properties upon which they are situated.

#### 8-205 Tree, Vegetation, and Property Maintenance Standards.

(a) Purpose- The purpose of this section is to protect public health, safety, welfare, utility infrastructure, public rights-of-way, sidewalks, streets, neighboring properties, municipal facilities, and public operations from hazardous, obstructive, unsafe, improperly maintained, or nuisance trees and vegetation.

(b) Owner Responsibility- Every property owner, occupant, trustee, agent, or person having control of property within the municipality shall maintain trees, shrubs, hedges, roots, limbs, and other vegetation located upon the property in a reasonably safe condition so as not to create a hazard, nuisance, obstruction, unsafe condition, or unreasonable risk of damage to persons, property, utilities, infrastructure, or neighboring premises.

(c) Hazardous Trees and Vegetation Prohibited- No owner shall permit any tree, limb, branch, trunk, stump, root system, hedge, shrub, or vegetation condition that:

- (1) Is dead, decayed, diseased, structurally unsound, uprooted, unstable, or in danger of falling;
- (2) Presents a hazard to persons, neighboring property, structures, sidewalks, streets, alleys, rights-of-way, drainage systems, utilities, municipal facilities, or public infrastructure;
- (3) Interferes with emergency access, emergency response operations, or public safety services;
- (4) Creates an unreasonable risk of damage to adjacent property, buildings, foundations, retaining walls, driveways, utility systems, or municipal infrastructure;
- (5) Obstructs sidewalks, pedestrian travel, streets, alleys, traffic control devices, street signs, fire hydrants, utility access, or required lines of sight at intersections or driveways;
- (6) Interferes with utility lines, sewer lines, drainage systems, electric service, water service, communications systems, stormwater systems, poles, easements, or municipal utility infrastructure;
- (7) Causes or contributes to damage, blockage, intrusion, uplift, cracking, or material interference with sewer lines, water lines, drainage facilities, sidewalks, streets, foundations, or public infrastructure due to root growth or vegetation expansion;

- (8) Presents an imminent danger of collapse, uprooting, falling limbs, utility interruption, obstruction, or structural failure; or
- (9) Otherwise constitutes a public nuisance or unsafe condition affecting public health, safety, or welfare.

(d) Clearance and Visibility Requirements- Trees and vegetation adjacent to public streets, sidewalks, alleys, easements, or rights-of-way shall be maintained so as not to obstruct:

- (1) pedestrian travel,
- (2) vehicle travel,
- (3) public visibility,
- (4) drainage,
- (5) utility access,
- (6) municipal operations,
- (7) or emergency access.

The municipality may establish minimum clearance standards by resolution, policy, or administrative regulation.

(e) Notice of Violation- Where the municipality determines that a hazardous, obstructive, unsafe, or prohibited vegetation condition exists, the municipality may issue written notice requiring trimming, pruning, root mitigation, stabilization, treatment, removal, cleanup, repair, or other corrective action within a reasonable period specified in the notice.

(f) Emergency Conditions- If the municipality determines that a tree or vegetation condition presents an immediate danger to life, safety, property, utilities, public infrastructure, or municipal operations, the municipality may take emergency corrective action without prior notice to the extent permitted by law.

(g) Municipal Abatement and Cost Recovery- If the responsible party fails to correct the violation within the required time, the municipality may perform or contract for necessary corrective work, including trimming, pruning, root mitigation, stabilization, removal, cleanup, repair, or restoration.

All costs incurred by the municipality may be assessed against the property owner and collected through billing, civil action, municipal lien, or any other lawful collection method.

(h) Utility and Municipal Operations- Nothing herein shall prohibit lawful trimming, pruning, vegetation management, root mitigation, or tree removal conducted by the municipality, public utility providers, emergency personnel, or authorized contractors for the protection of utility infrastructure, public safety, rights-of-way, drainage systems, or municipal operations.

(i) Appeals- Any person aggrieved by a notice or order issued under this section may appeal in accordance with the procedures established under this Chapter.

(j) Non-Exclusive Remedies- The remedies provided in this section are cumulative and shall not limit any authority otherwise available to the municipality under nuisance, property maintenance, emergency management, unsafe structure, utility, public safety, or state law.

(k) Where vegetation conditions affect structures, utilities, construction, occupancy, or conditions regulated under the State Building Code, enforcement may additionally proceed under Article 7 of this Chapter.

(l) No Private Cause of Action Created- Nothing in this section shall be construed to create a private cause of action between private parties or to limit any civil remedies otherwise available under state law.

#### 8-206 Owner Pruning and Corner Clearing Trees

(a) Every owner of any tree overhanging any street or right-of-way within the town of Sutton shall prune the branches so that such branches shall not obstruct the light from any street lamp or obstruct the view of any street intersection and so that there shall be a clear space of eight feet above the surface of the street or sidewalk. Said owner shall remove all dead, diseased, or dangerous trees, or broken or decayed limbs which constitute a menace to the safety of the public.

(b) The Town of Sutton shall have the right to prune any tree or shrub on private property when it interferes with the proper spread of light along the street from a streetlamp or interferes with visibility of any traffic control signal or device.

#### 8-207 Dead or Diseased Tree Removal on Private Property

The Town Council of Sutton is authorized to cause the removal of any dead or diseased tree situated on private property where such condition presents a hazard to persons or property or poses a risk of spreading insects or disease to other trees within the Town of Sutton. Written notice shall be issued by the mayor of the town of Sutton to the property owner.

The owner shall be required to remove the tree at their own expense within sixty (60) days from the date of notice. Upon failure to comply, the town of Sutton may proceed with removal and recover all associated costs from the owner. Such costs shall constitute a lien upon the property and shall be collected in the same manner as other municipal liens.

#### 8-208 Dead Animals

No owner or person in possession of a dead animal shall permit it to remain within the Town in a manner that creates a nuisance or health hazard.

Upon written or verbal notice from the Town or a law enforcement officer, the responsible party shall remove or properly dispose of the animal within a reasonable time not to exceed twenty-four (24) hours, unless an emergency condition exists

If the responsible party fails to comply, the Town may cause removal and recover the reasonable costs incurred.

#### 8-209 Recreational Vehicles Used for Long-Term Habitation.

- A. Any recreational vehicle, camper, motor home, or similar unit used for human habitation on a long-term or permanent basis shall be considered a dwelling for purposes of this Chapter and shall comply with all applicable property maintenance, sanitation, life-safety, and occupancy standards required of residential structures.
- B. Such units shall be maintained in a safe, sanitary, and habitable condition and shall be provided with approved utilities, including water, sewage disposal, and, where applicable, electrical service, in accordance with applicable codes and ordinances.
- C. The Code Enforcement Officer is authorized to determine whether a recreational vehicle or similar unit is being used for long-term habitation based on factors including duration of occupancy, utility connections, and evidence of permanent residence.
- D. Any property upon which a recreational vehicle or similar unit is located and used for long-term habitation shall not be considered a vacant property under Chapter 8 Article 5, provided the unit is lawfully occupied and in compliance with all applicable standards.
- E. If such recreational vehicle or unit is unoccupied, abandoned, or fails to meet the minimum property maintenance, sanitation, or safety standards of this Chapter, the property shall be subject to the vacant and/or dilapidated property registration requirements as a residential property and all applicable fees and enforcement provisions.
- F. Nothing herein shall exempt any structure, utility connection, electrical installation, plumbing installation, or occupancy condition from compliance with Article 7 of this Chapter or applicable State Building Code requirements where applicable.
- G. Failure to comply with this section shall constitute a violation of this Chapter and shall subject the property owner and/or responsible party to all enforcement remedies, including registration, fees, abatement, and penalties, as provided herein and pursuant to West Virginia Code § 8-12-5.

#### 8-210 Prohibition on Commercial Camping and Rental of Camping Spaces

(A) No person, property owner, tenant, or operator shall:

- (1) Sell, lease, rent, license, advertise, or otherwise offer any portion of real property within the Town for the purpose of camping, temporary sheltering, or establishment of encampments; or
- (2) Allow or permit the use of property in exchange for money, services, or any other consideration for camping or temporary habitation.

(B) Applicability

This section applies to all forms of compensation, including:

- (1) Cash payments;
- (2) Online or app-based rentals;
- (3) Barter or services exchanged for occupancy.

(C) Exception

This section shall not apply to:

- (1) Campgrounds, RV parks, or similar uses lawfully permitted and zoned for such activity under the Town's zoning ordinance;
- (2) Temporary events or activities expressly authorized by the Town through permit.

(D) Separate Violation

Each act of offering, advertising, or permitting such use shall constitute a separate violation, and each day the violation continues shall be considered a new offense.

(E) Nuisance Declaration

Any property used in violation of this section is hereby declared a public nuisance and subject to abatement under this Code.

(F) Additional Remedies

In addition to fines and abatement, the Town may:

- (1) Seek injunctive relief in circuit court;
- (2) Revoke any applicable business licenses or permits;
- (3) Recover all enforcement and abatement costs.

8-211 Enforcement, Notice to Owners

See Chapter 8, article 5 for the standards set for enforcement, notification, and penalties.

8-212 Severability

If any section, subsection, clause, phrase, or provision of this ordinance or the reenacted provisions is held invalid or unenforceable, such invalidity shall not affect the remaining provisions, which shall remain in full force and effect.

## Chapter 8

### Article 3

#### Miscellaneous Health, Sanitation and Nuisances

##### 8-301 Purpose

Various health, sanitation, or nuisances are defined and prohibited in other chapters of this code, and it is the intent of the town Council in enacting this chapter to make it supplemental to those other chapters in which health, sanitation, or nuisances are defined and prohibited. The purpose of this Article is to protect public health, sanitation, and safety; prevent the creation of public nuisances and unsafe living conditions; ensure the lawful use of public and private property, and establish fair and uniform procedures for enforcement, notice, and removal. This Article is content-neutral and regulates conduct, not status.

##### 8-302 Definitions

For purposes of this Article:

- (a) "Camping"- The use of property for living or sleeping purposes, including but not limited to erecting or using tents, tarps, or temporary shelters; sleeping outdoors with bedding, sleeping bags, or similar materials; or storing personal belongings in a manner consistent with habitation.
- (b) "Temporary Shelter"- Any tent, tarp, lean-to, structure, or enclosure not designed for permanent occupancy and used for habitation.
- (c) "Encampment"- One or more temporary shelters or camping setups, with or without personal property, indicating ongoing habitation.
- (d) "Public Property"- All property owned, leased, or controlled by the municipality, including streets, sidewalks, rights-of-way, parks, and public buildings.
- (e) "Responsible Party"- Any person who establishes, maintains, occupies, or permits camping or an encampment.

##### 8-303 Smoke, Fumes, and Airborne Hazards

No person shall cause or permit the emission of dense smoke, soot, cinders, fumes, gases, or airborne substances in quantities that are harmful to health, unreasonably offensive, or that damage property or interfere with the reasonable enjoyment of life or business.

If any person is found to be guilty of damage to another owner's property refer to Enforcement and Penalties Chapter 8 Article 5

##### 8-304 Stagnant Water

No person shall knowingly permit stagnant water to accumulate on property they own or control in a manner that creates a breeding ground for insects or otherwise threatens public health.

### 8-305 Broken Sewers, Drains, and Ditches

#### (a) Duty to Maintain.

The owner and/or occupant of any private property upon which any drain, sewer, or ditch is located, constructed, or maintained for the use or benefit of such property shall keep the same in good repair and in a condition that does not create a nuisance or hazard to:

- (1) The public; or
- (2) Adjacent property owners or occupants.

#### (b) Prohibited Conditions.

It shall be unlawful for any such drain, sewer, or ditch to become:

1. Blocked or stopped up;
2. Broken or structurally unsound;
3. Overflowing or improperly draining; or
4. Otherwise, in a condition that is dangerous, offensive, or injurious to public health or safety.

#### (c) Notice and Failure to Comply.

If the owner, agent, or occupant fails or refuses to repair or correct such condition within a reasonable time after receiving notice from the Mayor or authorized official, the Town may proceed as provided herein.

#### (d) Municipal Abatement.

Upon failure of the responsible party to make required repairs:

1. The Mayor may direct the appropriate municipal official or department to repair or cause to be repaired such drain, sewer, or ditch;
2. The cost of such work shall be documented and reported to Council; and
3. The owner and/or occupant shall be jointly and severally liable for all costs incurred.

#### (e) Cost Recovery.

All costs incurred by the Town in performing such repairs shall be recoverable from the owner and/or occupant and may be collected by any lawful means, including assessment against the property.

#### (f) Penalties.

Any owner, occupant, or agent who, after notice, fails to comply with the requirements of this section shall be guilty of a misdemeanor and, upon conviction, shall be fined not less than \$25.00 nor more than \$100.00.

### 8-306 Fireworks

Fireworks shall be regulated in accordance with West Virginia law and the rules of the State Fire Marshal.

Public fireworks displays may be permitted upon written application, inspection, and approval by the Town and appropriate fire and law enforcement officials.

Permits shall not be transferable and may be revoked for violations or unsafe conditions.

Permit holders shall be responsible for all damages arising from the display

No person shall display or ignite fireworks within 50 feet of any building or residential home and 100 feet from fuel pumps or flammable storage.

#### 8-307 Fireworks Sales, Permitting, and Enforcement

(a) This subsection is adopted pursuant to the authority granted under West Virginia Code §8-13-5 and applicable provisions of state fire code and consumer fireworks law.

The purpose is to:

- (1) Regulate the sale of consumer fireworks
- (2) Protect public health, safety, and welfare
- (3) Ensure compliance with state certification requirements
- (4) Provide local enforcement and revenue accountability

#### (b) Definitions

“Consumer Fireworks”-Fireworks authorized for retail sale under West Virginia law. “Temporary Fireworks Stand”- A structure or location used for seasonal retail sales not exceeding 45 days.

“Permanent Fireworks Retailer”- A fixed, year-round commercial structure.

“Permittee”- Any person or entity approved to sell fireworks within the Town

(c) Permit Required- No person shall sell, offer for sale, or distribute consumer fireworks within the Town without first obtaining:

1. A Fireworks Sales Permit issued by the Town; and
2. A valid certificate issued by the West Virginia State Fire Marshal’s Office

A separate permit is required for each location. Permits are non-transferable.

(d) Applicants are required to submit:

- (1) Completed application form
- (2) Copy of State Fire Marshal certification
- (3) Site plan (including distances, structures, parking)
- (4) Proof of liability insurance (\$1,000,000 minimum)
- (5) B&O registration with the Town
- (6) Estimated gross sales for the permit period
- (7) Payment of required fees

(e) Permit Fees and B&O Deposit

(1) Permit Fees

- Temporary Stand: \$250.00
- Permanent Retail Location: \$500.00 annually

(2) B&O Tax Deposit (RECOMMENDED BEST PRACTICE)

- Temporary vendors shall pay a minimum estimated B&O tax deposit of \$200.00 prior to opening
- Deposit shall be credited toward actual B&O liability

(Refer to B & O taxes, Section 4-201)

(f) Zoning and Location Restrictions

- Minimum distances:
  - 50 feet from structures
  - 100 feet from fuel pumps or flammable storage

Sales may be permitted only in approved commercial or designated zones. No sales permitted in residential zones unless specifically approved

(g) Operational Requirements for permit holders shall:

- (1) Post permit and state certificate visibly
- (2) Smoking, matches and open flames shall not be permitted within 50 feet of fireworks being sold. Signs shall be posted conspicuously in, on and around being displayed for sale with the "FIREWORKS—NO SMOKING" in letters of not less than four inches in height.
- (3) Fire extinguishing equipment shall be kept and maintained upon the sale premises and shall include, but not limited to, a ten-pound A.B.C. fire extinguisher.
- (4) All electrical fixtures contained upon the sale of premises shall be dust-ignition proof. All lighting fixtures and outlets shall be installed in a manner to prevent accidental ignition of fireworks.
- (5) No fewer than two unobstructed exits shall be always maintained upon fireworks sales premises to maintain clear access for emergency vehicles and emergencies.
- (6) No fireworks shall be offered for sale within 300 feet of the property line of any lot upon which any flammable liquid dispensers or any flammable storage areas are located.
- (7) Any outdoor fireworks sales shall be located not less than 25 feet from any building, structure and all rights-of-way including, but not limited to, highways, streets, alleys and sidewalks
- (8) Supervise all sales at all times
- (9) Restrict sales to persons 18 years or older

(h) The Town may conduct inspections including but not limited to:

- (1) Pre-opening inspection
- (2) Random compliance inspections
- (3) Final inspection upon closure

Failure to pass inspection may result in:

- (1) Immediate suspension
- (2) Revocation of permit

(i) All fireworks vendors are subject to the Town's Business & Occupation Tax under Article 4.

- (1) Vendors shall report gross receipts from fireworks sales and pay taxes in accordance with Sections 4-205 and 4-206.
- (2) Temporary vendors must comply with Section 4-217 of the Town of Sutton ordinances and file a final return, paying all taxes within 30 days of ceasing operations.
- (3) The Town may issue jeopardy assessments for temporary vendors, estimate tax due if no return is filed, and apply deposits toward final liability.

(j) Violations and Penalties

Any person who:

- (1) Operates without a permit
- (2) Violates safety requirements
- (3) Fails to comply with B&O tax provisions
- (4) Provides false information

Shall be subject to:

- (a) Fine: \$100 – \$500 per violation per day
- (b) Permit suspension or revocation
- (c) Immediate closure of operations
- (d) Additional penalties under Article 4 (including tax penalties and interest)

(k) Enforcement Authority

The Town may:

- (1) Issue stop-work or closure orders
- (2) Seek injunction to prevent operation
- (3) Assess taxes and penalties
- (4) File liens for unpaid taxes
- (5) Revoke business licenses
- (6) The Town of Sutton may seize, take, remove and dispose of at a public auction or destroy or caused to be seized, taken or removed and disposed at public auction or destroyed at expense

of the owner, all fireworks or combustibles offered for sale, stored or held in violation of this section, W. Va. Code § 29-3E or an emergency or legislative rule promulgated thereunder

#### (I) Revocation

Permits may be revoked for:

- (1) Failure to comply with this ordinance
- (2) Failure to pay B&O taxes
- (3) Unsafe conditions
- (4) Fraud or misrepresentation

#### 8-308 Explosive Devices

No explosive device shall be detonated within the Town without a permit approved by the Common Council or emergency authorization by the Mayor or Chief of Police.

- (1) All state and federal licensing and safety requirements must be met.
- (2) Each detonation shall require a separate permit unless otherwise approved.
- (3) The Town assumes no liability for damages resulting from permitted explosive activity.

#### 8-309 Injury or Destruction of Property or Monuments.

(a) It shall be unlawful for any person, without felonious intent, to take, remove, damage, destroy, tamper with, or deface any property, whether real or personal, that is not their own.

(b) It shall be unlawful for any person to break, remove, damage, or deface any monument, boundary marker, or tree used to designate municipal boundaries or property lines.

#### 8-310 Camping, temporary shelters, and encampments

- (a) On Public property no person shall camp, establish, or maintain a temporary shelter or encampment on public property at any time unless expressly authorized by permit.
- (b) On Private Property no person shall camp or maintain an encampment on private property without:
  - (1) Permission of the property owner; and
  - (2) Compliance with all zoning, sanitation, and property maintenance requirements.
- (c) Camping or storage of materials shall not obstruct sidewalks, streets, or rights-of-way, block access to buildings, fire hydrants, or emergency routes or create fire hazards or unsafe conditions.
- (d) For sanitation, no camping or encampment shall lack proper waste disposal; create accumulation of garbage, human waste, or debris; result in conditions constituting a public nuisance.
- (e) Exceptions- The following areas or circumstances shall be exempt:

- (a) Persons lawfully camping within campgrounds or trailer parks specifically designated and approved for such use pursuant to applicable laws or
- (b) For temporary and lawful overnight occupancy only.

#### 8-311 Unlawful Encampments Declared a Nuisance

Any camping, temporary shelter, or encampment in violation of this Article is hereby declared a public nuisance and may be abated by the Town.

#### 8-312 Enforcement, Notification, and Penalties

##### (a) Encampments

(1) Except in emergency situations, the Town shall provide written notice posted at the site; and when feasible, provided to the responsible party.

(2) The notice shall include description of the violation; required corrective action; time to comply (not less than 24–72 hours, unless conditions justify more time); statement that failure to comply will result in removal and possible penalties; and information on retrieval of personal property.

(b) Immediate removal without prior notice is authorized when conditions pose imminent danger to public health or safety, fire hazards, or obstruction of emergency access.

See Chapter 8, article 4 for the standards set for all other enforcement, notification, and penalties.

#### 8-313 Severability

If any section, subsection, clause, phrase, or provision of this ordinance or the reenacted provisions is held invalid or unenforceable, such invalidity shall not affect the remaining provisions, which shall remain in full force and effect.

## Chapter 8

### Article 4

#### Nuisances

##### 8-401 Purpose

Various nuisances are defined and prohibited in other chapters of this code, and it is the intent of the Town Council in enacting this chapter to make it supplemental to those other chapters in which nuisances are defined and prohibited; and the provisions of this chapter relating to the abatement of nuisances shall be regarded as alternative methods and procedures for the abatement of nuisances in those instances where other methods and procedures for abatement are provided.

West Virginia Code §8-12-5 Sections (13), (23) and (44)

##### 8-402 Nuisances Prohibited within the town of Sutton

It shall be unlawful for any person to cause, harbor, commit, or maintain, or to suffer to be caused, harbored, committed, or maintained, any nuisance as defined by the statute or common law of this state or as defined by this code or other ordinance of the Town of Sutton at any place within the town limits of Sutton.

##### 8-403 Certain Nuisances

(a) The following acts, conditions, or uses of property, when occurring or existing within the corporate limits of the Town, are hereby declared to be public nuisances:

- (1) Any act committed, or condition created or maintained by any person, or any substance, object, or thing kept or found in any public or private place, which is harmful or poses a risk to public health or safety;
- (2) Any building, bridge, or structure of any kind that is maintained or permitted to remain in an unsafe, dangerous, unsanitary, or otherwise harmful condition;
- (3) Any tree or other appurtenance to real property that is maintained or allowed to remain in a condition that is unsafe, hazardous, or detrimental to the public;
- (4) Any accumulation of stagnant water, or the discharge or disposal of foul, contaminated, or offensive liquids onto any street, public place, or private property in a manner that causes injury or annoyance to the public;
- (5) Any obstruction placed or allowed to remain on a street, sidewalk, or public way that creates a hazard or nuisance, including the placement or accumulation of stones, debris, refuse, dirt, or other materials;
- (6) Any sidewalk, gutter, or curb that is allowed to remain in disrepair or in an unsafe condition;
- (7) Any stable, livestock enclosure, poultry yard, or similar area where animals are kept in a manner that becomes offensive, unsanitary, or harmful to the public;

- (8) Any structure used for the storage of explosive materials, including powder or dynamite, unless properly authorized by a permit issued by the appropriate authority;
- (9) Any accumulation of litter, garbage, refuse, or the presence of abandoned or unlicensed motor vehicles, or parts thereof, that are offensive or detrimental to the surrounding community;
- (10) Any accumulation of offensive or unwholesome substances, or excessive growth of grass, weeds, or brush, upon any property within the Town.

(b) The nuisances listed in this section are not intended to be exclusive. Any act, omission, or condition that constitutes a nuisance under the statutes or common law of the State of West Virginia, when occurring within the Town, shall also be considered a nuisance under this section.

This section shall be enforced in accordance with applicable provisions of West Virginia law.

#### 8-404 Enforcement and Penalty

See Chapter 8, Article 5 for enforcement, notice, appeals, and penalties.

#### 8-405 Severability

If any section, subsection, clause, phrase, or provision of this ordinance or the reenacted provisions is held invalid or unenforceable, such invalidity shall not affect the remaining provisions, which shall remain in full force and effect.

## Chapter 8

### Article 5

#### Enforcement and Penalties

##### 8-501 Purpose

This Article establishes the procedures and standards for enforcement, inspections, investigations, notices, appeals, penalties, abatements, cost recovery, liens, and related enforcement actions applicable to violations of Chapter 8 of the Code of the Town of Sutton unless otherwise specifically provided.

##### 8-502 Right to enter private property: Duty of occupants

- A. Police officers, Fire Department officers, public health officers, or appointed official shall have the right to enter a private premises for the purposes specified in 8-403 upon compliance with all applicable provisions of law.
- B. Unless it appears probable that advance warning would defeat the purpose of such entry, the property owners or occupants of the premises that is to be entered shall be given reasonable notice in advance (24-48 hours), and in any case it shall be unlawful for any owner or occupant to prevent such entry which is sought to be made in compliance with law.
- C. If consent is denied or cannot be obtained, the Town shall obtain an administrative search warrant prior to entry, except in emergency situations.

##### 8-503 Complaint, Inspections, Investigations, and Violations

- (1) A complaint can be made by any reasonable person or any official of the Town of Sutton.
- (2) It shall be the duty of an appointed official of the Town of Sutton to inspect a property to determine whether any condition exists or activity is being practiced which constitutes a violation of 8-101 through 8-303 of the town of Sutton ordinances.
- (3) If a violation is deemed to exist, then an investigation will be opened, and notification will be sent to the property owner or tenant via personal service or certified mail.

W. Va. Code 8-12-5(43) and 8-12-19, W. Va. Code 8-12-5(23)

##### 8-504 Notice, Appeal

(A) Whenever the official or appointed official determines that a nuisance exists within the corporate limits of the Town, the town shall provide written notice to the owner, occupant, or person in control of the property where the nuisance is located by personnel service or certified mail. The notice shall:

- (1) Describe the condition constituting the nuisance;
- (2) Direct the responsible party to correct or remove the condition; and
- (3) Specify a reasonable time for compliance, not to exceed ten (10) days.

Failure to comply with the notice within the time specified shall constitute a violation of this Code.

Any recipient of such notice may appeal to the Town Council within five (5) days of service. Upon timely appeal, enforcement of the notice shall be delayed pending review by the town Council. The decision of the Council shall be final.

(b) If the notice issued by the town of Sutton states that the nuisance presents an immediate threat to public health, safety, or welfare, the responsible party shall take prompt action to correct the condition as directed in the notice, notwithstanding the standard compliance period.

(c) An inspection shall be conducted upon expiration of this period. If compliance has not been achieved, the Town of Sutton is authorized to undertake necessary cleanup actions, with all costs charged to the property owner.

(d) If the responsible party fails to comply, the Town may abate the nuisance and assess the cost as a lien against the property as permitted by law and Town of Sutton Ordinance.

#### 8-505 Penalties

##### A.

(1) If a person who has received notice under this article fails to comply with that notice—or with any decision made by the Town Council on appeal—the Mayor shall immediately direct the appropriate city official to correct the condition described in the notice. The cost of correcting the condition shall be charged to the person who received the notice and collected in the same manner as town taxes, as authorized by West Virginia Code § 8-12-16 and West Virginia Code § 8-13-13.

(2) These costs shall become a lien on the property where the condition occurred and shall be collected as municipal taxes if not paid directly to the town of Sutton, pursuant to West Virginia Code § 8-12-16 and West Virginia Code § 8-13-13.

##### B.

(1) Correcting a nuisance condition and recovering costs does not prevent the town from also prosecuting or fining the responsible party for maintaining a nuisance, as authorized by West Virginia Code § 8-12-5 and West Virginia Code § 8-12-16.

(2) Except as otherwise provided in this Code, any person violating any provision of this Chapter, or failing or refusing to comply with any lawful notice or order issued pursuant thereto, shall upon conviction be fined not less than Fifty Dollars (\$50.00) nor more than Five Hundred Dollars (\$500.00), plus court costs. Each day the violation continues after notice shall constitute a separate offense.

- C. On each succeeding day, a violation of this article exists shall constitute a new and separate offense.

#### 8-506 Arrest for committing or maintaining nuisance possible

Nothing in this subchapter shall be construed to prohibit any police officer from arresting any person for committing or maintaining a nuisance when such arrest is made pursuant to law.

#### 8-507 Severability

If any section, subsection, clause, phrase, or provision of this ordinance or the reenacted provisions is held invalid or unenforceable, such invalidity shall not affect the remaining provisions, which shall remain in full force and effect.

## **Chapter 8**

### **Public Health and Sanitary**

#### **Article 6**

#### **Dilapidated, and Vacant Structures**

##### **8-601 Authority**

This Article is enacted pursuant to the authority granted to municipalities under:

W. Va. Code § 8-12-5(23) – Authority to prevent injury or annoyance from dangerous, offensive or unwholesome conditions and to abate nuisances.

W. Va. Code § 8-12-16(a) – Authority to regulate, repair, close, vacate, or demolish unsafe, unsanitary, dangerous, or detrimental buildings and structures.

W. Va. Code § 8-12-16(c) – Authority to place a lien on real property for costs incurred in repair, alteration, improvement, vacating, closing, removing or demolishing structures.

W. Va. Code § 8-39-1 et seq. – Vacant and Abandoned Property Registration Act.

W. Va. Code § 11A-3-1 et seq. – Sale of tax liens and redemption procedures.

W. Va. Code Chapter 54 – Eminent domain authority, where applicable for public use.

Where conditions, structures, construction activities, repairs, demolitions, utilities, occupancy, or code violations are also subject to the State Building Code or other technical codes adopted by the Town, enforcement may additionally proceed under Article 7 of this Chapter.

Nothing in this Article shall limit the authority of the Town to enforce the State Building Code, property maintenance standards, fire safety standards, permit requirements, or other applicable laws and regulations.

##### **8-602 Purpose.**

The purpose of this Article is to:

(a) The town of Sutton finds that vacant and or dilapidated buildings that are not monitored or inspected can become fire hazards, may attract unauthorized occupants such as transients (including those involved in drug activity), and can hinder efforts to rehabilitate, maintain or improve nearby properties. For these reasons, regulating such buildings is necessary to protect the deterioration of neighborhoods, public health, safety, and welfare.

(b) Owners of vacant or dilapidated buildings shall register such buildings with the town of Sutton and make payment of a fee for the registration thereof and conform to these vacant and dilapidated building regulations to ensure such properties are secure and maintained.

(c) These articles will establish set procedures for notice, fines, lien placement, voluntary relinquish program, and opportunities to conform to the standards set for in this article of the Town of Sutton Ordinance and voluntary relinquish program

(d) By requiring registration, inspection, and oversight, this article is intended to ensure that vacant buildings are properly secured and protected from the elements, remain safely accessible to emergency personnel, do not negatively impact surrounding property value, maintenance, or redevelopment efforts, and do not present dangers to the community.

(e) The town of Sutton, by and through its departments shall inspect and monitor vacant buildings, shall assess the effects of the condition of those buildings on nearby structures, and shall promote substantial efforts to rehabilitate and develop such buildings when appropriate.

(f) The provisions of this chapter shall streamline the procedure by placing the responsibility to register and maintain a vacant structure on the owner of such structure before a condition of the structure falls into disrepair or otherwise merits a complaint.

(g) Relations to other laws- It is to be understood that the intent and purpose of this article is separate and distinct from other parts and sections of the Codified Ordinances of the Town of Sutton and the general laws of the State of West Virginia, which may also be applicable. The provisions of this section are applicable to the owners of such vacant or dilapidated buildings as set forth herein and are in addition to and not in lieu of all other applicable provisions of the Code of the Town of Sutton and any other applicable provisions of the Town of Sutton Municipal Code

#### 8-603. Definitions.

1. "Code Official"- means the municipal Code Official, Building Official, Inspector, Fire Official, or other authorized enforcement official designated by the municipality.
2. "Owner"- Owner means any person, corporation, partnership, trustee, estate, or other legal entity having legal or equitable title to property, including agents, executors, administrators, guardians, or persons exercising control over the property. An owner of the freehold of the premises or any lesser estate therein, a mortgagee, a vendee-in-possession, assignee of rents, receiver, executor, trustee, lessee, agent, or any other person, firm, or, corporation that is directly or indirectly in control of a building subject to the provisions of this chapter, and as set forth below.
3. "Dilapidated"— Any building or structure which, by reason of neglect, deterioration, damage, vacancy, or lack of maintenance, is unsafe, unsanitary, structurally deficient, or unfit for occupancy under W. Va. Code § 8-12-16(a). For further provisions see 8-604 of the Town of Sutton ordinances.
4. "Unsafe Structure"- means any building, dwelling, structure, premises, or portion thereof which is dangerous to life, health, property, or public safety due to damage, deterioration, dilapidation,

structural instability, fire damage, abandonment, vandalism, neglect, inadequate maintenance, hazardous conditions, or code violations

5. "Dangerous Structure"- means any structure or condition that presents a substantial risk of collapse, fire, injury, disease, unlawful activity, or other threat to public health, safety, or welfare.
6. "Continuous"- utility service means that service has not been interrupted for more than thirty (30) days during any three hundred sixty (360) day period. Utility service must reflect actual use and not simply be maintained in the owner's name for billing purposes. At a minimum, utilities must be used to keep the property and its major systems in compliance with applicable codes. The owner or responsible party claiming continuous service must provide proof, such as utility bills, for the applicable period. For further provisions see 8-604 of the Town of Sutton ordinances.
7. "Exterior maintenance and major systems"- means the safe and lawful maintenance of the facade, windows, doors, roof and other parts of the exterior of the building and the maintenance of its major systems consisting of the roof, the electrical and plumbing systems, the water supply system, the sewer system, and the sidewalk, driveway, if any, area of the lot, as applicable and as enforced by the Building Maintenance Board, particularly in connection with codes adopted by the City as well as all applicable local, state and federal laws. For further provisions see 8-604 of the Town of Sutton ordinances.
8. "Local Agent"- A person residing or maintaining a business within [50 miles of the town of Sutton or within Braxton County] designated by the owner to manage the property.
9. "Vacant Property/ Vacant Lot"- Any parcel of real property upon which no structure is present and where no regular activity occurs shall be considered vacant property or vacant lot; however, the routine maintenance of such a vacant lot, where no code violations exist, shall be deemed sufficient activity for purposes of this chapter, regardless of whether the lot is used in connection with adjoining improved property. For further provisions see 8-604 of the Town of Sutton ordinances.
10. "Unfit for Human Occupancy"- means any dwelling or structure determined to be unsafe, unsanitary, lacking required utilities, contaminated, structurally deficient, or otherwise unsuitable for human habitation.
11. "Vacant or Dilapidated Properties"-For the purposes of Chapter 8 any building, structure, or property that has been found to have any of the conditions or defects listed below shall be deemed vacant or dilapidated and shall be subject to register and pay the registration fee and possible penalty provisions provided in this article:
  - (a) No person or persons currently conducts a lawfully licensed business or
  - (b) Lawfully resides, dwells, or lives in any part of the building as the legal or equitable owner(s) or tenant-occupant(s), or owner-occupant(s), or tenant(s) on a permanent, non-transient basis; and/or
  - (c) When any portion of the structure is likely to fail, or become detached, or collapse.
  - (d) Any portion of the structure has fire damage that has not been repaired.

- (e) Whenever any building, its contents, or external maintenance or major building systems of the building and the surrounding real property, as defined in this section, are in violation of the health, sanitation, or nuisance codes of the town of Sutton Ordinances.
- (f) Whenever such a building because of inadequate maintenance or dilapidation is in such disrepair.
- (g) temporary absence shall not alone constitute vacant.

#### 8-604 Standards

All Vacant or Dilapidated structures must comply with the following criteria:

- (a) Exterior areas of the property are to be mowed regularly, and non-cultivated gardens maintained at no more than 12 inches of growth. All noxious weeds are prohibited.
- (b) Structure is to be cleared of all contents, not including building materials or components to be used in the future renovation at that structure.
- (c) If an electrical service is installed on the property, the service needs to be maintained in safe working order, up to date in current utility standards as a permanent service and install two GFCI protected receptacles. And any other minimum electrical safety requirements as determined by the Towns appointed officials. If no electrical service is on the premises, it needs to be locked out to prevent fire and unwanted safety hazards. Any lighting installed shall be up to the current compliance of the NEC.
- (e) Unstable interior and exterior surfaces and components are to be removed. Unstable or unsound accessory buildings are to be renovated or removed.
- (f) Minimum exterior-grade plywood is to be used for all loose, deteriorated and broken windows and doors are to be covered to eliminate the danger of falling and to prevent the unwanted entry of trespassers. Boards shall be cut to fit tightly within or over openings. Boards shall be fastened using screws or carriage bolts (preferred), OR nails of sufficient length and strength fastening shall be anchored into the structural framing (not just siding) Spaced no more than 12 inches apart. Unless alternative securing methods approved by the Code Official are utilized.
- (g) All loose or deteriorated trim, gutter or overhang extensions (masonry or frame) are to be removed or reattached to prevent falling on the public.
- (h) Regular routine monitoring and maintenance of the structure is to occur by the owner or local agent to ensure that the building is being kept in compliance with the above items.
- (i) If utilities are connected to the structure, they need to be kept in safe working order and up to current utility compliance.
- (j) The building official may allow, at his or her discretion, some deviations from these requirements if the situation and fairness allow such deviation(s); and

(k) The property or structure shall not be deemed occupied simply because the above measures have been taken or are being taken to conform to these requirements.

#### 8-605 Applicability and Registration

On \_\_\_\_\_, all owners of property within the town of Sutton that contain a vacant or dilapidated structure or property, as defined in this article, shall register with the Town of Sutton. For those structures that subsequently qualify as a vacant structure after \_\_\_\_\_, the owner thereof shall be required to register the structure with the town of Sutton within 30 days after the structure is found to meet the definition of a vacant or dilapidated structure/property and the owners have been properly notified as state in this article. The registration form shall require information from the registrant deemed necessary by the Mayor, Town council, or an appointed Building Official of the town, so as to ensure that the purposes of this chapter are met. Specifically, the above named town officers shall have the authority to require that the property owner provide a professional opinion (e.g., an architect, engineer, and the like) to determine the structural integrity of the building, the repairs necessary to ensure its structural integrity and that it will be safe for entry by firefighters and police officers in time of emergency, and that the building and its contents do not present a hazard to the public during the time the building remains vacant. The above-named officers shall have the authority to issue orders to the owner for corrective action deemed necessary.

The Mayor or an appointed Building Official shall rely upon the West Virginia State Building Code and Fire Code, as well as other applicable laws or ordinances, for guidance during any such structural review.

The requirements of this section shall be applicable to each owner of any building, structure, or property that is found to be vacant or dilapidated pursuant to the language contained in this article.

(1) Each such owner shall cause to be filed with the Town of Sutton the following:

1. A notarized registration form or statement including the street address and parcel number of each such vacant property or building;
2. The names and addresses of all owners,
3. Name and contact information of local agent (if applicable);
4. Emergency contact information;
5. Proof of liability insurance (if required);
6. A maintenance and security plan.
7. Any other information deemed necessary or requested by the Mayor, Town of Sutton Council, or appointed official.

(2) As a condition of registration, the owner shall agree in writing to the following

- (a) Keep property free of trash, debris, and overgrowth;
- (b) Maintain structural integrity in accordance with the Town Standards;

- (c) Prevent water damage and deterioration.
- (d) Board and secure all windows and doors in accordance with Town standards;
- (e) Maintain boarding in good condition (no broken or loose boards);
- (f) Prevent unauthorized entry.
- (g) Comply with this Ordinance;
- (h) Comply with all applicable building, safety, and nuisance codes;
- (i) Comply and any orders issued by the Mayor or an appointed building official deemed necessary to bring up to current standards as set forth in this article.

(3) If the owner cannot be located, notice shall be published in accordance with due process requirements and applicable to West Virginia law.

(4) In the event the owner(s) of structure/property deemed vacant or dilapidated does not register the structure, the Town shall register the structure/property, and in the event the owner(s) do not pay the registration fees then the town shall have the authority to institute legal proceedings consistent with legal remedies identified in this chapter.

(5) When the registration fee(s) as required by this chapter is billed to the owner(s), the total payment shall be made within 30 days of the date of billing.

(6) For purposes of this chapter, the following shall also be applicable:

- (a) If the owner is a corporation, the registration statement shall provide the names and residence addresses of all officers and directors of the corporation and shall be accompanied by a copy of the most recent annual franchise tax report filed with the secretary of state;
- (b) If an estate, the name and business address of the executor of the estate;
- (c) If a trust, the name and address of all trustees, grantors, and beneficiaries;
- (d) If a partnership, the names and residence addresses of all partners with an interest of 10% or greater;
- (e) If any other form of unincorporated association, the names and residence addresses of all principals with an interest of 10% or greater; or
- (f) If an individual person, the name and residence address of that individual person.

(7) In no instance shall the registration of a vacant or dilapidated structure/property and the payment of registration fees and vacancy fees be construed to exonerate the owner, agent, or responsible party for compliance with any other building code or housing code requirement. One registration statement may be filed to include all vacant buildings of the owner, so registering, but each structure constitutes a separate fee. See 8-616 for registration and vacant building fees.

(8) Registration shall be required for all vacant or dilapidated buildings, whether vacant/dilapidated and secure, vacant/dilapidated and open, or vacant/dilapidated and boarded, and shall be required whenever any building has remained vacant for 30 consecutive days or more.

(Penalty see 8-613)

#### 8-606 Determination, Inspection, and Administrative Search Warrants

(1) The Code Official may conduct inspections of buildings, structures, and premises at reasonable times for purposes of enforcing this Chapter, the State Building Code, property maintenance standards, nuisance regulations, or other applicable laws.

(2) At the time of registration, the appointed Building Official, Mayor, Fire Chief, or Chief of Police shall determine whether it is necessary for any or all of them to inspect the structure so as to identify any public safety issues needed to be addressed. If an internal inspection is deemed necessary, the owner will be notified in writing of the same and arrangements made for the same. If the owner fails or refuses to consent to and arrange for an inspection, the Town of Sutton, before performing any inspection, must seek an administrative search warrant from a court of competent jurisdiction, to authorize inspection of the premises for the purpose of determining the structural integrity of the building, the repairs necessary to ensure its structural integrity and that it will be safe for entry by firefighters and police officers in time of emergency, and that the building and its contents do not present a hazard to the public during the time that the building remains vacant.

(3) The Mayor or an appointed official, may also identify vacant buildings through visual observation, utility records, lawful inspections, complaints, emergency responses, or any other lawful means. Upon identification of a vacant building which is not registered, the mayor, the town of Sutton Council, or an appointed official, shall cause an inspection/investigation of the premises to determine whether the building is a vacant building. If the results of the inspection/investigation reveal that the building is a vacant building and is not registered, the Mayor or an appointed official shall register the property as a vacant building. Within five (5) business days of such registration, notice of the registration shall be sent to the property owner of such registration by certified mail return receipt requested at the last known address of such owner. The notice shall provide a description of the property upon which the building is situated, the date of registration, and the amount of the registration fee, if any.

If a structure is found to be:

- (a) Structurally unsafe;
- (b) Fire damaged;
- (c) Open and unsecured;
- (d) Vermin infested;
- (e) Vacant and deteriorating;
- (f) Hazardous for public health or safety.
- (g) Any other qualification that would deem it vacant or dilapidated as stated in this article.

The structure may be declared unsafe pursuant to W. Va. Code § 8-12-16(a). The structure will then be deemed vacant or dilapidated.

(4) All vacant structures are subject to reinspection on an annual basis or as deemed necessary to this subsection.

(5) Inspections conducted pursuant to this section shall be limited to determining compliance with applicable municipal ordinances, building codes, fire codes, safety standards, sanitation requirements, and public nuisance regulations.

(6) Nothing herein shall limit lawful emergency entry where necessary to protect life, safety, or property

(7) Enforcement Limited by Available Personnel and Resources- The Town intends to fully administer and enforce this Article reasonably practicable; however, enforcement activities, inspections, monitoring, investigations, and corrective actions shall be limited to the extent permitted by available personnel, certifications, training, funding, equipment, administrative capacity, and other municipal resources. Nothing in this Article shall be construed to create a mandatory duty upon the Town to perform inspections, monitoring, enforcement actions, or code administration services beyond those reasonably achievable with available personnel and resources. The Town may prioritize enforcement activities based upon public safety concerns, hazardous conditions, staffing levels, emergency circumstances, workload, operational necessity, and available funding.

#### 8-607 Emergency Authority; Unsafe Structures.

(a) When the Code Official determines that a structure or condition presents an immediate danger to life, health, safety, or property, the municipality may issue emergency orders requiring immediate corrective action.

(b) Emergency action may include evacuation, securing the structure, temporary closure, utility disconnection, barricading, emergency stabilization, debris removal, or demolition where reasonably necessary to protect the public.

(c) The municipality shall make reasonable efforts to notify the owner before taking emergency action when practicable under the circumstances.

(d) Costs incurred by the municipality for emergency actions may be assessed against the property owner and recovered through billing, civil action, municipal lien, or any other lawful collection method.

(e) Officials and employees acting in good faith under this section shall be entitled to all immunities and protections provided by law.

#### 8-608 Notice of violation and corrective action

(a). Written notice shall be sent via personnel service or certified mail to the owner on record.

(b). Notice shall:

(1) Describe the unsafe conditions;

- (2) Specify required corrective actions;
- (3) Provide thirty (30) days to respond;
- (4) Register the property with the Town of Sutton (if applicable);
- (5) Provide sixty (60) days to begin remediation;
- (6) Provide a reasonable deadline for completion.

(c). The same notice shall be posted conspicuously on the property.

#### 8-609 Non-Compliance

(a) The Town may inspect registered properties:

- (1) Upon reasonable notice as mentioned in 8-606; or
- (2) Without notice where permitted by law.

(B). If any compliance with this article is not achieved, the Town Council of Sutton may discuss the matter at the next regular public meeting and notification will be sent to the owner set forth in 8-607.

The owner shall have opportunity to:

- (a) Present evidence,
- (b) Request extension for good cause,
- (c) Contest the determination.

After hearing, Council may order:

- (a) Repair,
- (b) Securing,
- (c) Vacating,
- (d) Demolition
- (e) Registration.

Authority: W. Va. Code § 8-12-16(a).

#### 8-610 Right to Appeal Registration Fees; Waiver of Registration Fees

- (a) The owner shall have the right to appeal the imposition of the registration fees and vacancy structure fee to the Town Council; upon filing an application in writing to the Town of Sutton no later than 15 calendar days after the date of the billing statement. On appeal, the owner shall bear the burden of providing satisfactory objective proof of occupancy as defined in this article specifically.
- (b) The bill due date shall be put on hold until the next regular scheduled Town Council public meeting. After the meeting, the Town of Sutton Council shall respond within 5 business days if the responsible party is not present.
- (c) The decision of the Town of Sutton Council may be appealed to any court of competent jurisdiction

(d) Waiver of registration fee or an extension of a waiver fee up to 90 days from the date of the current billing statement may be granted by the Town Council or the appointed official upon application of the owner and review of compliance.

A party may seek such a waiver if the owner:

- (1) Demonstrates with satisfactory proof to the Town Council of Sutton or the appointed official that he or she is in the process of demolition, rehabilitation, or other substantial repair of the building; and
- (2) Objectively demonstrates to the Town Council of Sutton or the appointed official a reasonable anticipated length of time for the demolition, rehabilitation, or other substantial repair of the building;
- (3) Provides satisfactory proof to the Town Council of Sutton or the appointed official that he or she was actively attempting to sell or lease or rent the property during the vacancy period (The exemption only last 1 year or 12 months from the date of listing); or
- (4) Provides satisfactory proof to the Town Council of Sutton or the appointed official, to be evaluated on a case-by-case basis, that the vacancy is temporary and may be due to illness of the owner, active military service, or some other reasonable explanation believed to be short term in nature and document able as necessary.

(e) Within 30 days, or as soon thereafter as possible, after the waiver application is received, Town Council of Sutton or the appointed official shall grant or deny the waiver or request for extension, in writing, and dispatch the written decision by mail to the owner.

- (1) If the owner properly submitted an application for a waiver of fee or request for extension to the Town Council of Sutton or appointed official, and the decision rendered the owner seeks to appeal, the owner may appeal to the any court of competent jurisdiction.
- (2) To constitute a timely appeal, the owner must file an application in writing no later than 15 calendar days from the date of the Town of Sutton Council or appointed official decision. The Court shall either grant or deny the appeal.
- (3) After the decision of the Court is final, unless within 15 days of such decision is appealed to a court of competent jurisdiction. Such appeal shall stay, any registration and/or payment of registration fees or other actions available to the Town of Sutton concerning the property/structure at issue related to vacant building registration.

(f) Fee waiver determinations shall be based on objective criteria using a standardized scoring system to ensure fairness, consistency, and transparency.

(g) The Town may, upon written application and for good cause shown, grant a full or partial waiver of registration fees where enforcement would create an undue hardship or where the property is in active compliance, rehabilitation, or transfer. The Town may impose reasonable conditions upon any such waiver

A one-time waiver per 12-month cycle of the registration fee per property/structure is available.

#### 8-611 Registration Fees used for specific purposes

- (a) Consistent with W. Va. Code 8-12-16C, all registration fees shall be deposited into their own account
- (b) The registration fees established under this Article are intended solely to recover the reasonable and necessary costs incurred by the Town in administering, implementing, and enforcing the vacant and dilapidated property registration program.
- (c) Such costs may include, but are not limited to, expenses associated with inspections, re-inspections, code enforcement, administrative processing, notice and hearing procedures, legal enforcement, securing of structures, emergency response support, remediation, demolition, and ongoing monitoring of non-compliant properties.
- (d) Fee revenues may also be used to support personnel, including Code Enforcement Officers and Building Officials, and to acquire equipment and resources reasonably necessary to carry out the purposes of this Article and to protect the public health, safety, and welfare.
- (e) The Town Council finds that vacant and dilapidated properties impose a disproportionate burden on municipal services and create increased costs for enforcement, public safety, and community protection. The fees established herein are reasonably related to and proportionate with such costs. Repair, close, or demolish a vacant structure as authorized by W. Va. Code 8-12-16.
- (f) The fees imposed under this Article are regulatory in nature and are not intended to generate revenue beyond that necessary to defray the costs of the program. Such fees are not a tax and shall not be used for general revenue purposes unrelated to this program.
- (g) This Article is adopted pursuant to the authority granted under West Virginia Code § 8-12-5 and shall be construed to ensure compliance with applicable law governing municipal fees and the fair exercise of police powers.

#### 8-612 Amending Property Information

If the status of the registration information changes, it is the responsibility of the owner, responsible party, or agent for the same to contact the Town of Sutton within 30 days of the occurrence of such change and advise the town, in writing, of those changes.

#### 8-613 Exceptions

This section shall not apply to any building owned by the United States, the State of West Virginia, the City of Sutton, or any of their respective agencies or political subdivisions.

#### 8-614 Nonpayment of Fees, Penalties, and Liens

(1) If the owner fails to comply with a final order except for those owners that have properly perfected an appeal pursuant to Section 8-609 and the owner fails to pay the amount due, said amount shall constitute a debt due and owing to the Town of Sutton and the town may take the following actions:

- (a) The Town may repair, secure, or demolish the structure.
- (b) All costs incurred shall become a lien against the property pursuant to W. Va. Code § 8-12-16(c).
- (c) The lien shall be recorded in the Office of the Clerk of Braxton County.
- (d) The Town may pursue civil action to enforce said lien.

(2) If an owner fails to pay the registration fee as assessed and the town begins the collection action to enforce its lien, then the Town of Sutton shall post the written notice on the property and send the written notice to the owner(s) by certified and registered mail or personnel service.

(3) The Town may take action to sell the subject property by means of forfeiture, and the Court ordered an enforcement process to collect the debt owed to the Town of Sutton. Should the town take the steps necessary to sell the subject property, the town shall do so, subject to all liens and real and personal property taxes that are due. Purchasers of the subject property shall be similarly responsible for registration pursuant to this section in the same manner as to the prior owner and must begin the registration process anew if said property remains vacant. In accordance with W. Va. Code § 11A-3 et seq.

(4) Unpaid registration fees will result in the inability of the owner to obtain other city permits, such as building, business, and the like. The Town of Sutton Council or appointed Building Official may use his or her discretion to determine any hardship exceptions to this rule.

(5) The failure or refusal for any reason of any owner, or agent of an owner acting on behalf of the owner, to register a vacant or dilapidated building upon adoption of this chapter or to pay any fees required to be paid pursuant to the provisions of this chapter, within 30 days after they become due, shall constitute a violation, punishable upon conviction thereof by a fine in the amount of not less than \$100, nor more than \$500, or other amounts deemed appropriate by the Municipal Court, for each failure or refusal to pay a required vacant building fee or registration fee, as applicable. In such cases, whenever the minimum fine of \$100 is imposed, it shall not be subject to suspension or reduction for any reason. The Mayor, Town of Sutton Council or appointed official, shall have the authority to suspend or reduce fines that amount to over \$100.

(6) In addition to any other remedies authorized by this Chapter or state law, the Town may recover all unpaid fees, costs, expenses, penalties, charges, abatement costs, demolition expenses, emergency response costs, inspection costs, permit fees, reinspection fees, administrative expenses, utility-related expenses, remediation costs, and enforcement costs incurred under this Chapter, including Article 7 thereof.

Such amounts may be collected by civil action, municipal lien, special assessment, or any other lawful collection method authorized by state law. Any lien authorized under this Chapter may be recorded against the subject property and shall remain until satisfied, released, or otherwise discharged according to law.

#### 8-615 Property Acquisition for Public Purposes; Condemnation; Eminent Domain Authority

(a) Purpose and Intent- The municipality recognizes that certain properties, easements, rights-of-way, utility corridors, access areas, structures, or property interests may be necessary for the protection of public health, safety, welfare, infrastructure, municipal operations, code enforcement, nuisance abatement, redevelopment, utility services, public access, economic development, or other lawful municipal purposes.

This section is intended to preserve and authorize the municipality's ability to pursue lawful acquisition of property interests when reasonably necessary for a valid public purpose consistent with the Constitution and laws of the State of West Virginia.

(b) Reservation of Authority- Nothing in this Chapter shall be construed to limit, impair, waive, or restrict any authority otherwise granted to the municipality under the Constitution and laws of the State of West Virginia relating to:

- (1) Eminent domain;
- (2) Condemnation;
- (3) Acquisition of property;
- (4) Easements or rights-of-way;
- (5) Utility infrastructure;
- (6) Public improvements;
- (7) Unsafe structures;
- (8) Nuisance abatement;
- (9) Redevelopment or revitalization projects;
- (10) Emergency public safety actions; or
- (11) Protection of municipal property or operations.

(c) Authorized Public Purposes- The municipality may pursue acquisition, easement rights, condemnation proceedings, or other lawful property interests for public purposes including, but not limited to:

- (1) Existing or proposed municipal buildings, structures, or facilities;
- (2) Public markets, parks, recreational facilities, or community spaces;
- (3) Municipal utility systems, including water, sewer, stormwater, drainage, gas, electric, communications, or related infrastructure;

- (4) Streets, sidewalks, alleys, rights-of-way, access roads, parking areas, or transportation improvements;
- (5) Flood control, erosion control, stabilization, or environmental remediation;
- (6) Removal, stabilization, remediation, or prevention of unsafe, dangerous, dilapidated, abandoned, or nuisance structures or conditions;
- (7) Protection or preservation of existing municipal infrastructure, improvements, utilities, or public investments;
- (8) Access necessary for maintenance, repair, inspection, or operation of municipal facilities or infrastructure;
- (9) Redevelopment, revitalization, economic development, or blight remediation projects authorized by law; and

Any other lawful public use or public purpose authorized under West Virginia law.

(d) Existing Municipal Improvements and Utilities- Where municipal buildings, public facilities, utility infrastructure, access improvements, or other public improvements have been previously installed, constructed, maintained, or operated upon property and continued public use or operation reasonably requires acquisition, easement rights, maintenance access, or title clarification, the municipality may pursue lawful acquisition or condemnation proceedings as authorized by law.

(e) Good Faith Negotiation- Prior to initiating condemnation proceedings, the municipality shall make reasonable good faith efforts to negotiate voluntary acquisition, easement agreements, boundary adjustments, licenses, rights-of-entry, or other mutually agreeable resolutions unless emergency circumstances or public necessity require immediate action as permitted by law.

(f) Council Authorization Required- No condemnation or eminent domain proceeding shall be initiated except upon authorization by resolution of the governing body identifying:

- (1) The property or property interest involved;
- (2) The public purpose or necessity;
- (3) The reason acquisition is required;
- (4) The authorization for legal counsel to proceed; and
- (5) Any funding source or appropriation associated with the acquisition.

(g) Compliance with State Law- Any exercise of eminent domain, condemnation, or compulsory acquisition authority shall be conducted strictly in accordance with applicable provisions of West Virginia law, including all constitutional requirements concerning due process, notice, public use, necessity, and just compensation.

(h) Non-Exclusive Remedies- The authority granted or recognized in this section shall be cumulative and non-exclusive. The municipality may pursue any lawful administrative, civil, equitable, emergency,

code enforcement, nuisance abatement, receivership, lien, tax sale, negotiated acquisition, or condemnation remedy available under municipal ordinance or state law.

#### 8-616 Voluntary Property Revitalization Program

The Town of Sutton hereby establishes a Voluntary Property Revitalization Program to allow owners of dilapidated or vacant properties to voluntarily convey real property to the Town in lieu of enforcement proceedings.

Authority: W. Va. Code § 8-12-5(44) (general municipal authority to acquire and hold property), and § 8-12-16.

(a) A property qualifies if:

- (1) It has been declared unsafe under this article; or
- (2) It has been vacant for more than six (6) months; or
- (3) It is tax delinquent; or
- (4) The owner demonstrates an inability to repair or maintain the property after 60 days of notice.

(b) Procedures for the program are as stated below:

- (1) The owner submits written applications to the Town.
- (2) Town conducts title search and environmental review.
- (3) Owner executes a Warranty Deed or Quitclaim Deed transferring title.

(c) Town may require:

- a. Release of all occupants;
- b. Disclosure of known environmental hazards;

Satisfaction of existing liens where feasible.

(d) Acceptance of property shall require approval by the majority vote of Town Council. The Town may refuse acceptance if:

- (a) Title is clouded;
- (b) Environmental contamination risk exists;
- (c) Costs exceed redevelopment feasibility.

(e) The Effect of Transfer.

Upon recording of deed:

- (1) Municipal enforcement actions shall cease.
- (2) Outstanding municipal liens may be extinguished upon Council approval.
- (3) Property shall become municipal property for redevelopment, demolition, resale, or public use.

(f) Disposition.

The Town may:

- (1) Demolish unsafe structures;
- (2) Transfer property to nonprofit housing entities;
- (3) Sell property via public auction;
- (4) Redevelopment for public use.
- (5) Disposition shall comply with W. Va. Code § 8-12-18 (sale of municipal property).

8-617 Schedule of Registration Fees and Vacant or Dilapidated fees

The following registration fees shall be subject to change by the Town Council by an amendment of the ordinance.

- (1) For expenses in operating this program: \$250.00 per property/structure; and
- (2) If voluntarily registered by owner or business: \$150 per property/structure. The \$250 fee shall remain for any buildings that the town must register.

The registration fee is non-refundable. The table below lists the vacancy structure fee:

| Residential Properties |           |
|------------------------|-----------|
| Year 1                 | \$200.00  |
| Year 2                 | \$400.00  |
| Year 3                 | \$750.00  |
| Year 4                 | \$1000.00 |

For each additional year the structure is vacant beyond 4 years an additional \$300 for each year in excess of 4 years. (Example- if the structure is vacant for 5 years, then the vacancy fee is \$1300.00)

| Commercial Property |            |
|---------------------|------------|
| Year 1              | \$400.00   |
| Year 2              | \$1,000.00 |
| Year 3              | \$2,000.00 |
| Year 4              | \$3,500.00 |

For each additional year the structure is vacant beyond 4 years an additional \$750.00 for each year in excess of 4 years. (Example- if the structure is vacant for 5 years, then the vacancy fee is \$4,250.00)

The Town may reduce or waive fees as stated in this chapter. Fees shall be periodically reviewed to ensure they remain reasonably related to program costs.

## 8-618 Monthly Reporting Requirement and Administration

(a) The purpose of this section is to ensure transparency, accountability, and effective administration of the Town's vacant property registry, fee collection, enforcement actions, and Voluntary Property Revitalization Program (VPRP).

(b) The Code Enforcement Office, or designated administrative official, shall prepare and submit a monthly status report to the Mayor and Town Council. The monthly report shall be presented at a regular meeting of the Town Council.

(c) The monthly report shall include, at a minimum, the following:

### 1. Vacant Property Registry

- (a) Total number of registered vacant properties
- (b) Number of newly registered properties during the reporting period
- (c) Number of properties brought into compliance
- (d) Number of properties remaining in violation

### 2. Enforcement Activity

- (a) Number of notices of violation issued
- (b) Number of reinspection's conducted
- (c) Number of citations or enforcement actions taken
- (d) Number of abatements performed by the Town

### 3. Fees and Financial Tracking

- (a) Total registration fees assessed
- (b) Total fees collected
- (c) Outstanding balances
- (d) Total abatement costs incurred
- (e) Total liens filed during the reporting period

### 4. Voluntary Property Revitalization Program (VPRP)

- (a) Number of applications received
- (b) Number of properties accepted into the program
- (c) Number of properties transferred to the Town
- (d) Current status of properties under redevelopment

### 5. Appeals and Waivers

- (a) Number of fee waiver requests submitted
- (b) Number of waivers approved, partially approved, or denied
- (c) Number of appeals filed
- (d) Outcomes of appeals

(d) Format and Availability

The report may be presented in written, electronic, or spreadsheet format and shall be maintained as a public record, subject to applicable laws.

(e) Additional Information

The Mayor or Town Council may request additional information or expanded reporting as necessary to support decision-making and oversight.

(F) Failure to Report

Failure to provide the required monthly report may be addressed administratively and may result in corrective action as determined by the Town.

(G) Implementation

The Town is authorized to develop forms, templates, and tracking systems necessary to carry out the requirements of this section.

8-619 Conflicting Ordinances; Cumulative Remedies.

- (a) Where the provisions of this Chapter impose greater restrictions or higher standards than other municipal ordinances, this Chapter shall govern to the extent permitted by law.
- (b) Nothing in this Chapter shall prevent the municipality from enforcing any other applicable ordinance, regulation, code, statute, or lawful order.
- (c) The remedies provided herein are cumulative and non-exclusive, and the municipality may pursue any combination of administrative, civil, equitable, criminal, abatement, demolition, lien, or emergency remedies authorized by law. All demolition activities conducted pursuant to this Chapter shall additionally comply with applicable permit, inspection, utility safety, and State Building Code requirements under Article 7 where applicable.

8-620 Severability

If any section, subsection, clause, phrase, or provision of this ordinance or the reenacted provisions is held invalid or unenforceable, such invalidity shall not affect the remaining provisions, which shall remain in full force and effect.

## **Chapter 8**

### **Health, Sanitation, Safety, Nuisances and Vacant and Dilapidated Properties**

#### **Article 7**

#### **State Building Code Adoption and Enforcement**

##### **8-701 Purpose and Intent**

The purpose of this Article is to promote the public health, safety, welfare, and general well-being of the municipality and its residents through the adoption and enforcement of the West Virginia State Building Code and related regulations governing the construction, alteration, repair, maintenance, occupancy, demolition, and safety of buildings and structures within the municipality.

This Article is intended to provide minimum standards to safeguard life, health, property, and public welfare and to establish procedures for administration and enforcement consistent with state law.

##### **8-702 Adoption of West Virginia State Building Code**

Pursuant to the authority granted by the laws of the State of West Virginia, the municipality hereby adopts and incorporates by reference the current West Virginia State Building Code, as promulgated by the West Virginia State Fire Commission and State Fire Marshal, including all regulations, appendices, amendments, revisions, updates, and referenced standards thereto.

The State Building Code shall govern the construction, reconstruction, alteration, repair, relocation, enlargement, equipment, use and occupancy, maintenance, removal, and demolition of buildings and structures within the municipality where applicable under state law.

At least one copy of any code, regulation, or technical standard adopted by reference by the Town shall be maintained on file in the office of the Town Clerk or other designated municipal office and shall be available for public inspection during normal business hours in accordance with applicable law.

Unless otherwise prohibited by law, future amendments and revisions adopted by the State of West Virginia shall automatically become part of this Article without further amendment by the municipality. Administration and enforcement of the State Building Code under this Article shall be carried out to the extent authorized and reasonably practicable based upon available personnel, certifications, resources, and operational capacity.

##### **8-703 Enforcement Authority**

The municipal Code Official, Building Official, Fire Official, Inspector, Plans Examiner, or other designated enforcement officer is hereby authorized to administer and enforce this Article and the State Building Code.

Such officials may, consistent with applicable law and within the scope of their authority:

- (a) Conduct inspections and investigations;
- (b) Issue permits, certificates, approvals, notices, correction orders, citations, stop-work orders, and enforcement orders;
- (c) Enter upon property at reasonable times for inspections as authorized by law;
- (d) Condemn unsafe or dangerous structures or conditions;
- (e) Require corrective action to achieve compliance;
- (f) Order the discontinuance of unlawful work;
- (g) Coordinate enforcement with county, state, and emergency agencies; and
- (h) Take any lawful action necessary to enforce this Article and protect public health and safety.

#### 8-704 Enforcement Limited by Available Personnel and Resources.

The municipality intends to administer and enforce the State Building Code to the fullest extent reasonably practicable; however, enforcement activities shall be limited to the extent permitted by available personnel, certifications, training, funding, equipment, administrative capacity, and other municipal resources.

Nothing in this Article shall be construed to create a mandatory duty upon the municipality to perform inspections, plan reviews, enforcement actions, or code administration services beyond those reasonably achievable with available personnel and resources.

The municipality may prioritize enforcement activities based upon public safety, hazardous conditions, emergency circumstances, staffing levels, workload, and operational necessity.

#### 8-705 Permits Required

No person shall erect, construct, enlarge, alter, repair, move, demolish, or substantially improve any building or structure within the municipality where a permit is required under the State Building Code without first obtaining the required permit(s).

Permit applications shall be submitted in the form required by the municipality and shall include plans, specifications, contractor information, and other documentation deemed reasonably necessary for review.

The municipality may deny incomplete applications or applications that fail to comply with applicable codes or laws.

#### 8-706 Inspections

Authorized officials may conduct inspections necessary to determine compliance with this Article and the State Building Code.

Required inspections may include, but are not limited to:

- (a) (a) Footing and foundation inspections;
- (b) (b) Framing inspections;
- (c) (c) Electrical inspections;
- (d) (d) Plumbing inspections;
- (e) (e) Mechanical inspections;
- (f) (f) Final inspections; and
- (g) (g) Inspections of unsafe, vacant, damaged, or hazardous structures.

No work requiring inspection shall be concealed prior to inspection approval unless authorized by the Code Official. Where consent for inspection is denied or unavailable, the municipality may seek an administrative search warrant or other lawful inspection authority from a court of competent jurisdiction as permitted by law.

#### 8-707 Stop Work Orders

Whenever work is being performed contrary to this Article, the State Building Code, permit conditions, or applicable law, the Code Official may issue a stop-work order requiring all or part of the work to immediately cease.

The stop-work order shall be in writing and shall state the conditions under which work may resume.

It shall be unlawful for any person to continue work after issuance of a stop-work order except work specifically authorized to correct unsafe conditions.

#### 8-708 Unsafe Structures, Emergency Conditions, and Good Faith Enforcement

(a) Structures or conditions determined to be unsafe, dangerous, unsanitary, unfit for occupancy, structurally deficient, fire hazardous, or otherwise dangerous to life or property may be declared unsafe by the Code Official. The municipality may issue orders requiring repair, securing, vacation, demolition, remediation, or other corrective action consistent with Chapter 8 and applicable law. In emergency situations involving immediate danger to life or property, the municipality may take temporary emergency action without prior notice to the extent permitted by law.

(b) Good Faith Enforcement Immunity- Any municipal official, employee, inspector, Code Official, contractor, agent, or authorized representative acting in good faith and without malicious intent in the administration or enforcement of this Article shall be entitled to all immunities, protections, defenses, and limitations of liability provided by federal law, state law, and applicable governmental immunity statutes.

#### 8-709 Fees

Permit fees, inspection fees, reinspection fees, plan review fees, demolition fees, registration fees, administrative fees, and other related charges may be established by separate Fee Schedule Resolution adopted by the governing body.

All fees shall be payable to the municipality and may be amended from time to time by resolution without requiring amendment to this Code.

Unpaid fees, costs, expenses, penalties, or charges may be collected through civil action, municipal lien, or any other lawful collection method. Collection and lien procedures shall be governed by applicable provisions of Chapter 8 and state law.

#### 8-710 Violations and Penalties

Any person who violates this Article, the State Building Code, permit conditions, stop-work orders, or lawful orders issued pursuant thereto shall be guilty of a municipal ordinance violation.

Each day a violation continues after notice may constitute a separate offense.

In addition to other remedies authorized by law, the municipality may pursue:

- (a) (a) Civil penalties;
- (b) (b) Municipal citations;
- (c) (c) Injunctive relief;
- (d) (d) Abatement or corrective action;
- (e) (e) Cost recovery;
- (f) (f) Demolition or remediation proceedings;
- (g) (g) Permit suspension or revocation; and
- (h) (h) Municipal liens.

Penalties and enforcement procedures may be further established by separate ordinance or resolution.

#### 8-711 Appeals

Any person aggrieved by a decision, notice, order, denial, or action of the Code Official may appeal to the municipal appeals board, administrative hearing officer, or governing body as designated by the municipality.

Appeals shall be filed in writing within ten (10) business days from the date of the notice, order, decision, or action being appealed unless otherwise provided by law.

The filing of an appeal shall not automatically stay emergency orders or stop-work orders issued for immediate public safety concerns unless authorized by the municipality.

#### 8-712 Contractor and Owner Responsibility

Property owners, contractors, subcontractors, agents, and other responsible persons shall comply with this Article and all applicable codes and permit requirements.

Issuance of a permit or approval shall not relieve any person from responsibility for code compliance or from correcting violations or defective work.

### 8-713 Non-Exclusive Remedies

The remedies and enforcement options provided in this Article are cumulative and non-exclusive. The municipality may pursue any remedy available under municipal ordinance, state law, or equity.

### 8-714 Severability

If any section, subsection, sentence, clause, phrase, or provision of this Article is declared invalid or unconstitutional by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Article.

### 8-715 Effective Date

This Article shall take effect upon adoption, approval, and publication as required by applicable law and the Charter of the Town of Sutton.

The provisions set forth above shall replace all prior versions of Chapter 8, in its entirety.

**Section 3.** Codification Authority the Town Clerk is hereby authorized and directed to:

- (A) Insert the reenacted provisions into the Code of the Town of Sutton in proper numerical order;
- (B) Remove all repealed language;
- (C) Renumber sections as necessary; and
- (D) Make no substantive editorial changes required for formatting, consistency, and cross-referencing.

**Section 4.** Repealer- All ordinances or parts of ordinances inconsistent with this ordinance are hereby repealed to the extent of such inconsistency. Except as to any rights accrued, liabilities incurred, or proceedings begun prior to such repeal

**Section 5.** Severability- If any section, subsection, clause, phrase, or provision of this ordinance or the reenacted provision is held invalid or unenforceable, such invalidity shall not affect the remaining provisions, which shall remain in full force and effect.

**Section 6.** Effective Date- This ordinance shall take effect upon adoption, following required readings, approval, and publication as provided by law.