

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 West Virginia Code §§8-11-1 and 8-12-5, including, but not limited to, §8-12-5(3), (10), (13), (22), (43), and (57), and other applicable provisions of state law.

Pursuant to this authority, the Town may:

- (a) Prohibit the unlawful placement, deposit, accumulation, storage, or disposal of garbage, refuse, rubbish, debris, waste, trash, and litter on public or private property;
- (b) Require the lawful removal and disposal of such materials;
- (c) Prevent and abate conditions that constitute a public nuisance or threaten the public health, safety, or welfare; and
- (d) Establish reasonable enforcement procedures and penalties consistent with state law.

This Article shall be interpreted consistently with applicable state litter and solid-waste laws, including West Virginia Code §22-15A-4. Nothing in this Article authorizes the Town or any municipal official to exercise powers reserved by law to a state agency, county commission, court, or law-enforcement agency.

8-102 Purpose

This article is enacted by the Town Council of Sutton for the purpose of protecting the inhabitants of the town 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:

Commented [TM1]: Council note: Section 8-101 was amended to identify the statutes that actually grant authority to municipalities. West Virginia Code §22-15-4 was removed because it concerns the state Bureau for Public Health. Section 7-1-3kk was removed because it grants authority to county commissions rather than municipalities. Section 22-15A-4 remains referenced as an applicable state litter law, but not as the source of the Town's ordinance authority.

Commented [TM2R1]: This gives the Town clear authority without suggesting that its Code Enforcement Officer possesses the same powers as the Department of Environmental Protection, a police officer, or the county commission. [W. Va. Code §8-12-5](#) and [W. Va. Code §22-15A-4](#).

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

Commented [TM3]: Council note: No policy change. "City" was corrected to "Town," and the incorrect reference to the purpose section was replaced with a reference to Article One generally.

- (a) No person shall dispose of, or allow the disposal of, litter at any location within the town except in designated receptacles intended for that purpose.
- (b) Owners and occupants shall dispose of litter generated or maintained on their property in accordance with this Article.
- (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; removal of refuse from 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 to prevent them from becoming a threat to public health, safety, or welfare. Upon completion of the project, all debris and refuse shall be removed and disposed of lawfully.

If debris or refuse accumulates on a vacant lot to the extent that it constitutes a nuisance, and the responsible person fails to remove it after receiving the notice and opportunity to comply required by Article Five, the Town may undertake or contract for its lawful removal and disposal when authorized by law.

The Town may charge the responsible owner or person for the actual and reasonable costs incurred. Such costs may be recovered only in accordance with 8-510 and applicable law. A lien may be imposed only when expressly authorized by the statute governing the particular abatement and after all required procedures have been completed.

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

- (a) The owner or occupant of every occupied premises, and every person or business generating garbage or trash within the Town, shall maintain regular collection service or another lawful means of regular disposal.

Commented [TM4]: Council question: Should the provision say that removal costs “may be charged” rather than “shall be charged”?

Response: Yes. The Town should retain discretion, particularly when the responsible person cannot be identified or cost recovery would exceed the amount involved. The prior language also incorrectly suggested that every cleanup cost automatically becomes a lien collected like municipal taxes. Section 8-510 requires documented costs and permits recovery or a lien only when authorized by applicable law.

Action: I amended 8-109 and coordinated it with 8-510.

Commented [TM5]: Council question: How would the Town police or enforce the trash-service requirement?

Response: The Town would not routinely inspect every resident’s trash account. Enforcement would generally begin with a complaint, visible garbage accumulation, repeated illegal dumping, service-provider information lawfully available to the Town, or other reliable evidence. The owner or occupant would receive notice and an opportunity to demonstrate active collection service or another lawful method of disposal. A genuinely vacant property that produces no garbage would not be required to pay for unnecessary service.

Recommended action: Clarify the applicability of the requirement and enforce it through Article Five’s existing inspection, notice, and appeal procedures.

(b) Garbage and trash shall be stored and disposed of in the manner required by this Article.

(c) A vacant premises that does not generate garbage or trash is not required to maintain an active collection service. However, the property shall remain free of prohibited accumulations.

(d) This section shall be enforced in accordance with Article Five. When an inspection, complaint, observed accumulation, or other reliable information provides a reasonable basis to believe that garbage or trash is not being lawfully disposed of, an authorized official may request reasonable evidence of collection or lawful disposal.

8-111 Enforcement; notice to responsible party

(a) Violations of this Article shall be investigated and enforced in accordance with Article Five, including its requirements governing complaints, inspections, notice, opportunity to comply, appeals, and penalties.

(b) The Town's duly appointed Code Enforcement Officer, a municipal police officer, or another municipal official expressly appointed or designated to perform code-enforcement duties in accordance with applicable law may issue a notice of violation under this Article.

(c) A municipal police officer or other official who is lawfully authorized to initiate a municipal ordinance prosecution may prepare or initiate a citation, sworn complaint, or other lawful charging instrument. A Code Enforcement Officer may initiate such a proceeding only to the extent authorized by the officer's appointment, credentials, this Chapter, and applicable law.

(d) The Town may refer conduct that may violate federal, state, or county law to the agency having jurisdiction over that matter.

(e) No enforcement official may administratively find a person guilty or impose a fine. Guilt and any resulting fine shall be determined through the applicable municipal court process.

8-112 Penalty for Litter

(a) Any person who knowingly places, deposits, dumps, or throws litter upon public or private property without the permission of the property owner or governing authority commits a municipal ordinance violation.

(b) Upon conviction in Municipal Court, the person may be fined not less than fifty dollars (\$50) nor more than five hundred dollars (\$500), together with lawful court costs.

(c) To the extent authorized by law, the court may require the convicted person to remove the litter involved in the violation, reimburse the Town or property owner for reasonable cleanup and disposal costs caused by the violation, or perform other lawful remedial action reasonably related to the offense.

Commented [TM6]: Council question: Which individual is authorized to issue a citation?

Response: The Code Enforcement Officer may issue notices of violation and may initiate ordinance-enforcement proceedings within the authority granted by the officer's appointment and credentials. Municipal police officers may issue or initiate citations within their lawful authority. Another employee should not issue citations or notices merely because the employee works for the Town; that authority must be expressly and lawfully assigned. The Municipal Court—not the enforcement officer—determines guilt and imposes any fine.

Recommended action: Clarify the authorized officials and distinguish an administrative notice of violation from a court citation or sworn complaint.

Commented [TM7R6]: This clarification is important because a **notice of violation** and a **municipal citation or criminal complaint** are not the same document. Article Five already provides the general enforcement process; 8-111 only needs to identify who may begin that process.

Commented [TM8]: Council note: The \$50-to-\$500 municipal fine is retained. The cleanup provision was limited to the litter involved in the charged and proven violation. The prior language could have permitted punishment for unrelated littering that had not been charged or established. State litter violations may still be referred to the appropriate agency for enforcement under state law.

(d) Prosecution under this section shall comply with Article Five. Conduct that may violate West Virginia Code §22-15A-4 or another state law may be referred to the appropriate law enforcement or environmental agency.

(e) The Town shall not impose duplicative penalties under multiple substantially identical provisions for the same conduct.

Chapter 8

Article Two

External Sanitation and Property Maintenance

8-201 Authority

This Article is adopted pursuant to the authority granted to municipalities under West Virginia law, including:

(a) West Virginia Code §8-12-5(5), authorizing municipalities to require owners or occupants of adjoining property to keep sidewalks and similar public ways in good order, free, and clean;

(b) West Virginia Code §8-12-5(10), authorizing municipalities to prohibit the accumulation and require the disposal of garbage, refuse, debris, waste, ashes, trash, and similar materials on public or private property;

(c) West Virginia Code §8-12-5(13), authorizing municipalities to prevent injury or annoyance caused by dangerous, offensive, or unwholesome conditions;

(d) West Virginia Code §8-12-5(22), authorizing municipalities to eliminate public health and safety hazards and abate public nuisances;

(e) West Virginia Code §8-12-5(28), authorizing municipalities to protect and conserve trees and to provide for the removal of trees or limbs in a dangerous condition;

(f) West Virginia Code §8-12-5(43) and (57), authorizing municipalities to protect public health, safety, welfare, and good order and to prescribe reasonable penalties;

(g) West Virginia Code §8-12-13 and Article Seven of this Chapter, concerning the adoption and lawful administration of the West Virginia State Building Code; and

(h) West Virginia Code §8-12-16, concerning structures, dwellings, or buildings that are unsafe, unsanitary, dangerous, or detrimental to public safety or welfare.

Commented [TM9]: Council question: How are these requirements policed or enforced?

Response: Section 8-201 only identifies the Town's legal authority. Enforcement is governed by Article Five. A complaint or a condition lawfully observed from a public place may initiate a preliminary investigation. A complaint alone is not proof of a violation. Inspections, notice, opportunity to correct, appeal, reinspection, and any citation must follow Article Five. Entry onto private property requires consent, lawful authority, or a warrant when required.

Recommended action: Correct the inaccurate statutory descriptions. No separate enforcement procedure should be added to 8-201 because Article Five already supplies that procedure.

Pursuant to these provisions, the Town may establish reasonable exterior sanitation and property-maintenance standards and may enforce those standards in accordance with Article Five, Article Seven, and applicable state law.

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) Cut grass, weeds, brush, and other vegetation shall be removed or otherwise lawfully managed when the material:
- (1) Is deposited or allowed to accumulate on a street, sidewalk, storm drain, ditch, alley, public right-of-way, or neighboring property;
 - (2) Obstructs pedestrian or vehicle travel, drainage, or access to utilities;
 - (3) Creates a fire hazard, pest harborage, offensive odor, or other condition harmful to public health or safety; or
 - (4) Constitutes an unlawful accumulation of yard waste or refuse.

Ordinary grass clippings left upon a maintained lawn for mulching or natural decomposition do not violate this section unless they create one of the prohibited conditions listed above.

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

Fallen trees, hazardous stumps, and accumulations of yard or garden debris located on private property shall be removed, reduced, or lawfully managed by the owner or occupant when the condition creates pest harborage, a fire hazard, an obstruction, an offensive condition, or another identifiable threat to public health, safety, or neighboring property.

Ordinary composting, maintained firewood, mulching, and temporary yard-waste accumulation awaiting lawful disposal do not violate this section unless maintained in a manner that creates one of the prohibited conditions stated above.

Enforcement shall proceed in accordance with Article Five.

Commented [TM10]: Council question: Must all cut grass, weeds, and vegetation be removed?

Response: No. The ordinance should not prohibit normal mulching or leaving a reasonable amount of grass clippings on a maintained lawn. Removal is required only when the material is placed in public areas, blocks drainage or travel, enters neighboring property, or creates an identifiable nuisance or safety condition.

Recommended action: Narrow subsection (c) so it addresses harmful accumulations rather than ordinary lawn care.

Commented [TM11R10]: This makes the requirement objective and practical while still allowing the Town to address piles of brush, grass dumped into streets, blocked storm drains, and similar problems.

Commented [TM12]: Council question: How is this enforced—for example, debris behind the fire station?

Response: For private property, enforcement normally begins with a complaint or a condition lawfully observed from a public place. The Code Enforcement Officer documents the specific condition and determines whether it creates an identifiable nuisance or hazard. The owner then receives notice and a reasonable opportunity to correct it under Article Five.

The area behind the fire station must first be identified as municipal or private property. If it is Town property, it should be addressed administratively through the Mayor, Council, or the municipal department responsible for the property. The Town should maintain its own property to the same substantive standard, but it would not ordinarily issue itself a citation or lien. If the area is privately owned, the normal Article Five procedure applies.

Recommended action: Clarify that the section regulates hazardous or nuisance accumulations—not every fallen branch, stump, compost pile, or temporary collection of yard waste.

This prevents selective enforcement: the same physical standard should guide both municipal maintenance and private-property enforcement, even though the administrative process depends on who owns the property behind the fire station.

8-205 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 streetlamp 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.

8-206 Dead, diseased, or dangerous trees on private property

(a) A dead, diseased, structurally unstable, or dangerous tree or limb located on private property may be declared a violation when competent evidence demonstrates that it presents a material risk of injury to persons, damage to neighboring property or public infrastructure, obstruction of a public right-of-way, or spread of disease or infestation to other trees.

(b) The authorized enforcement official shall provide the owner with written notice identifying the tree or limb, the observed condition, the corrective action required, the compliance period, and the right to appeal under Article Five.

(c) Except in an emergency involving an actual and imminent danger, the owner shall receive a reasonable period to obtain an evaluation, arrange pruning or removal, or submit a written compliance plan. The compliance period may be extended for documented hardship when the extension does not create an unreasonable risk to public safety or neighboring property.

(d) If the owner fails to comply, the Town may pursue any remedy authorized by Article Five and applicable law. The Town may enter private property or perform corrective work only after satisfying all applicable requirements concerning notice, entry, authorization, procurement, and due process.

(e) Costs may be recovered by invoice, civil action, or a properly perfected lien only when the particular remedy and lien are authorized by state law. No lien arises automatically under this section.

(f) Emergency action shall be limited to temporary measures reasonably necessary to address an actual and imminent danger and shall comply with 8-509.

8-207 Dead Animals

Commented [TM13]: Council question (Debbie

Question): What happens when a property owner has a dangerous tree overhanging a building on a neighbor's private property but cannot afford removal?

Response: The Town must first determine whether objective evidence shows that the tree or limb is dead, diseased, structurally unstable, or otherwise presents a material danger. A neighbor's concern or a property-line dispute alone is not sufficient.

If a documented dangerous condition exists, the owner of the property where the tree is rooted remains responsible for correcting the violation. Financial hardship may justify additional time, a written compliance plan, or voluntary assistance when delaying correction would not create an unreasonable safety risk. It does not automatically eliminate responsibility for the dangerous condition.

If the condition is not a code-defined public safety hazard and primarily concerns damage or possible damage between two private properties, the matter may be a private civil dispute. The Town should not attempt to decide property-line questions, ownership of the tree, liability for damages, or private rights to trim overhanging branches.

Recommended action: Require objective documentation of the hazard, provide the responsible owner notice and an opportunity to comply, allow reasonable hardship accommodations when safe, and avoid using code enforcement violations to resolve an ordinary dispute between neighbors.

Commented [TM14]: COUNCIL NOTES FOR THE REVISION OF 8-205

Council questions: When the ordinance states that "the municipality determines" a violation or emergency exists, does that require a Council vote? Would Council need to hold a special meeting for an emergency?

Response: These questions arose from the earlier version of 8-205, which combined vegetation standards, inspections, notices, emergency action, municipal abatement, cost recovery, liens, and appeals in one section. That structure was removed during the 2018 IPMC coordination because it duplicated Articles Five and Seven and could create conflicting procedures.

Under the revised Chapter 8, an authorized enforcement official makes the initial administrative determination based on documented facts and within the limits of the official's qualifications. Council does not vote on every ordinary inspection or notice of violation. Council's role is to enact the standards, appoint or confirm officials where required, authorize municipal expenditures or permanent corrective action when required, and hear appeals until a qualified Board of Appeals is established.

An actual and imminent emergency does not necessarily require Council to convene a special meeting before temporary protective action is taken. Section 8-509

Commented [TM15]: Council Note

Action Taken: Preserve owner responsibility while allowing reasonable hardship extensions and coordinating municipal action and cost recovery with Article Five.

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.

8-208 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 Town's duly appointed Code Enforcement Officer is authorized to investigate and make the initial administrative determination as to whether a recreational vehicle, camper, motor home, or similar unit is being used for long-term habitation. The determination shall be based on documented, objective facts, which may include the duration and regularity of occupancy, utility connections, sewage-disposal arrangements, accumulation of household belongings, use of the unit as a mailing or residential address, and other reliable evidence of continuing residential use.
- (d) The Code Enforcement Officer may issue any notice authorized by this Chapter and may refer technical matters outside the scope of the officer's certification, provisional certification, appointment, or other legal authority to an appropriately qualified official or agency. The property owner or responsible party may appeal the determination in accordance with Article Five or Article Seven, as applicable.
- (e) 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 6, provided the unit is lawfully occupied and in compliance with all applicable standards.
- (f) 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.

Commented [TM16]: Council question: Is the Code Enforcement Officer's role limited to inspecting and reporting, with Council making the decision?

Response: No. Sutton has a duly appointed Code Enforcement Officer who may investigate the condition, document the evidence, make the initial administrative determination, and issue the applicable notice within the scope of the officer's lawful authority. Council does not need to vote on every RV-habitation determination. Requiring Council to make the initial decision could also create a conflict if Council later hears the owner's appeal. Council establishes the ordinance standards and serves as the appellate body until a qualified Board of Appeals is appointed. A technical matter outside the Code Enforcement Officer's certification, provisional status, or other lawful authority must be referred to an appropriately qualified official or agency.

Recommended action: Retain the Code Enforcement Officer as the initial decision-maker, require objective documentation, and preserve the owner's right to appeal.

Commented [TM17]: Corrected vacant-property reference from Article 5 to Article 6.

- (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.

8-209 Enforcement, Notice to Owners

See Chapter 8, Article 5 for the applicable enforcement, notice, appeal, and penalty procedures.

Chapter 8

Article 3

Miscellaneous Health and Sanitation

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.

8-302 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 4

8-303 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.

8-304 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

Commented [TM18]: Corrected enforcement reference from Article 4 to Article 5.

Commented [TM19R18]: 8-210 removed -The section was removed in this revision with 2018 IPMC coordination because it regulated the use or rental of land rather than the physical maintenance and safety of property. It also relied on a zoning exception that **was going to be written but we are no longer writing zoning ordinances**. So that automatically declared every violation a nuisance, and authorized broad penalties and remedies without adequate procedural detail. Section 8-208 already addresses the health, sanitation, utility, and safety concerns associated with RVs and campers used for long-term habitation. If Council wishes to regulate commercial campgrounds, paid camping spaces, or temporary RV rentals, that policy should be considered under the Town's land-use, business-licensing, or special-permit provisions, with clear definitions, lawful exceptions, operating standards, and due-process protections.
This section was only put in place when Debbie asked during the fall out festival. From my emails she read and understood. Now that we are no longer going to write zoning ordinances it needs to be removed from ordinance.

(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 Action.

- (1) If the responsible party fails to correct a condition after receiving the notice and opportunity to comply required by Article Five, the Town may undertake or contract for corrective work only when authorized by law and after satisfying all applicable requirements governing entry, municipal approval, procurement, expenditure of public funds, and cost recovery.
- (2) When an actual and imminent danger requires immediate temporary action, the Mayor may authorize an emergency expenditure within the monetary authority granted by the Town's purchasing ordinance. An expenditure exceeding the Mayor's authorized limit shall require approval of the Town Council unless another provision of law expressly authorizes the expenditure.
- (3) If Council approval cannot reasonably wait until the next regular meeting, Council may hold a properly noticed emergency meeting in accordance with West Virginia Code §6-9A-3 and the Town's meeting rules. The notice shall identify the date, time, place, purpose, and facts and circumstances constituting the emergency.
- (4) All work performed, expenditures made, and emergency circumstances relied upon shall be documented and reported to Council.

(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.

Commented [TM20]: Council question: May the Mayor approve emergency work costing up to \$2,000? Must Council approve a cost exceeding \$2,000, and would that require a special emergency meeting?

Response: Under the Town's existing purchasing ordinance, the Mayor's emergency-expenditure authority is limited to \$2,000 per occurrence for urgent protection or continued municipal operations. The Mayor should report the expenditure and supporting documentation to Council. A commitment exceeding that limit requires Council approval unless another law expressly provides otherwise.

If the condition can safely wait, the matter should be placed on the next regular or properly noticed special-meeting agenda. If delay would create an actual emergency, Council may hold an emergency meeting with notice provided as soon as practicable. The notice must state the facts and circumstances of the emergency. The purchase may not be divided into smaller amounts to avoid Council approval.

Recommended action: Coordinate 8-304 with the Town's general purchasing ordinance instead of creating a separate spending rule in Chapter 8.

Commented [TM21R20]: A special meeting and an emergency meeting are not necessarily the same. A routine repair exceeding \$2,000 can be considered at a properly noticed regular or special meeting. The shortened emergency-notice procedure should be used only when genuine emergency circumstances make ordinary notice impracticable. [W. Va. Code §6-9A-3](#)

(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.

8-305 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

8-306 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.

8-307 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.

8-308 Enforcement, Notification, and Penalties

See Chapter 8, Article 5 for the applicable enforcement, notice, appeal, and penalty procedures.

Commented [TM22]: Former 8-307 was removed during the IPMC coordination because it combined fireworks sales, state certification, Town permits, zoning, insurance, B&O taxes, inspections, seizure, closure, liens, and penalties in a single section containing conflicting standards and incomplete procedures. Several provisions relied on incorrect or uncertain authority, including municipal seizure and destruction of fireworks and a mandatory estimated B&O-tax deposit. Fireworks remain regulated under current §8-305 in accordance with West Virginia law and State Fire Marshal requirements. Explosive devices remain addressed in 8-306. The former property-and-monuments provision was then renumbered from 8-309 to current §8-307.

Commented [TM23]: Corrected enforcement reference from Article 4 to Article 5.

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 the applicable enforcement, notice, appeal, and penalty procedures.

Commented [TM24]: Corrected its circular enforcement reference to Article 5.

Chapter 8

Article 5

Enforcement and Penalties

8-501 Purpose and Scope

This Article establishes the general administrative enforcement procedure for violations of Articles 1 through 4 and Article 7 of this Chapter. Article 6 governs vacant building and vacant property registration. Proceedings involving the repair, alteration, improvement, vacating, closing, removal, or demolition of an unsafe, unsanitary, dangerous, or detrimental structure shall additionally comply with West Virginia Code § 8-12-16. If a more specific procedure is required by state law or another article of this Chapter, the more specific procedure controls.

8-502 Enforcement Officials and Limits of Authority

The Mayor may designate one or more municipal employees or officials to receive complaints and perform administrative duties under this Article. Inspections, technical determinations, orders, and enforcement actions involving structures intended for human occupancy or subjects requiring professional certification shall be performed, issued, or approved only by a person lawfully certified, provisionally certified, licensed, or otherwise authorized under West

Commented [TM25]: Important Article 5 changes include increasing the ordinary appeal period from two days to ten days, distinguishing emergency enforcement from ordinary enforcement, requiring warrants when entry is refused, and limiting fines to Municipal Court proceedings.

Virginia law. Nothing in this Chapter enlarges the authority granted by a state credential or provisional authorization.

8-503 Complaints, Preliminary Investigation, and Case Opening

A complaint may be submitted by any person or municipal official. The Town may also initiate an investigation based upon conditions lawfully observed from a public place, municipal records, emergency responses, or other reliable information. The designated official shall document the source of the complaint, the property involved, the observable facts, photographs or other evidence when available, and the provisions potentially violated. A complaint alone is not proof of a violation. A case shall be opened only when the available facts provide a reasonable basis for inspection or further investigation.

8-504 Entry and Inspection

Inspections shall be conducted at reasonable times and in a manner that minimizes inconvenience. An official may inspect conditions visible from a public place or another location where the official is lawfully present. Except in an exigent circumstance permitted by law, the Town shall provide reasonable advance notice and request the owner's or lawful occupant's consent before entering private property or a structure.

If consent is refused or cannot be obtained, the Town shall not enter unless authorized by an administrative search warrant or other lawful court order. For an inspection governed by West Virginia Code § 8-12-16, the Town shall satisfy the sworn-statement, good-faith-effort, substantial-safety-concern, warrant-service, and other requirements of that statute. When the owner or occupant can be located, a warrant issued under § 8-12-16 shall be provided at least five days before entry unless an exigent circumstance or court order lawfully permits otherwise. Evidence obtained during an administrative inspection shall be used only for the lawful purpose for which entry was authorized.

8-505 Ordinary Notice of Violation

When the authorized official determines that a violation exists and the condition does not require emergency action or a special state-law procedure, the Town shall serve a written notice upon the owner and, when appropriate, the occupant or responsible person. The notice shall identify the property; state the observed facts and each applicable ordinance or adopted-code section; describe the corrective action required; provide a reasonable compliance deadline; state how reinspection may be requested; describe the right and deadline to appeal; and state the potential consequences of noncompliance.

Unless a different period is required by law or reasonably necessary because of the nature of the condition, the notice shall provide not fewer than ten calendar days to comply, and ten calendar days from service to file a written administrative appeal. The official may grant a written extension for good cause when the violation does not present an immediate threat, and the responsible party demonstrates diligent progress.

Commented [TM26]: Council question: Does obtaining an administrative search warrant require Council approval?

Response: No. Council establishes the inspection and enforcement procedures by ordinance, but it does not approve individual warrant applications. When consent to enter private property is refused or cannot be obtained, the authorized Code Enforcement Officer determines whether sufficient documented facts exist to request an administrative search warrant.

For an inspection governed by West Virginia Code §8-12-16, the Code Enforcement Officer must provide a sworn statement establishing the Town's reasonable, good-faith attempts to obtain access and a legitimate and substantial safety concern supporting entry. The warrant application is presented to the Municipal Court or Magistrate Court having jurisdiction. The judge—not Council—decides whether the legal requirements have been satisfied and whether to issue the warrant.

The Code Enforcement Officer should coordinate with the municipal attorney when practical, particularly for a complex, occupied, or contested property. However, attorney review is not a substitute for judicial approval, and Council should not attempt to predetermine the facts of an individual enforcement case.

Recommended action: keep 8-504 exactly as written in the revised version including 2018 IPMC-coordinated revision.

Commented [TM27R26]: The process is:

- 1-Request the owner's or lawful occupant's consent.
- 2-Document reasonable, good-faith attempts to obtain access.
- 3-Establish a legitimate and substantial safety concern.
- 4-Submit a sworn warrant application.
- 5-Allow the Municipal Court or Magistrate Court to decide.
- 6-If issued, provide the owner or occupant the notice required by the warrant and applicable law before entry.
- 7-Council approval is therefore neither required nor the appropriate safeguard—the neutral court's approval is the safeguard. [W. Va. Code §8-12-16\(e\)](#)

8-506 Service of Ordinary Notices

An ordinary notice shall be served personally or by certified mail; return receipt requested, to the last known address reasonably available to the Town. When certified mail is refused, unclaimed, or returned undeliverable, the Town may use first-class mail, posting, publication, or another method permitted by applicable law. The case file shall contain proof of service or a written record of the Town's service efforts. Notices and orders concerning unsafe structures shall be served as required by West Virginia Code § 8-12-16 and the adopted property maintenance code.

8-507 Administrative Appeal

A person aggrieved by an ordinary notice or order may file a written appeal with the Town Clerk within ten calendar days after service, unless another appeal period is expressly established by state law or this Chapter. The appeal shall identify the decision contested and briefly state the grounds. A timely appeal **stays** ordinary enforcement until a written decision is issued but does not stay in an emergency order or action necessary to address an imminent danger unless ordered by a court or the official who issued the order.

The appeal shall be heard by the Board of Appeals established under Article 7 or, until such board is appointed, by the Town Council acting in that capacity. The appellant shall receive reasonable notice of the hearing and an opportunity to present evidence, question the Town's evidence, and be represented by counsel at the appellant's expense. The decision shall be based upon the record, contain findings and conclusions, and be issued in writing. It constitutes the Town's final administrative decision, subject to judicial review or other relief available under West Virginia law.

8-508 Reinspection and Noncompliance

After the compliance period expires, the authorized official may reinspect by lawful means. If compliance has not been achieved, the official shall document the remaining violations. The Town may issue a civil or criminal citation when authorized, seek injunctive or other judicial relief, perform a nuisance abatement authorized by law, or initiate the unsafe-building procedure in § 8-12-16. This section does not independently authorize entry, structural repair, closure, demolition, or a lien.

8-509 Emergency Conditions

When an authorized official determines from specific documented facts that a condition presents an actual and imminent danger requiring immediate action, the Town may issue an emergency order and take only those temporary measures reasonably necessary and lawfully authorized to protect life or prevent serious injury. The order shall describe the danger, the factual basis, the action required or taken, and the right to prompt review. Notice shall be provided as soon as reasonably practicable. Emergency authority shall not be used to avoid the notice, hearing, warrant, or judicial procedures otherwise required for permanent repair, closure, or demolition.

Commented [TM28]: Council question: Who determines that an emergency exists—the Code Official, Mayor, or Council? Is an emergency Council meeting required?

Response: The Town's duly appointed and lawfully authorized Code Official makes the initial determination that a condition presents an actual and imminent danger. That determination must be based on specific, documented facts—not a general concern or conclusory statement. The Code Official may issue an emergency order within the officer's lawful authority. The Mayor or if applicable, the Chief of police may authorize or perform temporary protective measures within the authority granted by Chapter 8, the Town's purchasing ordinance, and state law. Examples may include restricting access, posting a warning, establishing a safety perimeter, requesting police or fire assistance, or requiring an immediately dangerous activity to stop.

Council does not have to meet before every emergency warning or temporary safety measure. Requiring a Council vote first could prevent the Town from responding promptly to an immediate danger.

However, emergency authority does not automatically authorize permanent repair, entry, demolition, extensive abatement, a lien, or an expenditure beyond the Mayor's purchasing authority. If Council approval is legally required for the proposed permanent action or expenditure, Council must act at a regular, special, or—when genuine emergency circumstances exist—properly noticed emergency meeting. The owner must receive notice as soon as reasonably practicable and an opportunity for prompt review.

Emergency authority may not be used to avoid ordinary notice, hearing, warrant, appeal, procurement, or court procedures.

In short:

Code Official: determines and documents the immediate danger.

Mayor/authorized personnel: coordinate temporary protective action within their authority.

Council: approves permanent action or spending when Council approval is required.

Court: authorizes entry, demolition, or other judicial relief when required by law.

8-510 Municipal Abatement and Cost Recovery

The Town may abate a nuisance on private property only when the abatement is authorized by state law and this Chapter and after completing the notice, opportunity to comply, entry, procurement, accounting, and other procedures applicable to that action. All labor, equipment, contractor, disposal, legal, publication, recording, and administrative expenses claimed against an owner shall be itemized and supported by records. Costs may be recovered by invoice, civil action, or a properly perfected lien only as permitted by the statute authorizing the particular abatement. Municipal taxes and special liens shall not be treated as interchangeable collection devices unless state law expressly so provides.

8-511 Penalties

Except where another penalty is expressly provided, a person who knowingly fails to comply with a final notice or order issued under this Article commits an ordinance violation and, upon conviction in Municipal Court, may be fined not less than \$50 nor more than \$500, plus lawful court costs. A continuing violation may constitute a separate offense for each day after the compliance deadline only when the charging instrument identifies the continuing conduct, and applicable law permits separate offenses. No fine is imposed administratively by the Mayor, Council, or enforcement official.

8-512 Criminal Proceedings

A criminal ordinance prosecution shall be initiated by a sworn complaint and summons or other lawful charging instrument and served in accordance with West Virginia law. Nothing in this Chapter authorizes an arrest except when independently permitted by state law. Abatement or cost recovery does not bar prosecution, but the Town shall not impose duplicative penalties for the same conduct under multiple substantially identical provisions.

8-513 Records and Equal Enforcement

The Town shall maintain the complaint, inspection records, photographs, notices, proofs of service, communications, extensions, hearing record, orders, invoices, and lien documents in the enforcement file. Similar conditions shall be treated under consistent standards without unlawful discrimination. No official shall participate in an enforcement decision in which the official has a prohibited personal or financial interest.

CHAPTER 8

Public Health and Sanitary

ARTICLE 6

DILAPIDATED, AND VACANT STRUCTURES

8-601 Authority

This Article is enacted pursuant to West Virginia Code §§ 8-12-5, 8-12-16, 8-12-16a, and 8-12-16c. Section 8-12-16 authorizes procedures concerning structures that are unsafe, unsanitary, dangerous, or detrimental to public safety or welfare. Section 8-12-16a authorizes registration of improved real property that is uninhabitable and violates the applicable building code. Section 8-12-16c authorizes a vacant-building and vacant-property registration and maintenance program, registration fees, civil collection, and liens for delinquent registration fees after the required notice. Any municipal acquisition, disposition, tax-sale participation, receivership, eminent-domain action, or civil action shall proceed only under the separate statute governing that action.

Commented [TM29]: Corrected and updated the statutory authority.

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.

8-603 Definitions

For purposes of this Article:

CODE ENFORCEMENT OFFICIAL means the official designated under § 8-702 who possesses the certification, provisional certification, license, or other authorization required for the determination or action involved.

DILAPIDATED STRUCTURE means a building or structure that, because of deterioration, damage, neglect, or lack of maintenance, has one or more documented conditions falling within West Virginia Code § 8-12-16(a)(4) or the adopted IPMC. Dilapidation alone does not create a vacant-registration obligation or fee when the building is lawfully occupied.

LOCAL AGENT means a natural person residing in West Virginia whom an out-of-state owner designates in writing to accept service of process and fee notices and to receive emergency communications, as authorized by West Virginia Code § 8-12-16(d).

MIXED-USE BUILDING means a building containing both one or more commercial occupancies and one or more residential dwelling units.

OWNER or PROPERTY OWNER has the meaning stated in West Virginia Code §§ 8-12-16, 8-12-16a, or 8-12-16c, as applicable to the proceeding.

UNINHABITABLE PROPERTY means real property improved by a structure that a properly authorized code enforcement officer determines is uninhabitable and violates the applicable building code, for purposes of West Virginia Code § 8-12-16a. It is administered separately from vacant registration.

VACANT COMMERCIAL OCCUPANCY means a distinct commercial portion of a mixed-use building in which no lawful business, office, retail, professional, service, or other permitted commercial activity is regularly conducted for thirty (30) consecutive days. Temporary closure, active permitted renovation, or active marketing for sale or lease may support a good-cause exemption when the space remains secured and maintained.

VACANT BUILDING means a building or structure that is unoccupied, or unsecured and occupied by one or more unauthorized persons, for 30 consecutive days. It does not include a new building under active construction pursuant to a valid permit, or a building exempted for good cause under § 8-12-16c.

VACANT PROPERTY means real property on which no building is erected, and no routine activity occurs. Routine lawful maintenance is sufficient activity for this definition.

VACANCY does not arise solely from a temporary absence, hospitalization, military service, seasonal absence, active permitted renovation, or marketing for sale or lease when the owner demonstrates good cause and the property remains lawfully secured and maintained.

8-604 Standards

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

Commented [TM30]: Replaced the definitions to distinguish:
Vacant buildings
Vacant property
Dilapidated structures
Uninhabitable property
Owners
Local agents
Code enforcement officials

(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) A vacant or unoccupied structure is not required to be cleared of all contents. Any contents remaining within the structure shall be lawfully stored and maintained so as not to create a fire hazard, structural overload, obstruction, pest harborage, unsanitary condition, or impediment to lawful inspection or emergency access. Hazardous, perishable, leaking, infested, or unlawfully stored materials shall be removed as required by applicable law.

(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.

(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) Alternative compliance and modifications. The duly authorized Code Official may approve an alternative method of compliance or modification only when permitted by the adopted 2018 IPMC, the West Virginia State Building Code, this Chapter, and applicable state law.

Any approval shall:

- (1) Be requested or confirmed in writing;
- (2) Identify the specific requirement involved;

Commented [TM31]: Council question: Why must a vacant structure be cleared of all contents? What if the building is lawfully used for storage?

Response: A building should not be required to be completely empty merely because it is not occupied by people. Lawful storage does not automatically make a structure vacant, unsafe, dilapidated, or in violation of Chapter 8. The relevant questions are whether storage is a lawful use of the structure and whether the contents create a fire hazard, obstruct required access or exits, attract pests, contain prohibited or hazardous materials, overload the structure, or prevent a lawful inspection.

Furniture, tools, building materials intended for renovation, ordinary household possessions, and lawfully stored business or personal property do not have to be removed solely because the building is unoccupied. However, garbage, combustible accumulations, leaking materials, spoiled food, pest-infested contents, and other dangerous or unsanitary materials may be ordered removed under the applicable IPMC or Chapter 8 standard.

Recommended action: Do not use a blanket requirement that every vacant structure be "cleared of all contents." Require removal only of contents that are unlawful, dangerous, unsanitary, obstructive, or inconsistent with the building's lawful storage use.

Commented [TM32]: Council question: Should deviations be allowed by the Building Official or by the Town?

Response: A qualified Code Official may approve a technical alternative or modification when the adopted IPMC or State Building Code authorizes it and when the alternative provides equivalent protection. The decision must be based on written, objective findings—not general notions of fairness.

Council establishes the ordinance and may hear an appeal until a qualified Board of Appeals is appointed, but Council should not grant informal case-by-case waivers from technical safety standards. Council or an appointed official may consider registration-fee waivers under 8-609, but a financial hardship waiver is different from waiving a safety requirement.

action: I replaced the broad discretionary language with a written alternative-compliance procedure. This preserves reasonable flexibility for unusual buildings without allowing different rules for different owners.

- (3) State the facts supporting the decision;
- (4) Determine that the alternative provides an equivalent level of health, safety, sanitation, and property protection; and
- (5) Be maintained in the property's enforcement or registration file.

(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

Beginning on the effective date of the ordinance adopting this Article, the owner of a vacant building or vacant property shall register it with the Town after it has met the applicable definition for 30 consecutive days. The owner shall submit the registration within 30 days after the Town serves a registration notice or within 30 days after the owner knows that the property has become subject to registration, whichever occurs first. Council shall consider a written request for a good cause of exemption on a case-by-case basis as required by West Virginia Code § 8-12-16c.

The registration shall identify the street address and parcel number; all owners and their mailing addresses; the responsible local agent when required; emergency contact information; and the owner's reasonable maintenance and security plan. The Town may request additional information reasonably necessary to administer the program but shall not require confidential ownership of information unrelated to that purpose. An entity owner may satisfy ownership disclosure by providing its current public organization record and the name and address of the person authorized to act for it.

The owner shall keep the property secured against unauthorized entry; free from trash, debris, and prohibited overgrowth; protected from avoidable water intrusion; and maintained in accordance with 8-604, the IPMC, and other applicable laws. Boarding shall comply with standards approved by the code official. A registration statement may list multiple properties, but each property subject to registration is separately evaluated and separately assessed the applicable fee.

An owner residing outside West Virginia shall designate a local agent as defined in 8-603. The changes in registration information shall be reported under 8-611. Registration and payment do not establish that a structure is unsafe and do not excuse compliance with the IPMC or another applicable ordinance.

A dilapidated but occupied structure is enforced through the IPMC, Article 5, and, when applicable, West Virginia Code § 8-12-16; it is not charged a vacant-building fee solely because it is dilapidated. An uninhabitable property registration under § 8-12-16a shall follow the separate notice, repair, reinspection, and appeal requirements stated in 8-607.

Commented [TM33]: Council concern: Registration and corrective requirements may be difficult for some owners to complete within the stated time. If an owner fails to comply, the Town may not have the personnel or funding to perform the work itself.

Response: Requiring registration does not obligate the Town to repair, maintain, secure, or demolish every noncompliant property at municipal expense. Registration, enforcement, and municipal abatement are separate actions.

Article Five requires a reasonable compliance period and permits a written extension for good cause when the condition does not present an immediate threat and the owner demonstrates diligent progress. Section 8-609 also allows qualifying owners to request a fee waiver or extension under the standards stated there.

If an owner does not comply, the Town may use the enforcement remedy appropriate to the facts and available resources, including continued monitoring, a citation or sworn complaint, a compliance agreement, civil collection of registration fees, injunctive relief, or unsafe-building proceedings. The word "may" gives the Town discretion concerning which lawful remedy to pursue. The Town is not automatically required to hire a contractor or perform the owner's work.

Enforcement priorities should be based on documented factors such as imminent danger, structural instability, fire risk, public access, health hazards, effects on neighboring property, length of noncompliance, and available personnel and funding. Similar cases must be treated under consistent standards.

Commented [TM34R33]: If the building for home is in disrepair and unable to be fixed there is multiple grants available every year. These properties can be on a list and when these grants become available, we will have the matching funds and properties ready for these grants to not only help homeowners, but the town foot the bill.

Commented [TM35]: Council question: How can the Town require an owner to pay for a professional structural opinion when the Town may not be able to afford one?

Response: The IPMC-coordinated revision removed the blanket authority to require a professional opinion as part of registration. Current 8-605 requires only the information reasonably necessary to administer the program, including ownership information, emergency contacts, and a reasonable maintenance and security plan.

Registration alone does not establish that a structure is unsafe. If the Town initiates an unsafe-building, closure, or demolition proceeding, it must obtain and preserve competent evidence sufficient to support the action required by law. An owner may voluntarily provide a qualified professional's report to support a repair proposal, seek additional time, or dispute the Town's findings. A professional report should be required from an owner only when a specific code provision or lawful order authorizes it and the need is reasonably related to the condition at issue.

If an owner does not register after final notice, the Town may complete an administrative registration and pursue the remedies in 8-613. Any fee becomes due 30 days after billing unless stayed by a timely appeal. Penalties are governed by 8-613.

8-605A Mixed-Use Buildings and Vacant Commercial Occupancies

Each residential and commercial occupancy within a mixed-use building shall be evaluated according to its actual use and occupancy. Lawful occupancy of one or more residential dwelling units does not automatically exempt a vacant commercial occupancy from this Article. Conversely, a vacant commercial occupancy does not cause the entire mixed-use building, or its occupied residential dwelling units to be classified or registered as vacant.

When a commercial portion meets the definition of a vacant commercial occupancy, only that commercial occupancy is subject to registration. The registration notice, record, and billing statement shall identify the particular commercial occupancy with reasonable specificity. The owner shall not be charged a residential vacancy fee for dwelling units that remain lawfully occupied.

A registered vacant commercial occupancy shall be assessed against the applicable commercial registration fee and annual commercial vacancy fee under §8-616. A building shall not be charged for both a whole-building vacancy fee and a separate commercial-occupancy vacancy fee for the same space and period. Fees shall remain reasonably related to the Town's actual cost of administering and monitoring the registered commercial occupancy.

An inspection arising solely from the vacant-commercial registration shall be limited to the vacant commercial occupancy and those shared entrances, exits, utilities, structural components, fire-protection features, or other common building systems reasonably necessary to determine its condition or effect on occupants. The Town shall not enter or inspect an occupied dwelling unit solely because a commercial occupancy in the same building is vacant. Consent, warrant, notice, certification, and emergency requirements in Articles 5 through 7 continue to apply.

The owner shall keep the vacant commercial occupancy secured, weather-tight, free from prohibited accumulation, and maintained in compliance with §8-604 and the IPMC. Nothing in this section exempts any occupied or vacant portion of a mixed-use building from independently applicable building, fire, sanitation, nuisance, zoning, business-license, or life-safety requirements.

An owner may challenge the classification, fee, or scope of registration under 8-609. Evidence that the commercial occupancy is actively being renovated under a valid permit, actively marketed for sale or lease, temporarily closed for a documented reason, or expected to resume lawful operation within a determinate period shall be considered in deciding a good-cause exemption or fee waiver.

8-605B Maintained Vacant Residential Property; Good-Cause Exemption

Commented [TM36]: This is for Main Street Commercial Buildings. This is only a suggestion for a solution.

(a) An owner of a vacant residential building may apply for classification as a Maintained Vacant Residential Property and request a good-cause exemption from registration or a waiver or reduction of applicable vacancy fees.

(b) The application shall include:

1. The reason the building is temporarily unoccupied;
2. The anticipated period of vacancy or proposed date of reoccupancy, sale, lease, or other lawful disposition;
3. The owner's current contact information;
4. The name and contact information of a responsible local agent, when required;
5. A description of the maintenance, security, and inspection arrangements for the property; and
6. Reasonable documentation supporting the request.

(c) In determining whether good cause exists, the Town may consider whether:

1. Grass and vegetation are regularly maintained;
2. Gardens and exterior areas are actively maintained;
3. Utilities remain lawfully connected and in safe operating condition;
4. Water and sewer charges are current;
5. The building is weather-tight and secured against unauthorized entry;
6. The property is regularly inspected by the owner or responsible agent;
7. Repairs are completed promptly;
8. The property remains free from rubbish, infestation, nuisance, sanitation, and IPMC violations;
9. The owner maintains property insurance when reasonably available; and
10. The owner has provided a reasonable explanation and determinate period for the vacancy.

(d) Utility service, lawn maintenance, gardening, payment of taxes, or occasional visits shall not, individually or collectively, be treated as proof that the building is occupied. These activities may be considered evidence that the vacant property is responsibly maintained.

(e) When Council or its authorized official finds good cause, the property may be exempted from vacant registration for a determinate period or may remain registered with applicable fees reduced or waived. The written decision shall state:

1. The exemption or waiver granted;
2. Its beginning and expiration dates;
3. The conditions the owner must maintain; and
4. The owner's obligation to report a material change in the property's condition or use.

(f) An exemption or waiver may be granted for a period not exceeding twelve months and may be renewed upon a new application and inspection or documented review. Renewal is not automatic.

(g) The owner shall notify the Town within thirty days if:

1. Maintenance or utility service is discontinued;
2. The property becomes unsecured or develops a code violation;
3. Ownership or responsible-agent information changes;
4. The building becomes occupied, sold, leased, or transferred; or
5. The circumstances supporting the exemption materially change.

(h) The Town may inspect the exterior from a lawful location or conduct another inspection consistent with Articles 5 through 7. Interior entry requires consent, a lawful warrant, a court order, or an emergency circumstance recognized by law.

(i) The Town may revoke the exemption after written notice if the property is no longer maintained, the application contained materially inaccurate information, the owner violates a condition of approval, or the property develops an unsafe, unsanitary, nuisance, or IPMC violation. The owner may appeal under 8-609.

8-606 Identification, Determination, and Inspection

The Town may identify a potentially vacant building or vacant property through owner registration, lawful visual observation, utility information lawfully obtained, complaints, emergency responses, returned mail, municipal records, or other lawful and reliable means. Vacancy alone does not establish that a structure is unsafe, uninhabitable, or dilapidated.

An exterior inspection shall be limited to places where the official is lawfully present. An interior inspection requires consent, an administrative search warrant, a court order, or an exigent circumstance recognized by law. An inspection under West Virginia Code § 8-12-16 shall comply with the advance-notice, consent request, sworn-statement, warrant, and warrant-service requirements stated in 8-504 of this Chapter.

A determination that a structure is unsafe, uninhabitable, or in violation of the adopted IPMC shall be made or approved by a code enforcement official possessing the certification, provisional certification, license, or other authorization required by West Virginia law. The inspection report shall identify the inspector, inspection date, areas inspected, observable facts, photographs or supporting material, each applicable code provision, and recommended corrective measures.

8-607 Vacant Registration Notice and Unsafe-Condition Notice

When the Town determines that a building or property meets the definition requiring vacant registration, it shall send the owner a written registration notice identifying the property, the facts supporting the determination, the registration requirements, all fees and their due dates, the maintenance standards, and the right to challenge the determination and appeal to the Circuit Court of Braxton County. The notice shall be served by certified mail, return receipt requested, and by any additional method reasonably required to provide due process.

Commented [TM37]: Rewrote identification, inspection, warrant, and certification procedures.

Council question: If the Town may consider its available personnel and resources, what happens when the property owner also lacks money, contractors, or the physical ability to perform the work?

Response: Documented hardship may affect the time and reasonable method allowed for compliance, but it does not automatically eliminate the underlying property-maintenance or safety requirement. The Town and a private owner are situated differently: the resource provision was intended to prevent the ordinance from creating an unlimited mandatory municipal duty to inspect, repair, or abate every property at public expense. It was not intended to impose stricter treatment on an owner experiencing genuine hardship.

Under Article Five, an owner may request a **written extension** for good cause when the condition does not present an immediate threat, and the owner demonstrates diligent progress. Depending on the circumstances, the Town may approve a phased compliance plan, prioritize the most serious hazards, allow additional time to obtain a contractor, or connect the owner with an available voluntary assistance programs. The hardship waiver is graded on a point system, then turned over to the council for the denial or approval so it doesn't matter who anyone knows or doesn't know, it remains up to a group, so it is always fair and transparent. Section 8-609 may provide relief from registration fees when its eligibility requirements are satisfied.

Financial hardship cannot justify leaving an actual and imminent danger unaddressed indefinitely. In such a case, the Town may require immediate temporary safety measures while allowing a reasonable longer-term plan for permanent correction.

Similar hardship requests must be evaluated under consistent, written standards. Council or the Code Enforcement Officer should document the facts, the extension granted, required interim safeguards, and the revised deadline.

Recommended action: Do not create an automatic exemption based solely on inability to pay. Use Article Five's good-cause extension and written compliance-plan procedures, together with 8-609's fee-waiver provisions where applicable.

A simple explanation for Council:

Hardship may change the reasonable timeline and method of compliance, but it does not erase a dangerous condition. The Town should work with the owner when it can safely do so and document the same standards for every hardship request.

Commented [TM38]: Separated vacant-registration notices from unsafe-condition and uninhabitable-property notices.

A notice alleging an unsafe, uninhabitable, or property-maintenance violation is separate from the registration notice and shall state the inspection date, inspector, observed conditions, exact code sections, corrective measures, reasonable compliance period, hearing or appeal rights, and possible enforcement action. Registration or payment of a fee does not establish an unsafe condition and does not excuse compliance with another applicable code.

If the Town establishes an uninhabitable property registration under West Virginia Code § 8-12-16a, the appointed code enforcement officer shall post the statutory notice and send a copy by certified mail within five business days. The owner shall receive the 45-day repair or response period, and the 90-day appeal period required by that statute. A vacant-building registration under § 8-12-16c shall not be used to shorten those rights.

8-608 Hearing, Corrective Order, Closure, and Demolition

For ordinary vacant-registration disputes, the owner may present evidence, request a reasonable extension for good cause, and contest the determination under 8-609. Council may order registration, securing, or compliance with the maintenance standards only to the extent authorized by law.

Before ordering or undertaking repair, alteration, improvement, vacating, closing, removal, or demolition of a structure as unsafe, unsanitary, dangerous, or detrimental to public safety or welfare, the Town shall proceed under West Virginia Code § 8-12-16 and shall use the enforcement agency designated in § 8-702. The Town shall provide lawful notice and undertake reasonable, documented efforts to obtain the owner's agreement before acting without an owner agreement or court order.

Municipal closure, correction, removal, or demolition without owner agreement or a court order is authorized only when the structure satisfies the qualifying conditions in § 8-12-16(f)(1). Where that statute requires a finding that the structure is vacant, abandoned, or lawfully declared unfit and that the reasonable estimated repair or corrective cost exceeds fair market value, the record shall include competent evidence supporting both findings.

The written notice required before such action shall include the date of the last inspection; inspector's name; reasonable description of each qualifying condition; required corrective measures; time allowed for correction; proposed municipal action and date; and time allowed to apply to circuit court for a temporary injunction or similar relief. The notice shall be posted on the property and served in the same manner as a complaint as required by § 8-12-16.

If personal service cannot be achieved, the responsible official shall execute and retain for at least two years the affidavit required by § 8-12-16(f), documenting the qualifying conditions, supporting evidence, efforts to contact the owner, efforts to obtain entry or corrective action, and basis for the proposed action. The Town shall publish the required Class II legal advertisement, with the first publication at least 30 days and the last publication no later than 20 days before the proposed action.

Commented [TM39]: Rewrote hearing, corrective-order, closure, and demolition procedures to coordinate with current WV Code §8-12-16.

The notice shall advise the owner of the right to apply to the Circuit Court of Braxton County for a temporary injunction or similar relief. If the owner timely seeks relief, the Town shall respect the statutory hearing process and any court order. No demolition shall occur merely because a vacant registration fee is unpaid or because an owner failed to appear at a Council meeting.

Alternatively, the Town may institute a civil action under § 8-12-16(h) after providing the required pre-suit notice. The minutes, final order, inspection report, service documents, estimates, valuation of evidence, photographs, and all statutory affidavits shall be preserved in the case file.

8-609 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 documentable as necessary.

(e) Within 30 days, or as soon thereafter as possible, after the waiver application is received by the, 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.

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

8-610 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.

8-611 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.

8-612 Exceptions

This Article does not apply to a building owned by the United States, the State of West Virginia, the Town of Sutton, or their respective agencies or political subdivisions. Property used for agricultural purposes is exempt from the adopted property maintenance code and any property maintenance ordinance to the extent required by West Virginia Code § 29-3-5b. This exemption does not prevent enforcement of another independently applicable state law that lawfully governs the condition.

8-613 Nonpayment of Fees, Penalties, Costs, and Liens

An unpaid registration fee is a debt due to the Town. Before filing a lien for a delinquent vacant-building registration fee under West Virginia Code § 8-12-16c, the Town shall notify the owner or authorized agent by certified mail, return receipt requested, that a lien will be filed unless the delinquent fee is paid by the stated date. That date shall be no fewer than 30 days after the owner or agent receives the notice, as shown by the signed return receipt. If certified mail service cannot be obtained, the Town may use an alternative method expressly authorized by this Chapter and consistent with due process.

A lien for a registration fee shall identify the statutory authority, property, owner, fee period, amount, notice and receipt dates, and recording information. The lien shall be recorded with the Clerk of the Braxton County Commission. The Town may collect the debt or enforce a properly perfected lien through a civil action or another method authorized by law.

Costs incurred to maintain, secure, repair, close, or demolish property are distinct from registration fees. Such costs may be charged to the owner and recovered by civil action or lien only after the Town complies with West Virginia Code §§ 8-12-16 or 8-12-16c, as applicable,

Commented [TM40]: Added the state-required agricultural-property exemption.

Commented [TM41]: Rewrote registration-fee collection, lien, municipal-cost, court-penalty, and permit provisions

Council concern: The former section discusses selling property, but the Town does not have money to purchase, maintain, or redevelop properties.

Response: The Town is not required to purchase a property, bid at a tax sale, or spend municipal funds merely because vacant-registration fees remain unpaid. More importantly, the Town cannot automatically forfeit or sell privately owned property under Chapter 8.

For a delinquent vacant-building registration fee, the Town may provide the notice required by West Virginia Code § 8-12-16c, record a properly documented lien, and pursue collection through a civil action or another method specifically authorized by law. The property remains privately owned unless ownership is transferred through a separate lawful process. (Like the transfer program) West Virginia Code Chapter 11A establishes tax-sale procedures for delinquent property taxes. Those procedures are not a direct municipal forfeiture process for unpaid Chapter 8 fees.

If the Town later considers acquiring a particular property through voluntary conveyance, tax-sale participation, negotiated purchase, condemnation, or another lawful process, Council must separately evaluate title, liens, environmental risks, demolition and maintenance costs, available funding, and the proposed public purpose. Council is free to decline the property when acquisition is financially impractical. **Sutton initial intention for this section was for the properties that might be relinquished in the future. So, we did not have to keep all properties merely because they were relinquished to the town not for unpaid fees.**

The revised provision correctly separates the available remedies:

Unpaid registration fee: notice, debt, statutory lien, and lawful collection.

Unsafe-property correction costs: recovery only under the statute authorizing the work.

Tax sale: governed separately by Chapter 11A.

Voluntary transfer to the Town: governed by § 8-614 and requires Council's acceptance.

Town acquisition: discretionary—not mandatory.

This answers the funding concern: recording or enforcing a lien does not require Sutton to become the owner of the property.

and documents the actual reasonable costs. Chapter 11A tax-sale procedures shall not be represented as a direct municipal forfeiture procedure unless a court and controlling law specifically authorize the action.

Failure to register or pay a required fee after final notice may be prosecuted as a municipal ordinance violation. Upon conviction, the Municipal Court may impose a fine of not less than one hundred dollars (\$100) nor more than five hundred dollars (\$500), together with lawful court costs.

The Town Council, Code Enforcement Officer, Building Official, Town Clerk, and other administrative officials shall not suspend, reduce, forgive, or predetermine a judicial fine.

A fine may be suspended, in whole or in part, only by the municipal judge or person lawfully exercising the municipal judicial function, upon reasonable conditions and in accordance with West Virginia Code §8-11-1. The reason, conditions, and amount of any suspension shall be stated on the record or included in the written judgment. Similar cases shall be treated under reasonably consistent standards, while allowing consideration of materially different circumstances.

Administrative correction of a billing error, approval of a registration fee waiver under 8-609, or settlement of a civil debt is not the same as suspension of a judicial fine and shall follow the separate procedure applicable to that action.

8-614 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.

Commented [TM42]: Council concern: Reasons for suspending or reducing fines must be consistent.

Response: I agree with your concern. Council and administrative officials should not reduce a fine after conviction. Only the municipal judge or person lawfully performing that judicial function may suspend a fine, and then only upon reasonable conditions permitted by law. The reasons and conditions should be documented so similarly situated defendants are treated consistently.

This does not prevent the Town from correcting a billing mistake or granting a registration-fee waiver under 8-609. A registration fee, civil debt, and court-imposed fine are legally different.

action taken: I did not clearly separate judicial fines from administrative fees, and I added a requirement for a documented judicial basis for any suspension to make it consistent across the board.

(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).

8-615 Relation to other codes and 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

8-616 Schedule of Vacant-Building and Vacant-Property Registration Fees

(a) Initial registration and administrative fees.

Commented [TM43]: Council note: The two post-Year-4 increases were retained but labeled to clarify that the \$300 annual increase applies to residential properties and the \$750 annual increase applies to commercial properties. The initial registration fee was also distinguished from the separate annual vacancy fee. No fee amount was changed.

- (1) When the Town must identify and administratively register a property after the owner fails to register as required, the registration fee is two hundred fifty dollars (\$250) per property or structure.
- (2) When the owner is timely and voluntarily registers the property, the registration fee is one hundred and fifty dollars (\$150) per property or structure.
- (3) The initial registration fee is separate from the annual vacancy fee stated below.

(b) Annual residential vacancy fees.

Vacancy year	Annual fee
Year 1	\$200
Year 2	\$400
Year 3	\$750
Year 4	\$1,000

For each year after Year 4, the annual residential vacancy fee shall increase by three hundred dollars (\$300) over the prior year. For example, the residential fee for Year 5 is \$1,300.

(c) Annual commercial vacancy fees.

Vacancy year	Annual fee
Year 1	\$400
Year 2	\$1,000
Year 3	\$2,000
Year 4	\$3,500

For each year after Year 4, the annual commercial vacancy fee shall increase by seven hundred fifty dollars (\$750) over the prior year. For example, the commercial fee for Year 5 is \$4,250.

(d) No annual vacancy fee shall be imposed solely because an occupied structure is dilapidated.

(e) A fee is nonrefundable unless it is reversed on appeal, waived under 8-609, or found to have been collected in error.

(f) Fees may be amended only by ordinance and shall be reviewed periodically to ensure they remain reasonably related to the lawful costs and burdens of administering the program.

8-617 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 7

INTERNATIONAL PROPERTY MAINTENANCE CODE

8-701 Authority and Adoption

Pursuant to West Virginia Code §§ 8-12-5, 8-12-13, 8-12-16, and 29-3-5b and Title 87, Series 4 of the West Virginia Code of State Rules, the Town of Sutton adopts the 2018 edition of the International Property Maintenance Code, published by the International Code Council, including the West Virginia amendments incorporated into the State Building Code, as the minimum technical property-maintenance code of the Town, subject to the local amendments in this Article. The adopted code is referred to as the "IPMC."

8-702 Enforcement Agency and Code Official

The Town's code enforcement agency for purposes of West Virginia Code § 8-12-16 and the IPMC shall be the code enforcement department established and staffed in accordance with the State Building Code and applicable State Fire Commission rules. The Mayor shall designate the Building Code Official or Property Maintenance Code Official who will administer the IPMC, subject to Council confirmation when required by Town ordinance. When the Town lacks personnel authorized for a particular technical discipline, it shall obtain services through an intergovernmental agreement, contract with a lawfully qualified person, referral to the appropriate state agency, or another method permitted by law before issuing a final technical order in that discipline.

Police officers may enforce general property-maintenance matters such as high grass, rubbish, and garbage to the extent permitted by state certification rules. A police officer, code enforcement technician, clerk, or other uncertified employee shall not make or sign a technical violation determination concerning a structure intended for human occupancy unless independently authorized by West Virginia law.

8-703 Local Insertions

Where the 2018 IPMC requires the name of the jurisdiction to be inserted, the jurisdiction is the Town of Sutton, West Virginia. The grass and weed height in IPMC Section 302.4 is 12 inches. The insect-screen period in Section 304.14 is May 1 through October 1. The seasonal heat period in Sections 602.3 and 602.4 is October 1 through May 1. These dates do not limit enforcement when weather conditions create an independently unsafe condition.

8-704 Administration and Local Amendments

The administrative provisions of IPMC Chapter 1 apply except were replaced by a more protective procedure required by West Virginia law or this Chapter. References in the IPMC to the "code official" mean the official designated under 8-702. References to the "jurisdiction" mean the Town of Sutton. Any authority to enter property, close or demolish a structure,

recover costs, impose a lien, prosecute an offense, or take emergency action is limited by the Constitution and laws of West Virginia and the express procedures of Articles 5 and 6.

8-705 Appeals

Appeals from an IPMC notice or order shall be heard by a Board of Appeals established in accordance with the IPMC and applicable to West Virginia law. Until qualified members are appointed, the Town Council may serve as the administrative Board of Appeals to the extent permitted by law, provided that no member who participated materially in the inspection, charging decision, or prosecution participates in deciding the appeal. An appeal shall be filed with the Town Clerk within 20 calendar days after service of the IPMC notice or order unless controlling law provides a longer period. Emergency orders are governed by 8-509. The written decision is the Town's final administrative action, subject to judicial review or other relief available by law.

8-706 Relationship to Other Chapter 8 Provisions

The IPMC supplies minimum technical standards for existing structures, equipment, facilities, and premises. Articles 1 through 4 provide additional local health, sanitation, and nuisance standards. Article 5 provides general local enforcement procedures. Article 6 governs vacant-building and vacant-property registration and coordinates unsafe-building remedies under West Virginia Code § 8-12-16. These provisions shall be read together when reasonably possible.

A single condition may be identified under more than one applicable standard, but the notice shall clearly state each violation, and the Town shall not impose duplicative punishments for the same conduct. Registration of vacant property does not constitute a finding that the structure violates the IPMC, and an IPMC violation does not by itself authorize a vacant-registration fee.

8-707 Unsafe Structures, Closure, and Demolition

An IPMC determination that a structure is unsafe or unfit provides a technical basis for further action but does not displace West Virginia Code § 8-12-16. Any municipal repair, alteration, improvement, vacating, closing, removal, demolition, receivership, civil action, cost recovery, or lien involving such a structure shall comply with Article 6 and all mandatory state-law procedures.

8-708 Agricultural Property

Consistent with West Virginia Code § 29-3-5b, property used for agricultural purposes is exempt from the IPMC and from property-maintenance enforcement to the extent required by state law. The Town shall not use another label or nuisance provision to evade the statutory agricultural exemption.

8-709 Historic Buildings

Application of State Building Code provisions to an existing structure listed in the State Register of Historic Places or National Register of Historic Places shall comply with West Virginia Code § 29-3-5b, including required consultation with the State Historic Preservation Office and any final authority vested in the State Fire Marshal. Historic status does not excuse an imminent life-safety hazard, but corrective work shall be coordinated as required by law.

8-710 Referenced Codes and Later Editions

A reference in the IPMC to another International Code does not independently adopt that code beyond the edition and extent lawfully adopted by the State of West Virginia and the Town. A later IPMC edition does not become effective automatically. Council must adopt a later edition by ordinance after confirming consistency with the State Building Code and applicable West Virginia law.

8-711 Public Copy

The Town Clerk shall maintain the adopting ordinance, this Chapter, the adopted IPMC, and applicable West Virginia amendments for inspection as required by law. Enforcement notices shall identify the edition and section relied upon.

8-712 Conflicts and Severability

If the IPMC or this Chapter conflicts with the Constitution of the United States, the Constitution or laws of West Virginia, or a controlling legislative rule, the controlling authority governs. If a provision of this Article is held invalid, the remaining provisions remain effective to the fullest extent permitted by law.

8-713 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 and Recordkeeping.

- (a) The Town Clerk is authorized and directed to prepare the reenacted provisions for insertion into the Code of the Town of Sutton, place them in proper numerical order, remove repealed text, and make nonsubstantive formatting and cross-reference corrections.
- (b) The Town Clerk shall not make any substantive change without further action of the Town Council.
- (c) The elected Town Recorder shall preserve the enacted ordinance, the official code, Council proceedings, certifications, and other permanent municipal records as required by West Virginia law.

Commented [TM44]: Council concern: Should "Recorder" be changed to "Town Clerk" throughout the ordinances?

Response: It doesn't have to be. Sutton has an elected Town Recorder and an appointed Town Clerk. References to the Recorder must remain when the duty is assigned by state law, the Town Charter, or ordinance to the elected Recorder. These duties include preserving the journal of Council proceedings and maintaining official municipal records.

The appointed Town Clerk may receive applications and appeals, maintain working files, prepare notices, assist with codification, provide public inspection copies, and perform other assigned administrative duties. However, those administrative responsibilities do not transfer the elected Recorder's statutory office or legal responsibilities to the Clerk.

Option 1- I can remove town clerk from section 3 and replace with recorder.

Option 2- We can keep the revised language of section 3. I clarified in subsection (c).

Whichever option I personally agree with. I just need to know what everyone decides whether to change it or not.

(d) The Town Clerk may maintain administrative working copies, public-inspection copies, applications, registration records, enforcement files, and other records assigned to the Clerk, subject to the Recorder’s statutory responsibility for official municipal records.

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.

ADOPTED by the Town Council of the Town of Sutton, West Virginia, on this _____ day of _____, 2026.

TOWN OF SUTTON, WEST VIRGINIA

_____	Attest: _____
Mayor	Recorder

_____	_____
Council member	Council member

_____	_____
Council Member	Council Member

Council member

Explanation for revising Article Seven

Council explanation: Article Seven was revised because my original plan (we discussed in council meetings) and the town's present enforcement priorities have changed to focus more on property maintenance and improving the cleanliness and appearance of our town.

When Chapter 8 was originally prepared, we (the council) anticipated adopting its first comprehensive land-use and zoning ordinance through the later revision of Chapter 5 that was to follow right after the adoption of Chapter 8. Based on that plan, Article Seven broadly adopted the entire West Virginia State Building Code, so the Town could later coordinate building regulation, permits, land use, and zoning in Chapter 5.

After a lot of research and discussions with the mayor, assessor's office etc. I have recommended not proceeding with comprehensive zoning at this time. (Unless the Council determines to still move forward with enacting zoning ordinances.) Since the program in Chapter 8 has started in my opinion, Sutton's more immediate priority should be addressing unsafe, unsanitary, vacant, dilapidated, and poorly maintained properties in a fair and consistent manner. Comprehensive zoning would establish additional restrictions on how property may be used and developed, and I believe that Sutton is not presently prepared for that broader regulatory program, and that would be unfair to our residents and community.

The earlier Article Seven in Chapter 8 adopted the West Virginia State Building Code in broad terms. That adoption brought with it the full suite of incorporated construction and technical codes and standards, including building, residential, plumbing, mechanical, fuel-gas, energy, existing-building, electrical, accessibility, swimming-pool and related requirements. It also made the Town responsible for administering and enforcing the codes it adopted. Maintaining the blanket adoption could create public expectations and municipal responsibilities that the Town is not presently equipped to fulfill.

The revised Article Seven therefore adopts only the **2018 International Property Maintenance Code**, together with the applicable West Virginia amendments and the local procedures contained in Chapter 8. This is legally permitted because the West Virginia State Building Code rule expressly states that the 2018 IPMC may be adopted by a local jurisdiction without adopting the other national codes and standards contained in the State Building Code.

This narrower approach matches Sutton's present needs. The IPMC establishes minimum standards for existing properties and structures, including exterior maintenance, sanitation, structural safety, weather protection, plumbing facilities, mechanical equipment, light, ventilation, occupancy, fire-safety conditions, and unsafe structures. It gives the appointed Code Enforcement Officer an objective technical standard to use together with Articles One through Six of Chapter 8 to administer properly.

Limiting Article Seven to the 2018 IPMC also benefits the Town and its residents by:

- Avoiding the cost of establishing a full municipal building-code department before Sutton has the personnel and resources to administer it properly;
- Reducing the risk of permit delays or inconsistent inspections caused by insufficient staffing;
- Giving residents and property owners one identifiable property-maintenance standard instead of an entire collection of construction codes that the Town cannot fully administer creating confusion and stress on our office staff and residents;
- Allowing the Code Enforcement Officer to concentrate on Sutton's most immediate concerns—unsafe, vacant, dilapidated, unsanitary, and nuisance properties;
- Preserving notice, appeals, reasonable compliance periods, hardship extensions, and other due-process protections in Chapter 8; and
- Allowing Council to consider broader building-code administration or zoning later, after public discussion and when adequate staffing, certifications, funding, and administrative systems are available.

This revision does not excuse unsafe construction, eliminate state contractor or professional-licensing requirements, or override codes and laws enforced by the State Fire Marshal or other agencies. It means only that Sutton will not presently undertake local administration of every component of the complete State Building Code. The Town will administer the 2018 IPMC and its local property-maintenance ordinances within the authority and qualifications of its personnel.

Short Version Note

Why was Article Seven changed?

The former Article Seven broadly adopted the entire West Virginia State Building Code in anticipation of a later comprehensive zoning and land-use program. In my opinion, after ALOT of research, discussions, and experience, I believe we should no longer pursue zoning at this time. (unless the council decides otherwise) We should prioritize cleaning up unsafe, vacant, dilapidated, and poorly maintained properties. Also making sure that we are administrating it properly and keeping the needs of Sutton and its residents in mind. Because Sutton is not presently staffed or funded to administer all construction-code disciplines, Article Seven was narrowed to the 2018 IPMC. State Rule 87 CSR 4 expressly permits a local jurisdiction to adopt the 2018 IPMC without adopting the other component codes and standards. This gives the Code Enforcement Officer an enforceable property-maintenance standard while reducing municipal cost, complexity, and unnecessary burdens on residents. Since chapter 5 has not

been revised, we still reserve the right to enact zoning ordinances later if we, the next administrations, believe Sutton and its residents are ready.

Adoption of the 2018 IPMC or any WV building code requires any municipality to have a printed copy on hand in the office for the public to view at any time. So, I will have a copy of it with me at the meeting that each council member can take and look over with these revisions.

DRAFT