

BEFORE THE COUNTY COMMISSION OF PUTNAM COUNTY, WEST VIRGINIA

RE: PUTNAM COUNTY ORDINANCE FOR THE ELIMINATION OF HAZARDS TO PUBLIC HEALTH AND SAFETY

WHEREAS, Section 11, Article IX of the Constitution of West Virginia and West Virginia Code §7-1-3 provide that county commissions have the superintendence and administration of the internal police and fiscal affairs of their counties;

WHEREAS, West Virginia Code §7-1-3kk authorizes a county commission to enact ordinances, issue orders and take other appropriate and necessary actions for the elimination of hazards to public health and safety and to abate anything which the commission deems to be a public nuisance within the county;

WHEREAS, the County Commission of Putnam County, West Virginia, hereby finds that certain activities or conditions are a hazard to public health and safety, and that those activities and/or conditions constitute a public nuisance;

Now, THEREFORE, the County Commission of Putnam County, West Virginia sitting in regular session the 12TH day of July, 2022 hereby approves and adopts the following "Putnam County Ordinance for the Elimination of Hazards to Public Health and Safety";

The adoption having been moved by Commissioner Ellis, and duly seconded by Commissioner Foster, the vote on passage of the motion was as follows:

R. Andrew Skidmore
Ronald R. Foster
C. Brian Ellis

Aye
Aye
Aye

President Skidmore declared the Ordinance passed and approved.

WHEREFORE, it is therefore ADJUDGED and ORDERED that the attached Putnam County Ordinance for the Elimination of Hazards to Public Health and Safety be adopted.

Entered this 12TH day of July, 2022.

THE PUTNAM COUNTY COMMISSION



R. Andrew Skidmore, President



Ronald R. Foster, Commissioner



C. Brian Ellis, Commissioner

**PUTNAM COUNTY ORDINANCE FOR THE
ELIMINATION OF HAZARDS TO PUBLIC HEALTH AND
SAFETY**

I. JURISDICTION.

- (a) That W.Va. Code §7-1-3kk authorizes the Putnam County Commission to “enact ordinances, issue orders and take other appropriate and necessary actions for the elimination of hazards to public health and safety and to abate or cause to be abated anything which the commission determines to be a public nuisance.”; and
- (b) That W.Va. Code §7-1-3kk further provides that “The ordinance may provide for a misdemeanor penalty for its violation.”; and
- (c) That W.Va. Code §7-1-3kk further provides that “The ordinance may further be applicable to the county in its entirety or to any portion of the county as considered appropriate by the county commission.”; and
- (d) The Magistrate Court of Putnam County and the Circuit Court of Putnam County shall have concurrent jurisdiction with respect to misdemeanors under this Ordinance.

II. Certain nuisances declared and enumerated.

- (1) Each of the following acts when committed within Putnam County are hereby defined and declared to be a nuisance:
 - (a) An act done, committed, aided, or assisted to be done or committed by any person which is injurious or dangerous to the public health, safety, or welfare of any person or to the environment;
 - (b) Conduct of any business, trade or activity whereby noisome stenches and odors or noxious gasses arise or are generated; excluding those permitted by the State or Federal Government;
 - (c) An act committed, permitted, allowed or continued by the owner, agent, assignee, occupant or tenant of any premises, property or

structure, which act relates to the location, construction, repair, maintenance, use, emptying and cleaning of any water closet, privy, sink, plumbing, drain, yard, lot, areaway, pen, stable and other place where offensive, unsightly, unwholesome, objectionable or dangerous substances or liquids are or may be accumulated to the damage or injury of any of the inhabitants of the county, and not otherwise specified herein.

- (2) The following acts or conditions when existing within the county are hereby defined and declared to be a nuisance, and a dangerous condition defined in this Ordinance is declared to be a nuisance:
- (a) All buildings, bridges or other structures of whatever character kept or maintained, or which are permitted by any person owning or having control thereof to be kept or maintained, in a condition unsafe, dangerous, unhealthy, injurious, or annoying to the public;
 - (b) All ponds or pools of stagnant water, and all foul or dirty water or liquid found at, on, or discharged into or upon any street, public place or lot to the injury or damage of the public;
 - (c) All obstructions caused or permitted on any street or sidewalk to the danger or annoyance of the public, and all stones, rubbish, dirt, filth, slops, vegetable matter or other article thrown or placed by any person on or in any street, sidewalk or other public place, which in any way may cause any injury or annoyance to the public or which may be a hazard to the public health or safety;
 - (d) All houses or buildings used for special storage of powder, dynamite, or other explosive substances, except those maintained pursuant to permit issued by competent authority;
 - (e) Any building or structure or any vehicle, machinery, piece of equipment or other article upon any premises which is exposed to the view of persons on any street, sidewalk or public place and which is dilapidated, rusty or otherwise uncared-for condition, constitutes that which is commonly known as an "eyesore;"

- (f) Any unclean, stinking, foul, defective or filthy drainpipe, tank, septic system, or gutter, or any leaking or broken slop, garbage or manure box or receptacle of like character;
- (g) Any dirt gathered in cleaning yards, waste of factories, or any rags, damaged merchandise, wet, broken, or leaking containers, or any materials which are offensive or tend by decay to become putrid, or to render the atmosphere impure or unwholesome;
- (h) Any pond of putrid or stagnant water which is foul or offensive to the senses, dangerous to life, or detrimental to health;
- (i) The presence upon any private or public property of a junked or unlicensed vehicle, which constitutes a danger or hazard to human health or the environment or which is unsightly;
- (j) The disposal of hazardous waste within Putnam County;
- (k) The storage, land disposal, or the storage by conditions constituting land disposal, within Putnam County, of any prohibited hazardous substance;
- (l) The disposal, within Putnam County, of any prohibited hazardous substance at any facility other than a facility which is operating in compliance with the provisions of West Virginia law that operate, pursuant to 42 U.S.C. § 6906, "in lieu of" sections 3004 and 3005 of the Federal Solid Waste Disposal Act (42 U.S.C. §§ 6924 and 6925) (or, where applicable, in compliance with the Toxic Substances Control Act (15 U.S.C. § 2601 et seq.) or other applicable Federal law, and all applicable State requirements.
- (m) The nuisances described in this section are not intended to be, and shall not be construed as being exclusive, and any act of commission or omission, and any condition which constitutes a nuisance by statute or common law of the State when committed, omitted or existing within Putnam County is hereby declared to constitute a nuisance.

III. Persons liable for appropriate abatement of nuisance and for reimbursement to the Putnam County Commission of all abatement action costs incurred and to be incurred with respect to such nuisance.

(a) *[General liability.]* Notwithstanding any other provision of law and subject only to the affirmative defenses set forth in subsection (b) of this Ordinance, the following persons are liable for appropriate abatement of a nuisance, for reimbursement to the Putnam County Commission of all abatement action costs incurred or to be incurred by the Putnam County Commission with respect to such nuisance, and for such damages to which the Putnam County Commission may be entitled by law with respect to such nuisance:

- (1) Any person who creates, has created, or imminently threatens to create such nuisance;
- (2) Any person who has contributed to, is contributing to, or threatens to contribute to such nuisance;
- (3) Any person who maintains, has maintained, or imminently threatens to maintain such nuisance; or
- (4) Any person who, at any time during the creation or existence of a nuisance, owned or had control over any real or personal property or facility at, on, in, from or with which a nuisance has been or imminently threatens to be created, contributed to, or maintained and, who failed to abate the nuisance within thirty (30) days of being notified in writing by the County;
- (5) Any person who at the time of disposal within Putnam County of any prohibited hazardous substance or hazardous waste owned or operated any facility any part of which is located in Putnam County at which such prohibited hazardous substance or hazardous waste was disposed of or is currently being managed;
- (6) Any person who by contract, agreement, or otherwise arranged for disposal in Putnam County, or arranged with a transporter for transport for disposal in the Putnam County, of a hazardous waste or prohibited hazardous substances owned or possessed by such person, by any other party or entity, at any facility owned or operated in Putnam County by another party or entity and containing such hazardous waste or prohibited hazardous substances; and
- (7) Any person (including any past or present generator or past or present transporter) who has contributed to or is contributing to the past or present disposal

in Putnam County of any hazardous waste or prohibited hazardous substance which presents, or which may present a nuisance in any place in Putnam County.

(b) *Affirmative defenses to liability.* There shall be no liability, civil or criminal, under this Ordinance for any Person otherwise liable who can establish by clear and convincing evidence any of the following affirmative defenses applicable to the specified nuisance giving rise to the liability involved:

1. With respect to any nuisance, all the acts or omissions of the liable party(ies) regarding the nuisance which cause that person to fall within any of the categories of liability set forth in (a) (General Liability section above) were caused solely by:

a. An act of God;

b. An act of war;

c. An act or omission of a third party other than an employee or agent of the liable party or potentially liable party, or other than by one whose act or omission occurs in connection with a contractual relationship, existing directly or indirectly, with the liable party or potentially liable party if the liable party or potentially liable party establishes by clear and convincing evidence that:

(1) He or she exercised due care with respect to the acts, events or conditions giving rise to the nuisance, taking into consideration the characteristics of such hazardous substance or pollutant, considering all relevant facts and circumstance, and

(2) He or she took precautions against foreseeable acts or omissions of any such third party and the consequences that could foreseeably result from such acts or omissions; or

Any combination of the foregoing paragraphs.

(A) With respect only to the nuisance declared and defined in subsection II(2)(i), that the vehicle(s) is kept in an enclosed structure and does not create or contribute to any dangerous or noxious condition at, in or about the structure.

(B) With respect only to the nuisance declared and defined in subsection II(2)(l), that the hazardous waste is being stored or disposed of at facility duly licensed pursuant to, and operating in compliance with its license issued pursuant to, RCRA sections 3004 and 3005, 42 U.S.C. §§ 6924 and 6925, (or, where applicable, in compliance with the Toxic Substances Control Act

(15 U.S.C. § 2601 et seq.), or in compliance with the provisions of West Virginia law that operate, pursuant to RCRA § 3006, 42 U.S.C. § 6906, "in lieu of" RCRA sections 3004 and 3005, 42 U.S.C. §§ 6924 and 6925, (or, where applicable, in compliance with the Federal Toxic Substances Control Act (15 U.S.C. § 2601 et seq.) or other applicable Federal law, and all applicable State law requirements.

(3) With respect only to the nuisance declared and defined in subsection II(2)(k), either or both of the following:

(A) That the prohibited hazardous substance(s) were, or will be prior to their disposal or management within Putnam County, subject to a remedial action in which treatment that permanently and significantly reduces the volume, toxicity or mobility of the prohibited hazardous substance(s), pollutants, and contaminants is a principal element; or

(B) In the absence of the treatment described in subsection III(b)(3)(A) of this Ordinance, that no other practicable treatment technologies are available for the prohibited hazardous substances.

(c) *Liability of subsequent owner or operator.* A subsequent owner of, or person controlling, any real or personal property or facility described in subsection III(a)(4) of this Ordinance shall be liable to the same extent as the person who owned or controlled such facility at the time when such nuisance was created, contributed to, or maintained, so long as such nuisance remains unabated for more than thirty (30) days after written notice from the County;

(d) *Scope of liability.* When two or more persons liable for a nuisance pursuant to State law, which nuisance presents or imminently threatens to present a single indivisible harm to public health, safety, welfare or the environment for which there is no reasonable and reliable basis for apportioning among those persons the harm to the public health, safety, welfare or to the environment presented or imminently threatened by the nuisance, each such person shall be severally liable for appropriate abatement of the nuisance, reimbursement to the Putnam County Commission of all abatement action cost incurred and to be incurred by the Putnam County Commission with respect to such nuisance, and for all damages to which the Putnam County Commission may be entitled by law arising out of or related directly or indirectly to the nuisance act(s) or condition(s). Any liable party seeking to apportion the harm to public health, safety, welfare or the environment must prove by a preponderance of the evidence that the component of the harm which is sought to be apportioned is scientifically and technologically susceptible to

reasonable and reliable apportionment, that there is a reasonable and practicable basis for apportioning the harm, and that the separate abatement activity proposed for that harm or portion of the harm is as practicable, safe, efficient, reliable and cost-effective in providing the degree of protection of the public health, welfare and the environment as the abatement activity or activities, if any, proposed by the Putnam County Commission.

(e) *Civil liability for and recovery of future abatement action costs.* In any action by or on behalf of the Putnam County Commission to recover abatement action costs from a liable party in which the Putnam County Commission has prevailed or substantially prevailed, the court shall enter a declaratory judgment on liability for abatement action costs with respect to the nuisance to be incurred by or on behalf of the Putnam County Commission that will be binding on any subsequent action or actions to recover further abatement action costs or damages, unless all abatement actions with respect to the nuisance have been completed and all related abatement actions costs have been presented to the Court or their recovery expressly waived by the Putnam County Commission. A subsequent action or actions for recovery of further abatement action costs with respect to the nuisance may be maintained at any time during the abatement action, but must be commenced no later than two years after the date of completion of all abatement actions with respect to the nuisance.

(f) *Settlement of several liability and their effects.*

(1) *Contribution protection.* A person who has resolved its liability to the Putnam County Commission in an effective settlement approved by the Putnam County Commission after public notice and an opportunity for public comment or in a judicially approved effective settlement shall not be liable for claims for contribution regarding matters addressed in the settlement. Such settlement does not discharge any of the other potentially liable persons unless its terms so provide.

(2) *Rights of settling party.* A person who has resolved its liability to the Putnam County Commission for some or all of an abatement action or for some or all of the abatement action costs with respect to the nuisance in an administrative effective settlement approved by the Putnam County Commission after public notice and an opportunity for public comment, or in a judicially approved effective settlement may seek contribution from any person who is not party to a settlement referred to in subsection (f)(1) of this subsection.

(3) *Rights of settling party(ies) subordinate to Putnam County Commission's rights.* In any action seeking contribution for any liability imposed pursuant to this Ordinance, the rights of any person who has resolved its liability

to the Putnam County Commission shall be subordinate to the rights of the Putnam County Commission.

(g) *Limitation of liability of any owner or operator of a licensed waste disposal facility.* Notwithstanding any of other provision of this Ordinance:

(1) Any person who owns or operates a "Solid Waste Facility" as that term is defined in West Virginia Code § 22-15-2, any part of which is located in Putnam County, licensed by any agency or instrumentality of the Federal or State government to manage, including to treat, store, or dispose of, any waste, including, but not limited to, a "Solid Waste," as that term is defined in West Virginia Code § 22-15-2 or hazardous waste who has complied with all applicable reporting obligations pursuant to any State or Federal rules, regulations, or laws shall not be subject to any penalty, civil or criminal, under this Ordinance for any treatment, storage or disposal of any waste required to be reported, and that was properly and timely reported to the appropriate agency. Further, any facility as defined in W.Va. Code § 22-15-2 shall not be subject to any penalty, civil or criminal, under this Ordinance that is in compliance with all State and Federal laws regulating such facility.

Dangerous condition; abandoned excavations or buildings.

Dangerous condition, as used in this section means, including but not limited to, any open, unguarded, or unprotected excavation, refrigerators with intact doors, swimming pool or building which, when abandoned or left open or otherwise unprotected presents an endangerment to life or limb, or an abandoned, open, uncovered or otherwise unprotected well, cesspool, cistern or catch basin.

No property owner, tenant or person having control of property within Putnam County directly or indirectly shall create, allow, or maintain any dangerous conditions to exist on premises that he, she, or it owns or controls.

PROHIBITIONS.

It shall be unlawful for any person, persons, entity, or entities to engage in any activity in violation of this Ordinance.

The Ordinance shall be applicable to all zoned unincorporated areas of Putnam County, West Virginia.

PENALTIES.

- i. Any person who violates the provisions of this Ordinance shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than \$100.00 nor more than \$500.00.
- ii. Each violation of the provisions of this Ordinance shall constitute a separate offense.

ENFORCEMENT.

This Ordinance may be enforced by any law enforcement agency, including but not limited to, The State Fire Marshal's Office, the Putnam County Sheriff and any Deputy Sheriff, West Virginia State Police, West Virginia Department of Natural Resources, and any municipal police officer.

SEVERABILITY.

If any clause, paragraph, subparagraph, section, or subsection of this Ordinance is held to be invalid or unconstitutional by any court of competent jurisdiction, the remainder of the Ordinance shall not be affected thereby but shall remain in full force and effect.

EFFECTIVE DATE.

This Ordinance is effective upon passage.

THE PUTNAM COUNTY COMMISSION


R. Andrew Skidmore, President


Ronald R. Foster, Commissioner


C. Brian Ellis, Commissioner

Adopted: *July 12, 2022*