

Section 1.4 Purpose

The purpose of this ordinance is to provide for the safety and welfare of Harrison County, West Virginia residents by providing a procedure for identifying and removing obstructions unlawfully placed in public roads.

Section 1.5 Jurisdiction

This ordinance applies to all public roads within Harrison County, West Virginia which are not State roads and not wholly within the boundaries of a municipal corporation.

Section 1.6 Severability

If any article, section, subsection or provision of this ordinance is declared by a court of competent jurisdiction to be invalid or unconstitutional, such decision shall not affect the validity or constitutionality of the ordinance as a whole or any part thereof other than the part so declared to be invalid or unconstitutional.

ARTICLE 2. INTERPRETATION AND DEFINITIONS

Section 2.1 Interpretation

For the purpose of this ordinance, the following interpretations shall apply:

- (A) Words used in the present tense include the future tense.
- (B) The singular includes the plural.
- (C) The plural includes the singular.
- (D) The word "*person*" includes a natural person, corporation, unincorporated association chartered association, general partnership, limited partnership, limited liability company, joint venture, joint stock company, club company, business trust, or any manager, agent, servant, officer or employee of any of them.
- (F) The term "*shall*" is mandatory and the term "*may*" is permissive.

- (G) The word "*county*" refers to Harrison County, West Virginia.
- (H) If any provision of this ordinance conflicts with a provision of any other county ordinance which establishes a more stringent standard for protection of the health and safety of county residents, such other ordinance shall prevail. If any provision of this ordinance conflicts with a provision of any other county ordinance which establishes a less stringent standard for protection of the health and safety of county residents, this ordinance shall prevail; and such other provisions are hereby declared to be repealed to the extent they conflict with this ordinance.

Section 2.2 Definitions

As used in or in conjunction with this ordinance, unless the context clearly requires otherwise, the following words or phrases shall mean:

- (A) **Commission** the duly elected County Commission of Harrison County, West Virginia
- (B) **County Clerk** the duly elected Clerk of the County Commission of Harrison County, West Virginia.
- (C) **Health Department** A Board of Health organized pursuant to Chapter 16, Article 2 or Article 2A of the West Virginia Code
- (D) **Planning Commission** the Harrison County Planning Commission created pursuant to Chapter 8, Article 24 of the West Virginia Code.
- (E) **Public Road** any road to which the public has access or any road or way leading from any other public road over the land of another person and which shall have been established pursuant to law, including, without limitation, the right-of-way, roadbed, and all necessary culverts, sluices, drains, ditches, waterways, embankments, slopes, retaining walls, bridges, tunnels, and viaducts necessary for the maintenance of travel, dispatch of freight and communication between individuals and communities. In the absence of any other mark or record, the center of the traveled way shall be taken as the center of the road and the right-

of-way shall be designated therefrom an equal distance on each side.

(F) State Road

all roads classified and prescribed as either "expressway," "trunkline," "feeder," or "state local service" roads by the West Virginia Commissioner of Highways.

(G) Obstruction

trees which have been cut or have fallen either on adjacent land or within the bounds of a public road in such a manner as to interfere with travel thereon; landslides; carcasses of dead animals, lumber, wood or logs piled within the bounds of a public road; machines, vehicles, conveyances and implements abandoned or habitually placed within the bounds of a public road; fences, buildings or other obstructions within the bounds of a public road; ashes, cinders, earth, stone or other material placed on a public road or in any ditch or waterway along such road; water diverted from its regular course or channel so as to injure or endanger a public road, any road connected without lawful authority with a public road in such a manner as to obstruct or impede travel thereon or the flow of water in the gutters or drains along such road; pipeline, telegraph, telephone, trolley or other poles and wires connected therewith, constructed or erected on a public road in such a way as to interfere with the use thereof; or any other thing which will prevent the easy, safe and convenient use of such public road for public travel. Obstructions shall be considered within the bounds of any public road whenever any part thereof shall occupy any part of the right of way provided by law or acquired for road purposes, not including the additional land acquired for slopes, cuts or fills.

ARTICLE 3. PROCEDURES FOR IDENTIFICATION AND ABATEMENT

Section 3.1 Filing of Complaint

The Sheriff of Harrison County, any Deputy Sheriff, the Chief or any member of any County Fire Department, any member of the Health Department, the Director, Inspector or any member of the Planning Commission, or any person residing in Harrison County may file a complaint, verified under oath and penalty of perjury, alleging the existence of an obstruction to a public road and requesting that such obstruction be removed. Such complaint shall be filed with the County Clerk.

Section 3.2 Investigation of Complaint

The Commission shall refer any such complaint to the Planning Commission for investigation and recommendation. The recommendation of the Planning Commission shall be in writing and shall be returned to the Commission no later than fourteen (14) days after the date of reference.

Section 3.3 Commission Determination

After receipt and review of the Planning Commission's recommendation, the Commission shall make a determination by motion in public session as to whether sufficient evidence exists to issue a notice to show cause why an obstruction should not be abated.

Section 3.4 Notice to Show Cause

- (A) If the Commission determines that sufficient evidence exists to issue a notice to show cause why an obstruction should not be abated, the County Clerk shall cause written notice to be served upon the complainant and the landowner, occupant or public utility charged with creation of such obstruction, which notice shall require such landowner, occupant or public utility to appear before the County Commission at a designated time and show cause why an obstruction should not be abated. Such notice shall be served as provided under Rule Four (4) of the West Virginia Rules of Civil Procedure, and a copy of the complaint shall be attached to the notice served on the landowner, occupant or public utility charged with creation of such obstruction

- (B) The County Clerk shall record on the file copy of the notice the method by which service was made, the date of service; and, if service was made by personal service, shall cause the person making personal service to certify the date on which and upon whom personal service was made.

Section 3.5 Public Hearing; Disposition of Complaint

- (A) Pursuant to such notice to show cause, the Commission shall conduct a public hearing at which both the complainant and the landowner, occupant or public utility charged with creation of an obstruction, together with such witnesses as they may produce, shall have an opportunity to be fully heard.
- (B) A continuance of such hearing may be granted at the instance of either party for proper cause shown.
- (C) If the Commission determines after such hearing that an obstruction exists which should be abated, it shall issue an order which shall require that the landowner, occupant or public utility charged with the duty to remove such obstruction shall do so no later than ten (10) days after the date such order is entered.
- (D) Such order shall be served upon the landowner, occupant or public utility charged with the duty to remove such obstruction by the County Clerk by United States certified mail, postage prepaid, return receipt requested.

Section 3.6 Penalty for Failure to Remove Obstruction

If any obstruction is not removed as ordered by the Commission, the landowner, occupant or public utility charged with the duty to remove such obstruction shall be liable to the Commission in a sum of not less than one dollar nor more than five dollars for each day such obstruction remains unremoved.

Section 3.7 Abatement of Nuisance by Injunction

The Commission may apply to the Circuit Court of Harrison County for an injunction to abate such nuisance if the landowner, occupant or public utility charged with the duty to remove such obstruction does not do so within ten (10) days after the date the Commission enters an order to remove such obstruction.

**ARTICLE 4. REMOVAL OF OBSTRUCTIONS BY COMMISSION;
EXPENSE TO BE CHARGED AGAINST OWNER, ETC.**

The amount of any expense incurred by the county to remove an obstruction shall be charged against the landowner, occupant or public utility charged with the duty to remove such obstruction and shall be levied and collected as provided in Chapter 17, Article 16, Section 4 of the West Virginia Code.

Passed by the Harrison County Commission on FIRST READING on this the 26th
day of March, 2001.

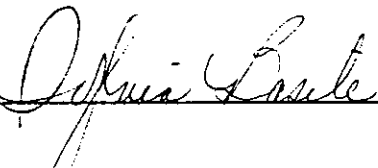
Passed by the Harrison County Commission on SECOND READING on this the 9th
day of April, 2001.



President, Harrison County Commission

ATTEST:

County Clerk



APPROVED AS TO FORM:

County Attorney

