

TITLE 13- LAND USE

CHAPTER ONE - RESTRICTING CERTAIN ACTIVITIES IN RELATION TO OBSCENE MATTERS

Section 13-101 . Definitions.

For purposes of this chapter:

(1) "Knowingly" means to have knowledge of or to be aware of the content or character of obscene matter.

(2) "Matter" means any book, magazine, newspaper or other printed or written material, or any picture, drawing or photograph, motion picture, or other visual representation, or live conduct, or any recording, transcription or mechanical, chemical or electrical reproduction, or any other articles, equipment, machines or materials.

(3) "Individual" means any human being regardless of age.

(4) "Obscene" means matter which the average individual applying contemporary community standards would find (i) taken as a whole, appeals to the prurient interest; (ii) depicts or describes in a patently offensive way ultimate sexual acts, normal or perverted, actual or simulated; and (iii) the matter, taken as a whole, lacks serious literary, artistic, political or scientific value, and which either:

(A) Depicts or describes patently offensive representation of masturbation, excretory functions, lewd exhibition of the genitals, sodomy, fellatio, cunnilingus, bestiality, sadism, masochism; or

(B) Depicts or describes nudity or sexual acts of persons, male or female, below the age of eighteen years.

(5) "Person" means any individual, partnership, firm, association, corporation or other legal entity.

(6) "Prepare" means to produce, publish or print.

(7) "Public display" means the placing of material on or in a billboard, viewing screen, theatre, marquee, newsstand, display rack, window, showcase, display case or similar public place so that material can be purchased or viewed by individuals.

Section 13-102. Injunctive relief.

The Circuit Court of Boone County shall have jurisdiction to issue an injunction to enforce the purposes of this ordinance upon petition by the attorney for the municipality or a representative thereof or any citizen of the municipality who can show a good faith and valid reason for making such application. No bond shall be required unless for good cause shown.

Section 13-103 Activities prohibited; penalties.

Any person who knowingly sends or causes to be sent or causes to be brought into the Town of Danville for sale or public display, or prepares, sells or makes a public display, or in the Town of Danville offers to prepare, sell or make a public display, or has in his possession with the intent to sell or make a public display of any obscene matter to any individual, is guilty of a misdemeanor, and, upon conviction thereof, shall be fined not more than five hundred dollars or imprisoned not more than thirty days or both fined and imprisoned. A person convicted of a second or subsequent offense under this ordinance is guilty of a misdemeanor, and, upon conviction thereof, shall be fined not more than one thousand dollars or imprisoned not more than six months or both fined and imprisoned.

Section 13-104 Employees acting within scope of employment shall not be prosecuted.

No employee shall be guilty of a violation of this ordinance when such employee is a

projectionist, ticket taker, usher, or when such employee prepares, sells or makes a public display of obscene matter while acting within the scope of his regular employment, unless such employee has a proprietary interest in such obscene matter or is a shareholder or officer of a corporation which has a proprietary interest in such obscene matter.

Section 13-105 Exceptions.

Nothing in this ordinance shall be construed so as to apply to any person exercising a right secured by the constitution or laws of this State or of these United States.

TITLE 13 Land Use

CHAPTER 1

Section 13-101 Manufactured home restrictions generally

The town of Danville finds that Manufactured homes, Mobile homes, and House trailers, are detrimental to the values of adjacent conventional single-family houses, stifle development of the Town for residential purposes, and involve potential hazards to public health.

Section 13-102 Definitions

(a) "Manufactured home" means a structure, transportable in one or more sections, which in the traveling mode is eight body feet or more in width or forty or more feet in length or, when erected on site, is three hundred twenty or more square feet, and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities, and includes the plumbing, heating, air-conditioning and electrical systems contained therein; except that such term shall include any structure which meets all the requirements of this definition except the size requirements and with respect to which the manufacturer voluntarily files a certificate which complies with the applicable federal standards. Calculations used to determine the number of square feet in a structure will be based on the structure's exterior dimensions measured at the largest horizontal projections when erected on site. Lack of one or any of the following will not preclude the home from meeting the definition of Manufactured home: utilities, plumbing, heating, air-conditioning, or electrical systems.

(b) "Mobile home" means a transportable structure that is wholly, or in substantial part, made, fabricated, formed or assembled in manufacturing facilities for installation or assembly and installation on a building site and designed for long-term residential use and built prior to enactment of the federal Manufactured Housing Construction and Safety Standards Act of 1974 (42 U.S.C. § 5401, *et seq.*), effective on the fifteenth day of June, one thousand nine hundred seventy-six, and usually built to the voluntary industry standard of the American national standards institute (ANSI) --A119.1 standards for mobile homes.

(c) "House trailers" means all trailers designed and used for human occupancy on a continual nonrecreational basis.

(d) "Situated" means sitting on, or connected to, the ground where the Manufactured home, Mobile home, or House trailer shall remain, and is connected to water lines and

power lines.

Section 13-103 Manufactured homes, Mobile homes, and House Trailers expressly prohibited

(a) It shall be a violation of this ordinance for any person to place a Manufactured home, Mobile home, or House trailer on any portion of land within the corporate limits of the Town of Danville.

Section 13-104 Exceptions

(a) Any Manufactured home, Mobile home, or House trailer situated on land in the Town of Danville prior to this ordinance being enacted shall be exempt from this ordinance. Any owner having property exempted under this exemption may replace the Manufactured home, Mobile home, or House trailer situate on the property with a Manufactured home, Mobile home, or House trailer that is of equal or greater value.

(b) Any manufactured home, mobile home, or house trailer that was exempted from this ordinance under (a) of this section shall remain exempted if the manufactured home, mobile home, or house trailer remains on the same property but is relocated.

(c) Mobile or Manufactured homes that are twenty-four feet or more wide and are normally towed to their destination in two separate units, which are then joined together, commonly referred to as "double wides," may be exempted from this ordinance if all of the following conditions are met:

1. The person or persons wishing to exempt a double wide from this ordinance file a "Motion to Exempt Double Wide from Ordinance" with the Town Council. The motion must include a description of where the double wide will sit, a description of a proposed foundation that meets the requirements of condition number 5, and detailed pictures of each side of the double wide.
2. The person or persons bringing the motion gives notice of the motion to any neighbor that owns land adjacent to the land on which the double wide will sit. The notice must include a copy of the "Motion to Exempt Double Wide from Ordinance" as well as the time and place the motion will be heard. Pictures of the double wide do not need to be included in the notice.
3. Notice shall be given by personal service. In the event that no personal

service can be made then the person required to give notice shall cause service of notice by publication as a Class II publication in compliance with the provisions of article three, chapter fifty-nine of the West Virginia Code, and the publication area shall be in Boone county.

4. The Town Council grants the "Motion to Exempt Double Wide from Ordinance" at a town meeting by a majority vote of the council members.
5. The double wide is placed on a foundation that is made up of a concrete footing that extends at least twelve inches below the surface, and is underpinned with masonry such as stone, brick or concrete block.

Section 13-104 Penalties

(a) Anyone who is in violation of this ordinance shall be fined One Hundred Dollars (\$100) for every day that the violation continues.

TITLE 13 Land Use

CHAPTER 2- EXOTIC ENTERTAINMENT RESTRICTIONS.

Section 13-201 Exotic entertainment restrictions generally

The Town of Danville, in order to protect and preserve the quality of its neighborhoods, commercial districts, and the quality of life in the Town, has in this ordinance, limited the location of exotic entertainment as that term is defined herein, to better the Town of Danville

Section 13-202 Definitions

For the purposes of this chapter:

(a) "Exotic entertainment" means live entertainment, dancing or other services conducted by persons while nude or seminude in a commercial setting or for profit.

(b) "Seminude" means the appearance of:

(1) The female breast below a horizontal line across the top of the areola at its highest point, including the entire lower portion of the human female breast, but does not include any portion of the cleavage of the human female breast exhibited by a dress, blouse, skirt, leotard, bathing suit or other wearing apparel provided the areola is not exposed, in whole or in part;

(2) A human bare buttock, anus, anal cleft or cleavage, pubic area, male genitals, female genitals or vulva, with less than a fully opaque covering; or

(3) A human male genital in a discernibly turgid state even if completely and opaquely covered

Section 13-203 Exotic entertainment expressly prohibited

(a) It shall be a violation of this ordinance for any person, business, or establishment, to provide or allow exotic entertainment within the corporate limits of the Town of Danville.

Section 13-204 Penalties

(a) Violations of the use provisions of this subsection is declared to be a public nuisance per se, which may be abated by the Town of Danville by way of civil action.

(b) Violations may also be punished by a fine not to exceed \$100. Any violation continuing from day to day shall constitute separate individual violations and may be prosecuted and fined as such.

Section 13-205 Savings Clause

If any section, subsection, sentence, clause, phrase or any portion of this subsection is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this subsection. The City Council of the City of Danville hereby declares that it would have adopted this subsection and each section, subsection, sentence, clause phrase or portion thereof irrespective of the fact that any one or more sections, subsections, sentences, clauses, phrases or portions be declared invalid or unconstitutional.

TITLE 13 Land Use

CHAPTER 3 VIDEO LOTTERY RESTRICTIONS

Section 13-302 Video Lottery Restrictions generally

The Town of Danville, in order to protect and promote the public morals, safety, health, welfare, and in order to protect and preserve the quality of its neighborhoods, commercial districts, and the quality of life in the Town, has in this ordinance, limited the number of Video Lottery terminals, as that term is defined herein, within the corporate limits of the Town of Danville.

Section 13-302 Definitions

(a) "Video lottery game" means a state lottery commission approved, owned and controlled electronically simulated game of chance which is displayed on a video lottery terminal and which:

(1) Is connected to the state lottery commission's central control computer by an on-line or dial-up communication system;

(2) Is initiated by a player's insertion of coins, currency, vouchers or tokens into a video lottery terminal, which causes game play credits to be displayed on the video lottery terminal and, with respect to which, each game play credit entitles a player to choose one or more symbols or numbers or to cause the video lottery terminal to randomly select symbols or numbers;

(3) Allows the player to win additional game play credits, coins or tokens based upon game rules which establish the random selection of winning combinations of symbols or numbers or both and the number of free play credits, coins or tokens to be awarded for each winning combination of symbols or numbers or both;

(4) Is based upon computer-generated random selection of winning combinations based totally or predominantly on chance;

(5) In the case of a video lottery game which allows the player an option to select replacement symbols or numbers or additional symbols or numbers after the game is initiated and in the course of play, either: (A) Signals the player, prior to any optional selection by the player of randomly generated replacement symbols or numbers, as to which symbols or numbers should be retained by the player to present the best chance,

based upon probabilities, that the player may select a winning combination; (B) signals the player, prior to any optional selection by the player of randomly generated additional symbols or numbers, as to whether such additional selection presents the best chance, based upon probabilities, that the player may select a winning combination; or (C) randomly generates additional or replacement symbols and numbers for the player after automatically selecting the symbols and numbers which should be retained to present the best chance, based upon probabilities, for a winning combination, so that in any event, the player is not permitted to benefit from any personal skill, based upon a knowledge of probabilities, before deciding which optional numbers or symbols to choose in the course of video lottery game play;

(6) Allows a player at any time to simultaneously clear all game play credits and print a redemption ticket entitling the player to receive the cash value of the free plays cleared from the video lottery terminal; and

(7) Does not use the following game themes commonly associated with casino gambling: Roulette, dice, or baccarat card games: Provided, That games having a display with symbols which appear to roll on drums to simulate a classic casino slot machine, game themes of other card games and keno may be used.

(b) "Video lottery" means a lottery which allows a game to be played utilizing an electronic computer and an interactive computer terminal device, equipped with a video screen and keys, a keyboard or other equipment allowing input by an individual player, into which the player inserts coins, currency, vouchers or tokens as consideration in order for play to be available, and through which terminal device the player may receive free games, coins, tokens or credit that can be redeemed for cash, annuitized payments over time, a noncash prize or nothing, as may be determined wholly or predominantly by chance. "Video lottery" does not include a lottery game which merely utilizes an electronic computer and a video screen to operate a lottery game and communicate the results of the game, such as the game "Travel", and which does not utilize an interactive electronic terminal device allowing input by an individual player.

(c) "Video lottery terminal" means a state lottery commission-approved machine or device that is compatible with the lottery commission's central computer system, and that is used for the purpose of playing video lottery games authorized by the lottery commission by no more than one player at a time.

It shall be a violation of this ordinance for any person, business or residence to possess or operate any Video lottery terminals within the corporate limits of the Town of Danville.

Section 13-104 Exceptions

(a) Any Video lottery terminals operating within the corporate limits of the Town of Danville prior to this ordinance being enacted shall be exempt from this ordinance.

(b) The Town of Danville may allow businesses to operate and possess Video lottery terminals if all of the following conditions are met:

1. The business files a written petition to operate and possess a Video lottery terminal with the Town of Danville. The petition must include how many Video lottery terminals the business is requesting.
2. The business is in accordance with all Video lottery laws of the State of West Virginia and has received all permits and licenses required by the state to operate any Video lottery terminal.
3. The business provides documentation of the requirements of number 2 with the petition.
4. The Town of Danville grants the petition to operate and possess a Video lottery terminal and gives the business a permit designating the number of video lottery terminals. The town shall rule on the petition within 15 days of filing.
5. There are not more than twenty-five Video lottery terminals currently operating within the corporate limits of the town, regardless of whether the terminals were authorised or permitted by the Town of Danville or not.

Amended May 12, 2015

TITLE 13
LAND USE

CHAPTER 4 THE VACATING, CLOSING, REMOVAL, OR DEMOLITION OF STRUCTURES, DWELLINGS, OR BUILDINGS THAT ARE UNSAFE, UNSANITARY, DANGEROUS, OR DETRIMENTAL TO THE PUBLIC SAFETY OR WELFARE.

An Ordinance to create Chapter 4 of Title 13 of the Ordinances of the Town of Danville related to the vacating, closing, removal, or demolition of structures, dwellings, or buildings that are unsafe, unsanitary, dangerous, or detrimental to the public safety or welfare.

WHEREAS, West Virginia Code Section 8-12-16 authorizes the Town of Danville to provide by ordinance for the vacating, closing, removal, or demolition of any dwelling, building, or structure deemed unsafe, unsanitary, dangerous, or detrimental to the public safety or welfare; and,

WHEREAS, the vacating, closing, and removal or demolition of such buildings and structures promotes public health and safety by removing dangerous conditions that may be encountered by community members, code enforcement personnel, and members of the police and fire departments; and

WHEREAS, the Town of Danville intends to create a process to correct these dangerous conditions that provides fair notice and due process to property owners while facilitating correction of the dangerous conditions in an appropriate and timely manner;

Now, therefore, be it ordained by the Town Council of the Town of Danville,

Chapter 4 of Title 13 of the Ordinances of the Town of Danville, is hereby created to read as follows:

Title 13 Chapter 4

Section 13-401 - Purpose and Scope.

This Article provides a process for the identification, inspection, correction, and removal of unsafe structures within the Town in a manner that provides adequate notice and due process to the owners of such structures while protecting the public from danger due to unsafe or unsanitary conditions.

This Article is intended to authorize the Town to exercise, to the fullest extent provided by law, the power and authority provided by W. Va. Code Section 8-12-16, as it may be amended, subject to the requirements and limitations therein.

The powers and duties granted in this Article are in addition to those otherwise granted by law and shall not be construed to limit any other lawful powers of the Town of Danville, including the power of the Town to enforce Section 7-115 Nuisances on private property.

This Article shall be construed liberally to promote the purpose of efficiently abating dangerous conditions that are harmful to the community.

Section 13-402. - Definitions. For the purposes of this article, the following words and phrases shall have the meanings respectively ascribed to them as follows:

(a) "Code enforcement agency" means an agency consisting the mayor of the Town, the building inspector, and one member at large, to be selected by and to serve at the will and pleasure of the mayor, and the Boone County Sanitarian and fire chief of the Danville Volunteer Fire Department, who shall serve as ex officio members of the enforcement agency.

(b) "Code official" means any person employed by the Town of Danville who has been delegated the authority from the code enforcement agency to conduct property maintenance inspections.

(c) "Owner" or "landowner" means a person who individually or jointly with others:

- (1) Has legal title to the property or structure, dwelling, or building, with or without actual possession of the property or structure, dwelling, or building;
- (2) Has charge, care or control of the property or structure, dwelling, or building as owner or designated agent of the owner;
- (3) Is an executor, administrator, trustee or guardian of the estate of the owner;
- (4) Is the designated agent of the owner for the purpose of managing, controlling or collecting rents; or
- (5) May lawfully control or direct the management or disposition of the property or structure, dwelling, or building.

(d) "Unsafe, unsanitary, dangerous or detrimental to the public safety or welfare" means:

- (1) Any door, aisle, passageway, stairway, exit or other means of egress that does not conform to the approved building or fire code of the Town of Danville as related to the requirements for existing buildings; or
- (2) The walking surface of any aisle, passageway, stairway, exit or other means of egress is so warped, worn loose, torn or otherwise unsafe as to not provide safe and adequate means of egress; or
- (3) Any portion of a structure, dwelling, or building or appurtenance that has been damaged by fire, earthquake, wind, flood, deterioration, neglect, abandonment, vandalism or by any other cause to an extent that it is likely to

partially or completely collapse, or to become detached or dislodged; or

(4) Any portion of a structure or building, or any member, appurtenance or ornamentation on the exterior that is not of sufficient strength or stability, or is not so anchored, attached or fastened in place so as to be capable of resisting natural or artificial loads of one and one-half the original designed value; or

(5) The structure, dwelling, or building, or part of the building or structure, because of dilapidation, deterioration, decay, faulty construction, the removal or movement of some portion of the ground necessary for the support, or for any other reason, is likely to partially or completely collapse, or some portion of the foundation or underpinning of the building or structure is likely to fail or give way; or,

(6) Any structure, dwelling, or building constructed, existing or maintained in violation of any specific requirement or prohibition applicable to any structure, dwelling, or building provided by the approved building or fire code of The Town of Danville or of any law or ordinance that presents either a substantial risk of fire, building collapse or any other threat to life and safety; or

(7) Any structure, dwelling, or building, because of a lack of sufficient or proper fire resistance-rated construction, fire protection systems, electrical system, fuel connections, mechanical system, plumbing system or other cause, is determined by the code official to be a threat to life or health; or

(8) When the dwelling, building or structure is vacant, abandoned or has been lawfully declared unfit for human habitation; and the reasonable estimated cost of repair, rehabilitation or corrective action exceeds the fair market value of the dwelling, building or structure, and either:

(i) a structure, dwelling, or building, used or intended to be used for dwelling purposes, because of inadequate maintenance, dilapidation, decay, contamination by any hazardous substance or material including, but not limited to, substance resulting from the illegal manufacture of drugs, damage, faulty construction or arrangement, inadequate light, ventilation, mechanical or plumbing system, or otherwise, is determined by the code enforcement agency to be unsanitary, unfit for human habitation or in such a condition that is likely to cause sickness or disease; or

(ii) The structure, dwelling, or building, or any portion, is clearly unsafe for its use; or,

(iii) The structure, dwelling, or building is neglected, damaged, dilapidated, unsecured or abandoned so as to become an attractive nuisance to children, becomes a harbor for vagrants, criminals, criminal activity or enables persons to resort to the structure, dwelling, or building for committing a nuisance or an unlawful act; or

(iiii) Any portion of a building that remains on a site after the demolition or destruction of the building or structure, or whenever any building or structure is abandoned.

Section 13-403. - Closing and Removal of Unsafe Structures.

The code enforcement agency may order the repair, alteration, improvement, closing, demolition, or removal of any structure, dwelling, or building that is determined by a code official to be unsafe, unsanitary, dangerous or detrimental to the public safety or welfare in accordance with the procedures set forth in this Article. In order to make a determination regarding the classification of a structure as unsafe, unsanitary, dangerous, or detrimental to the public safety or welfare pursuant to this Article, and to determine and enforce the appropriate remedy for any such structure, code officials shall be entitled to make inspections, perform investigations, issue notices, require corrective measures, obtain search warrants from and/or present complaints to The Danville Municipal Judge, and exercise all other powers and duties authorized by West Virginia Code Section 8-12-16, as it may be amended.

Section 13-404. - Inspection. For purposes of inspections performed pursuant to this Article, the following rules shall apply:

When a code official lawfully enters the premises of the property or the structure, dwelling, or building for investigating or inspecting any structure, dwelling, or building, the investigation shall be conducted in a way that minimizes the inconvenience to the owner or person(s) in possession.

Except in exigent circumstances and as may be permitted by law, the code enforcement agency shall provide reasonable notice of the inspection to the owner and request permission from the owner to enter the structure, dwelling, or building.

(0) If the owner cannot be located after reasonable inquiry by the code enforcement agency, or if the owner refuses entry, the code enforcement agency may obtain an administrative search warrant from either the municipal court or the Boone County Magistrate Court. Before issuance of an administrative search warrant, a code enforcement agency official shall be required to make a sworn statement and prima facie case showing that the code enforcement agency was unable to gain access to the structure, dwelling, or building after reasonable and good faith efforts, and that there is a legitimate and substantial safety concern involving the structure, dwelling, or building that supports the requested entry.

If the administrative search warrant is granted by the court, and if the owner can be located by a code official, the code enforcement agency shall provide the owner a copy of the administrative search warrant five days before entering the structure, dwelling, or building. If there is a tenant or other person in possession of the structure who is not the owner, and if such person(s) can be located, the code enforcement agency shall also provide such person(s) a copy of the administrative search warrant five days before entering the structure, dwelling, or building.

Any entry pursuant to this section shall be made for the sole purpose of inspection

of the structure, dwelling, or building for unsafe or unsanitary conditions and not for the purpose of gathering evidence for use in any criminal charge or proceeding unrelated to the unsafe or unsanitary condition of the structure, dwelling, or building.

Section 13-405 - Correction of Unsafe Conditions. Upon a determination by the code enforcement agency that a structure, dwelling, or building is unsafe, unsanitary, dangerous or detrimental to the public safety or welfare, the Town may take corrective action by causing it to be vacated, closed, removed, or demolished, either directly or through a third-party agent, in the absence of owner agreement or a court order, provided the following conditions are met:

- (a) The code enforcement agency undertakes reasonable efforts to locate and seek agreement from the owner prior to taking the corrective action.
- (b) The corrective action may only be taken as to a structure, dwelling, or building that meets the definitions contained in Section 13-402(d).

Prior to undertaking the corrective action, the Town will complete the following procedural requirements:

- (1) The code enforcement agency shall produce a written notice containing a description of the property and the structure, dwelling, or building sufficient for identification, the date of the last inspection, the name of the inspector, a reasonable description of the unsafe, unsanitary, dangerous, or detrimental condition(s), the corrective measures required, the allotted time to correct the substandard condition(s), and that the owner has the right to apply to the circuit court for a temporary injunction or other similar relief restraining action by the enforcement agency.

- (2) The notice shall be served on the owner or landowner by conspicuously posting and attaching a copy of the notice to the subject property or structure, dwelling, or building, and by serving the notice on the owner or landowner in the same manner as service of a complaint as set forth in Rule 4 of the West Virginia Rules of Civil Procedure.

- (3) If the code enforcement agency cannot effect personal service on the owner, a code enforcement agency official shall subscribe a written affidavit, to be maintained by the code enforcement agency for a minimum of two years, that demonstrates the structure, dwelling or building falls within one of the categories set forth in Section 13-402(d), sets forth the basis in reasonable detail including documentation of same, and memorializes the code enforcement agency official's efforts to contact or get permission for entry and corrective action from the owner; and the code enforcement agency shall publish notice of its intent to enter the property or structure, dwelling, or building for the purpose of demolition or correction, along with the address of the property, the name of the owner(s) and

the date of the proposed action, as a Class II legal advertisement, the first of which shall run at least thirty days before the date of the proposed action by the enforcement agency, and the last being no later than twenty days before the date of the proposed action by the enforcement agency.

(4) If there is no response to the notice by the owner or landowner in the time specified in the notice, then the municipality shall have the authority to proceed with correction or demolition of the subject structure, dwelling, or building.

Section 13-406. - Relief from Order for Corrective Action.

Pursuant to W. Va. Code Section 8-12-16, the owner of property subject to corrective action shall be given notice of the right to apply to the Circuit Court of Boone County for a temporary injunction or other similar relief restraining correction or demolition by the Town. Such notice shall be provided in the written notice produced pursuant to Section 13-405(1)

Pursuant to W. Va. Code Section 8-12-16, if such an application is made by the owner to the Circuit Court, a hearing shall be held within twenty days of the application, or as soon as reasonably possible.

(0) Pursuant to W. Va. Code Section 8-12-16, continuances of the hearing provided for in this section may be made for cause only. If a continuance is granted upon request by the owner, the owner is required to pay into court, in the form of a bond, any reasonable and necessary costs related to the structure, dwelling, or building likely to be incurred by the municipality during the continuance. This requirement is in addition to any other bond required or authorized by the West Virginia Rules of Civil Procedure or other applicable law.

Pursuant to W. Va. Code Section 8-12-16, at the conclusion of a hearing held under this subdivision, if the court finds that the structure, dwelling, or building is unsafe, unsanitary, dangerous, or detrimental to the public safety or welfare, the court shall make and enter an order granting the relief as requested by the Town.

Section 13-407. - Owner Responsibility for Costs.

The owner of any structure, dwelling, or building under order of the Code Enforcement Agency of the Town of Danville, shall be required to pay for the costs incurred by Town for repairing, altering, improving, vacating, closing, removing, or demolishing any structure, dwelling, or building.

In addition to any other rights provided by law, the Town may file a lien against the real property in question for an amount that reflects all costs incurred by the Town for

repairing, altering, improving, vacating, closing, removing, or demolishing any structure, dwelling, or building. Any such lien shall be filed and notices in accordance with applicable West Virginia law and Town Ordinances.

Section 13-408. - Civil Action for Corrective Action and Recovery of Costs.

in addition to any other rights provided in this Article and by law, the Town may, in its discretion, institute a civil action in circuit court against the landowner or other responsible party to obtain an order to take corrective action up to and including demolition of any structure, dwelling, or building that is unsafe, unsanitary, dangerous, or detrimental to the public safety or welfare; and to recover all reasonable costs and expenses incurred by the Town with respect to the property or structure, dwelling, or building and for reasonable attorney fees and court costs incurred in the prosecution of the action.

No fewer than ten days before instituting a civil action as provided in this section, the Town shall send notice to the landowner by certified mail, return receipt requested, advising the landowner of the governing body's intention to institute such action.

(0) The notice shall be sent to the most recent address of the landowner of record in the office of the Boone County Assessor and to any other address for the landowner as may exist on record with the Town . If, for any reason, such certified mail is returned without evidence of proper receipt, the Town shall resend the notice(s) by first class mail, postage prepaid, and shall also post notice on the front door or other conspicuous location on the subject property or structure, dwelling, or building.

Any violation of this Article may be prosecuted by the Town consistent with state and local laws. Unless otherwise authorized by state law, prosecution of a violation shall be initiated by a complaint presented to and sworn or affirmed before municipal judge or other municipal official with lawful authority to hear and determine violations of municipal code. Unless otherwise provided by statute, the presentation and oath or affirmation shall be made by a Code Enforcement Official or Town Attorney showing reason to have reliable information and belief. if from the facts stated in the complaint the municipal judge or other municipal official with lawful authority to hear and determine violations of municipal code finds probable cause, the complaint becomes the charging instrument initiating a criminal proceeding. A complaint lawfully authorized by this subsection along with a summons setting forth the date, time and place of appearance before a municipal judge and or other municipal official with lawful authority to hear and determine violations of municipal code shall be served in accordance with the law of the State of West Virginia concerning the service of process in civil actions, except that personal service of a summons and complaint may be made by a code enforcement agency official. If service is made by certified mail under Rule of the West Virginia Rules of Civil Procedure and delivery of the summons and complaint is refused, the code enforcement agency official, upon the receipt of the notice of the refusal, shall mail to the

person or entity being noticed, by first class mail, postage prepaid, a copy of the summons and complaint. if the first-class mailing is not returned as undeliverable by the U. S. Postal Service, service of the summons and complaint is presumed to have been effectuated. Upon service of the summons and complaint consistent with this subsection, the violation may be prosecuted consistent with state and local law.

Section 13-409. - Absolute Defense. It shall be an absolute defense to any civil action by an owner, landowner, or tenant for damages resulting from the closure, demolition, or other corrective action taken by the Town under this Article that the Town followed the procedures set forth herein; provided, that the Town acted in good faith, can demonstrate that the structure, dwelling or building falls within one of the categories set forth in Section 13-402(d).

Ordinance adopted by vote of Town Counsel on December 4, 2018 *JAH*