

ORDINANCE

MERCER COUNTY, WEST VIRGINIA

LITTER CONTROL ORDINANCE

BE IT ORDAINED AND ORDERED

*BY THE COUNTY COMMISSION OF MERCER COUNTY, WEST VIRGINIA, A
PUBLIC BODY CORPORATE OF MERCER COUNTY, WEST VIRGINIA, AS
FOLLOWS:*

WHEREAS, in order to control the act of littering, it is deemed necessary for the County of Mercer, State of West Virginia to impose regulatory action on persons who litter as authorized by West Virginia Code § 7 - 1- 3kk, which authorizes the 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;

NOW THEREFORE, BE IT ORDAINED BY THE COUNTY COMMISSION OF
THE COUNTY OF MERCER, STATE OF WEST VIRGINIA AS FOLLOWS:

Article I. Title and Definitions

Section1. Title

This ordinance shall be known and may be cited as the Mercer County Litter Control Ordinance.

Section 2. Definitions

- a. "Litter" means all waste materials, including but not limited to any garbage, refuse, trash, disposable package, containers, bottles, glass, crockery, cans, scrap metal, abandoned vehicles, appliances, furniture, paper, plastic, rubber, cigarette or cigar butt, carcass of any dead animal or any part thereof, waste building material at construction sites, or any other offensive or unsightly matter, but not including the wastes of primary processes of mining, logging, sawmilling, farming or manufacturing.
- b. "Person" means any natural person, business, corporation, partnership, association, firm, receiver, guardian trustee, executor, administrator, fiduciary, or representative or group of individuals or entities of any kind.
- c. "Private Property" means property owned by any person as defined herein, including, but not limited to, yards, grounds, driveways, entrance or passageways, parking areas, storage areas, any body of water, vacant land, and recreation facilities.
- d. "Public Property" means any area that is used or held out for use by the public, whether owned or operated by public or private interests, including, but not limited to highways, streets, alleys, streams or ponds or other bodies of water.
- e. "Vehicle" means every device capable of being moved upon a public highway or public waterway and in, upon or by which any person or property may be transported or drawn upon public highway or public waterway, and shall also include any water-craft, boats or other floating craft, except devices moved by human power, or used exclusively upon stationary rails or tracks, or used exclusively for agricultural purposes and not licensed pursuant to state law, which is not operated on any public highway for purposes other than crossing such public highway or along such highway between two tracts of the owner's land.
- f. "Abandoned vehicle" or "junk vehicle" means a vehicle as defined herein which requires a license for operation, but not currently licensed for ninety (90) days or more, regardless of whether or not such vehicle is in mechanical operating condition.
- g. "Litter receptacle" means a container with a capacity of not less than ten (10) gallons, constructed and/or placed for use as a depository for litter.
- h. "Institution" means any public or private establishment, which educates, instructs, treats for health purposes, or otherwise performs a service of fulfills a need for the

community, region, state or nation.

Article II. Moving Violations

Section 1. Littering Prohibited: Penalties

- a. It shall be unlawful for any person to drop, deposit, discard, or otherwise dispose of litter in or upon any public or private property within Mercer County, with or without permission of the owner, including, but not restricted to any street, sidewalk, park, body of water, vacant or occupied lot, except in public litter receptacles, or in authorized private litter receptacles provided for public use, or in an area designated by the State Department of Health as a permitted disposal site.
- b. When a violation of the provisions of this Section has been observed by any person, and the matter dumped or disposed of in the highway, right-of-way, property adjacent to such highway or right-of-way, or private property has been ejected from a motor vehicle, the owner or operator of such motor vehicle shall be presumed to be the person ejecting such trash, garbage, refuse or other unsightly matter, provided, however, that such presumption shall be rebuttable by competent evidence.

Section 2.

- a. No vehicle shall be driven or moved on any highway unless such vehicle is constructed or loaded to prevent any of its load from dropping, sifting, leaking, or otherwise escaping therefrom; provided, however that sand or any substance to increase traction or water or other substance may be applied on a roadway in the cleaning or maintaining of such roadway by the state or local government agency having such responsibilities.
- b. Any person operating a vehicle from which any glass or objects have fallen or escaped, which could cause an obstruction or damage to a vehicle or otherwise endanger travelers on such public property, shall immediately cause the public property to be cleaned of all glass or objects and shall pay any costs therefore. Any person who violates this sub-section is guilty of a misdemeanor. Upon conviction he or she is subject to a fine of not less than fifty dollars nor more than one thousand dollars, or in the discretion of the Court, sentenced to perform community service by cleaning up litter from any public highway, road, street, alley or any other public park or public property, or waters of the state, as designated by the Court, for not less than eight nor more than sixteen hours, or both.
- c. Any person convicted of a second or subsequent violation of this section is subject to double the authorized range of fines and community service for the subsection violated.

Article III. Stationary Violations

Section 1. Areas Surrounding Commercial Establishments and Institution

- a. It shall be the duty of each proprietor and each operator of any business, industry, or institution to keep the adjacent and surrounding area clear and free of litter. These areas include, but are not restricted to public and private sidewalks, roads and alleys, grounds, parking lots, loading and unloading areas, and all vacant lots which are owned or leased by said establishment or institution.

Section 2. Keeping Residential Property Clean

- a. It shall be the duty of each residential property owner and tenant to keep all exterior private property free of litter.
- b. This section shall not be deemed to prohibit the accumulation of litter awaiting the next regular scheduled refuse or garbage collection if such property is served by regularly scheduled garbage, refuse or litter collection. Such collection shall be deemed to be regular if such collection regularly occurs at least once per week or more frequently.

Section 3. Screening junk/abandoned vehicles

- a. It shall be unlawful for any person to keep or store anywhere within the county any junk/abandoned vehicle unless such vehicle is parked within an enclosed building or otherwise screened from public view so that the vehicle is not visible from public highways or other public property.

Section 4. Construction and Demolition Sites

- a. It shall be unlawful for any owner, agent or contractor to permit the accumulation of litter before, during or after completion of any construction or demolition project.
- b. It shall be the duty of the owner, agent or contractor in charge of a construction or development site to furnish litter receptacles and to collect, contain and prevent scattering litter on a daily basis. All litter shall be removed from such site at least once per week.

Section 5. Indiscriminate Dumping or Discarding of Litter and Solid Waste

- a. It shall be unlawful for any person to discard or dump along any street or road, on or off the right-of-way, any household or commercial solid waste, rubbish, refuse, junk, vehicle or vehicle parts, rubber tires, appliances, furniture, or any other material or equipment, on public or private property, with or without permission

of the property owner, except in receptacles provided for public use for the deposit of said material, or except in an area designated by the State Department of Health as a permitted disposal site.

- b. Any indication of ownership found in litter shall be prima facie evidence that the person identified violated the provisions of this section: Provided, that no inference may be drawn solely from the presence of any logo, trademark, trade name or other similar mass reproduced things of identifying character appearing on the found litter.

Section 6. Penalties

- a. Any person convicted of violation under Article III of this Ordinance shall be punished by a fine of not less than \$50.00 nor more than \$500.00. The Court may suspend the imposition of any sentence on the condition that the defendant perform community services for such period of time as the Court may designate to remove litter from the highways or other property in the County of Mercer. In addition to or in lieu of the foregoing penalty, any person convicted of violating this Article may be directed by the Court to pick up litter at locations which may be assigned by the Court and/or in whatever amounts and/or for whatever time may be deemed appropriate by the Court.
- b. Any person convicted of a second or subsequent violation of this section is subject to double the authorized range of penalties and community service for the subsection violated.

Article IV. Cleanup-Government Authorization

Section 1. Cleanup of Premises by Government Authorization

- a. Ten (10) days after due notice is given to any owner, agent, occupant, or lessee of any private property to remove litter from the premises, the Mercer County Administrator is authorized to have litter removed from said private property and to charge and collect the costs for such removal from the owner or owners, occupant or occupants of the property.

Article V. Litter Receptacles

Section 1. Use of Receptacles

- a. It shall be unlawful to deposit any item or items except litter in any receptacle placed for public use as a depository for litter. Any item or items, including litter, which are specifically prohibited in written form on or around the receptacle from being placed in said receptacle, shall not be so placed or deposited in said receptacle.

- b. It shall be unlawful for any person to scavenge or remove any item or items which have been discarded as litter in any litter receptacle, unless a written notice of permission has been obtained from an authorized enforcement officer of Mercer County or the Mercer County Commission.
- c. Any person convicted of violating Section 1 of this Article shall be punished by a fine of \$25.00.

Section 2. Providing Adequate Litter Receptacles

- a. It shall be the duty of any person owning or operating any establishment or public place to provide receptacles adequate to contain the litter generated at said establishment.
- b. The penalty established for violation of this section is \$15.00 for each day of violation. The offender shall receive a ticket from the enforcement officer for any violation of this section.

Article VI. Improper Disposal of Waste

Section 1. Depositing Improper Waste in Receptacles or Facilities

- a. It shall be unlawful to improperly dispose of any solid waste as defined in the Mercer County Solid Waste Ordinance at a facility operated for or receptacle placed for public or private use. Improper disposal shall mean and include the depositing in such facility of solid waste which is not accepted or authorized for disposal by such facility. The types of waste not accepted at any such facility shall be displayed at the entrance of such facility or on the receptacle.
- b. It shall be unlawful for any person to scavenge or remove any item or items which have been disposed of in a solid waste or litter receptacle unless written permission for such removal has been granted by the owner or operator of such receptacle or facility.

Article VII. Enforcement of Litter Laws; Prosecution; Presumption

Section 1. Enforcement

- a. Prosecution for a violation of any provision of this act may be initiated by any law enforcement officer or private citizen.

Article VIII. Penalties

- Section 1. Penalties:** A violation of any provision of this Ordinance for which a punishment is not set forth shall be punishable by a fine of not less than \$50.00 and not more

than \$500.00. In addition to such penalties, the violator may be ordered to abate any such violation or ordered to reimburse the County for the costs of abatement of any such violation.

Article IX. EFFECTIVE DATE

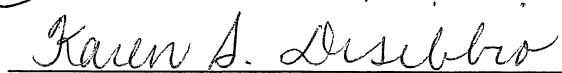
This ordinance shall be effective immediately upon passage. Upon passage of this ordinance the Clerk of this Commission shall notify the West Virginia State Police and all law-enforcement agencies in the county of its action in writing, together with a copy of the ordinance.

ENACTED AND ORDAINED THIS 9th DAY OF December, 2008.

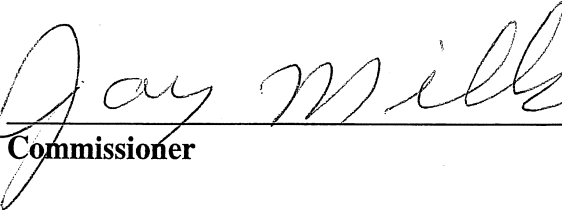
MERCER COUNTY COMMISSION



President

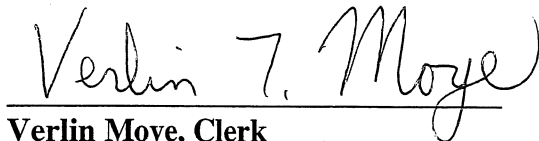


Commissioner



Commissioner

ATTEST:



Verlin Moye, Clerk