

AN ORDINANCE OF THE COUNCIL OF THE CITY OF WHEELING FIXING THE ASSESSMENT FOR THE FINES & COSTS FOR FAILURE TO TAKE SPECIFIC ACTIONS AS REQUIRED BY THE OHIO COUNTY CIRCUIT COURT TO REMOVE ANY AND ALL DEBRIS, VEHICLES, ETC. ON REAL PROPERTY IN THE CITY OWNED BY MARK DOWNIE AND FURTHER PERMITTING THE CITY TO REMOVE HEALTH HAZARDS, ABATE THE NUISANCE AT THE PROPERTY AND DISPOSE OF SUCH VEHICLES, METAL DEBRIS, ETC. REMAINING ON THE PROPERTY & THEREAFTER PLACE A LIEN FOR SUCH RELATED REMOVAL COSTS IN ACCORDANCE WITH THE COURT ORDER

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF WHEELING:

WHEREAS, On May 5th, 2022 counsel for both parties appeared for hearing and argument wherein the Court issued an Order directing that Mark Downie undertake specific actions to remove remnants of a burned structure and remove any debris, vehicles, etc. at 20 Zane Street and Lot #10-W43-108 and the adjacent lot #10-W43-109; and

WHEREAS, Mark Downie had been cited multiple times and had consistently failed to correct the dilapidated structures, the removal of structures and the debris that had risen to conditions of a junk yard littered with a tremendous amount of jagged metal, old vehicles, etc. as well as general sanitation issues; and

WHEREAS, in 2022 the property at 20 Zane Street, including the adjacent debris filled lot, had risen to a state of public nuisance with threatening public safety; and

WHEREAS, since the Order of this Court, issued in 2022, the City has attempted to have Mark Downie comply with said Orders and has advised him of the fines/costs, due to the City as per the Court Order, for continued non-compliance; and

WHEREAS, on August 22, 2023, Mark Downie was notified that the fines/costs due and

owing at that time amounted to thirty-two thousand six hundred dollars (\$32,600.00) for non-compliance with the October 17, 2022 Court Order; and

WHEREAS, Since August 22, 2023, being two hundred seventy-one days as of the date the City filed its Motion for Entry of Final Judgment, Mark Downie owed an additional twenty-seven thousand one hundred dollars (\$27,100.00) for a total of fifty-nine thousand seven hundred dollars (\$59,700.00); and

WHEREAS, The City of Wheeling, requested the Court to enter final judgement for the Mark Downie in the amount of fifty-nine thousand seven hundred dollars (\$59,700.00) and that the Order of Judgment may be filed in the office of the Ohio County Clerk's Office as a lien upon the properties; and

WHEREAS, The City repeated as it had initially advised the Court in 2022, that the City, is ready, willing and able to perform the required demolition and removal of the debris, vehicles, etc. located on the property upon entry of the Order of Final Judgment; and

WHEREAS, Therefore the City requested the Court to also provide in the final entry for judgement that the City be granted its request to abate the nuisance and remove and dispose of the vehicles, metal debris, etc. that have continued to accumulate upon the property and the costs associated with the removal and property clean-up be similarly assessed as a lien upon the property; and

WHEREAS, Pursuant to Rule 54 of the WV Rules of Civil Procedure the Plaintiff respectfully requested that the Court make an express determination that there is no just reason for further delay and direct the entry of final judgement in this matter granting the Plaintiff, City of Wheeling, the relief sought in such final judgement Order; and

WHEREAS, The City asked that the Court authorize that the City may take whatever action it deems necessary to remove the health hazards, including removal of all the dilapidated machinery metal, and debris, etc. on the property and facilitate the cleanup of the property, weeds, garbage, etc. and grant any and all relief, such as attorney fees and costs for the Mark Downie's non-compliance with the prior Order of the court as well as to Order the filing of the Final Judgement Order in the office of the Ohio County Clerk's Office of this filing, as well as the fines/costs associated liens which customarily are levied against said properties when the City must use public monies to effectuate a such removal; and

WHEREAS, Mark Downie was given notice by the Court but failed to reply to the City's Motion by the deadline set by the Court; and

WHEREAS, the Circuit Court of Ohio County on July 17, 2024 filed an Order for Entry of Judgement, granting the City the relief requested, which is attached and incorporated herein.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF WHEELING:

Section 1. The persons, firms or other entities hereinafter named found to be the owner of record of real property or portions thereof upon which certain debris generally, vehicles, metal debris, etc. were located and were subject to an Order of the Ohio County Circuit Court in Case # CC-35-2022-C-63 incorporated and adopted herein by reference after notice duly given; the owner of such property as hereinafter set forth shall be and they are now assessed for the fines/costs of failure to abate and removing such debris generally, vehicles, metal debris, etc. in the amount set opposite the respective name:

<u>Address</u>	<u>Tax Map</u>	<u>Assessment</u>	<u>Last Known Owner</u>
----------------	----------------	-------------------	-------------------------

20 Zane Street and adjacent lot 10-W43-109	10-W43-108 10-W43-109	\$59,700	Mark Downie
--	--------------------------	----------	-------------

Section 2. The Office of the City Clerk is hereby directed to prepare a transcript of the foregoing assessment, to duly certify same, to have the same attested by the City Manager and to forthwith record the same in the Office of the Clerk of the County Commission of Ohio County, West Virginia, so that the foregoing assessment shall become a lien on the real estate upon which such debris generally, metal debris, vehicles, etc. were located.

Section 3. There shall be 8% interest on the Judgment/ decrees for 2024 calendar year pursuant to WV. Code §56-6-31.

Section 4. After the City abates the nuisance and removes the debris generally, vehicles, metal debris, etc. a further lien shall be placed upon the property for the costs associated with the clean- up and removal as noted in the Court Order.

Section 5. The ordinance shall be effective from and after the date of its passage.