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M E M O R A N D U M

TO: Chairman Slaughter
Commissioner Evans
Commissioner Orenstein
Commissioner Wisenbaker
Commissioner Marshall
Commissioner Griner

FROM: Walter Elliott *Walter*

DATE: July 29, 2015

RE: Nuisance Abatement Ordinance

To follow up on my verbal report provided at your Work Session Monday, enclosed is the proposed amended and restated Nuisance Abatement Ordinance we have prepared so that the County's ordinance complies with the Georgia statute authorizing a nuisance abatement ordinance.

Also enclosed is a one-page Executive Summary of the full Ordinance.

Please let me know if you have any questions.

cc: Joe Pritchard
Paige Dukes
Chief Guyton
(all with enclosure)

Executive Summary of Proposed Restated Nuisance Abatement Ordinance

Legal authority for ordinance. The ordinance is based on and includes the requirements of OCGA §§ 41-2-7 through 41-2-17.

Board of Commissioners' findings. The ordinance is predicated upon findings of the Board of Commissioners that there exist in the County structures which:

- are unfit due to dilapidation and not complying with building and safety codes;
- have defects increasing the hazards of fire and accidents;
- lack adequate ventilation, light, or sanitary facilities;
- are unsafe, unsanitary, dangerous, or detrimental to the health, safety, or welfare; and
- are vacant and being used for drug crimes.

Property owners' duties. The ordinance imposes a duty on property owners to comply with applicable County building and safety codes.

County investigation. Upon receipt of a complaint, a county officer shall determine if a structure:

- is unfit and does not comply with applicable building and safety codes;
- constitutes a danger to the public health or safety; or
- is vacant and being used for drug crimes.

Judicial complaint. The County may file a complaint against the property in Magistrate Court.

Service of complaint. The complaint shall be served on interested parties, including the property owner and tenants.

Magistrate Court hearing. A hearing will be held before the Magistrate Court Judge.

Court order.

- If repair can be made at a reasonable cost in relation to the value of the structure, the Judge shall order the owner to bring it into compliance with all building and safety codes.
- If repair cannot be made at a reasonable cost in relation to the value of the structure, the Judge shall order the owner to demolish the structure.

The County's remedies. If the property owner fails to comply with the Judge's order, the County may cause the structure to be repaired or demolished, as applicable.

Lien for costs. The costs of abatement shall be a lien against the property. Costs shall include the cost of repair or demolition, attorneys' fees, and appraisal fees.

Enforcement of lien. The Tax Commissioner shall collect the amount of the lien using methods available for collecting property taxes, including foreclosure of the property.

Alternate remedies. The ordinance does not limit the authority of the County to issue citations for and to prosecute violations of other County ordinances.

July 29, 2015

LOWNDES COUNTY NUISANCE ABATEMENT ORDINANCE

AN ORDINANCE OF THE BOARD OF COMMISSIONERS OF LOWNDES COUNTY, GEORGIA, RELATING TO NUISANCE ABATEMENT TO PROMOTE THE PUBLIC HEALTH, SAFETY, AND WELFARE OF THE COUNTY; TO PROVIDE AN EFFECTIVE DATE; TO REPEAL A CONFLICTING ORDINANCE; AND FOR OTHER LAWFUL PURPOSES.

SECTION I. TITLE

This Ordinance shall be known as and may be cited as "The Lowndes County Nuisance Abatement Ordinance."

SECTION II. AUTHORITY, INTENT, PURPOSE, AND FINDINGS

This Ordinance is enacted pursuant to the authority and provisions of Title 41, Chapter 2, Sections 7 through 17, as amended, of the Official Code of Georgia Annotated. O.C.G.A. § 41-2-7 specifies the scope and purpose of this Ordinance. All powers and authorities granted to public officers and public authorities by such O.C.G.A. §§ 41-2-7 – 41-2-17 are hereby incorporated by reference so as to be assumed, delegated, and granted pursuant to this Ordinance. The Lowndes County Board of Commissioners specifically finds that conditions of the character described in O.C.G.A. § 41-2-7 exist within Lowndes County due to and including, without limitation, dwellings, buildings, structures, or properties which are unfit for human habitation or for commercial, industrial, or business uses due to dilapidation and not being in compliance with applicable codes; which have defects increasing the hazards of fire, accidents, or other calamities; which lack adequate ventilation, light, or sanitary facilities; or where other conditions exist rendering such dwellings, buildings, structures, or properties unsafe or unsanitary, or dangerous or detrimental to the health, safety, or welfare, or otherwise inimical to the welfare of the residents of Lowndes County; or which are vacant and being used in connection with the commission of drug crimes. Such dwellings, buildings, structures, or properties are declared to be a public nuisance. Power hereby is conferred by this Ordinance upon Lowndes County to exercise its enforcement and police powers to repair, close, or demolish the aforesaid dwellings, buildings, structures, or properties as provided in this Ordinance. It is the further purpose and intent that the procedures established in this Ordinance are, and shall be, in compliance with the minimum provisions of O.C.G.A. §§ 41-2-7 – 41-2-17.

SECTION III. DEFINITIONS

As used throughout this Ordinance, the following words, terms, and phrases, and their derivations, shall have the meanings ascribed to them in this Section III;

a. *Applicable codes* means (1) any housing or abatement standard provided in O.C.G.A., Title 8, Chapter 2, including standard minimum codes as adopted now or hereafter by Lowndes County ordinance(s) or by operation of law, or other property maintenance or building

standards or codes as adopted now or hereafter by Lowndes County ordinance(s) or by operation of law, or general nuisance law, relative to the safe use of real property; and (2) any fire or life safety code as provided for in O.C.G.A., Title 25, Chapter 2. Any such building or minimum standard codes for real property improvements shall be deemed to mean those building or minimum standard codes in existence at the time such real property improvements were constructed unless otherwise provided by law.

b. *Closing* means causing a property to be vacated and secured against unauthorized entry.

c. *Drug crime* means an act which is a violation of O.C.G.A. Title 16, Chapter 13, Article 2, known as the "Georgia Controlled Substances Act."

d. *Dwellings, buildings, or structures* means any building or structure or part thereof used or occupied for human habitation or commercial, industrial, or business uses, or intended to be so used, and includes any outhouses, improvements, and appurtenances belonging thereto or usually enjoyed therewith and also including any building and structure of any design.

e. *Governing authority* means the Lowndes County Board of Commissioners.

f. *Interested party(ies)* means

1. Owner;

2. Those parties having an interest in the property as revealed by a certification of title to the property conducted in accordance with the Title Standards of the State Bar of Georgia;

3. Those parties having filed a notice in accordance with O.C.G.A. § 48-3-9;

4. Any other party having an interest in the property whose identity and address are reasonably ascertainable from the records of the petitioner or records maintained in the Lowndes County courthouse or by the Lowndes County Clerk of Court. An interested party shall not include the holder of the benefit or burden of any easement or right of way whose interest is properly recorded, which interest shall remain unaffected; and

5. Persons in possession of said property and premises.

g. *Owner* means the current owner of record of the property, together with any mortgagee, or any lender or grantee holding legal title to the property by virtue of a deed to secure debt, security deed, or a security instrument as shown by a 50-year title examination for the property conducted in accordance with the Title Standards of the State Bar of Georgia.

h. *Property* means any lot, tract, or parcel of real estate whether improved or unimproved. It shall include any dwelling, building, structure, or part thereof used and occupied for human habitation or commercial, industrial, or business uses, or intended to be so used, and includes any outhouse, improvement, and appurtenance belonging thereto or usually enjoyed therewith and also includes any building or structure of any design. The term shall expressly include, for means of amplification and not limitation, swimming pools and wells. Also as used in this Ordinance, the term shall not mean or include any farm, any building or structure located on a farm, or any agricultural facility or other building or structure used for the production, growing, raising, harvesting, storage, or processing of crops, livestock, poultry, or other farm products.

i. *Public authority* means any member of the Lowndes County Board of Commissioners, the Lowndes County Manager, or any officer who is in charge of any department or branch of Lowndes County government relating to health, fire, or building regulations or to other activities concerning properties in Lowndes County; however, in no event shall any such public authority who files a request for investigation under Section V(b) be the public officer exercising the powers conferred upon public officers under this Ordinance.

j. *Public officer* means each and every of the Lowndes County Fire Chief, Fire Marshall, Engineer, Planner, Zoning Administrator, or the Director of the Lowndes County Board of Health, or any of the foregoing's respective designees.

k. *Repair* means altering or improving a property so as to bring any dwelling, building, or structure into compliance with the applicable codes of Lowndes County, laws of the State of Georgia, and/or the cleaning or removal of debris, trash, vegetation, and other materials present and accumulated which create a health or safety hazard or unsanitary and unsafe conditions which are an endangerment to the public health or safety, in or about any property.

l. *Resident* means any person residing in unincorporated Lowndes County on or after the date on which the alleged nuisance arose.

SECTION IV. DUTIES OF PROPERTY OWNERS

a. **Property construction and maintenance.** It is the duty of the owner of every property located within unincorporated Lowndes County (1) to construct and maintain such property in conformance with applicable codes in force within unincorporated Lowndes County, or such ordinances which regulate and prohibit activities on property within unincorporated Lowndes County and which declare it to be a public nuisance to construct or maintain any property within unincorporated Lowndes County in violation of such codes or ordinances; and (2) to keep such property within unincorporated Lowndes County reasonably clean and free of any materials, debris, vegetation, or conditions which create a health or safety hazard either on such property or to surrounding persons or properties.

b. **Drug crimes.** No owner shall allow any property located within unincorporated Lowndes County to be used in the commission of drug crimes.

SECTION V. NUISANCE ABATEMENT PROCEDURE

a. Appointment and designation of public officer. Each and every public officer, and their respective designees, are hereby appointed and designated with the authority to carry out the powers and duties prescribed in this Ordinance.

b. Complaint and investigation. Whenever a request is filed with a public officer by a public authority or by at least five residents of the unincorporated area of Lowndes County charging that any property located in the unincorporated area of Lowndes County:

1. is unfit for human habitation or for commercial, industrial, or business use and not in compliance with applicable codes;
2. is vacant and being used in connection with the commission of drug crimes; or
3. constitutes an endangerment to the public health or safety as a result of unsanitary or unsafe conditions,

the public officer with whom the request is filed shall make an investigation or inspection of the specific property to determine if such conditions exist under applicable codes. The public officer shall have the authority to enter upon property to conduct an investigation or inspection, provided such entry is made with the least possible inconvenience to the person(s) in possession of such property. If such an investigation or inspection is necessary, the public officer shall endeavor to obtain the permission of the owner of such property to conduct such investigation or inspection. If permission is denied by the property's owner, the public officer may seek the assistance of the Lowndes County attorney's office to obtain an inspection warrant from a court of competent jurisdiction. The public officer may determine or identify that the property is unfit for human habitation or for commercial, industrial, or business use and not in compliance with applicable codes upon a finding of conditions on the property which are dangerous or injurious to the health, safety, welfare, or morals of the occupants, occupants of neighboring properties, or other residents of Lowndes County. Such conditions may include the following (without limiting the generality of the foregoing): defects therein increasing the hazards of fire, accidents, or other calamities; lack of adequate ventilation, light, or sanitary facilities; dilapidation; disrepair; structural defects; and uncleanness. The public officer may determine that the property is being used in the commission of drug crimes upon personal observation or report of a law enforcement agency.

c. Judicial complaint and summons. If the public officer's investigation or inspection determines or identifies that any property meets one or more of the three enumerated standards from subsection (b), the public officer may file in a court of competent jurisdiction a complaint in rem against the lot, tract, or parcel of real property wherein the nuisance complained of exists and shall cause summons and a copy of the complaint to be served on the interested parties for such dwelling, building, or property pursuant to the provisions of Section VI. The complaint shall identify the subject real property by appropriate street address and official tax map reference; identify the interested parties; state with particularity the factual basis

for the action; and contain a statement of the action sought by the public officer to abate the alleged nuisance.

d. Time of hearing. The summons shall notify the interested parties that a hearing will be held before the Magistrate Court of Lowndes County, State Court of Lowndes County, or other court of competent jurisdiction, at a date and time certain, within Lowndes County. Such hearing shall be held not less than 15 days nor more than 45 days after the filing of said complaint in the proper court.

e. Right to be heard. The interested parties shall have the right to file an answer to the complaint and to appear in person or by attorney and offer testimony at the time and place fixed for the hearing.

f. Order. If, after such notice and hearing, the court determines that the property in question meets one or more of the standards enumerated in subsection (b), the court shall state in writing findings of fact in support of such determination and shall issue and cause to be served upon the interested parties that have answered the complaint or appeared at the hearing an order which does one of the following:

1. If the repair, alternation, or improvement of the said property can be made at a reasonable cost in relation to the present value of said property, the order shall require the owner, within the time specified in the order, to repair, alter, or improve such property so as to bring it into full compliance with the applicable codes relevant to the cited violation and, if applicable, to secure the property or structure so that it cannot be used in connection with the commission of drug crimes; or

2. If the repair, alternation, or improvement of the said property in order to bring it into full compliance with applicable codes relevant to the cited violations cannot be made at a reasonable cost in relation to the present value of said property, the order shall require the owner, within the time specified in the order, to demolish and remove the such noncompliant dwelling, building, or structure and all debris from the property.

For purposes of this Section V, the court shall make its determination of "reasonable cost in relation to the present value" of the property without consideration of the value of the land on which the property is situated; provided, however, that costs of the preparation necessary to repair, alter, or improve a property may be considered. Income and financial status of the owner of the property shall not be a factor in the court's determination with respect to the reasonable costs in relation to the present value of the property. The present value of the property and the costs of repair, alteration, or improvement may be established by affidavits of real estate appraisers with a Georgia appraiser classification as provided in O.C.G.A. Title 43, Chapter 39A, qualified building contractors or qualified building inspectors, in each case possessing a current Occupation Tax Certificate from Lowndes County, without actual testimony presented. Costs of repair, alteration, or improvement of the property shall be the cost necessary to bring the property into compliance with the applicable codes relevant to the cited violations.

g. Remedies of public officer in the event of noncompliance with order.

1. The order entered under subsection (f) shall further provide that, if the owner fails to comply with an order to repair, demolish, or close the property within the specified time, the public officer may cause such property to be repaired, altered, or improved, or to be vacated and demolished or closed. Such abatement action shall commence within 270 days after the expiration of time specified in the order for abatement by the owner. Any time during which such action is prohibited by a court order issued pursuant to O.C.G.A. § 41-2-13 or any other equitable relief granted by a court of competent jurisdiction shall not be counted toward the 270 days in which such abatement action must commence. The public officer is also authorized to file a motion for attachment for contempt against the owner with the court which issued the order as an alternate or additional remedy.

2. If the public officer chooses to have the work done as ordered on any dwelling, building, or property, he or she shall cause to be posted on the main entrance of the building, dwelling, or property a placard with the following words, including the Spanish translation:

“This building is unfit for human habitation or commercial, industrial, or business use and does not comply with the applicable codes or has been ordered secured to prevent its use in connection with drug crimes or constitutes an endangerment to public health or safety as a result of unsanitary or unsafe conditions. The use or occupation of this building is prohibited and unlawful.”

h. Salvage. If the public officer has a structure demolished, reasonable effort shall be made to salvage reusable materials for credit against the cost of demolition. The proceeds of any moneys received from the sale of salvaged materials shall be used or applied against the cost of the demolition and removal of the structure, and proper records shall be kept showing application of sales proceeds. Any such sale of salvaged materials may be made without the necessity of public advertisement and bid. Neither the public officer nor Lowndes County shall have any liability resulting from or occasioned by the sale of any such salvaged materials, including, without limitation, defects in such salvaged materials.

i. Lien for costs. The order shall provide that the amount of all costs associated with the abatement action shall be a lien against the real property upon which such cost was incurred. Such costs shall include but not be limited to the cost of demolition, reasonable attorneys' fees, and all court costs, appraisal fees, administrative costs incurred by the Lowndes County Tax Commissioner, restoration to grade of the real property after demolition, and title examination costs. Such lien shall attach to the real property upon the filing of a certified copy of the order requiring repair, closure, or demolition, in the Office of the Lowndes County Clerk of Superior Court, and shall relate back to the date of the filing of the lis pendens notice required under Section VI (b). The Lowndes County Clerk of Superior Court shall record and index such certified copy of the order in the deed records of Lowndes County and enter the lien for costs of abatement on the general execution docket of Lowndes County. Such lien should cross-reference the order and include the original caption and case number from the nuisance

abatement action. The lien shall be superior to all other liens on the property, except liens for taxes to which the lien shall be inferior, and shall continue in force until paid in full.

j. Enforcement of lien.

1. Upon a final determination of costs, fees, and expenses incurred in accordance with this Ordinance, the public officer shall transmit to the Lowndes County Tax Commissioner a statement of the total amount due and secured by said lien, together with copies of all notices provided to interested parties. The statement of the public officer shall be transmitted within 90 days of completion of the repairs, demolition, or closure. It shall be the duty of the Lowndes County Tax Commissioner to collect the amount of the lien using all methods available for collecting real property ad valorem taxes, including specifically O.C.G.A. Title 48, Chapter 4; provided, however, that the limitation of O.C.G.A. § 48-4-78 which requires 12 months of delinquency before commencing a tax foreclosure shall not apply. The Lowndes County Tax Commissioner shall remit the amount collected to the general fund of Lowndes County.

2. Enforcement of liens arising pursuant to this Ordinance may be initiated at any time following receipt by the Lowndes County Tax Commissioner of the final determination of costs in accordance with this Ordinance. The unpaid lien amount shall bear interest and penalties from and after the date of final determination of costs in the same amount as applicable to interest and penalties on unpaid real property ad valorem taxes. An enforcement proceeding pursuant to O.C.G.A. § 48-4-78 for delinquent ad valorem taxes may include all amounts due under this Ordinance.

3. The redemption amount in any enforcement proceeding arising pursuant to this Ordinance shall be the full amount of the costs as finally determined with interest, penalties, and costs incurred by Lowndes County and the Lowndes County Tax Commissioner in the enforcement of the lien. Redemption of property from the lien may be made in accordance with the provisions of O.C.G.A. §§ 48-4-80 and 48-4-81.

k. Waiver of lien. The Lowndes County Board of Commissioners may waive and release any such lien imposed on property for costs incurred by Lowndes County up to the time of the entry of the order and any additional costs incurred subsequent thereto in attempting to bring the property into compliance by entering into a contract with the owner of such property in which the owner agrees to a timetable for rehabilitation of the real property or the dwelling, building, or structure on the property and demonstrates the financial means to accomplish such rehabilitation.

l. Appellate procedure. Where the abatement action does not commence in the superior court, review of a court order arising pursuant to this Ordinance requiring the repair, alteration, improvement, or demolition of a property shall be by direct appeal to the superior court under O.C.G.A. § 5-3-29.

m. Alternate remedies. Nothing in this Section V shall be construed as to limit or impair the authority of public officers or other Lowndes County employees or agents under

existing and future Lowndes County ordinances to issue citations for violations of state minimum standard codes, optional building, fire, life safety, and other codes adopted by Lowndes County ordinance or by operation of law, and conditions creating a public health hazard or general nuisance, and to seek to enforce such citations in a court of competent jurisdiction prior to issuing a complaint in rem as provided in this Section V. The issuance of a citation for a violation of any such codes shall not be required as a prerequisite to issuing a complaint in rem under this Section V.

SECTION VI. SERVICE AND NOTICE

a. Copies of the complaint and summons shall be served in each of the following ways as applicable:

1. At least 14 days prior to the date of the hearing, the public officer shall mail copies of the complaint by certified mail or statutory overnight delivery, return receipt requested, to all interested parties whose identity and address are reasonably ascertainable. Copies of the complaint shall also be mailed by first-class mail to the property address to the attention of the occupants of the property, if any, and shall be posted on the property within three business days of filing the complaint and at least 14 days prior to the date of the hearing.

2. For an interested party whose mailing address is unknown, a notice stating the date, time, and place of the hearing shall be published in the newspaper in which the sheriff's advertisements appear in Lowndes County once a week for two consecutive weeks prior to the hearing.

b. A notice of lis pendens shall be filed in the Office of the Clerk of Superior Court of Lowndes County at the time of filing the complaint in the appropriate court. Such notice shall have the same force and effect as other lis pendens notices provided by law.

c. Orders and other filings made subsequent to service of the initial complaint and summons shall be served in the manner provided in this Section VI on any interested party who answers the complaint or appears at the hearing. Any interested party who fails to answer or appear at the hearing shall be deemed to have waived all further notice in the proceedings.

SECTION VII.

Nothing in this Ordinance shall be construed to prevent or impair in any way the power of Lowndes County to define and declare nuisances and to cause their removal or abatement by summary proceedings or other lawful manner.

SECTION VIII. SEVERABILITY.

If any section, subsection, paragraph, subparagraph, sentence, clause, phrase or any other provision, part or portion of this Ordinance shall be declared invalid or unconstitutional by a court of competent jurisdiction, or if any section, subsection, paragraph, subparagraph, sentence,

clause, phrase or any other provision, part or portion of this Ordinance as applied to any particular situation or set of circumstances shall be declared invalid, or unconstitutional, such invalidity shall not be construed to affect the portions of this Ordinance not so held to be invalid, or the application of this Ordinance to other circumstances not so held to be invalid. It is hereby declared to be the intent of the Board of Commissioners to provide for separable and devisable parts.

SECTION IX. REPEALER. The Ordinance adopted by the Board of Commissioners February 19, 1992, assigned Ordinance No. 92-0277, and recorded in minute book 91-92A, shall be, and the same is, hereby repealed.

This Ordinance shall be effective upon adoption.

It is so adopted and ordained, this _____ day of _____, 2015.

BOARD OF COMMISSIONERS
OF LOWNDES COUNTY:

ATTEST:

Bill Slaughter, Chairman

K. Paige Dukes, County Clerk