

ORDINANCE

Upon the adoption of the following ordinance, titled, "repairing, closing or demolition of unfit buildings or structures; health hazards on private property; properties affected.", Code Section 4-5 of The Building and Building Regulations code of Lowndes County shall be repealed and replaced with the following;

(A) It is found and declared that in the unincorporated area of the county there is the existence or occupancy of dwellings or other buildings or structures which are unfit for human habitation or for commercial, industrial, or business occupancy or use and are inimical to the welfare and are dangerous and injurious to the health, safety, and welfare of the people of Lowndes County; and that a public necessity exists for the repair, closing, or demolition of such dwellings, buildings, or structures. It is found and declared that where there is in existence a condition or use of real estate which renders adjacent real estate unsafe or inimical to safe human habitation, such use is dangerous and injurious to the health, safety, and welfare of the people of Lowndes County and a public necessity exists for the repair of such condition or the cessation of such use which renders the adjacent real estate unsafe or inimical to safe human habitation. Therefore, Lowndes County shall exercise its police powers to repair, close, or demolish any dwellings, buildings, or structures which are found to be unfit for human habitation, or for commercial, industrial, or business uses due to dilapidation and defects increasing the hazards of fire, accidents, or other calamities; lack of adequate ventilation, light, or sanitary facilities; or other conditions rendering such dwellings, buildings, or structures unsafe or unsanitary, or dangerous or detrimental to the health, safety, or welfare, or otherwise inimical to the welfare of the residents of the county or vacant, dilapidated dwellings, buildings, or structures in which drug crimes are being committed.

(B) All the provisions of this code, including method and procedure, may also be applied to private property where an accumulation of weeds, trash, junk, filth, and other unsanitary or unsafe conditions shall create a public health hazard or a general nuisance to those persons residing in the vicinity. A finding by the health department, health officer, or building inspector that such property is a health hazard or safety hazard shall constitute prima-facie evidence that said property is in violation of this code.

(C) As used in this code section, the following terms shall mean:

(1) "Closing" means securing and causing a dwelling, building, or structure to be vacated.

(2) "Drug Crime" means an act which is a violation of Article 2 of Chapter 13 of Title 16, known as the "Georgia, Controlled Substances Act."

(3) "Dwellings, buildings, or structures" means any building or 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 outhouses and appurtenances belonging thereto or usually enjoyed therewith and also includes any building or structure of any design. As used in this code section 4-5 the term "dwelling, buildings, or structures" 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.

(4) "Governing body" means the Lowndes County Board of Commissioners."

(5) "Owner" means the holder of the title in fee simple and every mortgagee of record.

(6) "Parties in interest" means persons in possession of said property and all individuals, associations, and corporations who have interest of record in the county where the property is located in a dwelling, building, or structure, including executors, administrators, guardians, and trustees.

(7) "Public authority" means any housing authority or any officer who is in charge of any department or branch of the government of the county, or state relating to health, fire, or building regulations or to other activities concerning dwellings, buildings, or structures in the county.

(8) "Public Officer" means the officers of the Code Enforcement Division who are authorized to exercise the powers prescribed by this ordinance.

(9) "Repair" means closing a dwelling, building, or structure or the cleaning or removal of debris, trash, and other materials present and accumulated which create a health or safety hazard in or about any dwelling, building, or structure.

(D) Whenever a request is filed with the public officer by a public authority or by at least five residents of the unincorporated area of the county charging that any dwelling, building, or structure is unfit for human habitation or for commercial, industrial, or business use or whenever it appears to the public officer (on his own motion) that any dwelling, building, or structure is unfit for human habitation or is unfit for its current commercial, industrial, or business use or is vacant, dilapidated, and being used in connection with the commission of drug crimes, the public officer shall, if his preliminary investigation discloses a basis for such charges, issue and cause to be served upon the owner of and any parties in interest in such dwelling, building, or structure a complaint stating the charges in that respect and containing a notice that a hearing will be held before the public officer (or his designated agent), fixed not less than ten days nor more than 30 days after the serving of said complaint; that the owner and any parties in interest shall be given the right to file an answer to the complaint and to appear in person, or otherwise, and give testimony at the place and time fixed in the complaint; and that the rules of evidence prevailing in courts of law or equity shall not be controlling in hearings before the public officer;

(E) After such notice and hearing, and the public officer determines that the dwelling, building, or structure under consideration is unfit for human habitation or is unfit for its current commercial, industrial, or business use or is vacant, dilapidated, and being used in connection with the commission of drug crimes, he shall state in writing his findings of fact in support of such determination and shall issue and cause to be served upon the owner thereof an order.

(1) If the repair, alteration, or improvement of the said dwelling, building, or structure can be made at a reasonable cost in relation to the value of the dwelling, building, or structure, requiring the owner or parties in interest, within the time specified in the order, to repair, alter, or improve such dwelling, building, or structure so as to render it fit for human habitation or for current commercial, industrial, or business use or to vacate and close the dwelling, building, or structure as a human habitation; or

(2) If the repair, alteration, or improvement of the said dwelling, building, or structure cannot be made at a reasonable cost in relation to the value of the dwelling, building, or structure, requiring the owner or parties in interest, within the time specified in the order, to remove or demolish such dwelling, building, or structure, in no event shall the governing authority require removal or demolition of any dwelling, building, or structure except upon a finding that the cost of repair, alteration, or improvement thereof exceeds one-half the value such dwelling, building, or structure will have when repaired to satisfy the minimum requirements of this law;

(F) If the owner or parties in interest fail to comply with an order to vacate and close or demolish the dwelling, building, or structure, the public officer may cause such dwelling, building, or structure to be repaired, altered, or improved or to be vacated and closed or demolished; and that the public officer may cause to be posted on the main entrance of any building, dwelling, or structure so closed a placard with the following words: "This building is unfit for human habitation or commercial, industrial, or business use; the use or occupation of this building for human habitation or for

commercial, industrial or business use is prohibited and unlawful.";

(G) If the owner fails to comply with any order to remove or demolish the dwelling, building, or structure, the public officer may cause such dwelling, building, or structure to be removed or demolished; provided, however, that the duties of the public officer, set forth in paragraph (F) of this code section and this paragraph, shall not be exercised until the governing body shall have by ordinance ordered the public officer to proceed to effectuate the purpose of Code sections 4-5A, 4-5B this code section and code sections 4-5I through 4-5K with respect to the particular property or properties which the public officer shall have found to be unfit for human habitation or unfit for its current commercial, industrial, or business use, which property or properties shall be described in the ordinance;

(H) The amount of the cost of such vacating and closing or removal or demolition by the public officer shall be a lien against the real property upon which such cost was incurred. Said lien shall attach to the real property upon the payment of all cost of demolition by the county and the filing of an itemized statement of the total sum of said costs by the public officer in the office of the clerk of the governing body of the county on a lien docket maintained by said clerk for such purposes. If the dwelling, building, or structure is removed or demolished by the public officer he shall sell the materials of such dwellings, buildings, or structures and shall credit the proceeds of such sale against the cost of the removal or demolition and any balance remaining shall be deposited in the superior court by the public officer, shall be secured in such manner as may be directed by such court, and shall be disbursed by such court to the persons found to be entitled thereto by final order or decree of such court. Nothing in this code section shall be construed to impair or limit in any way the power of the county to define and declare nuisances and to cause their removal or abatement by summary proceedings or otherwise;

(I) The county may enforce the collection of any amount due on such lien for removal or demolition of dwellings, buildings, or structures in the following manners:

(1) The owner or parties at interest shall be allowed to satisfy the amount due on such lien by paying to the county, within 30 days after the perfection of said lien, a sum of money equal to 25 percent of the total amount due and by further paying to the county the remaining balance due on such lien together with interest at the rate of 7 percent per annum, in three annual payments, each of which shall become due and payable on the anniversary date of the initial payment made as hereinabove prescribed.

(2) Should the property upon which such lien is perfected be sold, transferred, or conveyed by the owners or parties at interest at any time prior to the termination of the said three-year period, then the entire balance due on such lien shall be due and payable to the county; and

(3) Should the amount due on such lien, or any portion thereof, be unpaid after the passage of said three-year period, or upon the occurrence of the contingency provided for in subparagraph (2) of this paragraph, the county may enforce the collection of any amount due on such lien for alteration, repair, removal, or demolition of dwellings, buildings, or structures in the same manner as provided in code section 48-5-358 OCCA and other applicable state statutes. This procedure shall be subject to the right of redemption by any person having any right, title, or interest in or lien upon said property, all as provided by Article 3 of Chapter 4 of Title 48 of the OCCA.

(J) Officers of the Code Enforcement Division are designated to exercise the powers prescribed within this ordinance and are authorized to exercise the following powers to effectuate the purpose and provisions of this ordinance:

(1) To investigate the dwelling conditions in the unincorporated areas of the county in order to determine which dwellings, buildings, or structures therein are unfit for human habitation or are unfit for current commercial, industrial, or business use or are;

- (a) Vacant, dilapidated, and being used in connection with the commission of drug crimes;
- (b) Defects therein increasing the hazards of fire, accidents, or other calamities;
- (c) Lack of adequate ventilation, light, or sanitary facilities;
- (d) Dilapidation;
- (e) Disrepair;
- (f) Structural defects; and
- (g) Uncleanliness.

(2) To administer oaths and affirmations, to examine witnesses, and to receive evidence;

(3) To enter upon premises for the purpose of making examinations; provided, however, that such entries shall be made in such manner as to cause the least possible inconvenience to the persons in possession.

(K) Service of complaints or orders upon parties in interest and owners of unfit buildings or structures by public officers pursuant to their ordinance shall be served upon each person in possession of said property, each owner; and each party in interest; and the return of service signed by the public officer or his agent or an affidavit of service executed by any citizen of this state, reciting that a copy of such complaint or orders was served upon each person in possession of said property, each owner, and each party in interest personally or by leaving such copy at the place of his residence, shall be sufficient evidence as to the service of such person in possession, owner, and party in interest.

(1) If any of the owners and parties in interest shall reside out of the county, service shall be perfected by causing a copy of such complaint or orders to be served upon such party or parties by the sheriff or any lawful deputy of the county of the residence of such party or parties or such service may be made by any citizen; and the return of such sheriff or lawful deputy or the affidavit of such citizen that such party or parties were served either personally or by leaving a copy of the complaint or orders at the residence shall be conclusive as to such service.

(2) Nonresidents of this state shall be served by publishing the same once each week for two successive weeks in a newspaper printed and published in the county. A copy of such complaint or orders shall be posted in a conspicuous place on premises affected by the complaint or orders. Where the address of such nonresidents is known, a copy of such complaint or orders shall be mailed to them by registered or certified mail.

(3) In the event the owner or any party in interest is a minor or an insane person or person laboring under disabilities, the guardian or other personal representative of such person shall be served and if such guardian or personal representative resides outside the county, he shall be served as provided for in sub (2) of this section. If such minor or insane person or person laboring under disabilities has no guardian or personal representative or in the event such minor or insane person lives outside the county, service shall be perfected by serving such minor or insane person personally or by leaving a copy at the place of his residence which shall be sufficient evidence as to the service of such person or persons; in the case of other persons who live outside of the county, service shall be perfected by serving the judge of the probate court of the county wherein such property is located who shall stand in the place of and protect the rights of such minor or insane person or appoint a guardian ad litem for such person.

(4) In the event the whereabouts of any owner or party in interest is unknown and the same cannot be ascertained by the public officer in the exercise of reasonable diligence and the public officer shall make an affidavit to that effect, then the service of such complaint or order upon such persons shall be made in the same manner as provided in subsection (2) of this section or service may be perfected upon any person, firm, or corporation holding itself out as agent for the property involved.

(5) A copy of such complaint or orders shall also be filed in the proper office or offices for the filing of lis pendens notice in the county in which the dwelling, building, or structure is located and such filing of the complaint or orders shall have the same force and effect as other lis pendens notices provided by law. Any such complaint or orders or an appropriate lis pendens notice may contain a statement to the effect that a lien may arise against the described property and that an itemized statement of such lien is maintained on a lien docket maintained by the clerk of the governing body of the county.

STATE LAW REFERENCE - Power of counties to repair, close, or demolish unfit buildings or structures; health hazards on private property; properties affected, OCGA, 41-2-7.

ATTEST:

Jay M. Pundlton

DATE: February 19, 1992

MINUTE BOOK 91-92A
DATE ADOPTED February 19, 1992
BY Commissioner Bennett
SECOND Commissioner Hall