

STATE OF GEORGIA

ORDINANCE NO. 2006-11-87

COUNTY OF FULTON

**AN ORDINANCE TO AMEND CHAPTER 15 HEALTH AND PUBLIC SAFETY OF THE CODE OF ORDINANCES OF THE CITY OF SANDY SPRINGS BY ADDING ARTICLE III, GENERAL NUISANCE ABATEMENT, AS ATTACHED HERETO**

**BE IT RESOLVED** by the City Council for the City of Sandy Springs, Georgia while in regular session on November 21, 2006 at 7:00 p.m. as follows:

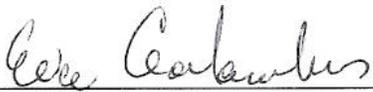
**SECTION 1.** That the Ordinance relating to amending Chapter 15, Health and Public Safety is hereby adopted and approved; and is attached hereto as if fully set forth herein; and,

**SECTION 2.** All ordinances, parts of ordinances, or regulations in conflict herewith are repealed.; and,

**SECTION 3.** That this Ordinance shall become effective upon its adoption.

**ORDAINED** this the 21<sup>st</sup> day of November, 2006.

Approved:

  
Eva Galambos, Mayor

Attest:

  
Christina V. Rowland, Interim City Clerk

(Seal)



## ARTICLE III: NUISANCE ABATEMENT

### 1. **Findings of the existence of nuisances.**

1.1 The governing authority of the City of Sandy Springs, Georgia finds and declares that within the city limits of the City of Sandy Springs 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 not in compliance with applicable state minimum standard codes as adopted by ordinance or operation of law or any optional building, fire, life safety, or other codes relative to the safe use of real property and real property improvements adopted by ordinance in the city; or general nuisance law and which constitute a hazard to the health, safety, and welfare of the people of the city and the state; and that public necessity exists for the repair, closing, or demolition of such dwellings, buildings, or structures.

1.2 It is further found and declared that in the City of Sandy Springs 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 the city 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. The governing authority of the city finds that there exist in the city dwellings, buildings, or structures which are unfit for human habitation or for commercial, industrial, or business uses due to dilapidation and which are not 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 other conditions exist rendering such dwellings, buildings or structure unsafe or unsanitary, or dangerous or detrimental to the health, safety, or welfare, or otherwise inimical to the welfare of the residents of the city, or vacant, dilapidated dwellings, buildings, or structures in which drug crimes are being committed, and private property exists constituting and endangerment to the public health or safety as a result of unsanitary or unsafe conditions to those persons residing or working in the vicinity of the property.

1.3 It is the intention of the governing authority that this article shall comply with and does comply with O.C.G.A § 41-2-9(b) as a finding that conditions as set out in O.C.G.A. § 41-2-7 exist within the City of Sandy Springs, Georgia.

### 2. **Continued use of other laws and ordinances.**

It is the intent of the mayor and council that nothing in this article shall be construed to abrogate or impair the powers of the courts or of any department of the city to enforce any provisions of any local enabling act, charter, or ordinance or regulation nor to prevent or punish violations thereof; and the powers conferred by this article shall be in addition to and supplemental to the powers conferred by any other law or ordinance, legislation, or regulation.

### 3.0 **Definitions.**

3.1 “Applicable codes” means:

- 3.1.1 Any optional housing or abatement standard provided in chapter 2 of Title 8 of the O.C.G.A. as adopted by ordinance or operation of law, or general nuisance law, relative to the safe use of real property;
- 3.1.2 Any fire or life safety code as provided for in Chapter 2 of Title 25 of the O.C.G.A.; and
- 3.1.3 Any building codes adopted by local ordinance prior to October 1, 1991, or the minimum standard codes provided in O.C.G.A. Chapter 2 of Title 8 after October 1 provided that 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.

3.2 “Closing” means causing a dwelling, building, or structure to be vacated and secured against unauthorized entry.

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

3.4 “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, improvements, and appurtenances belonging thereto or usually enjoyed therewith and also includes any building or structure of any design. The term 'dwellings, 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.

3.5 “Governing authority” means the mayor and council of the City of Sandy Springs, Georgia.

3.6 “Municipality” means any incorporated city within this state.

3.7 “Owner” means the holder of the title in fee simple and every mortgagee of record.

3.8 “Parties in interest” means:

3.8.1 Persons in possession of said property and premises;

3.8.2 Persons having of record in the county in which the dwelling, building, or structure is located any vested right, title, or interest in or lien upon such dwelling, building, or structure or the lot, tract, or parcel of real property upon which the public health hazard or general nuisance exists based upon a fifty-year title examination conducted in accordance with the title standards of the State Bar of Georgia;

3.8.3 Persons having paid an occupational tax to be the governing authority for a location or office at the subject building or structure; or

3.8.4 Persons having filed a property tax return with the governing authority as to the subject property, building, or structure.

3.9 “Public authority” means any member of a governing authority, any housing authority office, or any office who is in charge of any department or branch of the government of the municipality, county, or state relating to health, fire, or building regulations or to other activities concerning dwellings, buildings, or structures in the county or municipality.

3.10 “Public officer” means the officer or officers who are authorized by O.C.G.A. Section 41-2-7, Section 41-2-8 and Sections 41-2-9 through 41-2-17 and by this article adopted

under Section 41-2-7, Section 41-2-8, and Sections 41-2-9 through 41-2-17 to exercise the powers prescribed by this article or any agent of such officer or officers.

3.11 "Repair" means altering or improving a dwelling, building, or structure so as to bring the structure into compliance with the applicable codes in the jurisdiction where the property is located and 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.

3.12 "Resident" means any person residing in the jurisdiction where the property is located on or after the date on which the alleged nuisance arose.

#### **4.0 Duties of owners; appointment of public officer; procedures for determining premises to be unsafe or unhealthful.**

4.1 It is the duty of the owner of every dwelling, building, structure, or property within the jurisdiction to construct and maintain such dwelling, building, structure, or property in conformance with applicable codes in force within the city, or such ordinances which regulate and prohibit activities on property and which declare it to be a public nuisance to construct or maintain any dwelling, building, structure or property in violation of such codes or ordinances.

4.2 The City Manager shall appoint or designate the city code enforcement officer, city fire marshal, city fire chief, city police chief, building inspector, and their designees as public officer(s) to exercise the powers prescribed by this article.

4.3 Whenever a request is filed with the public officer by a public authority or by a least five (5) residents of the city charging that any dwelling, building, or structure is unfit for human habitation or for commercial, industrial, or business use and not in compliance with applicable codes; is vacant and being used in connection with the commission of drug crimes; or constitutes an endangerment to the public health or safety as a result of unsanitary or unsafe conditions, the public officer shall make an investigation or inspection of the specific dwelling, building, structure, or property. If the officer's investigation or inspection identifies that any dwelling, building, structure, or property is unfit for human habitation or for commercial, industrial, or business use and not in compliance with applicable codes; is vacant and being used in connection with the commission of drug crimes; or constitutes and endangerment to the public health or safety as a result of unsanitary or unsafe conditions, the public officer may issue a complaint in rem against the lot, tract, or parcel of real property on which such dwelling, building, or structure is situated or where such public health hazard or general nuisance exists and shall cause summons and a copy of the complaint to be served on the owner and parties in interest in such dwelling, building, or structure. The complaint shall identify the subject real property by appropriate street address and official tax map reference; identify the owner and the parties in interest; 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. The summons shall notify the owner and parties in interest that a hearing will be held before a court of competent jurisdiction as determined by O.C.G.A. Section 41-2-5, at a date and time certain and at a place within the city where the property is located. Such hearing shall be held not less than fifteen (15) days nor more than forty-five (45) days after the filing of said complaint in court. The owner and

parties in interest 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 hearing;

4.4 If after such notice and hearing, the court determines that the dwelling, building, or structure in question is unfit for human habitation or is unfit for its current commercial, industrial, or business use and not in compliance with applicable codes; is vacant and being used in connection with the commission of drug crimes; or constitutes an endangerment to the public health or safety as a result of unsanitary or unsafe conditions, the court shall state in writing findings of fact in support of such determination and shall issue and cause to be served upon the owner and any parties in interest that have answered the complaint or appeared at the hearing, or order:

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

4.4.2 If the repair, alteration, or improvement of the said dwelling, building, or structure 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 the dwelling, building, or structure, requiring the owner, within the time specified in the order, to demolish and remove such dwelling, building, or structure and all debris from the property.

For purposes of this article, the court shall make its determination of reasonable cost in relation to the present value of the dwelling, building or structure without consideration of the value of the land on which the structure is situated; provided, however, that costs of the preparation necessary to repair, alter, or improve a structure may be considered income and financial status of the owner shall not be factor in the court's determination. The present value of the structure 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 Chapter 39A of Title 41, of the O.C.G.A. qualified building contractors, or qualified building inspectors without actual testimony presented.

Costs of repair, alteration, or improvement of the structure shall be the cost necessary to bring the structure into compliance with the applicable codes relevant to the cited violations in force in the jurisdiction.

4.5 If the owner fails to comply with an order to repair or demolish the dwelling, building, or structure, the public officer may cause such dwelling, building, or structure, to be repaired, altered, improved, to be vacated and closed, or demolished. The public officer shall cause to be posted on the main entrance of the building, dwelling, or structure a placard with the following words:

"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 the public health or safety as a result of unsanitary or unsafe conditions. The use or occupation of this building is prohibited and unlawful."

4.6 If the public officer has the structure demolished, reasonable effort shall be made to salvage reusable materials for credit against to 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 any be made without the necessity of public advertisement and bid. The public officer and the city are relieved of any and all liability resulting from or occasioned by the sale of any such salvaged materials, including, without limitation, defects in such salvaged materials.

4.7 The amount of the cost of demolition, including all court costs, appraisal fees, administrative costs incurred by the tax commissioner, and all other costs necessarily associated with the abatement action, including restoration to grade of the real property after demolition, shall be a lien against the real property upon which such cost was incurred.

#### 4.8

4.8.1 The lien provided for in subsection 4.7 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 clerk of superior court in Fulton County and shall relate back to the date of this filing of the lis pendens notice required under subsection (g) of O.C.G.A. § 41-2-12. The clerk of superior court shall record and index such certified copy of the order in the deed records of Fulton County and enter the lien on the general execution docket. 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. After filing a certified copy of the order with the clerk of superior court, the public officer shall forward a copy of the order and a final statement of costs to the county tax commissioner. It shall be the duty of the county tax commissioner to collect the amount of the lien in conjunction with the collection of ad valorem taxes on the property and to collect the amount of the lien as if it were a real property ad valorem tax, using all methods available for collecting real property ad valorem tax, including specifically Chapter 4 of Title 48 of the O.C.G.A.; provided, however that the limitation of O.C.G.A. §48-4-78 which requires twelve (12) months of delinquency before commencing a tax foreclosure shall not apply. The tax commissioner shall remit the amount collected to the governing authority of City of Sandy Springs. Thirty (30) days after imposition of the lien, the unpaid lien amount shall bear interest and penalties in the same amount as applicable to interest and penalties on unpaid real property ad valorem taxes.

4.8.2 The tax commissioner shall collect and retain an amount equal to the cost of administering a lien authorized by O.C.G.A. § 41-2-7 et seq. unless such costs are waived by resolution of Fulton County. Any such amount collected and retained for administration shall be deposited in the general fund of Fulton County to pay the cost of administering the lien.

4.8.3 The city may waive and release any such lien imposed on property upon the owner of such property entering into a contract with the municipality agreeing to a timetable for rehabilitation of the real property of the dwelling, building, or structure on the property and demonstrating the financial means to accomplish such rehabilitation.

4.8.4 Where the abatement action does not commence in the superior court, review of a court order requiring the repair, alteration, improvement, or demolition of a dwelling, building, or structure shall be by direct appeal to the superior court under O.C.G.A. Section 5-3-29.

4.8.5 The public officers designated herein may issue citations for violations of state minimum standard codes, optional building, fire, life safety, and other codes adopted by ordinance, and conditions creating a public health hazard or general nuisance, and may seek to enforce such citation in a court of competent jurisdiction prior to issuing a complaint in rem as provided in this article.

4.8.6 Nothing in this article shall be construed to impair or limit in any way the power of the city to define and declare nuisances and to cause their removal or abatement by summary proceedings or otherwise.

**5.0 Determination by public officer that under existing ordinances dwellings, buildings, or structures are vacant and sample conditions of nuisances.**

5.1 The public officer may determine, under existing ordinances, that a dwelling, building, or structure is unfit for human habitation or is unfit for its current commercial, industrial, or business use if he/she finds that conditions exist in such building, dwelling, or structure which are dangerous or injurious to the health, safety, or morals of the occupants of such dwelling, building, or structure; of the occupants of neighborhood dwelling, buildings, or structures; or of other residents of the city. Such conditions include the following (without limiting the generality of the foregoing):

- 5.1.1 Defects therein increasing the hazards of fire, accidents or other calamities;
- 5.1.2 Lack of adequate ventilation, light, or sanitary facilities;
- 5.1.3 Dilapidation;
- 5.1.4 Disrepair;
- 5.1.5 Structural defects;
- 5.1.6 Uncleanliness; and
- 5.1.7 Other additional standards, which may from time to time be adopted and referenced herein by ordinance amendment.

5.2 The public officer may determine, under existing ordinances, that a dwelling, building or structure is vacant, dilapidated, and being used in connection with the commission of drug crimes based upon personal observation or report of a law enforcement agency and evidence of drug crimes being committed.

**6.0 Powers of public officers.**

The public officer(s) designated in this article shall have the following powers:

6.1 To investigate the dwelling conditions in the city 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 vacant, dilapidated, and being used in connection with the commission of drug crimes;

6.2 To administer oaths and affirmations, to examine witnesses, and to receive evidence;

6.3 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;

6.4 To appoint and fix the duties of such officer, agents, and employees as he or she deems necessary to carry out the purposes of this article; and

6.5 To delegate any of his or her functions and powers under the Ordinance to such officers and agents as he or she may designate.

#### **7.0 Service of Complaints and other filings**

7.1 Complaints issued by a public officer pursuant to this Article shall be served in the following manner:

7.1.1 At least fourteen (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 identities and addresses are reasonably ascertainable.

7.1.2 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 (3) business days of filing the complaint and at least fourteen (14) days prior to the date of the hearing.

7.1.3 For interested parties 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 Fulton County once a week for two consecutive weeks prior to the hearing.

7.2 Orders and other filings made subsequent to service of the initial complaint shall be served in the manner provided above 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.