

**ORDINANCE
CITY OF DULUTH
COMMUNITY STANDARDS**

WHEREAS, the Duluth Municipal Code promotes the life, health, safety and general welfare of all citizens through the effective enforcement of property maintenance codes and nuisance laws; and

WHEREAS, said codes are also designed to protect the property of all citizens, preserve the integrity of the community, protect the value of property and promote a stable population; and

WHEREAS, said codes also support economic development and job growth; and

WHEREAS, it is the desire of the Mayor and County to adopt and enforce, in all respects, regulations that meet the needs of the community.

NOW THEREFORE, the City Council of the City of Duluth hereby ordains that the City of Duluth Municipal Code is hereby amended by striking Section 5-178 through Section 5-282 in its entirety and replacing the same with a new Section 5-178 through Section 5-282 as provided for in Exhibit “A” of this Ordinance, by incorporating Section 9-90 through 9-99 in its entirety as provided for in Exhibit “B” of this Ordinance and by incorporating Section 9-100 through 9-119 in its entirety as provided for in Exhibit “C”

{Signatures on the Following Page}

IT IS SO ORDAINED this 14th day of September, 2020.

Mayor Nancy Harris

Those councilmembers voting in favor:

Marsha Anderson. Bomar, Post 1

Marline Thomas, Post 2

Billy Jones, Post 3

Kelvin J. Kelkenberg, Post 4

Greg Whitlock, Post 5

Those councilmembers voting in opposition:

ATTEST: _____
Teresa S. Lynn, City Clerk

Exhibit "A"

ARTICLE VI. – PROPERTY MAINTENANCE

DIVISION 1. – SCOPE AND APPLICATION

Sec. 5-178. - Title.

These regulations shall be known as the International Property Maintenance Code of the City of Duluth, Georgia, hereinafter referred to as "this code."

Sec. 5-179. - Purpose.

The purpose and intent of this article is:

- (1) To establish minimum requirements and standards for premises and structures in order to promote and protect the public health, safety, convenience, order and general welfare of the citizens of the city;
- (2) To enhance and promote the maintenance of real property and by so doing, improve the livability, appearance and the social and economic conditions of the community;
- (3) To ensure that real properties do not reach such a state of deterioration or disrepair as to cause the depreciation of the value of surrounding property or be materially detrimental to nearby properties and improvements;
- (4) This article is not to be used as a vindictive or malicious tool by one person against another. City officials shall use discretion in acting upon repeated and trivial complaints that do not reflect the intent and purpose stated in this section.

Sec. 5-180. - Scope.

The provisions of this code shall apply to all existing residential and nonresidential structures and all existing premises and constitute minimum requirements and standards for premises, structures, equipment and facilities for light, ventilation, space, heating, sanitation, protection from the elements, a reasonable level of safety from fire and other hazards, and for a reasonable level of sanitary maintenance; the responsibility of owners, an owner's authorized agent, operators and occupants; the occupancy of existing structures and premises, and for administration, enforcement and penalties.

Sec. 5-181. - Intent.

This code shall be construed to secure its expressed intent, which is to ensure public health, safety and welfare insofar as they are affected by the continued occupancy and maintenance of structures and premises. Existing structures and premises that do not comply with these provisions shall be altered or repaired to provide a minimum level of health and safety as required herein.

Sec. 5-182. - Severability.

If a section, subsection, sentence, clause or phrase of this code is, for any reason, held to be unconstitutional, such decision shall not affect the validity of the remaining portions of this code.

Sec. 5-183. - Conflicts.

Where there is a conflict between a general requirement and a specific requirement, the specific requirement shall govern. Where differences occur between provisions of this code and the referenced standards, the provisions of this code shall apply. Where, in a specific case, different sections of this code specify different requirements, the most restrictive shall govern.

Sec. 5-184. - Maintenance.

Equipment, systems, devices and safeguards required by this code or a previous regulation or code under which the structure or premises was constructed, altered or repaired shall be maintained in good working order. An owner, owner's authorized agent, operator or occupant shall not cause any service, facility, equipment or utility that is required under this section to be removed from, shut off from or discontinued for any occupied dwelling, except for such temporary interruption as necessary while repairs or alterations are in progress. The requirements of this code are not intended to provide the basis for removal or abrogation of fire protection and safety systems and devices in existing structures. Except as otherwise specified herein, the owner or the owner's authorized agent shall be responsible for the maintenance of buildings, structures and premises.

Sec. 5-185. - Application of other codes.

Repairs, additions or alterations to a structure, or changes of occupancy, shall be done in accordance with the procedures and provisions of the International Building Code, International Existing Building Code, International Energy Conservation Code, International Fire Code, International Fuel Gas Code, International Mechanical Code, International Residential Code, International Plumbing Code and NFPA 70. Nothing in this code shall be construed to cancel, modify or set aside any provision of the International Zoning Code, the City of Duluth Building Code or the City of Duluth Unified Development Code.

Sec. 5-186. - Existing remedies.

The provisions in this code shall not be construed to abolish or impair existing remedies of the jurisdiction or its officers or agencies relating to the removal or demolition of any structure that is dangerous, unsafe and insanitary.

Sec. 5-187. - Workmanship.

Repairs, maintenance work, alterations or installations that are caused directly or indirectly by the enforcement of this code shall be executed and installed in a workmanlike manner and installed in accordance with the manufacturer's instructions.

Sec. 5-188. - Historic buildings.

The provisions of this code shall not be mandatory for existing buildings or structures designated as historic buildings where such buildings or structures are judged by the code official to be safe and in the public interest of health, safety and welfare.

Sec. 5-189. - Referenced codes and standards.

Standards referenced in this Code shall be considered an integral part of this Code without separate adoption. When specific portions of a standard are denoted in the text of this Code, only those portions of the standard shall be enforced; and where provisions of this Code conflict with a standard, the provisions of this Code shall be enforced. Permissive and advisory provisions in a standard shall not be construed as mandatory.

Sec. 5-190. - Code compliance division.

The Division of Code Compliance within the Department of Planning and Development is hereby created and the executive official in charge thereof shall be known as the code official.

Sec. 5-191. - Code official and deputies.

The code official shall be the Director of the Department of Planning and Development or his designee. In accordance with the prescribed procedures of the City of Duluth, Georgia, the code official shall have the authority to appoint a deputy(s). Such employees shall have powers as delegated by the code official.

Sec. 5-192. - Liability.

The code official or employee charged with the enforcement of this code, while acting for the jurisdiction, in good faith and without malice in the discharge of the duties required by this code or other pertinent law or ordinance, shall not thereby be rendered civilly or criminally liable personally, and is hereby relieved from all personal liability for any damage accruing to persons or property as a result of an act or by reason of an act or omission in the discharge of official duties.

Any suit or criminal complaint instituted against any officer or employee because of an act performed by that officer or employee in the lawful discharge of duties and under the provisions of this code shall be defended by the legal representative of the jurisdiction until the final termination of the proceedings. The code official or any subordinate shall not be

liable for costs in an action, suit or proceeding that is instituted in pursuance of the provisions of this code.

Sec. 5-193. - Fees.

The fees for activities and services performed by the department in carrying out its responsibilities under this code shall be as prescribed in the current fee ordinance adopted by the city council.

Sec. 5-194. – Duties and powers of the code official.

The code official is hereby authorized and directed to enforce the provisions of this code. The code official shall have the authority to render interpretations of this code and to adopt policies and procedures in order to clarify the application of its provisions. Such interpretations, policies and procedures shall be in compliance with the intent and purpose of this code. Such policies and procedures shall not have the effect of waiving requirements specifically provided for in this code.

Sec. 5-195. - Inspections.

The code official shall make all of the required inspections, or shall accept reports of inspection by approved agencies or individuals. Reports of such inspections shall be in writing and be certified by a responsible officer of such approved agency or by the responsible individual. The code official is authorized to engage such expert opinion as deemed necessary to report on unusual technical issues that arise, subject to the approval of the appointing authority.

Sec. 5-196. - Owner's right of entry.

Every occupant of a building, dwelling or dwelling unit shall give the owner thereof, or the owner's agents or employees, access to any part of such building, dwelling or dwelling unit or its premises, at all reasonable times, for the purpose of maintenance, improving or making such repairs or alterations as are necessary to effect compliance with the provisions of this article or with any lawful rule or regulation adopted pursuant to the provisions of this article.

Sec. 5-197. - Right of entry.

Where it is necessary to make an inspection to enforce the provisions of this code, or whenever the code official has reasonable cause to believe that there exists in a structure or upon a premises a condition in violation of this code, the code official is authorized to enter the structure or premises at reasonable times to inspect or perform the duties imposed by this code, provided that if such structure or premises is occupied the code official shall present credentials to the occupant and request entry. If such structure or premises is unoccupied, the code official shall first make a reasonable effort to locate the owner, owner's authorized agent or other person having charge or control of the structure or premises and request entry. If entry is refused, the code official shall have recourse to the remedies provided by law to secure entry.

Sec. 5-198. - Identification.

The code official and all deputies of the City of Duluth shall carry proper identification when inspecting structures or premises in the performance of duties under this code.

Sec. 5-199. - Notices and orders.

The code official or his designee shall issue all necessary notices or orders to ensure compliance with this code.

Sec. 5-200. - Department records.

The code official shall keep official records of all business and activities of the department specified in the provisions of this code. Such records shall be retained in the official records for the period required for retention of public records.

Sec. 5-201. - Approval and modifications.

Whenever there are practical difficulties involved in carrying out the provisions of this code, the code official shall have the authority to grant modifications for individual cases upon application of the owner or owner's authorized agent, provided that the code official shall first find that special individual reason makes the strict letter of this code impractical, the modification is in compliance with the intent and purpose of this code and that such modification does not lessen health, life and fire safety requirements. The details of action granting modifications shall be recorded and entered in the department files.

Sec. 5-202. - Alternative materials, design and methods of construction and equipment.

The provisions of this code are not intended to prevent the installation of any material or to prohibit any design or method of construction not specifically prescribed by this code, provided that any such alternative has been approved. An alternative material, design or method of construction shall be approved where the code official finds that the proposed design is satisfactory and complies with the intent of the provisions of this code, and that the material, method or work offered is, for the purpose intended, not less than the equivalent of that prescribed in this code in quality, strength, effectiveness, fire resistance, durability and safety. Where the alternative material, design or method of construction is not approved, the code official shall respond in writing, stating the reasons why the alternative was not approved.

Sec. 5-203. - Testing.

Whenever there is insufficient evidence of compliance with the provisions of this code or evidence that a material or method does not conform to the requirements of this code, or in order to substantiate claims for alternative materials or methods, the code official shall

have the authority to require tests to be made as evidence of compliance without expense to the jurisdiction.

Test methods shall be as specified in this code or by other recognized test standards. In the absence of recognized and accepted test methods, the code official shall be permitted to approve appropriate testing procedures performed by an approved agency.

Reports of tests shall be retained by the code official for the period required for retention of public records.

Sec. 5-204. - Unsafe structures and equipment.

When a structure or equipment is found by the code official to be unsafe, or when a structure is found unfit for human occupancy, or is found unlawful, such structure shall be condemned pursuant to the provisions of this code.

An unsafe structure is one that is found to be dangerous to the life, health, property or safety of the public or the occupants of the structure by not providing minimum safeguards to protect or warn occupants in the event of fire, or because such structure contains unsafe equipment or is so damaged, decayed, dilapidated, structurally unsafe or of such faulty construction or unstable foundation, that partial or complete collapse is possible.

Unsafe equipment includes any boiler, heating equipment, elevator, moving stairway, electrical wiring or device, flammable liquid containers or other equipment on the premises or within the structure that is in such disrepair or condition that such equipment is a hazard to life, health, property or safety of the public or occupants of the premises or structure.

The code official shall cause a report to be filed on an unsafe condition. The report shall state the occupancy of the structure and the nature of the unsafe condition.

Sec. 5-205. - Unfit buildings and structures.

A structure is unfit for human occupancy whenever the code official finds that such structure is unsafe, unlawful or, because of the degree to which the structure is unfit, which include but are not limited to:

- (1) Defects therein increasing the hazards of fire, accidents, or other calamities;
- (2) Lack of adequate ventilation, light, or sanitary facilities;
- (3) Dilapidation;
- (4) Disrepair by failure to conform to applicable codes and ordinances;
- (5) Structural defects which render the structure unsafe for human habitation or occupancy;
- (6) Uncleanliness;
- (7) The presence of graffiti which is visible from adjoining public or private property;
- (8) Disrepair or lacks maintenance;
- (9) Insanitary;

- (10) Vermin or rat infested;
- (11) Contains filth and contamination;
- (12) Lacks heating facilities or other essential equipment required by this code; or
- (13) Because the location of the structure constitutes a hazard to the occupants of the structure or to the public.

Sec. 5-206. - Unlawful structure.

An unlawful structure is one found in whole or in part to be occupied by more persons than permitted under this code, or was erected, altered or occupied contrary to law.

Sec. 5-207. - Dangerous structure or premises.

For the purpose of this code, any structure or premises that has any or all of the conditions or defects described as follows shall be considered to be dangerous:

- (1) Any door, aisle, passageway, stairway, exit or other means of egress that does not conform to the approved building or fire code of the jurisdiction as related to the requirements for existing buildings.
- (2) The walking surface of any aisle, passageway, stairway, exit or other means of egress is so warped, worn loose, torn or otherwise unsafe as to not provide safe and adequate means of egress.
- (3) Any portion of a building, structure or appurtenance that has been damaged by fire, earthquake, wind, flood, deterioration, neglect, abandonment, vandalism or by any other cause to such an extent that it is likely to partially or completely collapse, or to become detached or dislodged.
- (4) Any portion of a building, or any member, appurtenance or ornamentation on the exterior thereof that is not of sufficient strength or stability, or is not so anchored, attached or fastened in place so as to be capable of resisting natural or artificial loads of one and one-half the original designed value.
- (5) The building or structure, or part of the building or structure, because of dilapidation, deterioration, decay, faulty construction, the removal or movement of some portion of the ground necessary for the support, or for any other reason, is likely to partially or completely collapse, or some portion of the foundation or underpinning of the building or structure is likely to fail or give way.
- (6) The building or structure, or any portion thereof, is clearly unsafe for its use and occupancy.
- (7) The building or structure is neglected, damaged, dilapidated, unsecured or abandoned so as to become an attractive nuisance to children who might play in the building or structure to their danger, becomes a harbor for vagrants, criminals or immoral persons, or enables persons to resort to the building or structure for committing a nuisance or an unlawful act.
- (8) Any building or structure has been constructed, exists or is maintained in violation of any specific requirement or prohibition applicable to such building or structure provided by the approved building or fire code of the jurisdiction, or of any law or

ordinance to such an extent as to present either a substantial risk of fire, building collapse or any other threat to life and safety.

- (9) A building or structure, used or intended to be used for dwelling purposes, because of inadequate maintenance, dilapidation, decay, damage, faulty construction or arrangement, inadequate light, ventilation, mechanical or plumbing system, or otherwise, is determined by the code official to be unsanitary, unfit for human habitation or in such a condition that is likely to cause sickness or disease.
- (10) Any building or structure, because of a lack of sufficient or proper fire-resistance-rated construction, fire protection systems, electrical system, fuel connections, mechanical system, plumbing system or other cause, is determined by the code official to be a threat to life or health.
- (11) Any portion of a building remains on a site after the demolition or destruction of the building or structure or whenever any building or structure is abandoned so as to constitute such building or portion thereof as an attractive nuisance or hazard to the public.

Sec. 5-208. - Closing of vacant structures.

If the structure is vacant and unfit for human habitation and occupancy, and is not in danger of structural collapse, the code official is authorized to post a placard of condemnation on the premises and order the structure closed up so as not to be an attractive nuisance. Upon failure of the owner or owner's authorized agent to close up the premises within the time specified in the order, the code official shall cause the premises to be closed and secured through any available public agency or by contract or arrangement by private persons and the cost thereof shall be charged against the real estate upon which the structure is located and shall be a lien upon such real estate and shall be collected by any other legal resource.

Sec. 5-209. - Authority to disconnect service utilities.

The code official shall have the authority to authorize disconnection of utility service to the building, structure or system regulated by this code and the referenced codes and standards in case of emergency where necessary to eliminate an immediate hazard to life or property or where such utility connection has been made without approval. The code official shall notify the serving utility and, whenever possible, the owner or owner's authorized agent and occupant of the building, structure or service system of the decision to disconnect prior to taking such action. If not notified prior to disconnection the owner, owner's authorized agent or occupant of the building structure or service system shall be notified in writing as soon as practical thereafter.

Sec. 5-210. - Notice.

Whenever the code official has condemned a structure or equipment under the provisions of this section, notice shall be posted in a conspicuous place in or about the structure affected by such notice and served on the owner, owner's authorized agent or the person or persons responsible for the structure or equipment. If the notice pertains to equipment, it shall be placed on the condemned equipment.

Sec. 5-211. - Placarding.

Upon failure of the owner, owner's authorized agent or person responsible to comply with the notice provisions within the time given, the code official shall post on the premises or on defective equipment a placard bearing the word "Condemned" and a statement of the penalties provided for occupying the premises, operating the equipment or removing the placard.

The code official shall remove the condemnation placard whenever the defect or defects upon which the condemnation and placarding action were based have been eliminated. Any person who defaces or removes a condemnation placard without the approval of the code official shall be subject to the penalties provided by this code.

Any occupied structure condemned and placarded by the code official shall be vacated as ordered by the code official. Any person who shall occupy a placarded premises or shall operate placarded equipment, and any owner, owner's authorized agent or person responsible for the premises who shall let anyone occupy a placarded premises or operate placarded equipment shall be liable for the penalties provided by this code.

Sec. 5-212. - Abatement methods.

The owner, owner's authorized agent, operator or occupant of a building, premises or equipment deemed unsafe by the code official shall abate or cause to be abated or corrected such unsafe conditions either by repair, rehabilitation, demolition or other approved corrective action.

Sec. 5-213. - Imminent danger.

When, in the opinion of the code official, there is imminent danger of failure or collapse of a building or structure that endangers life, or when any structure or part of a structure has fallen and life is endangered by the occupation of the structure, or when there is actual or potential danger to the building occupants or those in the proximity of any structure because of explosives, explosive fumes or vapors or the presence of toxic fumes, gases or materials, or operation of defective or dangerous equipment, the code official is hereby authorized and empowered to order and require the occupants to vacate the premises forthwith. The code official shall cause to be posted at each entrance to such structure a notice reading as follows: "This Structure Is Unsafe and Its Occupancy Has Been Prohibited by the Code Official." It shall be unlawful for any person to enter such structure except for the purpose of securing the structure, making the required repairs, removing the hazardous condition or of demolishing the same.

Sec. 5-214. - Temporary safeguards.

Notwithstanding other provisions of this code, whenever, in the opinion of the code official, there is imminent danger due to an unsafe condition, the code official shall order the necessary work to be done, including the boarding up of openings, to render such structure temporarily safe whether or not the legal procedure herein described has been instituted; and shall cause such other action to be taken as the code official deems necessary to meet such emergency.

Sec. 5-215. - Emergency repairs.

For the purposes of this section, the code official shall employ the necessary labor and materials to perform the required work as expeditiously as possible.

Costs incurred in the performance of emergency work shall be paid by the jurisdiction. The legal counsel of the jurisdiction shall institute appropriate action against the owner of the premises or owner's authorized agent where the unsafe structure is or was located for the recovery of such costs.

Any person ordered to take emergency measures shall comply with such order forthwith. Any affected person shall thereafter, upon petition directed to the Director of Planning and Development, be afforded a hearing as described in this code.

Sec. 5-216. - Demolition.

The code official shall order the owner or owner's authorized agent of any premises upon which is located any structure, which in the code official's or owner's authorized agent judgment after review is so deteriorated or dilapidated or has become so out of repair as to be dangerous, unsafe, insanitary or otherwise unfit for human habitation or occupancy, and such that it is unreasonable to repair the structure, to demolish and remove such structure; or if such structure is capable of being made safe by repairs, to repair and make safe and sanitary, or to board up and hold for future repair or to demolish and remove at the owner's option; or where there has been a cessation of normal construction of any structure for a period of more than two years, the code official shall order the owner or owner's authorized agent to demolish and remove such structure, or board up until future repair. Boarding the building up for future repair shall not extend beyond one year, unless approved by the building official.

If the owner of a premises or owner's authorized agent fails to comply with a demolition order within the time prescribed, the code official shall cause the structure to be demolished and removed, either through an available public agency or by contract or arrangement with private persons, and the cost of such demolition and removal shall be charged against the real estate upon which the structure is located and shall be a lien upon such real estate.

Where any structure has been ordered demolished and removed, the governing body or other designated officer under said contract or arrangement aforesaid shall have the right to sell the salvage and valuable materials. The net proceeds of such sale, after deducting the

expenses of such demolition and removal, shall be promptly remitted with a report of such sale or transaction, including the items of expense and the amounts deducted, for the person who is entitled thereto, subject to any order of a court. If such a surplus does not remain to be turned over, the report shall so state.

Sec. 5-217. - Stop work order.

Whenever the code official finds any work regulated by this code being performed in a manner contrary to the provisions of this code or in a dangerous or unsafe manner, the code official is authorized to issue a stop work order.

A stop work order shall be in writing and shall be given to the owner of the property, to the owner's authorized agent, or to the person doing the work. Upon issuance of a stop work order, the cited work shall immediately cease. The stop work order shall state the reason for the order and the conditions under which the cited work is authorized to resume.

Where an emergency exists, the code official shall not be required to give a written notice prior to stopping the work.

Any person who shall continue any work after having been served with a stop work order, except such work as that person is directed to perform to remove a violation or unsafe condition, shall be liable to the penalties as prescribed in Sec.

DIVISION 2 – TERMS AND DEFINITIONS

Sec. 5-218. – Terms and definitions

Words stated in the present tense include the future; words stated in the masculine gender include the feminine and neuter; the singular number includes the plural and the plural, the singular.

Where terms are not defined in this code and are defined in the International Building Code, International Existing Building Code, International Fire Code, International Fuel Gas Code, International Mechanical Code, International Plumbing Code, International Residential Code, International Zoning Code or NFPA 70, such terms shall have the meanings ascribed to them as stated in those codes. Where terms are not defined through the methods authorized by this section, such terms shall have ordinarily accepted meanings such as the context implies.

Whenever the words "dwelling unit," "dwelling," "premises," "building," "rooming house," "rooming unit," "housekeeping unit" or "story" are stated in this code, they shall be construed as though they were followed by the words "or any part thereof."

Anchored. Secured in a manner that provides positive connection.

Approved. Acceptable to the code official.

Basement. That portion of a building that is partly or completely below grade.

Bathroom. A room containing plumbing fixtures including a bathtub or shower.

Bedroom. Any room or space used or intended to be used for sleeping purposes in either a dwelling or sleeping unit.

Boarding house. A building containing one (1) or more dwelling units but not more than twenty (20) dwelling units, all of which offer non-transient lodging accommodations. Meals, if provided, may only be provided from a single central kitchen and compensation for such meals shall be included in the rental rate. No restaurant, meeting, reception or banquet facilities shall be provided.

Code Official. The official who is charged with the administration and enforcement of this code, or any duly authorized representative.

Condemn. To adjudge unfit for occupancy.

Cost of Such Demolition or Emergency Repairs. The costs shall include the actual costs of the demolition or repair of the structure less revenues obtained if salvage was conducted prior to demolition or repair. Costs shall include, but not be limited to, expenses incurred or necessitated related to demolition or emergency repairs, such as asbestos survey and abatement if necessary; costs of inspectors, testing agencies or experts retained relative to the demolition or emergency repairs; costs of testing; surveys for other materials that are controlled or regulated from being dumped in a landfill; title searches; mailing(s); postings; recording; and attorney fees expended for recovering of the cost of emergency repairs or to obtain or enforce an order of demolition made by a code official or the governing body.

Detached. When a structural element is physically disconnected from another and that connection is necessary to provide a positive connection.

Deterioration. To weaken, disintegrate, corrode, rust or decay and lose effectiveness.

Dwelling Unit. A single unit providing complete, independent living facilities for one or more persons, including permanent provisions for living, sleeping, eating, cooking and sanitation.

Easement. That portion of land or property reserved for present or future use by a person or agency other than the legal fee owner(s) of the property. The easement shall be permitted to be for use under, on or above said lot or lots.

Equipment Support. Those structural members or assemblies of members or manufactured elements, including braces, frames, lugs, snuggers, hangers or saddles, that transmit gravity load, lateral load and operating load between the equipment and the structure.

Exterior Property. The open space on the premises and on adjoining property under the control of owners or operators of such premises.

Garbage. The animal or vegetable waste resulting from the handling, preparation, cooking and consumption of food.

Ground Cover. Low growing, spreading plant, other than turf grass, used in landscaping to cover the ground and protect soil from erosion and drought.

Guard. A building component or a system of building components located at or near the open sides of elevated walking surfaces that minimizes the possibility of a fall from the walking surface to a lower level.

Habitable Space. Space in a structure for living, sleeping, eating or cooking. Bathrooms, toilet rooms, closets, halls, storage or utility spaces, and similar areas are not considered habitable spaces.

Historic Building. Any building or structure that is one or more of the following:

- (1) Listed or certified as eligible for listing, by the State Historic Preservation Officer or the Keeper of the National Register of Historic Places, in the National Register of Historic Places.
- (2) Designated as historic under an applicable state or local law.
- (3) Certified as a contributing resource within a National Register or state or locally designated historic district.

Housekeeping Unit. A room or group of rooms forming a single habitable space equipped and intended to be used for living, sleeping, cooking and eating that does not contain, within such a unit, a toilet, lavatory and bathtub or shower.

Imminent Danger. A condition that could cause serious or life-threatening injury or death at any time.

Infestation. The presence, within or contiguous to, a structure or premises of insects, rodents, vermin or other pests.

Inoperable Motor Vehicle. any automobile, motor vehicle, vehicle or trailer that cannot be driven upon the public streets for reason including but not limited to being unlicensed, wrecked, abandoned, in a state of disrepair, dismantled, partially dismantled, inoperative, does not have a valid license plate attached thereto or otherwise incapable of being moved under its own power.

Labeled. Equipment, materials or products to which have been affixed a label, seal, symbol or other identifying mark of a nationally recognized testing laboratory, approved agency or other organization concerned with product evaluation that maintains periodic inspection of the production of the above-labeled items and whose labeling indicates either that the equipment, material or product meets identified standards or has been tested and found suitable for a specified purpose.

Let for Occupancy of Let. To permit, provide or offer possession or occupancy of a dwelling, dwelling unit, rooming unit, building, premise or structure by a person who is or is not the legal owner of record thereof, pursuant to a written or unwritten lease, agreement or license, or pursuant to a recorded or unrecorded agreement of contract for the sale of land.

Mulch. A layer of material applied to the surface of soil to prevent erosion, conserve soil moisture, improve fertility and health of the soil, insulate plants, reduce weed growth and enhance the aesthetics of an area. Types of mulch include, but are not limited to, wood chips, bark chips, pine straw and synthetic mulch.

Neglect. The lack of proper maintenance for a building or structure.

Occupancy. The purpose for which a building or portion thereof is utilized or occupied.

Occupant. Any individual living or sleeping in a building, or having possession of a space within a building.

Openable Area. That part of a window, skylight or door which is available for unobstructed ventilation and which opens directly to the outdoors.

Operator. Any person who has charge, care or control of a structure or premises that is let or offered for occupancy.

Owner. Any person, agent, operator, firm or corporation having legal or equitable interest in the property; or recorded in the official records of the state, county or municipality as holding title to the property; or otherwise having control of the property, including the guardian of the estate of any such person, and the executor or administrator of the estate of such person if ordered to take possession of real property by a court.

Person. An individual, corporation, partnership or any other group acting as a unit.

Pest Elimination. The control and elimination of insects, rodents or other pests by eliminating their harborage places; by removing or making inaccessible materials that serve as their food or water; by other approved pest elimination methods.

Premises. A lot, plot or parcel of land, easement or public way, including any structures thereon.

Public Way. Any street, alley or other parcel of land that: is open to the outside air; leads to a street; has been deeded, dedicated or otherwise permanently appropriated to the public for public use.

Rooming House. A building arranged or occupied for lodging, with or without meals, for compensation and not occupied as a one- or two-family dwelling.

Rooming Unit. Any room or group of rooms forming a single habitable unit occupied or intended to be occupied for sleeping or living, but not for cooking purposes.

Rubbish. Combustible and noncombustible waste materials, except garbage; the term shall include the residue from the burning of wood, coal, coke and other combustible materials, paper, rags, cartons, boxes, wood, excelsior, rubber, leather, tree branches, yard trimmings, tin cans, metals, mineral matter, glass, crockery and dust and other similar materials.

Sleeping Unit. A room or space in which people sleep, which can also include permanent provisions for living, eating and either sanitation or kitchen facilities, but not both. Such rooms and spaces that are also part of a dwelling unit are not sleeping units.

Strict Liability Offense. An offense in which the prosecution in a legal proceeding is not required to prove criminal intent as a part of its case. It is enough to prove that the defendant either did an act which was prohibited, or failed to do an act which the defendant was legally required to do.

Structure. That which is built or constructed.

Tenant. A person, corporation, partnership or group, whether or not the legal owner of record, occupying a building or portion thereof as a unit.

Toilet Room. A room containing a water closet or urinal but not a bathtub or shower.

Ultimate Deformation. The deformation at which failure occurs and that shall be deemed to occur if the sustain- able load reduces to 80 percent or less of the maximum strength.

Ventilation. The natural or mechanical process of supplying conditioned or unconditioned air to, or removing such air from, any space.

Weeds. All rank vegetative growth including but not limited to grasses, kudzu, poison ivy, jimsonweed, burdock, ragweed, thistle, cocklebur, dandelion, plants of obnoxious odors, or other similar unsightly vegetative growths; however, this term shall not include cultivated flowers, fruits and vegetables, and gardens.

Workmanlike. Executed in a skilled manner; e.g., generally plumb, level, square, in line, undamaged and without marring adjacent work.

Yard. An open space on the same lot with a structure.

Yard Trimmings. Leaves, brush, grass clippings, pruned shrubs, tree debris and other vegetative matter.

DIVISION 3 – PROPERTY MAINTENANCE

Sec. 5-219. – Scope and responsibility.

The provisions of this division shall govern the minimum conditions and the responsibilities of persons for maintenance of structures, equipment and exterior property.

The owner of the premises shall maintain the structures and exterior property in compliance with these requirements, except as otherwise provided for in this code. A person shall not occupy as owner-occupant or permit another person to occupy premises that are not in a sanitary and safe condition and that do not comply with the requirements of this article. Occupants of a dwelling unit, rooming unit or housekeeping unit are responsible for keeping in a clean, sanitary and safe condition that part of the dwelling unit, rooming unit, housekeeping unit or premises they occupy and control.

Sec. 5-220. - Vacant structures and land.

Vacant structures and premises thereof or vacant land shall be maintained in a clean, safe, secure and sanitary condition as provided herein so as not to cause a blighting problem or adversely affect the public health or safety.

Sec. 5-221. - Sanitation.

Exterior property and interior premises shall be maintained in a clean, safe and sanitary condition. The occupant shall keep that part of the exterior property that such occupant occupies or controls in a clean and sanitary condition free from any accumulation of trash, rubbish or garbage. The storage and disposal of refuse shall be in accordance with Chapter 13 of the Duluth City Code, Solid Waste Management, as amended.

Sec. 5-222. - Open and outdoor storage.

The open or outdoor storage of any used or damaged lumber, building materials, junk, trash, garbage, debris, scrap metal, concrete, asphalt, cans, bottles, glass, tires, salvage materials, boxes, containers, bins, and abandoned, discarded, inoperative, or unusable furniture, stove, refrigerator, freezer, sink, toilet, cabinet or other household appliances or fixtures, yard waste or equipment, shall be prohibited. Refer to the city health and Solid Waste Management ordinance for additional requirements on the storage of garbage, rubbish, refuse and other litter.

Exceptions:

- (1) Residential lawn maintenance equipment in an open carport;
- (2) Property where outdoor storage is authorized by the zoning ordinance;
- (3) Wood which is neatly stacked in the side or rear yard cut in lengths not to exceed three (3) feet, stacked in height not to exceed five (5) feet and is for the personal use of the owner or occupant.

Sec. 5-223. - Fences and walls.

Fences and walls shall be maintained in a structurally sound condition and in good repair. Fences and walls shall be free from loose or rotting materials to the extent that they have become unsafe and an eyesore and shall have braces and supports attached to or fastened in accordance with common building practices.

Sec. 5-224. - Grading and drainage.

Premises shall be graded and maintained to prevent the erosion of soil and to prevent the accumulation of stagnant water thereon, or within any structure located thereon.

Sec. 5-225. - Sidewalks and driveways.

Sidewalks, walkways, stairs, driveways, parking spaces and similar areas shall be kept in a proper state of repair, and maintained free from hazardous conditions.

Sec. 5-226. - Grass, weeds and ground cover.

- (a) Premises and exterior property shall be maintained free from weeds or similar plant growth in excess of eight inches (8") in height. Noxious weeds shall be prohibited. It shall be the responsibility of the property owner, occupant, tenant, or other designated authority to cut and remove grass, weeds or uncultivated vegetation as often as may be necessary. All properties shall be maintained to the side and rear property lines and to the curb or edge of pavement.
- (b) Property owners abutting a right-of-way shall not allow yard trimmings to be discarded or accumulate on a public street, in a public drainage system or on a public sidewalk.
- (c) Property owners abutting a sidewalk, curb or gutter shall be responsible for maintaining said sidewalk, curb and gutter free from the growth of grass, weeds and ground cover.
- (d) All unpaved areas of front yards shall be maintained with grass, ground cover, mulch or other similar landscaping to such extent that the soil is not bare or subject to erosion.
- (e) When used, mulch shall be maintained and reapplied as often as necessary to prevent major discoloration, significant decomposition or thinning to a point that it no longer provides effective erosion control.
- (f) Upon failure of the owner or agent having charge of a property to cut and destroy weeds after service of a notice of violation, they shall be subject to prosecution in accordance with this article and as prescribed by the authority having jurisdiction. Upon failure to comply with the notice of violation, any duly authorized employee of the jurisdiction or contractor hired by the jurisdiction shall be authorized to enter upon the property in violation and cut and destroy the weeds growing thereon, and the costs of such removal shall be paid by the owner or agent responsible for the property.

Sec. 5-227. - Trees, shrubs, hedges and bushes.

- (a) There shall be no dead, dying, damaged, diseased or hazardous trees, shrubs, ground cover or weeds likely to harbor vermin or insects, restrict or impede access to or public

use of adjacent sidewalks and streets, obstruct traffic-control signs and devices and fire hydrants, or pose a risk of physical injury to the public.

- (b) Tree stumps visible from a public or private street shall not be permitted or maintained on any premises for more than thirty (30) days after the tree has been cut.

Exceptions:

- (1) Property covered by a valid land disturbing permit;

- (c) Felled trees, slash, removed tree limbs, or other portions of any tree shall not be permitted or maintained on the ground on any premises for more than thirty (30) days.

Exceptions:

- (1) Property covered by a valid land disturbing permit;

- (2) Wood which is neatly stacked in the side or rear yard cut in lengths not to exceed three (3) feet, stacked in height not to exceed five (5) feet and is for the personal use of the owner or occupant.

- (d) Shrubs, hedges, bushes and other similar cultivated ornamental vegetation shall be pruned and maintained uniformly by trimming, shaping or otherwise preventing excessive growth in order to aesthetically control the size and shape of the plant, promote the health of the plant and prevent the appearance of neglect or abandonment. In no such case shall any shrub, hedge, bush or other similar cultivated ornamental vegetation have individual tips, branches, limbs, or stems that extend more than eighteen (18) inches from the natural form of the bulk or main body of the plant.

- (e) Any tree, shrub, hedge, bush or other planting which overhangs any sidewalk, street, public right-of-way or other public place in the city; is in sufficient proximity thereto as to either impede or interfere with the orderly passage of traffic or pedestrian travel, or create a condition which is considered by the city engineer to create a traffic hazard at intersections or otherwise by virtue of sight obstruction shall be trimmed by the owner of the premises on which such tree or shrub grows so that any obstruction, impediment or interference shall cease.

Sec. 5-228. - Rodent harborage.

Structures and exterior property shall be kept free from rodent harborage and infestation. Where rodents are found, they shall be promptly exterminated by approved processes that will not be injurious to human health. After pest elimination, proper precautions shall be taken to eliminate rodent harborage and prevent re-infestation.

Sec. 5-229. - Exhaust vents.

Pipes, ducts, conductors, fans or blowers shall not discharge gases, steam, vapor, hot air, grease, smoke, odors or other gaseous or particulate wastes directly on abutting or adjacent public or private property or that of another tenant.

Sec. 5-230. - Accessory structures.

Accessory structures shall be maintained structurally sound and in good repair.

Sec. 5-231. - Motor vehicles.

Except as provided for in other regulations, inoperative or unlicensed motor vehicles shall not be parked, kept or stored on any premises, and vehicles shall not at any time be in a state of major disassembly, disrepair, or in the process of being stripped or dismantled. Painting of vehicles is prohibited unless conducted inside an approved spray booth.

Exceptions:

- (1) A vehicle of any type is permitted to undergo major overhaul, including body work, provided that such work is performed inside a structure or similarly enclosed area designed and approved for such purposes.

Sec. 5-232. - Defacement of property.

A person shall not willfully or wantonly damage, mutilate or deface any exterior surface of any structure or building on any private or public property by placing thereon any marking, carving or graffiti. It shall be the responsibility of the owner to remove said marking, carving or graffiti and restore said surface to an approved state of maintenance and repair.

Sec. 5-233. - Abandoned wells.

All abandoned wells within the city must be filled, capped, or enclosed so as to prevent any hazard to the public health or safety. Any person who fails to fill, cap or enclose an abandoned well within ten (10) days after receiving written notice from the city council to fill, cap or enclose such abandoned well shall be subject to the penalties provided for in division 5 of this article.

Sec. 5-234. - Swimming pools.

Swimming pools shall be maintained in a clean and sanitary condition, and in good repair. Stagnant water in swimming pools conducive to the breeding or harboring of mosquitoes or other insects shall not be permitted or maintained on any premises. A finding by the code enforcement officer or a health official of the county environmental health department shall constitute prima-facie evidence that stagnant water in a swimming pool is conducive to the breeding or harboring of mosquitoes or other insects.

All outdoor swimming pools, hot tubs and spas, containing water more than 24 inches in depth shall be completely surrounded by a fence or barrier not less than 48 inches in height above the finished ground level measured on the side of the barrier away from the pool. Gates and doors in such barriers shall be self-closing and self-latching. Where the self-

latching device is less than 54 inches above the bottom of the gate, the release mechanism shall be located on the pool side of the gate. Self-closing and self-latching gates shall be maintained such that the gate will positively close and latch when released from an open position of 6 inches from the gatepost. An existing pool enclosure shall not be removed, replaced or changed in a manner that reduces its effectiveness as a safety barrier.

Exceptions:

- (1) Spas or hot tubs with a safety cover that complies with ASTM F1346 shall be exempt from the provisions of this section.

Sec. 5-235. - Exterior Structure.

The exterior of a structure shall be maintained in good repair, structurally sound and sanitary so as not to pose a threat to the public health, safety or welfare. The following conditions shall be determined as unsafe and shall be repaired or replaced to comply with the International Building Code or the International Existing Building Code as required for existing buildings:

- (a) The nominal strength of any structural member is exceeded by nominal loads, the load effects or the required strength.
- (b) The anchorage of the floor or roof to walls or columns, and of walls and columns to foundations is not capable of resisting all nominal loads or load effects.
- (c) Structures or components thereof that have reached their limit state.
- (d) Siding and masonry joints including joints between the building envelope and the perimeter of windows, doors and skylights are not maintained, weather resistant or water tight.
- (e) Structural members that have evidence of deterioration or that are not capable of safely supporting all nominal loads and load effects.
- (f) Foundation systems that are not firmly supported by footings, are not plumb and free from open cracks and breaks, are not properly anchored or are not capable of supporting all nominal loads and resisting all load effects.
- (g) Exterior walls that are not anchored to supporting and supported elements or are not plumb and free of holes, cracks or breaks and loose or rotting materials, are not properly anchored or are not capable of supporting all nominal loads and resisting all load effects.
- (h) Roofing or roofing components that have defects that admit rain, roof surfaces with inadequate drainage, or any portion of the roof framing that is not in good repair with signs of deterioration, fatigue or without proper anchorage and incapable of supporting all nominal loads and resisting all load effects.
- (i) Flooring and flooring components with defects that affect serviceability or flooring components that show signs of deterioration or fatigue, are not properly anchored or are incapable of supporting all nominal loads and resisting all load effects.
- (j) Veneer, cornices, belt courses, corbels, trim, wall facings and similar decorative features not properly anchored or that are anchored with connections not capable of supporting all nominal loads and resisting all load effects.
- (k) Overhang extensions or projections including, but not limited to, trash chutes, canopies, marquees, signs, awnings, fire escapes, standpipes and exhaust ducts not

properly anchored or that are anchored with connections not capable of supporting all nominal loads and resisting all load effects.

- (l) Exterior stairs, decks, porches, balconies and all similar appurtenances attached thereto, including guards and handrails, are not structurally sound, not properly anchored or that are anchored with connections not capable of supporting all nominal loads and resisting all load effects.
- (m) Chimneys, cooling towers, smokestacks and similar appurtenances not structurally sound or not properly anchored, or that are anchored with connections not capable of supporting all nominal loads and resisting all load effects.

Sec. 5-236. - Protective treatment.

Exterior surfaces, including but not limited to, doors, door and window frames, cornices, porches, trim, balconies, decks and fences, shall be maintained in good condition and clean of visible signs of mold, mildew or algae growth. Exterior wood surfaces and siding, other than decay-resistant woods, shall be protected from the elements and decay by painting or other protective covering or treatment. Peeling, flaking and chipped paint or paint that has faded so that it is no longer consistent in appearance with other paint on the same building or structure shall be eliminated and surfaces repainted. Siding and masonry joints, as well as those between the building envelope and the perimeter of windows, doors and skylights, shall be maintained weather resistant and water tight. Metal surfaces subject to rust or corrosion shall be coated to inhibit such rust and corrosion, and surfaces with rust or corrosion shall be stabilized and coated to inhibit future rust and corrosion. Oxidation stains shall be removed from exterior surfaces.

Exceptions:

- (1) Patination of metal surfaces for aesthetic purposes, provided that structural members shall be maintained free from deterioration.
- (2) Surfaces designed for stabilization by oxidation are exempt from this requirement.

Sec. 5-237. - Premises identification.

Buildings shall have approved address numbers placed in a position to be plainly legible and visible from the street or road fronting the property. These numbers shall contrast with their background. Address numbers shall be Arabic numerals or alphabet letters. Numbers shall be not less than 4 inches in height with a minimum stroke width of 0.5 inch.

Sec. 5-238. - Structural members.

Structural members shall be maintained free from deterioration, and shall be capable of safely supporting the imposed dead and live loads.

Sec. 5-239. - Foundation walls.

Foundation walls shall be maintained plumb and free from open cracks and breaks, loose or rotting materials, shall be maintained weatherproof and properly surface coated as needed to prevent deterioration and shall be kept in such condition so as to prevent the entry of rodents and other pests.

Sec. 5-240. - Exterior walls.

Exterior walls shall be free from holes, breaks, and loose or rotting materials; and maintained weatherproof and properly surface coated where required to prevent deterioration.

Sec. 5-241. - Roofs and drainage.

Roofs of buildings shall be maintained so that they are structurally sound and in a safe condition and have no defects, which might admit rain or cause dampness in the interior portions of a building. All portions, additions or sections of a roof including, but not limited to, the fascia, eaves, soffit, sheathing, rafter tail, barge rafter, vent screening, gutter, downspout, roof jack, lead or metal flashing, shall be complete with all trim strips, moldings, brackets, braces and supports attached or fastened in accordance with common building practices.

The roof and flashing shall be sound, tight and not have defects that admit rain. Roof drainage shall be adequate to prevent dampness or deterioration in the walls or interior portion of the structure. Roof drains, gutters and downspouts shall be maintained in good repair and free from vegetation and other obstructions. Roof water shall not be discharged in a manner that creates a public nuisance or that interferes with the use and enjoyment of another's property.

Exceptions:

- (1) Emergency repairs such as tarping or boarding up of a damaged roof may be allowed for not more than thirty (30) days, which may be extended by the director.

Sec. 5-242. - Decorative features.

Cornices, belt courses, corbels, terra cotta trim, wall facings and similar decorative features shall be maintained in good repair with proper anchorage and in a safe condition.

Sec. 5-243. - Overhang extensions.

Overhang extensions including, but not limited to, canopies, marquees, signs, metal awnings, fire escapes, standpipes and exhaust ducts shall be maintained in good repair and be properly anchored so as to be kept in a sound condition. Where required, all exposed surfaces of metal or wood shall be protected from the elements and against decay or rust by periodic application of weather-coating materials, such as paint or similar surface treatment.

Sec. 5-244. - Stairways, decks, porches and balconies.

Every exterior stairway, deck, porch and balcony, and all appurtenances attached thereto, shall be maintained structurally sound, in good repair, with proper anchorage and capable of supporting the imposed loads.

Sec. 5-245. - Chimneys and towers.

Chimneys, cooling towers, smoke stacks, and similar appurtenances shall be maintained structurally safe and sound, and in good repair. Exposed surfaces of metal or wood shall be protected from the elements and against decay or rust by periodic application of weather-coating materials, such as paint or similar surface treatment.

Sec. 5-246. - Handrails and guards.

Every handrail and guard shall be firmly fastened and capable of supporting normally imposed loads and shall be maintained in good condition.

Sec. 5-247. - Window, skylight and door frames.

Every window, skylight, door and frame shall be kept in sound condition, good repair and weather tight. Windows of buildings shall be fully supplied and maintained with glass windowpanes or with a substitute approved by the code official, which are without open cracks, broken glass or holes. Screens, if provided, shall be securely fastened to the window.

Sec. 5-248. - Glazing.

Glazing materials shall be maintained free from cracks and holes.

Sec. 5-249. - Doors and frames.

Exterior doors, door assemblies, operator systems if provided, and hardware shall be maintained in proper working condition and fit reasonably well within their frames so as to substantially prevent rain and wind from entering a building. Locks at all entrances to dwelling units and sleeping units shall tightly secure the door. Exterior door-jams, stops, headers and moldings shall be securely attached to the structure and maintained in good condition without splitting or deterioration.

Sec. 5-250. - Basement hatchways.

Every basement hatchway shall be maintained to prevent the entrance of rodents, rain and surface drainage water.

Sec. 5-251. - Building interiors.

(a) Freedom from dampness. Every building shall be maintained free from dampness to

prevent conditions conducive to decay, mold, electrical hazards or deterioration of the structure.

- (b) Structural members. The supporting structural members of every building shall be structurally sound, showing no evidence of deterioration or damage that would render them incapable of carrying the imposed loads.
- (c) Interior wall, ceilings, floors, stairways and handrails. All interior walls, ceilings, floors, stairways and handrails shall be structurally sound, in good repair, free from defects and painted, decorated or properly covered.
- (d) Bathroom and kitchen floors. Every kitchen and wet floor areas of bathrooms shall be covered and protected by non-absorbent floor coverings. Dressing areas my transition to carpet.

Sec. 5-252. - Building security.

Doors, windows or hatchways for dwelling units, room units or housekeeping units shall be provided with devices designed to provide security, such as deadbolt locks or professionally monitored security/alarm systems, for the occupants and property within.

Sec. 5-253. - Gates.

Exterior gates, gate assemblies, operator systems if provided, and hardware shall be maintained in good condition. Latches at all entrances shall tightly secure the gates.

Sec. 5-254. - Handrails and guardrails.

Every exterior and interior flight of stairs having more than four risers shall have a handrail on oneside of the stair and every open portion of a stair, landing, balcony, porch, deck, ramp or other walking surface that is more than 30 inches above the floor or grade below shall have guards. Handrails shall be not less than 30 inches in height or more than 42 inches in height measured vertically above the nosing of the tread or above the finished floor of the landing or walking surfaces. Guards shall be not less than 30 inches in height above the floor of the landing, balcony, porch, deck, or ramp or other walking surface.

Exceptions:

- (1) Guards shall not be required where exempted by the adopted building code.

Sec. 5-255. - Rubbish and garbage.

Exterior property and premises, and the interior of every structure, shall be free from any accumulation of rubbish or garbage. Every occupant of a structure shall dispose of all rubbish in a clean and sanitary manner by placing such rubbish in approved containers. The operator of every establishment producing garbage shall provide, and at all times cause to be utilized, approved leak-proof containers provided with close-fitting covers for the storage of such materials until removed from the premises for proper disposal.

DIVISION 4 - OCCUPANCY LIMITATIONS

Sec. 5-256 - Dwelling space.

- (a) Required space in dwellings. Each dwelling shall contain at least six hundred (600) square feet of floor area.
- (b) Required space in sleeping rooms. In every dwelling of two (2) or more rooms, every bedroom occupied for sleeping purposes by one (1) occupant must contain at least 70 square feet and bedrooms occupied by more than one occupant must contain at least 50 square feet per occupant.
- (c) Every living room shall contain not less than 120 square feet.
- (d) Sleeping area requirements. No kitchen, bathroom, toilet room, hall, closet, cellar or utility or storage area shall be used as a sleeping space. No more than seventy (70) percent of a dwelling can be used as sleeping space.
- (e) Conditions on inhabiting basement. No cellar or basement shall be used as a habitable room or dwelling unit unless:
 - (1) The floor and walls are impervious to leakage of underground and surface runoff water and are adequately protected against dampness; and
 - (2) All sleeping rooms shall have an emergency escape window or door leading directly to the exterior.

Sec. 5-257. - Dwelling units.

Every dwelling unit shall contain its own bathtub or shower, lavatory, water closet (toilet) and kitchen sink which shall be maintained in a sanitary, safe, working condition. The lavatory shall be placed in the same room as the water closet or located in close proximity to the door leading directly into the room in which such water closet is located. A kitchen sink shall not be used as a substitute for the required lavatory.

Sec. 5-258. - Required facilities.

- (a) Dwelling Unit. Every dwelling unit shall contain its own bathtub or shower, lavatory, water closet and kitchen sink that shall be maintained in a sanitary, safe working condition. The lavatory shall be placed in the same room as the water closet or located in close proximity to the door leading directly into the room in which such water closet is located. A kitchen sink shall not be used as a substitute for the required lavatory.
- (b) Rooming houses. Not less than one water closet, lavatory and bathtub or shower shall be supplied for each four rooming units.

- (c) Hotels. Where private water closets, lavatories and baths are not provided, one water closet, one lavatory and one bathtub or shower having access from a public hallway shall be provided for each 10 occupants.
- (d) Employees' facilities. Not less than one water closet, one lavatory and one drinking facility shall be available to employees.
- (e) Drinking facilities. Drinking facilities shall be a drinking fountain, water cooler, bottled water cooler or disposable cups next to a sink or water dispenser. Drinking facilities shall not be located in toilet rooms or bathrooms.
- (f) Public toilet facilities. Public toilet facilities shall be maintained in a safe, sanitary and working condition in accordance with the International Plumbing Code. Except for periodic maintenance or cleaning, public access and use shall be provided to the toilet facilities at all times during occupancy of the premises.

Sec. 5-259. - Water closet, bathtub or shower requirements.

Every dwelling shall contain within its walls at least one (1) room, separate from the habitable rooms, which affords privacy and is equipped with a toilet and a lavatory. Every dwelling shall contain at least one (1) room which affords privacy to a person and which is equipped with a bathtub or shower. There must be at least one (1) toilet, lavatory and bathtub or shower (a full bathroom) for each five (5) persons living and sleeping in a dwelling.

Sec. 5-260. - Sanitary toilet requirement.

All dwellings and living quarters located in the city limits shall have sanitary toilets using a septic tank, drain field or sanitary sewer and running water.

Sec. 5-261. – Plumbing fixtures

Plumbing fixtures shall be properly installed and maintained in working order, and shall be kept free from obstructions, leaks and defects and be capable of performing the function for which such plumbing fixtures are designed. Plumbing fixtures shall be maintained in a safe, sanitary and functional condition.

Sec. 5-262. - Water heating facilities.

Water heating facilities shall be properly installed, maintained and capable of providing an adequate amount of water to be drawn at every required sink, lavatory, bathtub, shower and laundry facility at a temperature not less than 110°F (43°C). A gas-burning water heater shall not be located in any bathroom, toilet room, bedroom or other occupied room normally kept closed, unless adequate combustion air is provided. An approved combination temperature and pressure-relief valve and relief valve discharge pipe shall be properly installed and maintained on water heaters.

Sec. 5-263. - Sanitary drainage system

- (a) General. Plumbing fixtures shall be properly connected to either a public sewer system or to an approved private sewage disposal system.
- (b) Maintenance. Every plumbing stack, vent, waste and sewer line shall function properly and be kept free from obstructions, leaks and defects.
- (c) Grease interceptors. Grease interceptors and automatic grease removal devices shall be maintained in accordance with this code and the manufacturer's installation instructions. Grease interceptors and automatic grease removal devices shall be regularly serviced and cleaned to prevent the discharge of oil, grease, and other substances harmful or hazardous to the building drainage system, the public sewer, the private sewage disposal system or the sewage treatment plant or processes. Records of maintenance, cleaning and repairs shall be available for inspection by the code official.

Sec. 5-264. - Storm drainage

Drainage of roofs and paved areas, yards and courts, and other open areas on the premises shall not be discharged in a manner that creates a public nuisance.

Sec. 5-265. - Heating facilities.

Dwellings shall be provided with heating facilities capable of maintaining a room temperature of 65°F (18°C) all habitable rooms, bathrooms and toilet rooms based on the winter outdoor design temperature for the locality indicated in Appendix D of the International Plumbing Code. Cooking appliances shall not be used, nor shall portable unvented fuel-burning space heaters be used, as a means to provide required heating.

Sec. 5-266. - Fire protection systems.

All systems, devices and equipment to detect a fire, actuate an alarm, or suppress or control a fire or any combination thereof shall be maintained in an operable condition at all times.

Sec. 5-267. - Fire safety/means of egress.

A safe, continuous and unobstructed path of travel shall be provided from any point in a building or structure to the public way. Means of egress shall comply with the International Fire Code.

Sec. 5-268. - Locked doors.

Means of egress doors shall be readily openable from the side from which egress is to be made without the need for keys, special knowledge or effort, except where the door hardware conforms to that permitted by the International Building Code.

DIVISION 5. ENFORCEMENT, SUBPOENA POWER, NOTICE OF VIOLATION & PENALTIES

Sec. 5-269. - Enforcement.

This article shall be enforced by the director or his/her duly authorized representative or by any other agency or individual designated by the city council to enforce this article.

Sec. 5-270. – Violations and unlawful acts.

It shall be unlawful for a person, firm or corporation to be in conflict with or in violation of any of the provisions of this code.

Sec. 5-271. - Notice of violation.

Enforcement shall begin with a written notice of violation provided to the owner, occupant, or party in interest. The notice shall contain a deadline of, no less than two (2) days and not more than thirty (30) days for compliance, which may be extended by the director. If the violation continues past the deadline, the director may issue a citation or take such other legal action authorized under this article.

If the owner, occupant or party in interest has received a notice of violation of any provision of this article within the preceding twenty-four-month period no additional notice of violation under this section shall be required before issuing a citation for any subsequent alleged violation of this article.

Such notice shall be in accordance with all of the following:

- (a) The name and address of the owner, occupant or other responsible person, if known;
- (b) The address or other description of the site upon which the violation is occurring;
- (c) A statement specifying the nature of the violation;
- (d) A description of the remedial measures necessary to bring the action or inaction into compliance with this Code and the date for the completion of such remedial action;
- (e) A statement of the penalty or penalties that may be assessed against the person to whom the notice of violation is directed; and
- (f) A statement that the determination of violation may be appealed to the Planning and Development Director by filing a written notice of appeal within 10 working days after the notice of violation (except, that in the event the violation constitutes an immediate danger to public health or public safety, 24 hours' notice shall be sufficient).

Sec. 5-272. - Method of service.

Such notice or shall be deemed to be properly served if a copy thereof is: delivered personally (personal service), or sent by certified or first-class certified mail addressed to the last known address. If the notice is returned showing that the letter was not delivered, a copy thereof shall be posted in a conspicuous place in or about the structure affected by such notice.

Sec. 5-273. - Abatement of violation.

The imposition of the penalties herein prescribed shall not preclude the legal officer of the jurisdiction from instituting appropriate action to restrain, correct or abate a violation, or to prevent illegal occupancy of a building, structure or premises, or to stop an illegal act, conduct, business or utilization of the building, structure or premises.

Sec. 5-274. – Noncompliance and violation penalties, subpoena power.

If any person fails to comply within the time specified in the notice of violation, the code official shall issue a citation for the violator to appear in municipal court. The citation shall specifically allege that section violated and the nature of such violation. Any person who shall violate a provision of this code, or fail to comply therewith, or with any of the requirements thereof, shall be prosecuted within the limits provided by state or local laws. Each day that a violation continues after due notice has been served shall be deemed a separate offense.

Any duly authorized enforcement personnel shall have the power to issue subpoenas requiring occupants, residents, owners, or parties-in-interest of buildings under inspection, investigation, or who have been accused of a violation of this article to appear in municipal court. The duly authorized enforcement personnel shall also have the power to issue subpoenas to occupants, residents, owners, or parties-in-interest to produce written records related to the property under inspection or investigation.

Sec. 5-275. - Prosecution of violation.

Any person failing to comply with a notice of violation or order served in accordance with this article may be deemed guilty of a misdemeanor or civil infraction as determined by the local municipality, and the violation shall be deemed a strict liability offense. If the notice of violation is not complied with, the code official shall institute the appropriate proceeding at law or in equity to restrain, correct or abate such violation, or to require the removal or termination of the unlawful occupancy of the structure in violation of the provisions of this code or of the order or direction made pursuant thereto. Any action taken by the authority having jurisdiction on such premises shall be charged against the real estate upon which the structure is located and shall be a lien upon such real estate.

Sec. 5-276. - Unauthorized tampering.

Signs, tags or seals posted or affixed by the code official shall not be mutilated, destroyed or tampered with, or removed without authorization from the code official.

Sec. 5-277. - Appeals.

Any decision of a compliance officer may be appealed to the Director of Planning and Development. The Director may utilize, at his sole discretion, the interpretation services provided

by the International Code Council to amend an administrative decision made by a compliance officer. A decision by the Director required by this article shall be subject to appeal and review by the Zoning Board of Appeals of the City of Duluth. A decision by the Zoning Board of Appeals shall be final.

Any appeal taken under this article shall be filed in writing using the appropriate form as furnished by the Department of Planning and Development with associated fees as prescribed in the current fee ordinance adopted by the city council. Appeals of a decision to the Director shall be filed within ten (10) working days after the notice of violation is served (except, that in the event the violation constitutes an immediate danger to public health or public safety, 24 hours' notice shall be sufficient). Appeals to the Zoning Board of Appeals shall be filed within ten (10) working days after the notice of the Director's decision.

Sec. 5-278. - Stays of enforcement.

Appeals of notice and orders (other than Imminent Danger notices) shall stay the enforcement of the notice and order until the appeal is heard by the appeals board.

Sec. 5-279. - Transfer of ownership.

It shall be unlawful for the owner of any dwelling unit or structure who has received a compliance order or upon whom a notice of violation has been served to sell, transfer, mortgage, lease or otherwise dispose of such dwelling unit or structure to another until the provisions of the compliance order or notice of violation have been complied with, or until such owner or the owner's authorized agent shall first furnish the grantee, transferee, mortgagee or lessee a true copy of any compliance order or notice of violation issued by the code official and shall furnish to the code official a signed and notarized statement from the grantee, transferee, mortgagee or lessee, acknowledging the receipt of such compliance order or notice of violation and fully accepting the responsibility without condition for making the corrections or repairs required by such compliance order or notice of violation.

Sec. 5-280. - Penalties.

Any person violating any of the provisions of this article shall be subject to a fine or imprisonment, upon conviction in the municipal court, and each and every day that the premises shall remain in a condition in violation of the terms of this article shall constitute a separate offense. This section shall be in addition to the provisions of the abatement of said nuisance and the charge of the cost of the same against the owner of the premises by the city. A fine imposed under this article shall be no less than two hundred fifty dollars (\$250.00) and shall not exceed one thousand dollars (\$1,000.00) per offense. A sentence of imprisonment under this article shall not exceed sixty (60) days per offense. At the discretion of the municipal court judge, any sentence may be probated, altered or amended.

Secs. 5-281 – 5-282. – Reserved.

Exhibit "B"

Article VI. Abandoned Shopping Carts.

Sec. 9-90. - Findings and determination.

Shopping carts that have been removed from the premises of businesses and left abandoned on public or private property throughout the city constitute a public nuisance and a potential hazard to the health, safety and welfare of the public. They create conditions of blight in the community, obstruct free access to sidewalks, streets and other public rights-of-way, interfere with pedestrian and vehicular traffic, impede emergency services, and create impediments to the flow of water in drainage systems and other waterways when abandoned within drainage culverts and easements. It is for these reasons such lost, stolen, or abandoned shopping carts are hereby declared to be a public nuisance which shall be subject to abatement in the manner set forth in this ordinance, or as provided by law.

Sec. 9-91. - Purpose.

To provide for the prompt retrieval of lost, stolen or abandoned shopping carts in order to eliminate blight and improve the image and appearance of the city. It is the purpose of this ordinance to have the owners and operators of businesses providing shopping carts to use the means available to them to deter, prevent or mitigate the removal of shopping carts from their business premises. Moreover, it is the purpose of this ordinance to prevent the illegal removal of shopping carts from the business premises pursuant to O.C.G.A. 16-8-21.

Sec. 9-92. - Applicability.

All retail establishments with ten (10) or more shopping carts available for customer use at the establishment shall be required to develop, implement and comply with the terms and conditions of an abandoned cart prevention and recovery plan. Such plan shall be submitted to the Department of Planning and Development in writing on a renewable annual basis prior to the issuance of a new or renewed Occupational Tax Certificate.

Sec. 9-93. - Definitions.

For the purpose of this article, the following words and phrases shall have the meaning as indicated.

Abandoned cart or abandoned shopping cart shall mean any cart that has been removed, without the written consent of the cart owner, from the business premises or parking area of the retail/commercial establishment of which the cart owner's business premises are located and is located on either public or private property.

Abandoned cart prevention and recovery plan shall mean a protocol submitted in writing by a cart owner as set forth hereinafter that provides for a plan for the prevention of cart removal and for the recovery of carts removed from and not located on the owner's business premises.

Business premises shall mean the interior of a cart owner's commercial establishment, adjacent walkways, any loading area, and the parking area, as herein defined.

Cart or shopping cart shall mean those pushcarts and motorized carts of the type which are commonly provided by grocery stores, drugstores, or other merchant stores or markets for the use of the public in transporting commodities in stores and markets and incidentally from the store to a place outside the store.

Cart owner shall mean the owner or operator of a commercial establishment which provides carts for use by its customers for the purpose of transporting goods of any kind.

Cart retrieval company or cart retrieval service shall mean a third party service in the business of retrieving and returning shopping carts to the cart owner.

City shall mean the City of Duluth, Georgia.

On-site cart containment and cart recovery program shall mean one (1) or more of the following measures:

- (1) Disabling devices or other system or equipment on all shopping carts which prevent them from being removed from the business premises.

- (2) An on-site security guard to deter customers from attempting to remove carts from the business premises.

- (3) Physical barriers which restrict shopping carts to the business premises (if permitted by applicable zoning regulations and fire marshal approval).

- (4) Obtaining a security deposit from customers for the use of shopping carts.

- (5) Employment and or contracting with a cart retrieval company or cart retrieval service for recovery of abandoned carts in accordance with the recovery requirements set forth hereinafter.

Parking area shall mean a parking lot or other property provided by a business for use by a customer for parking an automobile or other vehicle.

Sec. 9-94. - Cart owner/business requirements.

- (a) Cart identification required. All carts must have a permanently affixed sign identifying the owner of the cart.

- (b) Daily cart retrieval. All cart owners shall retrieve all carts daily to ensure all such carts are secure after the close of business.
- (c) Abandoned cart prevention and recovery plan. Every cart owner of more than ten (10) carts shall develop, implement and comply with the terms and conditions of an abandoned cart prevention and recovery plan. Such plan shall be submitted to the Department of Planning and Development in writing on a renewable annual basis and shall include the following elements:
 - (1) Owner information. The name of the business; the physical address where the retail establishment is located; and the name, address, and telephone number(s) of the owner and all on-site managers.
 - (2) Shopping carts to be maintained on-site: an accurate accounting of the number of shopping carts in the retail establishment's inventory. A general description of the establishment's carts such as color(s), construction material, and any distinguishing markings.
 - (3) Existing practices and methods for retrieving abandoned shopping carts. These measures may include, but are not limited to:
 - i. Installed disabling devices on all carts;

- ii. Installed physical or architectural barriers around business entrances/exits to prevent cart;

- iii. Removal of carts;

- iv. Providing carts for rental or deposit that can be temporarily used for the purpose of collecting and transporting purchases;

- v. Providing personnel for the purposes of the retrieval of lost, stolen or abandoned shopping carts. Such personnel may be either employees of the business or cart retrieval company hired by the owner to provide shopping cart retrieval services, or combination of both;

- vi. The use of courtesy clerks to accompany customers and return carts to the inside of the business premises;

- vii. Other demonstrably effective measures acceptable to the City likely to prevent removal of carts from the business premises.

(4) Employee awareness training. The owner of the retail establishment shall implement and maintain a program for its new and existing managers and supervisors designed to educate such employees concerning the requirements of the shopping cart retrieval plan and the provisions of this ordinance.

(5) Preventive measures for retaining the shopping carts on the premises of the retail establishment. Some examples include, and are not limited to:

- i. Signs in the cart storage areas and parking lots.
- ii. Wheel lock (disabling devices) components installed on shopping carts.
- iii. Notices on placards affixed to the cart.
- iv. The use of staff to make frequent retrievals of carts on the curtilage of the premises and nearby rights-of-way.

Sec. 9-95. - City retrieval of carts.

- (a) The city may retrieve an abandoned cart from public property (or private property with the consent of the property owner or tenant) in the following circumstances:
 - (1) Where the location of the shopping cart will impede emergency services.
 - (2) When the abandoned cart does not identify the cart owner as required by this section.
 - (3) When the city has contacted the cart owner and provided proper notice of the abandoned cart and said cart has not been reclaimed within three (3) business days.

Sec. 9-96. - Enforcement and remedies.

- (a) The Department of Planning and Development shall have the responsibility for the enforcement of this article.
- (b) Any cart owner that fails to retrieve its abandoned cart within three (3) days after receiving notice from the city, shall pay the city's administrative costs for retrieving the cart and providing the notification to the cart owner. Any cart owner who fails to retrieve abandoned carts in accordance with this Code section in excess of three (3) times during any twenty-four (24) month period shall be subject to a possible fine of not more than one thousand dollars (\$1,000.00) per day or sixty (60) days in jail, or both in addition to the aforementioned costs for each occurrence thereafter. Each day the violation continues shall constitute a separate offense.
- (c) If a cart is not retrieved by the cart owner within two (2) weeks after notice of retrieval by the city has been received by the cart owner, including the payment of all costs and fines, or if the cart owner cannot be determined, the cart may be sold, destroyed, or otherwise disposed of in the city's discretion.

Secs. 9-97 - 9-99. - Reserved

Exhibit "C"

Article VII. City of Duluth Derelict Property Ordinance

Sec. 9-100. Short Title.

This Article shall be known as the "City of Duluth Derelict Property Ordinance."

Sec. 9-101. Definitions.

As used in this article, the term:

- (a) **Applicable codes** means any optional housing or abatement standard provided in O.C.G.A. title 8, chapter 2 as adopted by ordinance or operation of law, or other property-maintenance standards as adopted by ordinance or operation of law, or general nuisance law, relative to the safe use of real property; any fire or life safety code as provided for in O.C.G.A. title 25, chapter 2; and any building codes adopted by local ordinance prior to October 1, 1991, or the minimum standard codes provided in O.C.G.A. title 8, chapter 2 after October 1, 1991, 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.
- (b) **Closing** means causing a dwelling, building, or structure 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 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. As used in this article, 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.
- (e) **Graffiti** means any inscriptions, words, figures, paintings, or other defacements that are written, marked, etched, scratched, sprayed, drawn, painted, or engraved on or otherwise affixed to any surface of public or private property by means of any aerosol paint container, broad-tipped marker, gum label, paint stick, graffiti stick, etching equipment, brush, or other device capable of scarring or leaving a visible mark on any surface without prior authorization from the owner or occupant of the property.
- (f) **Governing authority** means the City Council of the City of Duluth, Georgia.

- (g) Interested party means:
- (1) The "owner";
 - (2) Persons in possession of said property and premises;
 - (3) 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;
 - (4) Those parties having filed a notice in accordance with O.C.G.A. § 48-3-9; and
 - (5) Any other party having an interest in the property whose identity and address are reasonably ascertainable from the records of the municipality or records maintained in the county courthouse or by the clerk of court; provided, however, 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.
- (h) Municipality means the City of Duluth, Georgia.
- (i) Owner means the holder of the title in fee simple and every mortgagee of record.
- (j) Public authority means any member of the governing authority, any director of a public housing authority, or any officer who is in charge of any department or branch of government (municipal, county or state) relating to health, fire, life safety, building regulations, or to other activities concerning dwellings, buildings, or structures, or use of private property within the city.
- (k) Public officer means the city manager, who is authorized to exercise the powers prescribed by article, and any officer or employee of the city to whom he delegates such authority.
- (l) 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.
- (m) Resident means any person residing in the jurisdiction where the property is located on or after the date on which the alleged nuisance arose.

Sec. 9-102. Duty of owners of real property and structures thereon.

It is the duty of the owner of every dwelling, building, structure, or private 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 laws and ordinances which regulate and prohibit activities on private property and which declare it to be a public nuisance to construct or maintain any dwelling, building, structure, or use private property in violation of such codes, laws or ordinances.

Sec. 9-103. Declaration of public nuisance.

Every dwelling, building, or structure within the city which (i) is constructed or maintained in violation of applicable codes in force within the city; (ii) is unfit for human habitation or commercial, industrial, or business use or occupancy due to inadequate provisions for ventilation, light, air, sanitation, or open

spaces; (iii) poses an imminent harm to life or other property due to fire, flood, hurricane, tornado, earthquake, storm or other natural catastrophe; (iv) is vacant and used in the commission of drug crimes; (v) is occupied and used repeatedly for the commission of illegal activities, including facilitating organized crime or criminal enterprises, after written notice to the owner of such activities conducted therein; (vi) is abandoned; or (vii) otherwise constitutes an endangerment to the public health or safety as a result of unsanitary or unsafe conditions, is hereby declared a public nuisance. Every private property within the city on which is being regularly conducted any activity or land use in violation of applicable laws and ordinances, including the zoning ordinance of this city, is hereby declared to be a public nuisance. Property which may be deemed esthetically substandard or deteriorating shall not meet the definition of a public nuisance unless the overall condition or use of the property results in impaired health, safety, transmission of disease, infant mortality, or crime.

Sec. 9-104. Powers of city manager or his designee.

- (a) In carrying out his duties pursuant to this article, the city manager or his designee to whom his authority is assigned shall, in addition to those powers otherwise conferred upon or delegated to him by the Charter and other ordinances of the city, be empowered to:
- (1) Investigate and inspect the condition of dwellings, buildings, structures, and private property within the city to determine those structures and property uses in violation of this article. Entries onto private property shall be made in a manner so as to cause the least possible inconvenience; provided, however, the public officer shall not enter into any occupied dwelling or structure without first having obtained the consent of the owner or a person in possession. In those cases where consent to entry is denied after reasonable request, the public officer may apply to the municipal court for an administrative search warrant upon showing probable cause that a violation exists.
 - (2) To retain experts including certified real estate appraisers, qualified building contractors, and qualified building inspectors, engineers, surveyors, accountants, and attorneys.
 - (3) To appoint and fix the duties of such officers and employees of the city as he deems necessary to carry out the purposes of this article; and
 - (4) To delegate any of his functions and powers under this article to such officers, employees and agents as he may designate.
- (b) In addition to the procedures set forth in this article, the city manager or his designee(s) may issue citations for violations of state minimum standard codes, optional building, fire, life safety and other codes adopted by ordinance, and conditions declared to constitute a public health or safety hazard or general nuisance, and to seek enforcement of such citations before the municipal court prior to issuing a complaint in rem as provided in this article. 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 other summary proceedings.

Sec. 9-105. Complaint in rem in municipal court; procedure; lien; appeal.

- (a) Whenever a request is filed with the public officer by a public authority or by at least five residents of the municipality charging 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 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 may make an investigation or inspection of the specific dwelling, building, structure, or property and make a written report of his findings. Such officer shall be guided in his investigation by documenting conditions, which include but are not limited to:
- (1) Defects therein increasing the hazards of fire, accidents, or other calamities;
 - (2) Lack of adequate ventilation, light, or sanitary facilities;
 - (3) Dilapidation;
 - (4) Disrepair by failure to conform to applicable codes and ordinances;
 - (5) Structural defects which render the structure unsafe for human habitation or occupancy;
 - (6) Uncleanliness; or
 - (7) The presence of graffiti which is visible from adjoining public or private property.
- (b) If the public 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 an endangerment to the public health or safety as a result of unsanitary or unsafe conditions, the public officer shall file a complaint in rem in the municipal court of the city 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 interested parties 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 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. The summons shall notify the interested parties that a hearing will be held before the municipal court at a date and time certain and at a place within the county or municipality where the property is located. 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. 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 hearing.
- (c) 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 interested parties that have answered the complaint or appeared at the hearing 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 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 by closing the structure so that it cannot be used in connection with the commission of drug crimes; or
- (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 section, 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; and, provided further, that if the unsatisfactory condition is limited solely to the presence of graffiti, the dwelling, building or structure shall not be ordered demolished or closed, but its owner may be ordered to repair the same by cleaning or removal of the graffiti. Income and financial status of the owner shall not be a 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 O.C.G.A. title 43, chapter 39A, 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.

- (d) If the owner fails to comply with an order to repair or demolish the dwelling, building, or structure, the public officer shall cause such dwelling, building, or structure to be repaired, altered, or improved, or to be vacated and closed, or demolished within 270 days of 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 subsection (c) of this section or any equitable relief granted by a court of competent jurisdiction shall not be counted toward the 270 days in which such abatement action shall commence. 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

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

- (e) If the public officer has the 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. The public officer and governing authority 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.
- (f) 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.
- (g) The lien provided for in subsection (e) 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 Gwinnett County and shall relate back to the date of the filing of the lis pendens notice required under subsection (a). The clerk of superior court shall record and index such certified copy of the order in the deed records of the 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, within 90 days of the completion of repairs, demolition or closure, forward a copy of the order and a final statement of costs to the county tax commissioner.
- (h) 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 taxes, including specifically O.C.G.A. § 48-4-5; 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; provided, further, that 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. The tax commissioner may initiate enforcement of liens imposed under this section at any time following receipt of the final determination of costs from the public officer. 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.
- (i) The tax commissioner shall remit the amount collected to the governing authority of the municipality whose ordinance is being enforced. The tax commissioner may retain an amount equal to the cost of administering collection of the lien. Any such amount collected and retained for administration shall be deposited in the general fund of the county to pay the cost of administering the lien.

- (j) The governing authority 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 or the dwelling, building, or structure on the property and demonstrating the financial means to accomplish such rehabilitation.
- (k) 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. § 5-3-29.

Sec. 9-106. Service of complaints or orders upon owners and parties in interest.

- (a) Summons and copies of the complaint shall be served in the following manner:
 - (1) In all cases, a copy of the complaint and summons shall be conspicuously posted on the subject dwelling, building, structure, or property within three business days of filing of the complaint and at least 14 days prior to the date of the hearing.
 - (2) At least 14 days prior to the date of the hearing, the public officer shall mail copies of the complaint and summons by certified mail or statutory overnight delivery, return receipt requested, to all interested parties whose identities and addresses are readily ascertainable. Copies of the complaint and summons shall also be mailed by first-class mail to the property address to the attention of the occupants, if any;
 - (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 such county once a week for two consecutive weeks prior to the hearing; and
 - (4) A notice of lis pendens shall be filed in the office of the clerk of superior court in which the dwelling, building, structure, or property is located at the time of filing the complaint in municipal court.
- (b) The public officer shall cause an affidavit of service to be filed of record in the municipal court prior to the hearing showing compliance with the service requirements of this section. Such affidavit shall constitute a prima facie showing of minimum procedural due process and shall constitute sufficient proof that service was perfected.
- (c) Orders and other filings made subsequent to service of the initial complaint shall be served in the manner provided in this section on every 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.

Sec. 9-107. Limitation of liability for code enforcement; no special duty created.

It is the intent of this article to protect the public health, life safety and general welfare of properties and occupiers of buildings and structures within the city in general, but not to create any special duty or

relationship with any individual person or to any specified property within or without the boundaries of the city. Approval of a permit and inspection of a property shall in no manner guarantee or warrant to the owner or occupants thereof that said property has been constructed, maintained, or operated in conformance with applicable codes, laws and regulations. The city reserves the right to assert all available immunities and defenses in any action seeking to impose monetary damages upon the city, its officers, employees and agents arising out of any alleged failure or breach of duty or relationship as may now exist or hereafter be created. To the extent any federal or state law, regulation, or ordinance requires compliance as a condition precedent to the issuance of a permit, plan or design approval, inspection or other activity by the city, its officers, employees and agents, issuance of such permit, approval, or inspection shall not be deemed to constitute a waiver or estoppel of the condition precedent, and it shall remain the obligation and responsibility of the owner, his design professional(s), and contractor(s) to satisfy such legal requirements.

Sec. 9-108. General cleanliness of premises.

The owner and occupant of property within the city shall each be independently responsible for keeping the premises, including all buildings thereon and the full yard thereof, clean and free from all garbage, refuse, filth, dirt, ashes, trash, rubbish and other offensive materials.

Sec. 9-109. Disorderly house.

- (a) Any person who keeps and maintains, either by himself or others, a common, ill-governed and disorderly house, to the encouragement of gaming, drinking, illicit drug activity, or other misbehavior, to the common disturbance of the neighborhood or orderly citizens, shall be guilty of an offense against the city; provided, however, before any person is charged under this subsection, written notice shall be given the owner of the property and the person in possession thereof by the chief of police stating the general, customary and common habits of the house, giving fair notice of this subsection and the conduct proscribed thereby.
- (b) Any person who shall allow any boisterous, noisy, drunken or riotous persons to assemble or remain in their house, apartment or upon their property, after receiving oral notice from a police officer that boisterous, noisy, drunken or carousing activities have caused complaint and annoyance to the common disturbance of the neighborhood or orderly citizens, shall be guilty of an offense against the city; provided, however, no person shall be charged under this subsection unless the owner or person in possession of the premises has been afforded an opportunity to disburse the assembly or offending person from the premises. This subsection shall not preclude a police officer from arresting any individual for criminal trespass where such individual knowingly and without authority remains on private property after being notified by the owner or lawful occupant to depart.

Sec. 9-110. Violations; enforcement penalties.

Any person who willfully refuses to comply with the provisions of this article shall be cited to appear before the municipal court and, upon conviction, shall be fined not less than \$100.00; each day of continued violation, after citation, shall constitute a separate offense. In addition to the foregoing fines, upon conviction, the director shall discontinue the public water supply service at any premises upon which there is found to be a cross-connection, auxiliary intake, by-pass, or inter-connection, and service

shall not be restored until such cross-connection, auxiliary, by-pass, or inter-connection has been discontinued.

Sec. 9-111 - Reserved.

Article VIII. "City of Duluth Blighted Property Ordinance."

Sec. 9-112. Short Title.

This Article shall be known as the "City of Duluth Blighted Property Ordinance."

Sec. 9-113. Purpose.

The existence of real property which is maintained in a blighted condition increases the burden of the state and local government by increasing the need for government services, including but not limited to social services, public safety services, and code enforcement services. Rehabilitation of blighted property decreases this need for such government services.

In furtherance of its objective to eradicate conditions of slum and blight within the city, this board of commissioners, in exercise of the powers granted to municipal corporations at Chapter 61, Urban Redevelopment, of Title 36 of the Official Code of Georgia Annotated, has designated those areas of the city where conditions of slum and blight are found or are likely to spread.

In recognition of the need for enhanced governmental services and in order to encourage private property owners to maintain their real property and the buildings, structures and improvement thereon in good condition and repair, and as an incentive to encourage community redevelopment, a community redevelopment tax incentive program is hereby established as authorized by Article IX, Section II, Paragraph VII(d) of the 1983 Constitution of the State of Georgia.

Sec. 9-114. Definitions.

- (a) 'Blighted property', 'blighted', or 'blight' means any urbanized or developed property which:
- (1) Presents two or more of the following conditions:
 - (A) Uninhabitable, unsafe, or abandoned structure;
 - (B) Inadequate provisions for ventilation, light, air, or sanitation;
 - (C) An imminent harm to life or other property caused by fire, flood, hurricane, tornado, earthquake, storm, or other natural catastrophe respecting which the governor has declared a state of emergency under the state law or has certified the need for disaster assistance under federal law; provided, however, this division shall not apply to property unless the relevant public agency has given notice in writing to the property owner regarding specific harm caused by the property and the owner has failed to take reasonable measures to remedy the harm;

- (D) A site identified by the federal Environmental Protection Agency as a superfund site pursuant to 42 U.S.C. Section 9601, et seq., or having environmental contamination to an extent that requires remedial investigation or a feasibility study;
 - (E) Repeated illegal activity on the individual property of which the property owner knew or should have known; or
 - (F) The maintenance of the property is below state, county, or municipal codes for at least one year after written notice of the code violation to its owner; and
- (2) Is conducive to ill health, transmission of disease, infant mortality, or crime in the immediate proximity of the property.

Property shall not be deemed blighted solely because of esthetic conditions.

- (b) 'Building inspector' means a certified inspector possessing the requisite qualifications to determine minimal code compliance.
- (c) 'Community redevelopment' means any activity, project, or service necessary or incidental to achieving the redevelopment or revitalization of a redevelopment area or portion thereof designated for redevelopment through an urban redevelopment plan or thorough local ordinances relating to the repair, closing, and demolition of buildings and structures unfit for human habitation.
- (d) 'Governing authority' means the City Council of the City of Duluth, a Georgia municipal corporation.
- (e) 'Millage' or 'millage rate' means the levy, in mills, which is established by the governing authority for purposes of financing, in whole or in part, the levying jurisdiction's general fund expenses for the fiscal year.
- (f) 'Person' means such individual(s), partnership, corporations, business entities and associations which return real property for ad valorem taxation or who are chargeable by law for the taxes on the property.
- (g) 'Public officer' means the city manager or such officer or employee of the city as designated by the city manager to perform the duties and responsibilities hereafter set forth in this article.

Sec. 9-115. Ad Valorem Tax Increase on Blighted Property

- (a) There is hereby levied on all real property within the city which has been officially identified as maintained in a blighted condition an increased ad valorem tax by applying a factor of seven (7.0) to the millage rate applied to the property, so that such property shall be taxed at a higher millage rate generally applied in the municipality, or otherwise provided by general law; provided, however, real property on which there is situated a dwelling house which is being occupied as the primary residence of one or more persons shall not be subject to official identification as maintained in a blighted condition and shall not be subject to increased taxation.

- (b) Such increased ad valorem tax shall be applied and reflected in the first tax bill rendered following official designation of a real property as blighted.
- (c) Revenues arising from the increased rate of ad valorem taxation shall, upon receipt, be segregated by the city manager and used only for community redevelopment purposes, as identified in an approved urban redevelopment program, including defraying the cost of the city's program to close, repair, or demolish unfit building and structures.

Sec. 9-116. Identification of Blighted Property.

- (a) In order for a parcel of real property to be officially designated as maintained in a blighted condition and subject to increased taxation, the following steps must be completed:
 - (1) An inspection must be performed on the parcel of property. In order for an inspection to be performed,
 - (A) A request may be made by the public officer or by at least five residents of the city for inspection of a parcel of property, said inspection to be based on the criteria as delineated in ordinance, or
 - (B) The public officer may cause a survey of existing housing conditions to be performed, or may refer to any such survey conducted or finalized within the previous five years, to locate or identify any parcels which may be in a blighted condition and for which a full inspection should be conducted to determine if that parcel of property meets the criteria set out in this article for designation as being maintained in a blighted condition.
 - (2) A written inspection report of the findings for any parcel of property inspected pursuant to subsection (1) above shall be prepared and submitted to the public officer. Where feasible, photographs of the conditions found to exist on the property on the date of inspection shall be made and supplement the inspection report. Where compliance with minimum construction, housing, occupancy, fire and life safety codes in effect within the city are in question, the inspection shall be conducted by a certified inspector possessing the requisite qualifications to determine minimal code compliance.
 - (3) Following completion of the inspection report, the public officer shall make a determination, in writing, that a property is maintained in a blighted condition, as defined by this article, and is subject to increased taxation.
 - (4) The public officer shall cause a written notice of his determination that the real property at issue is being maintained in a blighted condition to be served upon the person(s) shown on the most recent tax digest of Gwinnett County as responsible for payment of ad valorem taxes assessed thereon; provided, however, where through the existence of reasonable diligence it becomes known to the public officer that real property has been sold or

conveyed since publication of the most recent tax digest, written notice shall be given to the person(s) known or reasonably believed to then own the property or be chargeable with the payment of ad valorem taxes thereon, at the best address available. Service in the manner set forth at O.C.G.A. § 41-2-12 shall constitute sufficient notice to the property's owner or person chargeable with the payment of ad valorem taxes for purpose of this section, except that posting of the notice on the property will not be required.

- (b) The written notice given to the person(s) chargeable with the payment of ad valorem taxes shall notify such person of the public officer's determination the real property is being maintained in a blighted condition and shall advise such person of the hours and location at which the person may inspect and copy the public officer's determination and any supporting documentation. Persons notified that real property of which the person(s) is chargeable with the payment of ad valorem taxes shall have 30 days from the receipt of notice in which to request a hearing before the city's municipal court. Written request for hearing shall be filed with the public officer and shall be date stamped upon receipt. Upon receipt of a request for hearing, the public officer shall notify the municipal court and the building inspector or person who performed the inspection and prepared the inspection report.
- (c) Within 30 days of the receipt of a request for hearing, the municipal court clerk shall set a date, time and location for the hearing and shall give at least ten business days notice to the person(s) requesting the hearing, the public officer and the building inspector or person who performed the inspection and prepared the inspection report. Notice of scheduled hearings shall be published as a legal advertisement in the Gwinnett Daily Post, or other designated legal organ in Gwinnett County, at least five days prior to the hearing. Hearings may be continued by the municipal court judge upon request of any party, for good cause.
- (d) At the hearing, the public officer shall have the burden of demonstrating by a preponderance of the evidence that the subject property is maintained in a blighted condition, as defined by this article. The municipal court judge shall cause a record of the evidence submitted at the hearing to be maintained. Upon hearing from the public officer and/or their witnesses and the person(s) requesting the hearing and/or their witnesses, the judge of municipal court shall make a determination either affirming or reversing the determination of the public officer. The determination shall be in writing and copies thereof shall be served on the parties by certified mail or statutory overnight delivery. The determination by the court shall be deemed final. A copy of such determination shall also be served upon the Tax Commissioner of Gwinnett County, who shall include the increased tax on the next regular tax bill rendered on behalf of the city.
- (e) Persons aggrieved by the determination of the court affirming the determination of the public officer may petition the Superior Court of Gwinnett County for a writ of certiorari within 30 days of issuance of the court's written determination.

Sec. 9-117. Remediation or Redevelopment.

- (a) A property owner or person(s) who is chargeable with the payment of ad valorem taxes on real property which has been officially designated pursuant to this article as property maintained in a

blighted condition may petition the public officer to lift the designation, upon proof of compliance with the following:

- (1) Completion of work required under a plan of remedial action or redevelopment approved by the city's planning and development director which addresses the conditions of blight found to exist on or within the property, including compliance with all applicable minimum codes; or
 - (2) Completion of work required under a court order entered in a proceeding brought pursuant to Article VI Section 5-205, Unfit Buildings and Structures, of Chapter 5 of the Municipal Code of Duluth, Georgia.
- (b) Before action on a petition to lift the designation, the public officer shall cause the property to be thoroughly inspected by a building inspector who, by written inspection report, shall certify that all requisite work has been performed to applicable code in a workmanlike manner, in accordance with the specifications of the plan of remedial action or redevelopment, or applicable court order. Upon finding required work to be satisfactorily performed, the public officer shall issue a written determination that the real property is no longer maintained in a blighted condition. Copies of this determination shall be served upon the person(s) chargeable with the payment of ad valorem taxes, and upon the Tax Commissioner of Gwinnett County.
- (c) All plans for remedial action or redevelopment shall be in writing, signed by the person(s) chargeable with the payment of ad valorem taxes on the real property and the director of the city's planning and development department, and contain the following:
- (1) The plan shall be consistent with the city's comprehensive plan and all laws and ordinances governing the subject property, and shall conform to any urban redevelopment plan adopted for the area within which the property lies;
 - (2) The plan shall set forth in reasonable detail the requirements for repair, closure, demolition, or restoration of existing structures, in accordance with minimal statewide codes; where structures are demolished, the plan shall include provisions for debris removal, stabilization and landscaping of the property;
 - (3) On parcels of five acres or greater, the plan shall address the relationship to local objectives respecting land uses, improved traffic, public transportation, public utilities, recreational and community facilities, and other public improvements;
 - (4) The plan shall contain verifiable funding sources which will be used to complete its requirements and show the feasibility thereof;
 - (5) The plan shall contain a timetable for completion of required work; and

- (6) Any outstanding ad valorem taxes (state, school, county and city, including the increased tax pursuant to this article) and governmental liens due and payable on the property must be satisfied in full.

Sec. 9-118. Decrease of Tax Rate.

- (a) Real property which has had its designation as maintained in a blighted condition removed by the public officer, as provided in Section 9-116, Identification of Blighted Property, of this Article, shall be eligible for a decrease in the rate of city ad valorem taxation by applying a factor of 0.5 to the city millage rate applied to the property, so that such property shall be taxed at a lower millage rate than the millage rate generally applied in the municipality or otherwise provided by general law; such decreased rate of taxation shall be applied beginning with the next tax bill rendered following removal of official designation of a real property as blighted. The decreased rate of taxation may be given in successive years, depending on the amount of cost expended by the person(s) chargeable with payment of ad valorem taxes on the property to satisfy its remediation or redevelopment, with every \$25,000.00 or portion thereof equaling one year of tax reduction; provided, however, that no property shall be entitled to reduction in city ad valorem taxes for more than four successive years.
- (b) In order to claim entitlement for a decreased rate of taxation, the person(s) chargeable with payment of ad valorem taxes on the property shall submit a notarized affidavit to the public officer, supported by receipts or other evidence of payment, of the amount expended.

Sec. 9-119. Notice to Tax Commissioner.

It shall be the duty of the public officer to notify the Tax Commissioner of Gwinnett County in writing as to designation or removal of designation of a specific property as maintained in a blighted condition. Such notice shall identify the specific property by street address and tax map, block and parcel number, as assigned by the Gwinnett County Tax Assessor's Office. The public officer shall cooperate with the tax commissioner to assure accurate tax billing of those properties subject to increased or reduced ad valorem taxation under this article.