

First Read: 8/27/2012

Second Read: 9/24/2012

**AN ORDINANCE OF THE MOUNTAIN PARK CITY COUNCIL TO  
AMEND ARTICLE IV OF CHAPTER 101 OF THE MOUNTAIN PARK CITY  
CODE, PERTAINING TO THE REGULATION OF UNFIT DWELLINGS  
AND STRUCTURES, AND FOR OTHER PURPOSES**  
#317-12

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WHEREAS, the City of Mountain Park, Georgia, currently has an Unfit Dwellings and Structures ordinance codified at Article IV of Chapter 101 of the City Code; and

WHEREAS, since the adoption of said ordinance, the State of Georgia has adopted legislation providing for the adoption of ordinances regulating unfit dwellings and structures and providing a different procedure for the enforcement of such regulations than that currently provided by the City's code; and

WHEREAS, the Mayor and City Council find that such procedures provided by State law are desirable and in the best interest of the citizens of Mountain Park, Georgia; and

WHEREAS, the Mayor and City Council find that there exists in the City dwellings, buildings, or structures which are unfit for human habitation or for commercial, industrial, or business uses due to dilapidation and not being in compliance with applicable codes; which have defects increasing the hazards of fire, accidents, or other calamities; which lack adequate ventilation, light, or sanitary facilities; or where other conditions exist rendering such dwellings, buildings, or structures unsafe or unsanitary, dangerous or detrimental to the health, safety, or welfare, or otherwise inimical to the welfare of the residents of the City, or vacant, dilapidated dwellings, buildings, or structures in which drug crimes are being committed;

THEREFORE, the Mayor and City Council hereby ordain as follows:

SECTION ONE

Article IV of Chapter 101 of the City Code is hereby amended and restated as follows:

ARTICLE IV. - UNFIT DWELLINGS AND STRUCTURES

Sec. 101-111. - Definitions.

Sec. 101-112. - Code compliance officer; powers.

Sec. 101-113. - Standards for determining unfit buildings and structures.

Sec. 101-114. - Complaint and inspection; in rem procedure.

Sec. 101-115. - Service of complaints and orders.

Sec. 101-116. - Lien established; collection of amount due on lien.

Sec. 101-117. - Duty to maintain property; violations and enforcement.

Sec. 101-111. - Definitions.

As used in this article, the following words, terms and definitions shall apply:

“Applicable codes” means: (a) any optional housing or abatement standard provided in Chapter 2 of Title 8 of the Official Code of Georgia 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, including the Mountain Park Building Code Ordinance; (b) any fire or life safety code as provided for in Chapter 2 of Title 25 of the Official Code of Georgia, including all state minimum standard codes; and (c) any building codes adopted by local ordinance prior to October 1, 1991, provided that such building or minimum standard codes for real property improvements shall be deemed to mean those buildings or standard codes in existence at the time such real property improvements were constructed unless otherwise provided by law.

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

“Code compliance officer” means the officer or officers who are appointed by the governing authority and authorized to exercise the powers prescribed by this article relating to the inspection for violations of the article's provisions and the issuance of complaints upon determining that a violation has occurred, including the building official and including also the City code enforcement officer.

“Drug crime” means an act which is a violation of Article 2 of Chapter 13 of Title 16 of the Official Code of Georgia, known as the “Georgia Controlled Substances Act.”

“Dwelling, building, structure, or property” means any building, structure or property, or part thereof, used and occupied for human habitation or commercial, industrial, or business uses, or intended to be so used, and includes any outhouses and appurtenances belonging thereto or usually enjoyed therewith and also includes any building or structure of any design. The term “dwelling, building, structure, or property” 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.

“Governing authority” means the mayor and city council of the City of Mountain Park, Georgia.

“Interested parties” means:

- (1) Owner;

- (2) Those parties having an interest in the property as revealed by a certification of title to the property conducted in accordance with the title standards of the State Bar of Georgia;

- (3) Those parties having filed a notice in accordance with O.C.G.A. § 48-3-9;
- (4) Any other party having an interest in the property whose identity and address are reasonably ascertainable from the records of the petitioner or records maintained in the county courthouse or by the clerk of the court. Interested parties shall not include the holder of the benefit or burden of any easement or right-of-way whose interest is properly recorded which interest shall remain unaffected; and
- (5) Persons in possession of said property and premises.

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

“Person” means any natural person, corporation, partnership (general or limited), limited liability company, estate, trust or other entity or artificial person, or combination thereof.

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

“Repair” means altering or improving a dwelling, building, or structure so as to bring the structure into compliance with the applicable codes 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, structure or property.

“Resident” means any person residing in the City of Mountain Park on or after the date on which the alleged nuisance arose.

#### Sec. 101-112. - Code compliance officer; powers.

- (A) The code compliance officer shall assume all of the duties and exercise such powers as may be necessary or convenient to carry out and effectuate the abatement of nuisances, as set forth in this article, pursuant to the provisions of O.C.G.A. §§ 41-2-7 – 41-2-17, as amended. The powers which may be exercised by the code compliance officer, as the code compliance officer is contemplated by this article, in carrying out and effectuating the purpose and provisions of this article, pursuant to such statutes, include, without limitation, the following powers in addition to others granted in this chapter:
  - (1) To investigate the dwelling conditions in the city in order to determine which dwellings, buildings, or structures therein are unfit for human habitation or are vacant, dilapidated, and being used in connection with the commission of drug crimes;

- (2) To administer oaths and affirmations, to examine witnesses, and to receive evidence;
  - (3) To enter upon premises for the purpose of making examinations; provided, however, that such entry shall be made in such manner as to cause the least possible inconvenience to the persons in possession;
  - (4) To appoint and fix the duties of such officers, agents, and employees as he deems necessary to carry out the purposes of the ordinances;
  - (5) To delegate any of his functions and powers under the ordinance to such officers and agents as he may designate; and
  - (6) To issue citations and complaints for violations of the provisions of this article. The code compliance officer shall also be authorized to request the city attorney or other designated attorney prepare and file complaints under the provisions of this article.
- (B) It is the intent of this article to protect the public health, life, safety and general welfare of the 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. Neither approval of a permit nor inspection of a property shall 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.

Sec. 101-113. - Standards for determining unfit buildings and structures.

- A. Any building or structure that has any of the following conditions (as listed below under subsection B.), such that the life, health, property, or safety of its occupants or the general public are endangered, is hereby declared illegal and unfit for human habitation or use (as applicable) and shall be abated by repair or demolition. The complaint and inspection of an unfit building or structure shall be as set forth in section 101-114 of this article.
- B. The code compliance officer is authorized to determine that a dwelling, building, structure or property is unfit for human habitation or use if he finds that conditions exist in such building, dwelling, or structure which are dangerous or injurious to the health, safety, or morals of the occupants of such dwelling, building or structure; the occupants of neighborhood dwellings, buildings, or structures; or of other residents of the City of Mountain Park. Examples of such conditions include, but are not limited to, the following conditions of any building or structure:
- (1) Defects increasing the hazards of fire, accidents, or other calamities;
  - (2) Lack of adequate ventilation, light, or sanitary facilities;

- (3) Dilapidation;
- (4) Disrepair;
- (5) Structural defects;
- (6) Severe uncleanliness, rodent infestation;
- (7) Damage by fire, flood, wind or other cause to the extent that the structural integrity of the building or structure is less than it was prior to damage and is less than the minimum requirement established by the applicable state minimum standard codes for similar new buildings;
- (8) Construction or maintenance in violation of a specific requirement of the state minimum standard codes, of any other applicable building code or ordinance, or of any other applicable state law;
- (9) Decay, deterioration or dilapidation such that full or partial collapse is likely;
- (10) The stress in any material, member or portion thereof, due to all imposed loads, including dead load, which exceeds the stresses allowed by the applicable state standard minimum code for similar new buildings;
- (11) The means of egress are not of adequate size or are not arranged to provide a safe path of travel in case of fire or panic; or the fire doors, closing devices and similar features are in disrepair or in a dilapidated or non-working condition to render the building or structure unsafe in case of fire or panic;
- (12) Exterior siding that is inadequate and unsecured, or is not weather, water, and windproof, such that the building would not pass existing state minimum standard codes for similar new buildings;
- (13) Conditions such that the structure or portion thereof, for whatever reason, is manifestly unsafe or unsanitary for the purpose for which it is being used;
- (14) The dwelling, building or structure is vacant, dilapidated and being used in connection with the commission of drug crimes upon personal observation of the code compliance personnel or report of a law enforcement agency and evidence of drug crimes being committed; and
- (15) Any other condition constituting a public nuisance, including, for example, maintaining stagnant or fetid water on the premises; an accumulation of trash, junk, filth, or other unsanitary and unsafe conditions; the generation of smoke or fumes in sufficient amounts to cause odor or annoyance to the inhabitants of Mountain Park; and/or maintaining a dangerous or diseased animal or fowl or

maintaining such a number of animals in such foul and unsanitary conditions as to constitute a public nuisance.

Sec. 101-114 - Complaint and inspection; in rem procedure.

- A. Whenever a request is filed with the code compliance officer by a public authority, or by at least five residents of the city, that any dwelling, building, structure, or property: 1) is unfit for human habitation or for commercial, industrial, or business use and not in compliance with applicable codes; 2) is vacant and being used in connection with the commission of drug crimes; 3) constitutes an endangerment to the public health or safety as a result of unsanitary or unsafe conditions; 4) has an accumulation of weeds, trash, junk, filth, and other unsanitary or unsafe conditions constituting a public health hazard or a general nuisance to those persons residing in the vicinity; 5) constitutes a public nuisance; or 6) has one or more of the conditions defined in section 101-113 above, the code compliance officer shall make an investigation or inspection of the specific dwelling, building, structure, or property. The code compliance officer may also inspect properties on his own information or determination regarding potential violations of this or other city ordinances.
- B. The code compliance officer may, if his preliminary investigation discloses a basis for such charges, issue a complaint in rem against the lot, tract, or parcel of real property on which such dwelling, building, or structure is situated or where such public health hazard or general nuisance exists. The complaint may be filed and prosecuted by the city attorney or city solicitor. The complaint may be filed in the municipal court, pursuant to that court's jurisdiction under O.C.G.A. § 41-2-5, or in the superior court of the county in which the property where the violation is alleged to exist lies. A summons and the complaint shall be served on all interested parties in such dwelling, building, or structure.
- C. The complaint shall:
  - (1) Identify the subject real property by appropriate street address and official tax map reference;
  - (2) Identify the interested parties;
  - (3) State with particularity the factual basis for the action; and
  - (4) Contain a statement of the action sought by the code compliance officer to abate the alleged nuisance, as well as other relief sought.
- D. The summons shall notify the interested parties that a hearing will be held before a court of competent jurisdiction at a date and time certain and at a place as specified, depending on whether the complaint is filed in municipal court or superior court. 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 the hearing.

- E. 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 use and not in compliance with applicable codes; is vacant and being used in connection with the commission of drug crimes; constitutes an endangerment to the public health or safety as a result of unsanitary or unsafe conditions; or otherwise constitutes a public nuisance, then the court shall state in writing its 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 stating:
- (1) If the repair, alteration, or improvement of the said dwelling, building, structure, or property can be made at a reasonable cost in relation to the present value of the dwelling, building, structure, or property, requiring the owner, within the time specified in the order, to repair, alter, or improve such dwelling, building, structure, or property so as to bring it into full compliance with the applicable codes relevant to the cited violation and, if applicable, to secure the structure so that it cannot be used in connection with the commission of drug crimes; or
  - (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 provision, the court shall make its determination of “reasonable cost in relation to the present value of the dwelling, building, or structure” without consideration of the value of the land on which the structure is situated; provided, however, that costs of the preparation necessary to repair, alter, or improve a structure may be considered. Income and financial status of the owner shall not be 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, 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.

In any action brought to enforce the provisions of this article, the City shall be entitled to its reasonable attorney's fees and other litigation costs, such to be a lien against the property, unless the court determines that the failure to comply with this article was substantially justified based on the record as a whole.

- F. If the owner fails to comply with an order to repair or demolish the dwelling, building, or structure, the code compliance officer may cause such dwelling, building, or structure to be repaired, altered, or improved or to be vacated and closed, or demolished. Such



abatement action shall commence within 270 days after the expiration of time specified in the order for abatement by the owner. Any time during which such action is prohibited by a court order issued pursuant to O.C.G.A. § 41-2-13 or any other equitable relief granted by a court of competent jurisdiction shall not be counted toward the 270 days in which such abatement action must commence. The code compliance officer shall cause to be posted on the main entrance of any 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, 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.”

- G. If the code compliance officer has the structure demolished, reasonable efforts 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 sale of such salvaged materials may be made without the necessity of public advertisement and bid. The code compliance officer and the 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.
- H. Where the abatement action is commenced in municipal court, review of a court order requiring the repair, alteration, improvement, or demolition of a dwelling, building, or structure shall be by direct appeal to the superior court under O.C.G.A. § 5-3-29.
- I. In addition to the procedures and remedies outlined above, the code compliance officer may issue citations for violations of state minimum standard codes, optional building, fire, and life safety codes adopted by or applicable in the City, and conditions creating a public health hazard or general nuisance, and may enforce such citations in a court of competent jurisdiction prior to issuing a complaint in rem as provided in this article.

#### Sec. 101-115. - Service of complaints and orders.

- A. Complaints initiated under this article shall be served in the following manner:
  - (1) At least 14 days prior to the date of the hearing, the code compliance officer or attorney filing the complaint shall mail copies of the complaint by certified mail or statutory overnight delivery, return receipt requested, to all interested parties whose identities and addresses are reasonably ascertainable;
  - (2) Copies of the complaint shall also be mailed by first-class mail to the property address to the attention of the occupants of the property, if any; and

- (3) A copy of the complaint shall be posted on the property within three business days of filing the complaint and at least 14 days prior to the date of the hearing.
- B. 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.
- C. A notice of lis pendens shall be filed in the office of the clerk of superior court in the county in which the dwelling, building, or structure is located at the time of filing the complaint in the appropriate court. Such notice shall have the same force and effect as other lis pendens notices provided by law.
- D. Orders and other filings made subsequent to service of the initial complaint shall be served in the manner provided in this article on any interested party who answers the complaint or appears at the hearing. Any interested party who fails to answer or appear at the hearing shall be deemed to have waived all further notice in the proceedings.

Sec. 101-116. - Lien established; collection of amount due on lien.

- A. The amount of the cost of demolition, including all court costs, attorney's fees and expenses awarded by the court, appraisal fees, administrative costs incurred by the county 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.
- B. The lien provided for in this section 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 the county where the real property is located and shall relate back to the date of the filing of the lis pendens notice required under subsection 101-115C. of this article. 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.
- C. Upon final determination of costs, fees, and expenses incurred in accordance with this article, the code compliance officer shall transmit to the tax commissioner of the county in which the property lies a statement of the total amount due and secured by said lien, together with copies of all notices provided to interested parties. The statement of the public officer shall be transmitted within 90 days of completion of the repairs, demolition, or closure. It shall be the duty of the county tax commissioner or other official who is responsible, or whose duties include the collection of taxes, to collect the amount of the lien using all methods available for collecting real property ad valorem taxes, including specifically Chapter 4 of Title 48 of the Official Code of Georgia;

provided, however, that the limitation of O.C.G.A. § 48-4-78 which requires 12 months of delinquency before commencing a tax foreclosure shall not apply. The county tax commissioner shall collect and enforce liens imposed pursuant to this chapter in accordance with O.C.G.A. §§ 48-5-359.1 and 41-2-9(b). The county tax commissioner shall remit the amount collected to the governing authority of Mountain Park.

- D. Enforcement of liens pursuant to this article may be initiated at any time following receipt by the county tax commissioner of the final determination of costs in accordance with this chapter. The unpaid lien amount shall bear interest and penalties from and after the date of final determination of costs in the same amount as applicable to interest and penalties on unpaid real property ad valorem taxes. An enforcement proceeding pursuant to O.C.G.A. § 48-4-78 for delinquent ad valorem taxes may include all amounts due under this chapter.
- E. The redemption amount in any enforcement proceeding pursuant to this article shall be the full amount of the costs as finally determined in accordance with this article together with interest, penalties, and costs incurred by the governing authority or county tax commissioner in the enforcement of such lien. Redemption of property from the lien may be made in accordance with the provisions of O.C.G.A. §§ 48-4-80 and 48-4-81.
- F. The governing authority may waive and release such lien imposed on property upon the owner of such property entering into a contract with the City of Mountain Park 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.

Sec. 101-117. - Duty to maintain property; violations and enforcement.

It shall be the duty of every owner of real property within the City to maintain such property free of the conditions listed in subsection B of Sec. 101-113. In addition to any other remedy provided by law or by this ordinance, any owner of real property willfully failing to maintain it free of such conditions may be cited and prosecuted for violating this ordinance, and upon conviction, shall be punished by fine not to exceed \$1,000. Each day that the violation continues after a citation is issued shall be considered a separate offense.

SECTION TWO

- A. EFFECTIVE DATE. The public welfare requiring, this ordinance shall be effective immediately on adoption. Any violation of Article IV of Chapter 101 as it existed immediately preceding the adoption of this ordinance that exists on the date of the adoption of this ordinance may be prosecuted or otherwise addressed pursuant to the procedure provided by this ordinance as amended.
- B. SEVERABILITY. If any section, paragraph, clause, phrase, or provision of this ordinance shall be adjudged invalid or held unconstitutional, such invalid language shall

be severed and shall not affect the remaining portions of this ordinance, which will be enforceable to the greatest extent allowed by law.

- C. REPEALER. Any ordinance in conflict with this ordinance is hereby repealed, provided that the adoption of this ordinance shall not prevent or affect the validity of the City's prosecution of ordinance violations occurring prior to the adoption of this ordinance.

SO ORDAINED this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

City of Mountain Park, Georgia

\_\_\_\_\_  
Jim Still, Mayor

ATTEST:

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Karen Segars, City Administrator