

City of Sugar Hill
Planning Staff Report
Nuisances

DATE: March 3, 2023
TO: Mayor and City Council
FROM: Planning Director
SUBJECT: Nuisance Ordinance Amendment

ISSUE State law authorizes the city to adopt certain provisions related to the enforcement and mitigation of nuisances and repair or demolition of unsafe and unfit buildings. Code enforcement staff have worked with the city attorney to draft an amendment to the city code to include the required provisions of the state code.

DISCUSSION

- State law authorizes the city to declare buildings and structures unfit for human habitation and includes minimum requirements for city ordinances to exercise the authority.
- The proposed amendment includes all the necessary provisions to administer the nuisance code related to unsafe and unfit buildings including the ability provide for abatement and procedures to file liens on properties.

NUISANCES

AN ORDINANCE TO ADOPT NUISANCES PROCEDURES RELATING, BUT NOT LIMITED TO, REPAIR OR DEMOLITION OF UNSAFE AND UNFIT BUILDINGS, AND FOR OTHER PURPOSES

WHEREAS, The Mayor and Council of the City of Sugar Hill is committed to protecting the health, safety, and welfare of its residents; and,

WHEREAS, The Mayor and Council seeks to adopt and enact an ordinance for the abatement of nuisances, including to not limited to unsafe or unfit buildings and structures that present a danger to the general public; and,

WHEREAS, The Official Code of Georgia Annotated (O.C.G.A.) Section 41-2-7 provides the city with the authorization to adopt ordinances relating to dwelling, buildings, or structures located within the city limits of Sugar Hill; these ordinances shall provide the City with the power to close, repair, or demolish buildings or structures which are unfit for human habitation or for commercial and industrial, or business occupancy or use and not in compliance with the applicable state minimum standard codes adopted by the city; and

NOW, THEREFORE, BE IT ORDAINED by the Mayor and Council The Code of the City of Sugar Hill, Georgia, is hereby amended by deleting Chapter 50 – Nuisances in its entirety and replacing it with following text:

Chapter 50 - NUISANCES

ARTICLE 1. – IN GENERAL

Sec. 50-1. Nuisances declared.

The following conditions may be declared to be nuisances:

- (1) Stagnant water on premises;
- (2) Any dead or decaying matter, weeds or vegetation over 12 inches in height, any fruit, vegetable, animal or rodent, upon premises which is odorous or capable of causing disease or annoyance to the inhabitants of the city;
- (3) The generation of smoke or fumes in sufficient amount to cause odor or annoyance to the inhabitants of the city;
- (4) The pollution of public water;
- (5) Maintaining a dangerous or diseased animal or fowl;
- (6) Obstruction of a public street, highway or sidewalk without a permit;
- ~~(7) Loud or unusual noises which are detrimental or annoying to the public, including without limitation, unusual loud disturbances in or around churches or multiple family complexes such as loud music and other activities in swimming pool and clubhouse area;~~
- (8) All walls, trees and buildings that may endanger persons or property;

- (9) Any business or building where illegal activities are habitually and commonly conducted in such a manner as to reasonably suggest that the owner or operator of the business or building was aware of the illegal activities and failed to reasonably attempt to prevent those activities;
- (10) Unused iceboxes, refrigerators and the like unless the doors, latches or locks thereof are removed;
- (11) Any trees, shrubbery or other plants or parts thereof, which obstruct clear, safe vision on roadways and intersections of the city; and
- (12) The outdoor storage of inoperative vehicles, machinery, equipment, used building materials, trash, solid waste, appliances and similar items and materials in any location other than a lawfully approved junk yard, landfill or other commercial enterprises requiring the short-term storage of items being repaired; and
- (13) Any other condition constituting a nuisance under state law.

Sec. 50-2. Complaint of nuisance; hearing.

Any official or inhabitant of the city may direct a complaint of nuisance to the city marshal, city building inspector, or city manager, who shall investigate or cause the complaint to be investigated and may place the complaint on the municipal court docket for a hearing upon the basis of the investigation. The court, after a summons to the party involved, shall hold a hearing thereon and, upon finding that a nuisance does exist, shall issue an order to the owner, agent in control, or tenant in possession, stating that a nuisance has been found to exist and that the nuisance must be abated within so many hours or days as the judge shall deem reasonable, having consideration for the nature of the nuisance and its effect on the public.

Sec. 50-3. Abatement by city.

- (a) In any case where the owner, agent or tenant fails to abate the nuisance in the time specified, or where the owner, agent or tenant cannot be served with notice, or where the nature of the nuisance is such, in the opinion of the judge, that it must be immediately abated, the judge may issue an order to the city manager directing the nuisance to be abated. The city manager, in such case, shall keep record of the expenses and cost of abating same, and the costs shall be billed against the owner, agent or tenant for collection as city revenues.
- (b) Other city employees shall assist the city manager as directed or as necessary in abating nuisances hereunder.

Sec. 50-4. Nuisance per se, exception; summary abatement.

Nothing contained in this chapter shall prevent the mayor from summarily and without notice ordering the abatement of or abating any nuisance that is a nuisance per se in the law or where the case is an urgent one and the health and safety of the public or a portion thereof is in imminent danger.

Sec. 50-5. Offense; penalty.

- (a) It is hereby declared to be an offense for any owner, agent or tenant to maintain or allow a nuisance to exist. Each day a nuisance is continued shall constitute a separate offense.
- (b) Persons convicted of maintaining a nuisance shall be subject to a fine of not less than \$25.00 and not more than ~~\$51,000.00~~.

Reserved Sec. 50-6--50-10.

ARTICLE II. – UNFIT BUILDINGS

Sec. 50-11. Definitions

The following words, terms, and phrases when used in article, shall have the meanings described to them in this section, except when the context clearly indicates a different meaning:

- (1) “Applicable codes” means (A) any optional housing or abatement standard provided in Chapter 2 of Title 8 of the Official Code of Georgia Annotated (“O.C.G.A.”) 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; (B) any fire or life safety code as provided for in Chapter 2 of Title 25 of O.C.G.A.; and (C) the minimum standard codes provided in Chapter 2 of Title 8 of O.C.G.A., 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.
- (2) “Closing” means causing a dwelling, building, or structure to be vacated and secured against unauthorized entry.
- (3) “Drug crime” means an act which is a violation of Article 2 of Chapter 13 of Title 16 of O.C.G.A., known as the “Georgia Controlled Substances Act.”
- (4) “Dwellings, buildings, or structures” means any building or structure, or part thereof used and occupied for human habitation or commercial, industrial, or business uses, or intended to be so used, and includes any outhouses, improvements, and appurtenances belonging thereto or usually enjoyed therewith and also includes any building or structure of any design. As used in O.C.G.A. Section 41-2-7, O.C.G.A. Sections 41-2-9 through 41-2-17, 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.

(5) “Governing authority” means the council or other legislative body charged with governing a municipality.

(6) “Interested parties” means:

(A) Owner;

(B) 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;

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

(D) 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

(E) Persons in possession of said property and premises.

(7) “Municipality” means any incorporated city within this state.

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

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

(10) “Public officer” means the officer or officers who are authorized by O.C.G.A. Section 41-2-7, O.C.G.A. Sections 41-2-9 through 41-2-17 and the city marshal, city building inspector, director of planning and development, or city manager.

(11) “Repair” means altering or improving a dwelling, building, or structure so as to bring the structure into compliance with the applicable codes in the jurisdiction where the property is located and the cleaning or removal of debris, trash, and other materials present and accumulated which create a health or safety hazard in or about any dwelling, building, or structure.

(12) “Resident” means any person residing in the jurisdiction where the property is located on or after the date on which the alleged nuisance arose.

Sec. 50 – 12. Findings

- (a) It is found and declared that in the City of Sugar Hill there is the existence or occupancy of dwellings or other buildings or structures which are unfit for human habitation or for commercial, industrial, or business occupancy or use and not in compliance with the applicable state minimum standard codes as adopted by ordinance or operation of law or any optional building, fire, life safety, or other codes relative to the safe use of real property and real property improvements adopted by ordinance in the jurisdiction where the property is located; or general nuisance law and which constitute a hazard to the health, safety, and welfare of the people of this state; and that a public necessity exists for the repair, closing, or demolition of such dwellings, buildings, or structures.
- (b) It is further found and declared that in the city where there is in existence a condition or use of real estate which renders adjacent real estate unsafe or inimical to safe human habitation, such use is dangerous and injurious to the health, safety, and welfare of the people of this state and a public necessity exists for the repair of such condition or the cessation of such use which renders the adjacent real estate unsafe or inimical to safe human habitation.
- (c) It is further found and declared that in the city there exists dwellings, buildings, or structures which are unfit for human habitation or for commercial, industrial, or business uses due to dilapidation and not in compliance with applicable codes; which have defects increasing the hazards of fire, accidents, or other calamities; which lack adequate ventilation, light, or sanitary facilities; or where other conditions exist rendering such dwellings, buildings, or structures unsafe or unsanitary, or dangerous or detrimental to the health, safety, or welfare, or otherwise inimical to the welfare of the residents of the city, or vacant, dilapidated dwellings, buildings, or structures in which drug crimes are being committed, and private property exists constituting an endangerment to the public health or safety as a result of unsanitary or unsafe conditions to those persons residing or working in the vicinity of the property.
- (d) It is the intention of the Mayor and City Council of the City of Sugar Hill to exercise its police power to repair, close, or demolish the aforesaid dwellings, buildings, or structures in the manner provided in State Law and this Article.

Sec. 50 – 13. Continue use of other laws and ordinances

It is the intent of the council that nothing in this article shall be construed to abrogate or impair the powers of the courts or of any department of the city to enforce any provisions of any local enabling act, charter, ordinance or regulation, nor to prevent or publish violations thereof, and

the powers conferred by this article shall be in addition to and supplemental to the powers conferred by any other law or ordinance, legislation, or regulation.

Sec. 50 – 14. Duties of owners; appointment of public officer; procedures for determining premises to be unsafe or unhealthy.

- (a) It is the duty of the owner of every dwelling building, structure, or property within the jurisdiction to construct and maintain such dwelling, building, structure or property in conformance with applicable codes in force within the city, or such ordinances which regulate and prohibit activities on property, and which declare it to be a public nuisance to construct or maintain any dwelling, building, structure, or property in violation of such codes or ordinances.
- (b) The city marshal, city building inspector, director of the department of planning and development, or the city manager, and their designees as public officers are authorized to exercise the powers prescribed by this article.
- (c) Whenever a request is filed with the public officer by a public authority or by at least five residents of the city charging that any dwelling, building, or structure is unfit for human habitation or 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 a result of unsanitary or unsafe conditions, the public officer shall make an investigation or inspection of the specific dwelling, building, structure, or property. If the officer's investigation or inspection identifies that any dwelling, building, structure, or property is unfit for human habitation or for commercial, industrial, or business use and not in compliance with applicable codes; is vacant and being use 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 may issue a complaint in rem against the lot, tract, or parcel of real property on which such dwelling, building, or structure is situated or where such public health hazard or general nuisance exists and shall cause summons and a copy of the complaint to be served on the owner and interested parties in such dwelling, building, or structure. The complaint shall identify the subject real property by appropriate street address and 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 owner and interested parties that a hearing will be held before the Municipal Court at a date and time certain and at a place within the city where the property is located. Such hearing

shall be held **not less than 15 days or more than 45 days** after the filing of such complaint in court. The owner and 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;

- (d) 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 to 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 serve upon the owner and any interested parties that have answered the complaint or appeared at the hearing, an order:
- (1) If the repair, alteration, or improvement of 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 prescribed in the order, to repair, alter, or improve such dwelling, building, or structure so as to bring it into full compliance with the applicable codes relevant to the cited violation, and if applicable, to secure the structure so that it cannot be used in connection with the commission of drug crimes;
 - (2) If the repair, alteration, or improvement of 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.
 - (3) For purposes of this article, the court shall make its determination of reasonable cost in relation to the present value of the dwelling, building, or structure without consideration of the value of the land on which the structure is situated; provided, however, that costs of the preparation necessary to repair, alter, or improve a structure may be considered. Income and financial status of the owner shall not be a factor in the court's determination. The present value of the structure and the costs of repair, alteration and improvement may be established by affidavits of real estate appraisers with a state appraiser classification as provided in O.C.G.A. Title 43, Ch 39A (O.C.G.A. § 43-39a-1 et seq.), qualified building contractors, or qualified building inspectors without actual testimony presented; or

- (4) Cost 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.
- (e) If the owner fails to comply with an order to repair or demolish the dwelling, building, or structure, the public officer may cause such dwelling, building, or structure to be repaired, altered, improved, to be vacated and closed, or demolished. 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 Code Section 41-2-13 or any other equitable relief granted by a court of competent jurisdiction shall not be counted toward the 270 days in which such abatement action must commence. The public officer shall cause to be posted on the main entrance of the dwelling, building, 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, safety as a result of unsanitary or unsafe conditions. The use or occupation of this building is prohibited and unlawful.”
- (f) 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 salvage 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 salvage materials may be made without the necessity of public advertisement and bid. The public officer and the city are relieved of any and all liability resulting from or occasioned by the sale of any such salvage material, including, without limitation, defects in such salvage materials.
- (g) The amount of the cost of demolition, including attorneys’ fees, court costs, appraisal fees, administrative cost incurred by the city, 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 property upon which such cost was incurred.
- (h) In addition to the procedures and remedies in this article, the public officers designated herein may issue citations for violation of state minimum standard codes, optional building, fire, life safety, and other codes adopted by ordinance, and

conditions creating a public health hazard or general nuisance, and seek to enforce such citations in Municipal Court.

Sec. 50 – 15. Determination by public officer that dwelling, building, or structure is unfit or vacant, dilapidated, and being used in connection with the commission of drug crimes.

- (a) The public officer may determine, under existing ordinances, that a dwelling, building, or structure is unfit for human habitation or is unfit for its current commercial, industrial, or business use if he or she finds that conditions exist in such building, dwelling, or structure which are dangerous or injurious to the health, safety, or morals of the occupants of such dwelling, building, or structure; of the occupants of neighborhood dwellings, buildings, or structures; or of other residents of the city. Such conditions include the following (without limiting the generality of the foregoing):
- (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;
 - (5) Structural defects;
 - (6) Uncleanliness; and
 - (7) Other additional standards, which may from time to time be adopted and referenced herein by ordinance amendment.
- (b) The public officer may determine, under existing ordinances, that a dwelling, building or structure is vacant, dilapidated, and being used in connection with the commission of drug crimes upon personal observation or report of a law enforcement agency and evidence of drug crimes being committed.

Sec. 50 – 16. Powers of Public Officers.

The public officers designated in this article shall have the following powers:

- (1) To investigate the dwelling conditions in the city in order to determine which dwellings, buildings, or structures therein are unfit for human habitation or are unfit for current commercial, industrial, or business use or are vacant, dilapidated, and being used in connection with the commission of drug crimes;
- (2) To administer oaths and affirmations, to examine witnesses, and to receive evidence;

- (3) To enter upon premises for the purpose of making examinations; provided, however, that such entries shall be made in such manner as to cause the least possible inconvenience to the persons in possession;
- (4) To appoint and fix the duties of such officers, agents, and employees as he or she deems necessary to carry out the purposes of this article; and
- (5) To delegate any of his or her functions and powers under this article to such officers and agents as he or she may designate.

Sec. 50 – 17. Service of Complaint and Other Filings

- (a) Complaints issued by a public officer pursuant to this article shall be served in the following manner:
 - (1) At least 14 days prior the date of the hearing, the public officer shall mail copies of the complaint by certified mail or statutory overnight delivery, return receipt requested, to all interested parties whose identities and addresses are reasonably ascertainable.
 - (2) Copies of the complaint shall also be mailed by first-class mail to the property address to the attentions of the occupants of the property, if any, and shall be posted on the property within three business days of filing the complaint and at least 14 days prior to the date of the hearing.
 - (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 advertisement appears in the county once a week for two consecutive weeks prior to the hearing.
- (b) Notice of lis pendens shall be filed in the office of the clerk of superior court of Gwinnett County at the time of filing the complaint. Such notice shall have the same force and effect as other lis pendens notices provided by law.
- (c) Orders and other findings made subsequent to the service of the initial complaint shall be made in the manner provided in this section 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.

IT IS SO ORDAINED, this ____ day of _____, 2023.

Those voting in favor:

Those voting in opposition:

Mayor Pro Tem Taylor Anderson

Mayor Pro Tem Taylor Anderson

Council Member Mason Roszel

Council Member Mason Roszel

Council Member Marc Cohen

Council Member Marc Cohen

Council Member Jennifer Thatcher

Council Member Jennifer Thatcher

Council Member Alvin Hicks

Council Member Alvin Hicks

ATTEST:

City Clerk

Submitted to Mayor: ____ / ____ / ____

Approved by Mayor, this _____ day of _____ 2023.

Brandon Hembree, Mayor