ORDINANCE O-01-2019

AN ORDINANCE OF THE WALKER COUNTY SOLE COMMISSIONER CREATING CHAPTER 12 ON BUILDING AND BUILDING CONSTRUCTION; ADDRESSING BLIGHTED PROPERTIES IN THE UNINCORPORATED AREA OF THE COUNTY AND FOR OTHER PURPOSES

WHEREAS, there is strong interest in addressing real property that is unfit for human habitation, is unfit for its current commercial, industrial or business use and is not in compliance with applicable codes; is vacant and being used in connection with the commission of criminal activity; or constitutes an endangerment to the public health or safety as a result of unsanitary or unsafe conditions; and

WHEREAS, there is strong interest in addressing real property with conditions including defects increasing the hazards of fire, accidents, or other calamities, lack of adequate ventilation, light, or sanitary facilities, dilapidation, disrepair, structural defects, and uncleanliness; and

NOW THEREFORE BE IT HEREBY ORDAINED, that Part II of the Walker County Code of Ordinances is amended to add Chapter 12 Building and Building Construction as follows:

Chapter 12

BUILDING AND BUILDING CONSTRUCTION

Article I. In General

Secs. 12-1 -- 12-50. Reserved

Article II. Blighted and Derelict Property

Sec. 12-51. Short title.
Sec. 12-52. Definitions.
Sec. 12-53. Duty of owners of property and construction thereon.
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Sec. 12-55. Powers of the public officer.
Sec. 12-56. Complaint in rem in magistrate court; procedure; lien; approval.
Sec. 12-57. Service of complaints on owners and parties in interest.
Sec. 12-58. Limitation of liability for code enforcement; no special duty created.
Sec. 12-59. General cleanliness of premises.
Sec. 12-60. Disorderly house.
Sec. 12-61. Violations; enforcement penalties.
Sec. 12-62. - 12-100. Reserved.

Sec. 12-51. Short title.

This article is known as the "Blighted and Derelict Property Ordinance."

Sec. 12-52. Definitions.

As used in this article, these terms have the following meanings:

Blighted or *derelict* means any construction, as defined in this section, or property within the county which (i) is constructed or maintained in violation of applicable codes; (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; (vii) has graffiti on any exterior wall or facade visible from other private or public property; (viii) has wooden boards, plywood, other wood based material, or any other non-transparent material covering any window or door; (ix) has visible exterior deterioration, including, but not limited to, faded, chipped, or peeling paint, broken, loose or missing siding material, broken, cracked, or otherwise compromised doors, windows, or other openings; or (x) otherwise constitutes an endangerment to the public health or safety as a result of unsanitary or unsafe conditions.

County means the unincorporated area of Walker County, Georgia.

County's codes means the standard codes adopted by Walker County under Part II, Chapter 1 of this Code, including but not limited to housing, fire or life safety code, and minimum standard building codes.

Closing means causing a construction, as defined below, to be vacated and secured against unauthorized entry.

Construction means any building, dwelling, or other 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 "construction" does not mean or include 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.

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."

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.

Governing authority means the Sole Commissioner or Board of Commissioners of Walker County, Georgia.

Interested party means:

(1) The "owner";

(2) Person or persons in possession of a 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 county or records maintained in the county courthouse or by the clerk of court; provided, however, interested party does not include the holder of the benefit or burden of any easement or right-of-way whose interest is properly recorded and this interest remains unaffected.

Owner means the holder of the title in fee simple and every mortgagee of record whether a person, firm, association, or corporation.

Property means any real property located within the unincorporated area of the county, whether improved or unimproved, and includes any unimproved premises on which a construction is sited.

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 any construction, as defined above, or use of private property within the unincorporated area of the county.

Public officer means the Director of Planning, Zoning and Inspections who is authorized to exercise the powers prescribed by this article, and any officer or employee of the county to whom he or she delegates such authority.

Repair means altering or improving a construction so as to bring it into compliance with the county''s 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 construction.

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

Sec. 12-53. Duty of owners of property and constructions thereon.

The owner of any construction and any property within the county must construct and maintain such construction and property in conformance with the county's codes and any other laws and ordinances which regulate or prohibit activities on private property and which declare it to be a public nuisance to construct or maintain any construction or of use private property in violation of such codes, laws, or ordinances.

Sec. 12-54. Declaration of public nuisance.

Any blighted or derelict construction or property within the county constitutes a public nuisance. Any property within the county on which is being regularly conducted any activity or land use in violation of applicable laws and ordinances, including all applicable zoning ordinances, also constitutes a public nuisance. Nothing in this Article section shall be read to supersede Chapter 34 of the county's codes.

Sec. 12-55. Powers of the public officer.

(a) In carrying out duties under to this article, the public officer has, in addition to those powers otherwise conferred upon or delegated to him or her by other ordinances of the county, the power to:

(1) Investigate and inspect the condition of any construction and private property within the county to determine if the structure and property uses are in violation of this article. Entries onto private property must be made in a manner so as to cause the least possible inconvenience; provided, however, the public officer cannot enter into any occupied construction 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 magistrate 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 county as he or she deems necessary to carry out the purposes of this article; and

(4) To delegate any of his or her functions and powers under this article to such officers, employees, or agents as he or she may designate.

(b) In addition to the procedures set forth in this article, the public officer may issue citations for violations of the applicable codes or conditions declared to constitute a public health or safety hazard or general nuisance and seek enforcement of such citations before the magistrate 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 county to define and declare nuisances and to cause their removal or abatement by other summary proceedings.

Sec. 12-56. Complaint in rem in magistrate court; procedure; lien; appeal.

(a) Whenever a public official determines that any construction or property constitutes a public nuisance under this article or a request is filed with the public officer by a public authority or by at least five residents of the county charging that any construction or property constitutes a public nuisance under section this article, the public officer may make an investigation or inspection of the specific construction or property and make a written report of his findings. The public officer may be guided in his or her investigation by documenting conditions, which may include, but are not limited to:

(1) Defects 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 construction or property constitutes a public nuisance under this article, the public officer will file a complaint in rem in the magistrate court of Walker County against the lot, tract, or parcel of real property on which such construction 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 construction or property. 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 magistrate court at a set date and time. The hearing must be held not less than fifteen (15) days nor more than forty-five (45) days after the service of a complaint filed in the magistrate court. The interested parties 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.

(c) If, after such notice and hearing, the court determines that the construction or property constitutes a public nuisance under this article, 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 an order:

(1) If the repair, alteration, or improvement of the construction can be made at a reasonable cost, which is not more than fifty (50) percent of the fair market value of the construction as determined from the tax records of the county, in relation to the present value of the construction requiring the owner, within the time specified in the order, to repair, alter, or improve such construction so as to bring it into full compliance with the applicable codes relevant to the cited violation; and, if applicable, to secure by closing; or

(2) If the repair, alteration, or improvement of the construction in order to bring it into full compliance with applicable codes relevant to the cited violations cannot be made at a reasonable cost, which is not more than fifty (50) percent of the fair market value of the construction as determined from the tax records of the county, in relation to the present value of the construction requiring the owner, within the time specified in the order, to demolish and remove such construction and all debris from the property.

(d) For purposes of this section, the court shall make its determination of reasonable cost in relation to the present value of the construction 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 construction must 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.

(e) If the owner fails to comply with an order to repair or demolish the construction, the public officer must cause the construction to be repaired, altered, or improved, or to be vacated and closed, or demolished within two hundred seventy (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 two hundred seventy (270) days in which such abatement action shall commence. The public officer must cause to be posted on the main entrance of the construction 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."

(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 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.

(g) The amount of the cost of demolition, including all court costs, appraisal fees, 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.

(h) 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 of Walker County, Georgia, and shall relate back to the date of the filing of the lis pendens notice required under 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. After filing a certified copy of the order with the clerk of superior court, the public officer shall, within ninety (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.

(i) The amount of the lien shall be collected in the manner as all other ad valorem taxes are collected by the county.

(j) The tax commissioner must remit the amount collected to the county. The tax commissioner may retain an amount equal to the cost of administering collection of the lien. Any amount retained for administration must be deposited in the general fund of the county to pay the cost of administering the lien.

(k) 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 county agreeing to a timetable for rehabilitation of the real property or the construction on the property and demonstrating the financial means to accomplish such rehabilitation.

(l) Review of a magistrate court order requiring the repair, alteration, improvement, or demolition of a construction must be by writ of certioari.

Sec. 12-57. 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 must be conspicuously posted on the construction or property within three (3) business days of filing of the complaint and at least fourteen (14) days prior to the date of the hearing.

(2) At least fourteen (14) days prior to the date of the hearing, the public officer must 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 must 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 (2) 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 construction or property is located at the time of filing the complaint in the magistrate court.

(b) The public officer must cause an affidavit of service to be filed of record in the magistrate court prior to the hearing showing compliance with the service requirements of this section. This affidavit

constitutes a prima facie showing of minimum procedural due process and constitutes sufficient proof that service was perfected.

(c) Orders and other filings made subsequent to service of the initial complaint must 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 waives all further notice in the proceedings.

Sec. 12-58. 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 residents and visitors of the county, 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 county. Approval of a permit and inspection of a property does not guarantee or warrant to the owner or occupants thereof that the property has been constructed, maintained or operated in conformance with applicable codes, laws and regulations. The county reserves the right to assert all available immunities and defenses in any action seeking to impose monetary damages upon the county, its officers, employees, or agents arising out of any alleged failure or breach of duty or relationship as may now exist or later be created. To the extent any federal or state law or regulation requires compliance as a condition precedent to the issuance of a permit, plan, or design approval, inspection or other activity by the county, its officers, employees, or agents, issuance of such permit, approval, or inspection does not constitute a waiver or estoppel of the condition precedent, and it remains the obligation and responsibility of the owner, his design professional(s), and contractor(s) to satisfy such legal requirements.

Sec. 12-59. General cleanliness of premises.

The owner and occupant of property within the county is independently responsible for keeping the premises, including any construction thereon and the full yard thereof, clean and free from all garbage, refuse, filth, dirt, ashes, trash, rubbish or other offensive materials.

Sec. 12-60. 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 county; 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 county; 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. 12-61. Violations; enforcement penalties.

Any person who willfully refuses to comply with the provisions of this article will be cited to appear before the magistrate court and, upon conviction, may be punished according to the provisions of Chapter VII, section 7-18 of the county's charter.

Sec. 12-62. - 12-100. Reserved.

SO ORDAINED by the Sole Commissioner of Walker County, Georgia, this 14 day of March, 2019.

Shannon K. Whitfield
Sole Commissioner
Walker, County Georgia

Attest:
Rebecca Wooden
County Clerk