

This article shall be known as and cited as "The Unsafe and Unfit Property Ordinance of the Town of Lyerly."

### **Purpose**

It is found and declared that in the Town of Lyerly 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 are inimical to the welfare and are dangerous and injurious to the health, safety, and welfare of the people of the Town of Lyerly; and that a public necessity exists for the repair, closing, or demolition of such dwellings, buildings, or structures. It is further found and declared in the town that there is in existence conditions or uses of real estate which render adjacent real estate unsafe or inimical to safe human habitation, which such uses are dangerous and injurious to the health, safety, and welfare of the people of this county, and that a public necessity exists for the repair of such conditions or the cessation of such uses. Therefore, it is the purpose of this article that whenever the Town of Lyerly finds that there exists in the town dwellings, buildings or structures which are unfit for human habitation or for commercial, industrial, or business uses due to dilapidation and defects increasing the hazards of fire, accidents, or other calamities; lack of adequate ventilation, light, or sanitary facilities; or other conditions rendering such dwellings, buildings, or structures unfit, unsafe or unsanitary, or dangerous or detrimental to the health, safety, or welfare, or otherwise inimical to the welfare of the residents of this town, or vacant dwellings, buildings, or structures in which drug crimes are being committed, the town may exercise its police power to repair, close, or demolish the aforesaid dwellings, buildings, or structures in the manner provided in this article and O.C.G.A. §§ 41-2-7 through 41-2-17.

All the provisions of this article, including method and procedure, shall also be applied to private property where an accumulation of weeds, trash, junk, filth, and other unsanitary or unsafe conditions shall create a public health hazard or general nuisance to the persons residing in the vicinity. A finding by any governmental health department, health officer, building inspector, or the code enforcement officer shall constitute prima-facia evidence that said property is in violation of this article and O.C.G.A. §§ 41-2-7 through 41-2-17.

### **Scope and applicability**

(a) This article is enacted pursuant to the provisions of Title 41, [Chapter 2](#), Sections 7 through 17, as amended, of the Official Code of Georgia Annotated (O.C.G.A.) and sometimes referenced herein as the "statute" or "code." O.C.G.A. § 41-2-7 specifies the scope and purpose of this article. All powers and authorities granted to public officers and public authorities by the statute are hereby incorporated herein by reference so as to be assumed, delegated and granted pursuant to this article.

(b) The provisions of this article shall apply to both residential and non-residential property whether being occupied or not and whether being developed or not, within the Town of Lyerly.

(c) It is the duty of the owner of every dwelling, building, structure, or property within the Town of Lyerly to construct and maintain such dwelling, building, structure or property in



(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* shall mean any natural person, corporation, partnership (general or limited), limited liability company, estate, trust or other entity or artificial person, or combination thereof.

*Public 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 his agents.

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

*Repair* means altering or improving a dwelling, building, or structure so as to bring the structure into compliance with the applicable codes of the Town of Lyerly 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 Town of Lyerly on or after the date on which the alleged nuisance arose.

*State minimum standard codes* means those codes as defined in O.C.G.A. § 8-2-20(9)(B).

*Undesirable vegetation* means plants, which due to natural growth characteristics constitute a negative effect on public safety, public health or public welfare by promoting rodents or potentially dangerous wild animals, infestation of mosquitoes, fleas, insects or other vermin.

#### Authority and powers of Public Officer

(a) The following public officers have been designated with the responsibility to exercise the powers prescribed by this article:

(b) The Public Officer is hereby authorized, pursuant to O.C.G.A. § 41-2-11, to exercise such powers as may be necessary to carry out and effectuate the purpose and provisions of this article, including but not limited to the following powers:



(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, or of any other applicable Town of Lyerly 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 enforcement 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 the Town of Lyerly; 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.

Undesirable vegetation.

It shall be unlawful for the owner and/or occupant of a lot or tract of land in the Town of Lyerly, or for any agent or representative of any such occupant or owner, to permit or maintain on such lot any growth of undesirable vegetation or an accumulation of weeds, trash, junk, filth, or other



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:

(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 with a Georgia appraiser classification as provided in Chapter 39A of Title 43, 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 town shall be entitled to its 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 public 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 public officer shall cause to be posted on the main entrance of any building, dwelling, or structure a placard with the following words:



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.

(3) 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.

(j) The governing authority may waive and release such lien imposed on property upon the owner of such property entering into a contract with Town of Lyerly 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) In addition to the procedures and remedies outlined above, the public officer may issue citations for violations of state minimum standard codes, optional building, fire, and life safety codes adopted by the Town of Lyerly, 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.

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

#### 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 public 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.

(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 town once a week for two consecutive weeks prior to the hearing.

general nuisance law, or other measures. This article provides remedies in addition to and cumulative of all other existing remedies for the town.

Records.

The public officer shall be the supervisor and custodian of the records on each property against which a complaint is issued, including but not limited to the investigative findings, course of action required, and, if applicable, citations and court findings. Such records shall be public records and made available to any party in interest and copies thereof provided upon the payment of such reasonable cost as may be incurred in duplicating or otherwise providing them. The records shall be preserved for not less than four years after the proceedings and action, if any, regarding the property are concluded.

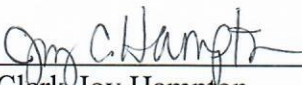
**SECTION XVIII. EFFECTIVE DATE**

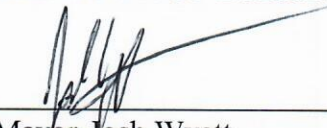
This Ordinance shall be effective upon its adoption, the public health, safety, and general welfare demanding.

**SO ADOPTED** this 10<sup>th</sup> day of April, 2012.

ATTEST:

THE TOWN OF LYERLY, GEORGIA

  
\_\_\_\_\_  
Clerk-Joy Hampton

  
\_\_\_\_\_  
Mayor-Josh Wyatt





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All the provisions of this article, including method and procedure, shall also be applied to private property where an accumulation of weeds, trash, junk, filth, and other unsanitary or unsafe conditions shall create a public health hazard or general nuisance to the persons residing in the vicinity. A finding by any governmental health department, health officer, building inspector, or the code enforcement officer shall constitute prima-facia evidence that said property is in violation of this article and O.C.G.A. §§ 41-2-7 through 41-2-17.

## **Scope and applicability**

- (a) This article is enacted pursuant to the provisions of Title 41, [Chapter 2](#), Sections 7 through 17, as amended, of the Official Code of Georgia Annotated (O.C.G.A.) and sometimes referenced herein as the "statute" or "code." O.C.G.A. § 41-2-7 specifies the scope and purpose of this article. All powers and authorities granted to public officers and public authorities by the statute are hereby incorporated herein by reference so as to be assumed, delegated and granted pursuant to this article.
- (b) The provisions of this article shall apply to both residential and non-residential property whether being occupied or not and whether being developed or not, within the Town of Lyerly.
- (c) It is the duty of the owner of every dwelling, building, structure, or property within the Town of Lyerly to construct and maintain such dwelling, building, structure or property in



conformance with the laws of this state, with applicable state minimum standard codes, with applicable town ordinances which regulate or prohibit activities on property, and with this article, which declares it to be a public nuisance to construct or maintain any dwelling, building, structure, or property in violation of such codes or ordinances, or under such conditions as would constitute an unfit property as defined herein.

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 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, including all state minimum standard codes as defined in O.C.G.A. § 8-2-20(9)(B); 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 building 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 secure against unauthorized entry.

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

*Dwelling, building, structure, or property* means any building or 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 members of the council of the Town of Lyerly.

*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* shall mean any natural person, corporation, partnership (general or limited), limited liability company, estate, trust or other entity or artificial person, or combination thereof.

*Public 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 his agents.

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

*Repair* means altering or improving a dwelling, building, or structure so as to bring the structure into compliance with the applicable codes of the Town of Lyerly 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 Town of Lyerly on or after the date on which the alleged nuisance arose.

*State minimum standard codes* means those codes as defined in O.C.G.A. § 8-2-20(9)(B).

*Undesirable vegetation* means plants, which due to natural growth characteristics constitute a negative effect on public safety, public health or public welfare by promoting rodents or potentially dangerous wild animals, infestation of mosquitoes, fleas, insects or other vermin.

#### Authority and powers of Public Officer

(a) The following public officers have been designated with the responsibility to exercise the powers prescribed by this article:

(b) The Public Officer is hereby authorized, pursuant to O.C.G.A. § 41-2-11, to exercise such powers as may be necessary to carry out and effectuate the purpose and provisions of this article, including but not limited to the following powers:



(1) To investigate the dwelling conditions in the Town of Lyerly 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 deems necessary to carry out the purposes of the articles;

(5) To delegate any of his functions and powers under the article 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 public officer shall also be authorized to request the county attorney or other designated attorney to prepare and file complaints under the provisions of this article.

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 are hereby declared illegal and unfit for human habitation or the building or structure's current commercial, industrial or business use (as applicable), and shall be abated by repair or demolition.

(b) The Public officer is authorized to determine that a dwelling, building, structure or property is unfit for human habitation or is unfit for its current commercial, industrial, or business 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; of the occupants of neighborhood dwellings, buildings, or structures; or of other residents of the Town of Lyerly. 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, or of any other applicable Town of Lyerly 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 enforcement 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 the Town of Lyerly; 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.

Undesirable vegetation.

It shall be unlawful for the owner and/or occupant of a lot or tract of land in the Town of Lyerly, or for any agent or representative of any such occupant or owner, to permit or maintain on such lot any growth of undesirable vegetation or an accumulation of weeds, trash, junk, filth, or other



unsanitary, unsafe, or unfit conditions as to constitute an endangerment to public health or a general nuisance which renders adjacent real estate unsafe or inimical to safe human habitation.

Complaint and inspection; in rem proceedings.

(a) Whenever a request is filed with the public officer by a public authority, or by at least five residents of the Town of Lyerly, 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; or 5) constitutes a public nuisance; the public officer shall make an investigation or inspection of the specific dwelling, building, structure, or property. The public officer may also inspect properties on his own information or determination regarding potential violations of this or other county ordinances.

(b) The public 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 county attorney or other designated attorney. The complaint may be filed in Chattooga County Superior Court, under that court's general equitable jurisdiction. 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 enforcement 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. 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 commercial, industrial, or business use and not in compliance with applicable codes; or 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; 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:

(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 with a Georgia appraiser classification as provided in Chapter 39A of Title 43, 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 county shall be entitled to its 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 public 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 public 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 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."

(g) If the public 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 enforcement 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)

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.

(i) The lien provided for in subsection (h) 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. 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.

(1) Upon final determination of costs, fees, and expenses incurred in accordance with this article, the public officer shall transmit to the county tax commissioner 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; 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 the county whose lien is being collected.

(2) 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.

(3) 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.

(j) The governing authority may waive and release such lien imposed on property upon the owner of such property entering into a contract with Town of Lyerly 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) In addition to the procedures and remedies outlined above, the public officer may issue citations for violations of state minimum standard codes, optional building, fire, and life safety codes adopted by the Town of Lyerly, 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.

(l) 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 summary proceedings or otherwise.

#### 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 public 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.

(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.

#### Demolition

No person shall begin demolition without obtaining permission from The Town of Lyerly Planning and Zoning Office and ensuring that all utilities have been disconnected. The person who has secured the permission shall remove from the property all debris, trash, litter, rubbish, rubble and foundation exposed above the ground level; fill any excavation or other depressions to existing grade with clean dirt containing no more than twenty-five (25%) per cent stone or masonry; and adequately slope and drain all filled areas as determined by the Code Enforcement Officer.

#### Right to Enter and Inspect

The Code Enforcement Officer or their designee, or any other person authorized to enforce this Ordinance, and any sworn officer of the Town of Lyerly shall be empowered to enter any property and structure at reasonable times to inspect the condition or work being performed thereon or therein.

#### Eminent domain.

Nothing in this article shall be construed to prevent the owner of any property from receiving just compensation for the taking of such property by the power of eminent domain under the laws of the State of Georgia, or to permit any property to be condemned or destroyed except in accordance with the police power of this state. Procedures under this article shall not constitute the exercise of the power of eminent domain by Bartow County.

#### Other remedies.

This article shall not be construed to impair or limit in any way the power of the town to define and declare nuisances and to ensure their removal or abatement by summary proceedings or otherwise, including other enforcement actions under other ordinances, or complaints filed under



general nuisance law, or other measures. This article provides remedies in addition to and cumulative of all other existing remedies for the town.

Records.

The public officer shall be the supervisor and custodian of the records on each property against which a complaint is issued, including but not limited to the investigative findings, course of action required, and, if applicable, citations and court findings. Such records shall be public records and made available to any party in interest and copies thereof provided upon the payment of such reasonable cost as may be incurred in duplicating or otherwise providing them. The records shall be preserved for not less than four years after the proceedings and action, if any, regarding the property are concluded.

**SECTION XVIII. EFFECTIVE DATE**

This Ordinance shall be effective upon its adoption, the public health, safety, and general welfare demanding.

**SO ADOPTED** this 14<sup>th</sup> day of February, 2012.

ATTEST:

THE TOWN OF LYERLY, GEORGIA

Joy C Hampton  
Clerk Joy Hampton

[Signature]  
Mayor-Josh Wyatt

