

Chapter 16

UNFIT DWELLINGS, BUILDINGS OR STRUCTURES

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Sec. 16-1. Findings.

The City Council finds that there exists within the city:

- (1) Dwellings, buildings or structures that: are unfit for human habitation or for commercial, industrial or business occupancy or use; are not in compliance with the applicable state minimum standard codes, federal, state, city, county or local building, fire, life safety or other codes relative to the safe use of real property and real property improvements or general nuisance law; constitute a hazard to the health, safety and welfare to the people of the city; and a public necessity exists for the repair, closing or demolition of such dwellings, buildings or structures;
- (2) Dwellings, buildings or structures that, due to their condition or use, render adjacent real estate unsafe or inimical to safe human habitation, such that the use is dangerous and injurious to the health, safety and welfare of the people of the city 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;
- (3) Dwellings, buildings and structures that are not in compliance with applicable codes and are unfit for human habitation or for commercial, industrial or business uses due to one of the following:
 - a. Dilapidation;
 - b. Defects increasing the hazards of fire, accidents or other calamities;
 - c. Lack of adequate ventilation, light or sanitary facilities; or
 - d. Other conditions rendering such dwellings, buildings or structures unsafe, unsanitary, dangerous or detrimental to the health, safety or

welfare or otherwise inimical to the welfare of the residents of the county; and

- (4) Vacant, dilapidated dwellings, buildings or structures in which drug crimes and other illegal crimes are being committed.

Sec. 16-2. Definitions.

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

Applicable codes means any optional housing or abatement standard provided in chapter 2 of title 8 of the Official Code of Georgia, as adopted by ordinance or operation of law, or other property maintenance standards as adopted by ordinance or operation of law, or general nuisance law, relative to the safe use of real property; any fire or life safety code as provided for in chapter 2 of title 25 of the Official Code of Georgia; and any building codes adopted by local ordinance prior to October 1, 1991, or the minimum standard codes provided in chapter 2 of title 8 of the Official Code of Georgia, after October 1, 1991, provided that such building or minimum standard codes for real property improvements shall be deemed to mean those building or minimum standard codes in existence at the time such real property improvements were constructed, unless otherwise provided by law.

City means City of Flovilla, Georgia.

City Council means City of Flovilla City Council.

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

County means Butts County, Georgia.

Drug crime means an act which is a violation of O.C.G.A. § 16-13-2 et seq. known as the "Georgia Controlled Substance Act."

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 structures of any design. As used in this article, the term "dwellings, buildings or structures" shall not mean or include any farm, any building or structure located on a farm or any agricultural facility or other building or structure used for the production, growing, raising, harvesting, storage or processing of crops, livestock, poultry or other farm products.

Governing authority means the City Council of the City of Flovilla, Georgia.

Interested party means:

- (1) The owner;
- (2) Persons in possession of said property and premises;
- (3) Those parties having an interest in the property as revealed by a certification of title to the property conducted in accordance with the title standards of the state bar;
- (4) Those parties having filed a notice in accordance with O.C.G.A. § 48-3-9; and
- (5) Any other party having an interest in the property whose identity and address are reasonably ascertainable from the records of the municipality or records maintained in the county courthouse or by the clerk of court; provided, however, "interested party" shall not include the holder of the benefit or burden of any easement or right-of-way whose interest is properly recorded which interest shall remain unaffected.

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

Public authority means any member of the governing authority, any director of a public housing authority or any officer who is in charge of any department or branch of government (municipal, county or state) relating to health, fire, life safety, building regulations, or to other activities concerning dwellings, buildings, or structures, or use of private property within the city.

Public officer means the mayor, his/her designees, law enforcement officers, fire safety officers and code enforcement officers, along with any officer or employee of the city to whom the mayor delegates the authority to exercise the powers prescribed by this article.

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 his 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.

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. 16-3. Duty of owners of real property and structures thereon.

It is the duty of the owner of every dwelling, building, structure or private property within the city to construct and maintain such dwelling, building, structure or property in conformance with applicable codes in force within the city, or any other such laws and ordinances that regulate and prohibit activities on property. It is hereby declared to be a public nuisance to construct or maintain any dwelling, building, structure or use property in violation of such codes, laws or ordinances.

Sec. 16-4. Appointment of public officers.

The City Council of the City of Flovilla hereby appoint and designate the mayor, his/her designees, law enforcement officers, fire safety officers and code enforcement officers as public officers to exercise the powers prescribed by this article.

Sec. 16-5. Procedures for determining premises to be unsafe or unhealthful.

- (a) Whenever a request is filed with the public officer by a public authority or by at least five residents of the city *or whenever it appears to the public officer on his own motion (proposed)* that any dwelling, building or structure is unfit for human habitation or for commercial, industrial or business use and not in compliance with applicable codes; is vacant and being used in connection with the commission of drug crimes; or constitutes an endangerment to the public health or safety as a result of unsanitary or unsafe conditions, the public officer shall 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 used in connection with the commission of drug crimes; or constitutes an endangerment to the public health or safety as a result of unsanitary or unsafe conditions, the public officer 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 parties in interest in such dwelling, building or structure.

The complaint shall identify the subject real property by appropriate street address and official tax map reference; identify the owner or the parties in interest; 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 parties in interest that hearing will be held before a court of competent jurisdiction as determined by O.C.G.A § 41-2-5 at a date and time certain and at a place within the county where the property is located. Such hearing shall be held not less than 15 days nor more than 45 days after the filing of said complaint in court. The owner and parties in

interest 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. A notice of lis pendens shall be filed in the office of the clerk of superior court in the county at the time of filing the complaint in the magistrate court.

(b)

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 is not in compliance with applicable codes; is vacant and being used in connection with the commission of crimes; or constitutes an endangerment to the public health or safety as a result of unsanitary or unsafe conditions, the court shall state in writing findings of fact in support of such determination and shall issue and cause to be served upon the owner and any parties in interest that have answered the complaint or appeared at the hearing an order:

(1) If the repair, alteration or improvement of the dwelling, building or structure can be made at a reasonable cost in relation to the present value of the dwelling, building or structure, requiring the owner, within the time specified in the order, to repair, alter or improve such dwelling, building or structure so as to bring it into full compliance with the applicable codes relevant to the cited violation and, if applicable, to secure the structure so that it cannot be used in connection with the commission of crimes; or

(2) If the repair, alteration or improvement of the dwelling, building or structure in order to bring it into full compliance with applicable codes relevant to the cited violations cannot be made at 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.

(c)

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. The 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 or real estate appraisers with a state appraiser classification as provided in chapter 39A of title 43 of the O.C.G.A., 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 code relevant to the code violations in force in the city.

(d)

If the owner fails to comply with an order to repair or demolish the dwelling, building or structure, within the time period set forth in the order, the public officer shall 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 the building, dwelling or structure a placard with the following words:

"This building is unfit for human habitation or commercial, industrial or business use and does not comply with the applicable codes or has been ordered secured to prevent its use in connection with drug times or constitutes an endangerment to public health or safety as result of unsanitary or unsafe conditions. The use or occupation of this building is prohibited and unlawful".

- (e) If the public officer has the structure demolished, reasonable effort shall be made to salvage reusable materials for credit against the cost of demolition. The proceeds of any moneys received from the sale of salvaged materials shall be used or applied against the cost of the demolition and removal of the structure and proper records shall be kept showing application of sales proceeds. Any such sale of salvaged materials may be made without the necessity of public advertisement and bid. The public officer and governing authority are relieved of any and all liability resulting from or occasioned by the sale of any such salvaged materials, including, without limitation, defects in such salvaged materials.
- (f) The amount of the cost of demolition, including all court costs, appraisal fees, administrative costs incurred by the tax commissioner and all other costs necessarily associated with the abatement action, including restoration to grade of the real property after demolition, shall be a lien against the real property upon which such cost was incurred.
- (g) The lien provided for in subsection (f) shall attach to the real property upon the filing of a certified copy or the order requiring repair, closure or demolition in the office of the clerk of superior court of the county and shall relate back to the date of the filing of the lis pendens notice required under subsection (a). The clerk of superior court of the county 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 or taxes to which the lien shall be inferior, and shall continue in force until paid.
- (h) Upon final determination of costs, fees and expenses incurred in accordance with this article, the public officer responsible for enforcement actions 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 official shall be transmitted within 90 days of the completion of the repairs, demolition or closure. It shall be the duty of the county tax commissioner to collect the amount of the lien using all methods available for collecting real property and ad valorem taxes,

including specifically chapter 4 of title 48 of the Official Code of Georgia; provided, however, that the limitation of O.C.G.A. 48-4-78 which requires 12 months of delinquency before commencing a tax foreclosure shall not apply. The county tax commissioner shall collect and enforce county liens imposed pursuant to this article in accordance with O.C.G.A. § 48-5-359.1. The county tax commissioner or county tax collector shall remit the amount collected to the governing authority of the city. The unpaid lien amount shall bear interest and penalties from and after the date of final determination of costs in the same amount as applicable to interest and penalties on unpaid real property ad valorem taxes.

- (i) The 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, county tax commissioner tax collector in the enforcement of such lien. Redemption of property from the lien may be made in accordance with the provisions at O.C.G.A. §§ 48-4-80 and 48-4-81.
- (j) The governing authority may waive and release any such lien imposed on property upon the owner of such property entering into a contract with the mayor agreeing to a timetable for rehabilitation at the real property to current code standards or the dwelling, building or structure on the property and demonstrating the financial means to accomplish such rehabilitation.
- (k) The review of a court order requiring the repair, alteration, improvement or demolition of a dwelling, building or structure shall be by direct appeal to the superior court of the county under O.C.G.A. 5-3-29.

Sec.16-6. Standards for determining unfitness for habitation.

- (a) The public officer may determine, under existing ordinances, that dwelling, building or structure is unfit for human habitation or is unfit for its current commercial, industrial or business use if he/she finds that conditions exist in such building, dwelling or structure that 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; or
 - (7) Other additional standards that 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 based upon personal observation or report of a law enforcement agency and evidence of drug crimes being committed.

Sec. 16-7. 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 the ordinance; and
- (5) To delegate any of his or her functions and powers under the ordinance to such officers and agents as he or she may designate.

Sec. 16-8. Service of complaints or orders upon owners and parties in interest.

- (a) Complaints issued by a public officer pursuant to this article shall be served in the following manner: At least 14 days prior to 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.

Copies of the complaint shall also be mailed by first-class mail to the property address to the attention of the occupants of the property, if any, and shall be posted on the property within three business days of the filing of the complaint and at least 14 days prior to the

date of the hearing. It is hereby declared a violation of this section to deface, destroy or remove a posted notice on the property. Any person violating the terms of this Ordinance shall be punished in Magistrate Court by a fee not to exceed *one thousand dollars* (\$1000.00) and/or sixty (60) days in jail for each separate violation. Each day the violation continues shall be considered a separate offense.

- (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 the 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 at the time of filing the complaint in municipal 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 the owner and any party in interest who answers the complaint or appears at the hearing. Any party who fails to answer or appear at the hearing shall be deemed to have waived all further notice in the proceedings.

Sec.16-9. General Penalty

Whenever in this Code or in any ordinance of the city any act is prohibited or is made or declared to be lawful for an offense, or whenever in such Code or ordinance the doing of an act is required or the failure to do an act is declared to be unlawful, unless otherwise provided by state law, where no specific penalty is provided therefore, the violation of any such provision of this Code or any ordinance shall be punished by a fine not exceeding \$1,000.00, and by imprisonment in the county or county jail not to exceed 60 days. Any one or more of these punishments may be inflicted, and the fines imposed therefore may be collected by execution. Each day any such violation shall continue shall be a separate offense.

This ordinance shall take effect and be in force from and after the date of its adoption.

SO ADOPTED AND ORDAINED THIS _____ DAY OF _____, _____.

Scott Chewning, Mayor

Catherine Watson, Mayor-Pro-Tem

Willie Morgan

Letha Kinard

Glorine Thurman

Thomas Douglas

ATTEST:

Annie Mitchell, City Clerk