

THE CITY OF MOLENA, GEORGIA
ORDINANCE NO. 45

AN ORDINANCE TO AMEND THE CODE OF ORDINANCES OF THE CITY OF MOLENA, GEORGIA, BY CREATING A NEW ARTICLE ENTITLED "UNSAFE AND DILAPIDATED BUILDINGS"; TO ESTABLISH RULES AND REGULATIONS FOR ABATEMENT OF UNSAFE PREMISES; TO PROVIDE FOR CODIFICATION; TO PROVIDE SEVERABILITY; TO PROVIDE PENALTIES; TO REPEAL CONFLICTING ORDINANCES; TO PROVIDE AN ADOPTION DATE; TO PROVIDE AN EFFECTIVE DATE; AND FOR OTHER LAWFUL PURPOSES

WHEREAS, the legislature of the State of Georgia adopted a state nuisance abatement law in order to empower local communities to combat the negative impacts of unfit buildings and structures under the Official Code of Georgia Annotated (O.C.G.A.) § 41-2-7 *et seq.*; and

WHEREAS, the legislature, effective July 1, 2001, amended O.C.G.A. § 41-2-7 *et seq.* to further clarify nuisance abatement procedures and to provide further due process of law; and

WHEREAS, it is the desire of the City Council of the City of Molena, Georgia (hereinafter "City"), as the duly elected governing authority of the City, to amend its code of ordinances to create a new article concerning the abatement of unsafe and dilapidated buildings in compliance with the July 1, 2001, changes in the state nuisance abatement code under O.C.G.A. § 41-2-7 *et seq.*; and

WHEREAS, the City declares and finds that within the incorporated areas of the City 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 which are not in compliance with the applicable state or minimum standard codes as adopted by local ordinance or operation of law or any building, fire, life safety, or other codes relative to the safe use of real property and real property improvements adopted by local ordinance by the City, or general nuisance law, and which constitute a hazard to the health, safety, and welfare of the people of the City, and that a public necessity exists for the repair, closing, or demolition of such dwellings, buildings, or structures; and

WHEREAS, it is found and declared that within the incorporated areas of the City there are in existence conditions or uses of real estate which render adjacent real estate unsafe or inimical to safe human habitation, that such uses are 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 conditions or the cessation of such uses which render the adjacent real estate unsafe or inimical to safe human

habitation; and

WHEREAS, the City finds that there exists in the incorporated areas of the City dwellings, buildings, or structures which are unfit for human habitation or for commercial, industrial, or business use due to dilapidation and are not in compliance with applicable codes; which have defects increasing the hazards of fires, accidents, or other calamities; which lack adequate ventilation, light, or sanitary facilities; or where other conditions exist rendering such dwellings, buildings, or structures unsafe or unsanitary, or dangerous or detrimental to the health, safety, or welfare, or otherwise inimical to the welfare of the residents of the City, or in which drug crimes are being committed; power is conferred upon the City under O.C.G.A. § 41-2-7 *et seq.* as amended to exercise the City's police power to repair, close, or demolish the aforesaid dwellings, buildings, or structures in the manner provided in this Ordinance; and

WHEREAS, on private property in the incorporated areas of the City there exist endangerments to the public health or safety as a result of unsanitary or unsafe conditions to those persons residing or working in the vicinity of the unsanitary or unsafe private property. Now,

**BE IT AND IT IS HEREBY ORDAINED BY THE CITY COUNCIL
OF THE CITY OF MOLENA, GEORGIA**

SECTION 1. The Code of Ordinances of the City of Molena, Georgia, is hereby amended by creating a new Article entitled "Unsafe and Dilapidated Buildings" and sections thereunder which shall read as follows:

Sec. 1. Continued Use of Other Laws and Ordinances.

It is the intent of the City Council that nothing in this Ordinance shall be construed to abrogate or impair the powers of the courts or of any department of the City to enforce any provisions of any local ordinance or regulation, nor to prevent or punish violations thereof, and the powers conferred by this Ordinance shall be in addition to and supplemental to the powers conferred by any other law or ordinance, legislation, or regulation.

Sec. 2. Definitions.

Unless the context indicates otherwise, the meaning of the terms used herein is as set forth in this Section.

"Applicable codes" mean:

- (a) Any optional housing or abatement standard provided in Chapter 2 of

- Title 8 of the O.C.G.A. as adopted by ordinance or operation of law, or general nuisance law, relative to the safe use of real property;
- (b) Any fire or life safety code as provided for in Chapter 2 of Title 25 of the O.C.G.A.; and
 - (c) Any building codes adopted by local ordinance or the minimum standard codes provided in O.C.G.A. Chapter 2 of Title 8, 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.

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

“City” means the incorporated areas of the City of Molena, Georgia.

“County” means Pike County, Georgia.

“Drug crime” means any act which is a violation of Article 2 of Chapter 13 of Title 16 of the Official Code of Georgia Annotated (O.C.G.A.) known as the “Georgia Controlled Substances 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 structure of any design. 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 Mayor and City Council of the City of Molena, Georgia.

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

“Parties in interest” means:

- (a) Persons in possession of said property and premises;
- (b) Persons having of record in the City in which the dwelling, building, or structure is located any vested right, title, or interest in or lien upon such dwelling, building, or structure or the lot, tract, or parcel of real property upon which the structure is situated or upon which the public

health hazard or general nuisance exists based on a fifty (50) year title examination conducted in accordance with the title standards of the State Bar of Georgia;

- (c) Persons having paid an occupational tax to the governing authority for a location or office at the subject building or structure; or
- (d) Persons having filed a property tax return with the governing authority as to the subject property, building, or structure.

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

“Public officer” means the officer or officers who are authorized by O.C.G.A. Sections 41-2-7, Section 41-2-8, and Sections 41-2-9 through 41-2-17, and by this Ordinance adopted under Sections 41-2-7, Section 41-2-8, and Sections 41-2-9-through 41-2-17 to exercise the powers prescribed by this Ordinance or any agent of such officer or officers.

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

“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. 3. Duties of Owners; appointment of public officer; procedures for determining premises to be unsafe or unhealthful.

- (a) It is the duty of the owner of every dwelling, building, structure, or 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 such ordinances which regulate and prohibit activities on property, and which declare it to be a public nuisance to construct or maintain any dwelling, building, structure or property in violation of such codes or ordinances.
- (b) The City Council of the City of Molena appoint and designate the County Code Enforcement Officer, the County Building Inspector, the City of Molena Chief of Police, and their designees, as public officers to exercise the powers

prescribed by this Ordinance.

- (c) Whenever a request is filed with the public officer by a public authority or by at least five (5) residents of the City charging that any dwelling, building, or structure is unfit for human habitation or for commercial, industrial, or business use and is 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 a 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 fifteen (15) days nor more than forty-five (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.
- (d) If, after such notice and hearing, the court determines that the dwelling, building, or structure in question is unfit for human habitation or is unfit for its current commercial, industrial, or business use and is 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 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 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 Ordinance, 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 of real estate appraisers with a Georgia 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 codes relevant to the cited violations in force in the jurisdiction.

- (e) If the owner fails to comply with an order to repair or demolish the dwelling, building, or structure, the public officer may cause such dwelling, building, or structure, to be repaired, altered, improved, to be vacated and closed, or demolished. 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 crimes or constitutes an endangerment to the 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 the City 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, 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.
- (h) The lien provided for in Paragraph (g) of this Section shall attach to the real property upon the filing of a certified copy of the order requiring repair, closure, or demolition in the office of the Clerk of Superior Court of Pike County and shall relate back to the date of the filing of the Lis Pendens notice required under subsection (f) of O.C.G.A. § 41-2-12. The Clerk of Superior Court shall record and index such certified copy of the order in the deed records of Pike 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 forward a copy of the order and a final statement of costs to the Pike County Tax Commissioner (hereinafter "Tax Commissioner"). It shall be the duty of the Tax Commissioner to collect the amount of the lien in conjunction with the collection of ad valorem taxes on the property and to collect the amount of the lien as if it were a real property ad valorem tax, using all methods available for collecting real property ad valorem tax, including specifically Chapter 4 of Title 48 of the O.C.G.A.; provided, however, that the limitation of O.C.G.A. § 48-4-78 which requires twelve (12) months of delinquency before commencing a tax foreclosure shall not apply. The Tax Commissioner shall remit the amount collected to the governing authority of the City. Thirty (30) days after imposition of the lien, the unpaid lien amount shall bear interest and penalties in the same amount as applicable to interest and penalties on unpaid real property ad valorem taxes.
- (i) The Tax Commissioner shall collect and retain an amount equal to the cost of administering a lien authorized by O.C.G.A. § 41-2-7 *et seq.* Any such amount collected and retained for administration shall be deposited in the general

fund of the County to pay the cost of administering the lien.

- (j) The City may waive and release any such lien imposed on property upon the owner of such property entering into a contract with the City 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) Where the abatement action does not commence in the Pike County Superior Court, review of a court order requiring the repair, alteration, improvement, or demolition of a dwelling, building, or structure shall be by direct appeal to the Pike County Superior Court as provided in O.C.G.A. § 5-3-29.
- (l) The public officers designated herein may issue citations for violations of state minimum standard codes, optional building, fire, life safety, and other codes adopted by ordinance, and conditions creating a public health hazard or general nuisance, and may seek to enforce such citation in any court of competent jurisdiction prior to issuing a complaint in rem as provided in this Ordinance.
- (m) Nothing in this Ordinance shall be construed to impair or limit in any way the power of the City to define and declare nuisances and to cause their removal or abatement by summary proceedings or otherwise.

Sec. 4. Determination by Public Officer that under existing ordinances dwellings, buildings, or structures are vacant and sample conditions of nuisances.

The public officer may determine, under existing ordinances, that a dwelling, building, or structure is unfit for human habitation or is unfit for its current commercial, industrial, or business use if he/she finds that conditions exist in such building, dwelling, or structure which are dangerous or injurious to the health, safety, or morals of the occupants of such dwelling, building, or structure; of the occupants of neighborhood dwellings, buildings, or structures; or of other residents of the City. Such conditions include the following (without limiting the generality of the foregoing):

- (a) Defects therein increasing the hazards of fire, accidents or other calamities;
- (b) Lack of adequate ventilation, light, or sanitary facilities;
- (c) Dilapidation;
- (d) Disrepair;
- (e) Structural defects;

- (f) Uncleanliness; and
- (g) Other additional standards which may from time to time be adopted and referenced herein by Ordinance amendment.

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. 5. Powers of public officers.

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

- (a) 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;
- (b) To administer oaths and affirmations, to examine witnesses, and to receive evidence;
- (c) 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;
- (d) 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
- (e) 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. 6. Service of Complaints.

- (a) Complaints issued by a public officer pursuant to this Ordinance shall be served in the following manner: In all cases, a copy of the complaint and summons shall be conspicuously posted on the subject dwelling, building, or structure within three (3) business days of filing of the complaint and at least ten (10) days prior to the date of the hearing. A copy of the complaint and summons shall be served in one of the following ways:
 - (1) Personal service upon each owner and party in interest if such parties are residents of the County. Service shall be perfected at least ten (10) days prior to the date of the hearing. Service may be made by the public officer designated by ordinance to abate nuisances or by any law enforcement officer of the City; and a return of service, filed with the

clerk of the appropriate court, shall be deemed sufficient proof that service was perfected;

- (2) Pursuant to the provisions of Article 5, Chapter 4, of Title 48 of the O.C.G.A.; or
 - (3) Statutory overnight delivery.
- (b) If any owner or party in interest is a resident of this state but resides outside of the County, service shall be perfected by certified mail or statutory overnight delivery, return receipt requested, to the most recent address shown in the county tax filings, and mailed at least fourteen (14) days prior to the date of the hearing.
 - (c) Nonresidents of this state, whose mailing address is known, shall be served by certified mail or statutory overnight delivery, return receipt requested, and mailed at least fourteen (14) days prior to the date of the hearing. Nonresidents of the state whose mailing address is unknown, shall be served by a notice stating the date, time, and place of the hearing 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.
 - (d) In the event either the owner or any party in interest is a minor, estate, an incompetent person, or person laboring under disabilities, the guardian or other personal representative of such person shall be served. If such guardian or personal representative resides outside the County or is a nonresident of this state, he or she shall be served as provided for in this Section. If such owner or party in interest has no guardian or personal representative, service shall be perfected by serving the judge of the Pike County Probate Court at least thirty (30) days prior to the date of the hearing, which Judge shall stand in the place of and protect the rights of such minor, estate, or incompetent person or appoint a guardian ad litem for such person.
 - (e) In the event of unknown persons or unborn remaindermen who are likely to have any rights in the property or interest or the proceeds thereof, the judge of the Pike County Probate Court shall be personally served at least thirty (30) days prior to the date of the hearing, and it shall be the duty of the judge of the Probate Court to stand in the place of and protect the rights of such unknown parties or unborn remaindermen.
 - (f) In the event the whereabouts of any owner or party in interest is unknown and the same cannot be ascertained by the public officer in the exercise of reasonable diligence, or if any owner or party in interest cannot, after due diligence, be served as provided in this Ordinance, the public officer shall

make an affidavit to that effect and serve by publication in the manner provided in Paragraph (c) of this Section, and such publication shall be sufficient proof that service was perfected.

- (g) 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.
- (h) Orders and other filings made subsequent to service of the initial complaint shall be served in the manner provided in this Ordinance 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.

SECTION 2. This Ordinance shall be codified in a manner consistent with the laws of the State of Georgia.

SECTION 3.

A. It is hereby declared to be the intention of the City Council that all sections, paragraphs, sentences, clauses and phrases of this Ordinance are and were, upon their enactment, believed by the City Council to be fully valid, enforceable and constitutional.

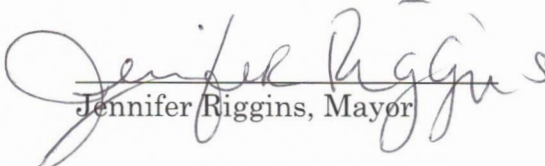
B. It is hereby declared to be the intention of the City Council that, to the greatest extent allowed by law, each and every section, paragraph, sentence, clause or phrase of this Ordinance is severable from every other section, paragraph, sentence, clause or phrase of this Ordinance. It is hereby further declared to be the intention of the City Council that, to the greatest extent allowed by law, no section, paragraph, sentence, clause or phrase of this Ordinance is mutually dependent upon any other section, paragraph, sentence, clause or phrase of this Ordinance.

C. In the event that any section, paragraph, sentence, clause or phrase of this Ordinance shall, for any reason whatsoever, be declared invalid, unconstitutional or otherwise unenforceable by the valid judgment or decree of any court of competent jurisdiction, it is the express intent of the City Council that such invalidity, unconstitutionality or unenforceability shall, to the greatest extent allowed by law, not render invalid, unconstitutional or otherwise unenforceable any of the remaining sections, paragraphs, sentences, clauses, or phrases of the Ordinance and that, to the greatest extent allowed by law, all remaining sections, paragraphs, sentences, clauses, or phrases of the Ordinance shall remain valid, constitutional, enforceable, and of full force and effect.

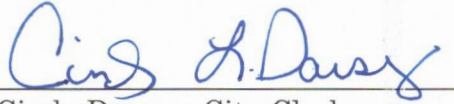
SECTION 4. Repeal of Conflicting Provision. Except as otherwise provided herein, all ordinances or parts of ordinances in conflict with this ordinance are hereby repealed.

SECTION 5. Effective Date. This ordinance shall become effective immediately upon its adoption by the City Council of the City of Molena.

SO ORDAINED this 9th day of January, 2017.


Jennifer Riggins, Mayor

ATTEST:


Cindy Darsey, City Clerk

(Seal)

FIRST READING: Dec. 12, 2016

SECOND READING/ADOPTION: Jan. 9, 2017