

Subject Matter: Nuisance Ordinance
**Date First Presented by Council at
Public Meeting:** 10-22-01
**Date of Adoption at a
Public Meeting:** 11-12-01

**TOWN OF SHARPSBURG
COUNTY OF COWETA
STATE OF GEORGIA**

ORDINANCE NUMBER 01-10

TOWN OF SHARPSBURG, GEORGIA

PREAMBLE & FINDINGS

WHEREAS, the Town of Sharpsburg desires to create and adopt Nuisance Ordinance; and

WHEREAS, the Georgia General Assembly pursuant to Chapter 2 of Title 41 of the Official Code of Georgia delegates authority to the Town thereunder to deal with nuisances within the Town; and

WHEREAS, it is the desire of the Town to enact this Nuisance Ordinance so as to exercise this authority.

**WHEREFORE, THE TOWN OF SHARPSBURG HEREBY ADOPTS,
ORDAINS AND ENACTS THE FORGOING NUISANCE ORDINANCE AS FOLLOWS:**

SECTION ONE

Definitions.

“Applicable codes” means:

(a) any optional housing or abatement standard provided in Chapter 2 of Title 8 of the Official Code of Georgia Annotated, as adopted by ordinance or operation of law, or other property maintenance standards as adopted by ordinance or operation of law, or general nuisance law, relative to the safe use of real property;

(b) any fire or life safety code as provided for in Chapter 2 of Title 25 of the Official Code of Georgia Annotated;

(c) the minimum standard codes provided in Chapter 2 of Title 8 of the Official Code of Georgia Annotated, 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.

“*Drug Crime*” means an act which is a violation of Article 2 of Chapter 13 of Title 16 of the Official Code of Georgia Annotated, 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 buildings or structure belonging thereto or usually enjoyed therewith and also includes any building or structure of any design. As used in this Ordinance, 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 Town Council of the Town of Sharpsburg.

“*Municipality*” shall mean the Town of Sharpsburg.

“*Owner*” means the holder of the title in fee simple and every mortgage or record.

“*Parties in interest*” means:

- (a) Persons in possession of said property and premises;
- (b) Persons having record in the county 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 upon a 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 Town of Sharpsburg, relating to health, fire, or building regulations or to other activities concerning dwellings, building, or structures in the Town of Sharpsburg.

“Public Officer” means the officer or officers who are authorized by this Ordinance 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.

SECTION TWO

Nuisances.

(a) Whenever the Town Council of the Town of Sharpsburg, or its duly appointed public officer, finds the existence or occupancy of dwellings or other buildings or structures which are unfit for human habitation or for commercial, industrial, or business occupancy or use and not in compliance with the applicable state minimum standard codes as adopted by ordinance or operation of law or any optional building, fire, life safety, or other codes relative to the safe use of real property and real property improvements adopted by ordinance; or general nuisance law, and which constitute a hazard to the health, safety, and welfare of the people of the Town of Sharpsburg; and that a public necessity exists for the repair, closing, or demolition of such dwellings, buildings, or structures. It is found and declared where there is in existence a condition or use of real estate which renders adjacent real estate unsafe or inimical to safe human habitation, such use is dangerous and injurious to the health, safety, and welfare of the people of the Town of Sharpsburg 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. Whenever the Town Council finds that there exist in the Town dwellings, buildings, or structures which are unfit for human habitation or for

commercial, industrial, or business uses due to dilapidation and not in compliance with applicable codes; which have defects increasing the hazards of fire, accidents, or other calamities; which lack of 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 Town of Sharpsburg, or vacant, dilapidated dwellings, buildings, or structures in which drug crimes are being committed, the Town of Sharpsburg exercises its police power to repair, close, or demolish the aforesaid dwellings, buildings, or structures in the manner provided in this Ordinance.

All the provisions of this Ordinance may be applied to private property where there exists an endangerment to the public health or safety as a result of unsanitary or unsafe conditions to those persons residing or working in the vicinity. A finding by the Town Council, or its designee, that such property is a health or safety hazard shall constitute prima-facie evidence that said property is in violation of this Ordinance.

(b) A finding by any Public Authority that property constitutes a nuisance shall constitute prima facie evidence that said property is in violation of this Ordinance.

(c) If the existence in the Town of Sharpsburg of a nuisance is complained of, the municipal court of the Town of Sharpsburg or the Superior Court of Coweta County shall have jurisdiction to hear and determine the question of the existence of such nuisance, and if found to exist, to order its abatement.

SECTION THREE

Procedures for Enforcement.

(a) The Town Council is hereby designated to exercise the powers prescribed in this Ordinance. The Town Council, or its designee, may appoint a designee to exercise his powers under this Ordinance.

(b) Whenever a request is filed with the public officer by a public authority or by at least five residents of the Town of Sharpsburg charging 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 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 and parties in interest; state with particularity of 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 the municipal court or a court of competent jurisdiction as determined by O.C.G.A. §41-2-5, as amended, at a date and time certain and at a place within the county or municipality 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 the proper 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;

(c) That if, after such notice and hearing, the court determines that the dwelling, building, or structure in question is unfit for human habitation or is unfit for its current commercial, industrial, or business use and not in compliance with applicable codes; is vacant and being used in connection 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 said dwelling, building, or structure can be made at a reasonable cost in relation to the present value of the dwelling, building, or structure, requiring the owner, within the time 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 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 relevant 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.

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 of the Official Code of Georgia Annotated, 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.

(3) That, 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. 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 public health or safety as a result of unsanitary or unsafe conditions. The use or occupation of this building is prohibited and unlawful.”

(4) 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;

(5) That 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.

(6) The lien provided for in paragraph (5) of this subsection 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 required under subsection (g) 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 the county and enter the lien on the general execution docket. The lien shall be superior to all other liens on the property, except liens for taxes to which the lien shall be inferior, and shall continue in force until paid. After filing a certified copy of the order with the clerk of superior court, the public officer shall forward a copy of the order and a final statement of costs to the county tax commissioner. It shall be the duty of the county 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 taxes, including specifically Chapters 4 of Title 48 of the Official Code of Georgia Annotated; 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 tax commissioner shall remit the amount collected to the governing authority of the Town whose ordinance is being enforced. Thirty 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.

(7) The tax commissioner shall collect and retain an amount equal to the cost of administering a lien authorized by this Ordinance unless such costs are waived by resolution of the County governing authority. 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.

(8) The Town Council may waive and release any such lien imposed on property upon the owner of such property entering into a contract with the Town Council 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.

(9) Where the abatement action does not commence in the 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 superior court under O.C.G.A. §5-3-29.

(10) In addition to the procedures and remedies in this Ordinance, the designated public officers 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 seek to enforce such citations in a court of competent jurisdiction prior to issuing a complaint in rem as provided in this Ordinance.

SECTION FIVE

Service of Summons and Order

(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 business days of filing of the complaint and at least ten 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 days prior to the date of the hearing. Service may be made by the public officer designated by the Town Council to abate nuisances or by any law enforcement officer of the county or municipality whose ordinance is being enforced; 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 of Chapter 4 of Title 48 of the Official Code of Georgia Annotated; or

(3) Statutory overnight deliver.

(b) If any owner or party in interest is a resident of this state but resides outside of the Coweta County, service shall be perfected by a certified mail or statutory overnight delivery, return receipt requested, to the most recent address shown in county tax filings and mailed at least 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, mailed at least 14 days prior to the date of the hearing. For nonresidents 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 Coweta county once a week for two consecutive weeks prior to the hearing.

(d) In the event either the owner or any party in interest is a minor, an estate, an incompetent person, or person laboring under disabilities, the guardian or other personal representative of such person shall be served and if such guardian or personal representative resides outside Coweta County or is a nonresident of this state, he or she shall be served as provided for in subsection (c) of this Ordinance. If such owner or party in interest has not guardian or personal representative service shall be perfected by serving the judge of the probate court of Coweta County at least 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 probate court of Coweta County shall be personally served at least 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 subsection (c) of this Ordinance, 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 Coweta County. 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 SIX

This Ordinance shall become immediately effective upon its second reading and adoption by the Town Council.

SECTION SEVEN

The Preamble of this Ordinance shall be construed to be, and is hereby incorporated by reference as is fully set out herein.

SECTION EIGHT

The sections, paragraphs, sentences, clauses, and phrases of this Ordinance are severable, and if any phrase, sentence, paragraph, or section of this Ordinance shall be declared illegal by the valid judgment or decree of any court of competent jurisdiction, such an illegality shall not affect any of the remaining phrases, clauses, sentences, paragraphs, and sections of this Ordinance.

SECTION NINE

All ordinances and parts of ordinances in conflict herewith are hereby expressly repealed.

[Signatures appear on the following page]

Ordained by the Mayor and Council of the Town of Sharpsburg, this the 12th day of November, 2001 by the following voting for adoption.

Clay Cole, Council Member

Larry Hyde, Council Member

David Mullins, Council Member

Attest:

Alvin G. Arrowood, Mayor

Robin Spradlin, Town Clerk