

CITY OF LOOKOUT MOUNTAIN, GEORGIA

ORDINANCE NO 145

AN ORDINANCE

To add to the Code of Ordinances of the City of Lookout Mountain, Georgia, finding that there exist dwellings, buildings, or structures of the conditions and character described in O.C.G.A. Section 41-2-7 within the City of Lookout Mountain, Georgia; and

To provide for the abatement by repair or removal of unfit buildings or structures as defined in O.C.G.A. Sections 41-2-7 through 41-2-17, including provisions for notice and hearing before a public officer, for accomplishment of repair and removal, and for the placement of lien upon property for the costs of repair and removal and for all other related purposes.

BE IT ORDAINED by the City Council of the City of Lookout Mountain, Georgia, and IT IS HEREBY ORDAINED:

Section 1: The City Council of the City of Lookout Mountain, Georgia, hereby finds that there exist in the City of Lookout Mountain, Georgia, 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 ventilation, light, or sanitary facilities; structural deterioration, availability to vagrants and other trespassers due to abandoned condition, and other conditions 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 of Lookout Mountain, Georgia, or vacant, dilapidated dwellings, buildings or structures in which drug crimes are being committed, as is contemplated under the provisions of O.C.G.A. Section 41-2-7.

Section 2. It is further found by the City Council of the City of Lookout Mountain, Georgia that there exists private property within the City of Lookout Mountain, Georgia, where an accumulation of weeds, trash, junk, filth, or other unsanitary or

unsafe conditions create a public health hazard or a general nuisance to those persons residing in the City of Lookout Mountain, Georgia, also as contemplated under the provisions of O.C.G.A. Section 41-2-7.

Section 3. This Ordinance is adopted pursuant to the provisions of O.C.G.A. Section 41-2-7 and Section 41-2-9, for the purpose of enabling the enactment of an Ordinance for the abatement of nuisances, under the provisions of O.C.G.A. Sections 41-2-7 through 41-2-17, and for all other related purposes.

Section 4. The City Council of the City of Lookout Mountain, Georgia, having found that there exist within the City of Lookout Mountain, Georgia, dwellings, buildings, or structures which are unfit for human habitation or for commercial, industrial, or business uses, and private property within the City of Lookout Mountain, Georgia, where an accumulation of weeds, trash, junk, filth, and other unsanitary or unsafe conditions create a health hazard or a general nuisance to the persons residing within the City, the City Council of the City of Lookout Mountain, Georgia, hereby adopts the provisions of O.C.G.A. Sections 41-2-7 through 41-2-17, as follows:

4.1 The definitions contained in O.C.G.A. Section 41-2-8 are incorporated by reference herein, and shall be included as a part of this Ordinance.

4.2 There is hereby created the office, within the City of Lookout Mountain, Georgia, designated as "Nuisance Hearing Officer." Such officer shall be the Chairman of the Municipal Planning Commission of the City of Lookout Mountain, Georgia, or such other individual as the Mayor may designate. The Nuisance Hearing Officer shall be uncompensated, and shall serve at the pleasure of the Council. Such officer shall be empowered with all the powers and authority authorized under the provisions of O.C.G.A. Sections 41-2-7 through 41-2-17.

4.3 Whenever a request is filed with the Nuisance Hearing Officer by a public authority or by at least five (5) residents of the City of Lookout Mountain, Georgia, charging that

any dwelling, building, or structure is unfit for human habitation or for commercial, industrial or business use, or whenever it appears to the Nuisance Officer (on his own motion) that any dwelling, building or structure is unfit for human habitation or is unfit for its current commercial, industrial, or business use or is vacant, dilapidated, and being used in connection with the commission of drug crimes, the Nuisance Hearing Officer shall, if his preliminary investigation discloses a basis for such charges, issue and cause to be served upon the owner of and any parties in interest in such dwelling, building, or structure, a complaint stating the charges in that respect and containing a notice that a hearing will be held before the Nuisance Hearing Officer (or his designated agent) at a place within the City of Lookout Mountain, Georgia, not less than ten (10) days nor more than thirty (30) days after the service of said complaint; the owner and any parties in interest may file an answer to the complaint and may appear in person, or otherwise, and may be represented and give testimony at the place and time fixed in the complaint and notice of hearing; and it is further provided that the rules of evidence prevailing in courts of law or equity shall not be controlling in hearings before the Nuisance Hearing Officer.

4.4 If, after such notice and hearing, the Nuisance Hearing Officer determines that the dwelling, building, or structure under consideration is unfit for human habitation or is unfit for its current commercial, industrial, or business use, or is vacant, dilapidated, and being used in connection with the commission of drug crimes, he shall state in writing his findings of fact in support of such determination, and shall issue and cause to be served upon the owner thereof an order:

(A) If the repair, alteration, or improvement of the said dwelling, building, or structure can be made at a reasonable cost in relation to the value of the dwelling, building, or structure, requiring the owner or parties in interest, within the time specified in the order, to repair,

alter, or improve such dwelling, building, or structure so as to render it fit for human habitation or for current commercial, industrial, or business use or to vacate and close the dwelling, building, or structure as a human habitation; or

(B) If the repair, alteration, or improvement of the said dwelling, building, or structure cannot be made at a reasonable cost in relation to the value of the dwelling, building, or structure, requiring the owner or parties in interest, within the time specified in the order, to remove or demolish such dwelling, building, or structure.

PROVIDED that in every case, the owner or party in interest shall be afforded an opportunity to repair such structure, or otherwise bring it in compliance with the Ordinances of the City of Lookout Mountain, Georgia, within the time specified in the Order by the Nuisance Hearing Officer, prior to any repair, demolition or removal of such building by the City of Lookout Mountain, Georgia, or under its direction.

4.5 In no event shall the City Council of the City of Lookout Mountain, Georgia, require removal or demolition of any dwelling, building, or structure within the City of Lookout Mountain, Georgia, except upon a finding that the cost of repair, alteration, or improvement thereof exceeds one-half the value such dwelling, building, or structure will have when repaired to satisfy the minimum requirements of this law; provided further, that a finding by the Nuisance Hearing Officer that the costs of repair, alteration, or improvement exceeds one-half the value such dwelling, building or structure will have when repaired may be accepted by the City Council without the necessity of hearing further evidence on the question; and provided further, that even if such costs shall exceed one-half of such value, the owner or party in interest shall still be given the opportunity to repair, alter, or improve the structure within the time specified by the Nuisance Hearing Officer in order to prevent the demolition or removal of such structure.

4.6 If the owner or parties in interest fail to comply with any order of the Nuisance Hearing Officer to vacate, close or demolish the dwelling, building, or structure, the Nuisance Hearing officer may cause such dwelling, building, or structure to be repaired, altered, or improved or to be vacated and closed or demolished; and the Nuisance Hearing Officer may cause to be posted on the main entrance of any building, dwelling, or structure so closed a placard with the following words:

"This building is unfit for human habitation or commercial, industrial, or business use; the use or occupation of this building for human habitation or for commercial, industrial, or business use is prohibited and unlawful."

4.7 If the owner or parties in interest fail to comply with any order to remove or demolish the dwelling, building, or structure, the Nuisance Hearing Officer may cause such dwelling, building, or structure to be removed or demolished; provided, however, that the duties of the Nuisance Hearing Officer with regard to the repair, alteration, or improvement, or demolition and removal of such structure by the City of Lookout Mountain, Georgia, or at its direction, shall not be exercised until the City Council of the City of Lookout Mountain, Georgia, shall have by Ordinance ordered the Nuisance Hearing Officer to proceed to effectuate the purpose of this Ordinance and of O.C.G.A. Sections 41-2-7 through 41-2-17 with respect to the particular property or properties which the Nuisance Hearing Officer shall have found to be unfit for human habitation or unfit for its current commercial, industrial, or business use, which property or properties shall be described in the Ordinance ordering the Nuisance Hearing Officer to proceed with regard to such property.

4.8 The amount of the costs of such vacating and closing or removal or demolition or repair, alteration, or improvement of such properties shall be a lien against the real property upon which such cost was incurred, including attorneys' fees where appropriate, and any expert witness fees or other costs incurred with regard to the hearings conducted concerning such property and related proceedings. Said lien shall attach to

the real property upon the payment of all costs of demolition by the City, or costs of repair, improvement or alteration, and costs of proceedings under this Ordinance, and the filing of an itemized statement of the total sum of all costs so incurred by the Nuisance Hearing Officer in the office of the Clerk of the City of Lookout Mountain, Georgia, on a Lien Docket maintained by said Clerk for such purposes. If the dwelling, building, or structure is removed or demolished by the Nuisance Hearing Officer, he shall sell or cause to be sold the materials of such dwellings, buildings, or structures together with any personal property contained or abandoned in such structure and which the owner or party in interest refuses to remove after reasonable notice, and shall credit the proceeds of such sale against the costs of the removal or demolition, and costs of proceedings under this Ordinance, and any balance remaining shall be deposited in the Superior Court of Walker County, Georgia, by the Nuisance Hearing Officer, shall be secured in such manner as may be directed by such Court, and shall be disbursed by such Court to the persons found to be entitled thereto by Final Order or Decree of such Court.

Section 5. Nothing in this Ordinance shall be construed to impair or limit in any way the power of the City of Lookout Mountain, Georgia, to declare and define nuisances and to cause their removal or abatement by summary proceedings or otherwise.

Section 6. The City of Lookout Mountain, Georgia, may enforce the collection of any amount due on such lien described in the preceding sections for removal or demolition of dwellings, buildings, or structures, or for repairs, alterations or improvements to such structures and costs of proceedings only in the following manner:

(A) The owner or parties at interest shall be allowed to satisfy the amount due on such lien by paying to the City of Lookout Mountain, Georgia, within thirty (30) days after the perfection of said lien, a sum of money equal to twenty-five

percent (25%) of the total amount due and by further paying to the City of Lookout Mountain, Georgia, the remaining balance due on such lien, together with interest at the rate of seven percent (7%) per annum, in three (3) equal annual payments, each of which shall become due and payable on the anniversary date of the initial payment made as hereinabove prescribed;

(B) Should the property upon which such lien is perfected be sold, transferred, or conveyed by the owner or parties at interest at any time prior to the termination of said three-year period, then the entire balance due on such lien shall be due and payable to the City; and

(C) Should the amount due on such lien, or any portion thereof, be unpaid after the passage of said three-year period, or upon the occurrence of the contingency provided for in subparagraph (B) of this paragraph, the City of Lookout Mountain, Georgia, may enforce the collection of any amount due on such lien for alteration, repair, removal, or demolition of dwellings, buildings, or structures and costs of proceedings in the same manner as provided in O.C.G.A. Section 48-5-358 and other applicable statutes. This procedure shall be subject to the right of redemption by any person having any right, title, or interest in or lien upon said property, all as provided by Article 3 of Chapter 4 of Title 48 of the Official Code of Georgia Annotated.

Section 7. The Nuisance Hearing Officer may determine, under this and other related 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 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 of Lookout Mountain, Georgia. Such conditions may 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; and
- (6) Uncleanliness.

The Nuisance Hearing Officer may also consider the availability of such structure to trespassers and to rodents or vermin. The Nuisance Hearing Officer may also determine, under this and other existing Ordinances, that a dwelling, building, or structure is vacant, dilapidated, and being used in connection with the commission of drug crimes upon personal observation or report of a law enforcement agency and evidence of drug crimes being committed.

Section 8. The Nuisance Hearing Officer is empowered to exercise such powers as may be necessary or convenient to carry out and effectuate the purpose and provisions of this Ordinance and of O.C.G.A. Sections 41-2-7 through 41-2-17, including the following powers in addition to others herein granted:

- (1) To investigate the dwelling conditions of the City of Lookout Mountain, Georgia, 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 of the City of Lookout Mountain, Georgia, as he deems necessary to carry out the purposes of this and all related Ordinances, subject to the approval of the City Council of the City of Lookout Mountain, Georgia; and

(5) To delegate any of his functions and powers under this Ordinance to such officers and agents as he may designate.

Section 9. (A) Complaints or orders issued by the Nuisance Hearing Officer pursuant to this Ordinance and all related Ordinances shall, in all cases, be served upon each person in possession of said property, each owner, and each party in interest; and the return of service signed by the Nuisance Hearing Officer or his agent or an affidavit of service executed by any citizen of the State of Georgia, reciting that a copy of such complaint or orders was served upon each person in possession of said property, each owner, and each party in interest personally or by leaving such copy at the place of his residence, shall be sufficient evidence as to the service of such person in possession, owner, and party in interest.

(B) If any of the owners and parties in interest shall reside out of the City of Lookout Mountain, Georgia, service shall be perfected by causing a copy of such complaint or orders to be served upon such party or parties by the sheriff or any lawful deputy of the county of the residence of such party or parties or such service may be made by any citizen of the State of Georgia, if such service is made within the State of Georgia; and the return of such sheriff or lawful deputy or the affidavit of such citizen that such party or parties were served either personally or by leaving a copy of the complaint or orders at the residence shall be conclusive as to such service.

(C) Nonresidents of the State of Georgia shall be served by publishing the same once each week for two successive weeks in a newspaper printed and published in the City of Lookout Mountain, Georgia, or, in the absence of such newspaper, in one printed and published outside the City and circulated in the

City. A copy of such complaint or orders shall be posted in a conspicuous place on premises affected by the complaint or orders. Where the address of such nonresidents is known, a copy of such complaint or orders shall be mailed to them by registered or certified mail. Alternatively, such complaint, notice or order may be served under the provisions of the Georgia Long-Arm Statute, or service may be acknowledged.

(D) In the event either the owner or any party in interest is a minor or an insane 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 the City of Lookout Mountain, Georgia, or is a nonresident of the State of Georgia, he shall be served as provided for in subsection (C) of this section of this Ordinance or under this subsection in such cases. If such minor or insane person or person laboring under disabilities has no guardian or personal representative or in the event such minor or insane person lives outside the City of Lookout Mountain, Georgia, or is a nonresident of the State of Georgia, service shall be perfected by serving such minor or insane person personally or by leaving a copy at the place of his residence which shall be sufficient evidence as to the service of such person or persons; in the case of other persons who live outside the City or are nonresidents of the State of Georgia, service shall be perfected by serving the Judge of the Probate Court of Walker County, who shall stand in the place of and protect the rights of such minor or insane person or appoint a guardian ad litem for such person.

(E) In the event the whereabouts of any owner or party in interest is unknown and the same cannot be ascertained by the Nuisance Hearing Officer in the exercise of reasonable diligence and the Nuisance Hearing Officer shall make an affidavit to that effect, then the service of such complaint or order upon such persons shall be made in the same manner as provided in subsection (C) of this section of this Ordinance, or

service may be perfected upon any person, firm, or corporation holding itself out as an agent for the property involved.

(F) A copy of such complaint or orders shall also be filed in the proper office or offices for the filing of lis pendens notice in the Office of the Superior Court of Walker County, and such filing of the complaint or orders shall have the same force and effect as other lis pendens notices provided by law. Any such complaint or orders or an appropriate lis pendens notice may contain a statement to the effect that a lien may arise against the described property and that an itemized statement of such lien is maintained on a lien docket maintained by the Clerk of the City of Lookout Mountain, Georgia.

Section 10. Nothing in this Ordinance shall be construed to abrogate or impair the powers of the Courts or of any department of the City of Lookout Mountain, Georgia, to enforce any provisions of its local enabling act, its charter, or its ordinances or regulations 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 Ordinance, by the City Charter, or by statute.

Section 11. It is the intention of the City Council of the City of Lookout Mountain, Georgia, and it is hereby ordained that the provisions of this Ordinance shall become and be made a part of the Code of Ordinances of the City of Lookout Mountain, Georgia, and the sections of this ordinance may be re-numbered to accomplish such intention.

Section 12. If any section, subsection, sentence or clause of this Ordinance be adjudged invalid, such adjudication shall not affect the validity of the Ordinance as a whole or of any section, subsection, sentence or clause hereof, not adjudged invalid.

Section 13. All other ordinances or parts thereof heretofore enacted by the City in direct conflict herewith are hereby repealed; however, this Ordinance shall be deemed to be cumulative of any other remedies provided in other Ordinances

heretofore adopted by the City of Lookout Mountain, Georgia, and all Ordinances related to the subject matter contained herein shall remain in full force and effect, except to the extent that the provisions thereof are in direct conflict with the provisions of this Ordinance.

Section 14. This Ordinance shall be effective ten (10) days after its adoption by at least three members of the Council of the City after two (2) readings at least one (1) week apart.

APPROVED ON FIRST READING ON June 29, 1990.

James J. Goufner
Member of City Council

James B. Butler
Member of City Council

James L. Goufner
Member of City Council

Member of City Council

Member of City Council

D. N. Adams
Mayor of Lookout Mountain,
Georgia

APPROVED AND ADOPTED ON SECOND READING ON July 26, 1990.

Susan W. Petterway
Member of City Council

James L. Goufner
Member of City Council

James B. Butler
Member of City Council

Daniel L. Chandler
Member of City Council

Member of City Council

D. N. Adams
Mayor of Lookout Mountain,
Georgia

ATTEST:

[Signature]
City Clerk of Lookout Mountain,
Georgia

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