

CITY OF LOOKOUT MOUNTAIN, GEORGIA

ORDINANCE NO. 318

AN ORDINANCE directing the Nuisance Hearing Officer of the City of Lookout Mountain, Georgia, to proceed with the demolition of certain buildings and structures located on the properties described herein, and for other purposes.

WHEREAS, on November 7, 2018, Angela D. Sutherland, Nuisance Hearing Officer of the City of Lookout Mountain, Georgia (the “Nuisance Hearing Officer”), issued a Complaint pursuant to O.C.G.A. § 41-2-7, *et seq.* and the City of Lookout Mountain’s Ordinance No. 145 stating that an inspection of the buildings and structures located on certain property described herein revealed that said buildings and structures were unfit for human habitation or for commercial, industrial, or business use, were not in compliance with applicable codes, and constituted an endangerment to the public health or safety as a result of unsanitary or unsafe conditions; and

WHEREAS, following notice to interested parties, a hearing on the Complaint was conducted by the Honorable Buddy B. Presley, Jr., Judge of the Municipal Court of Lookout Mountain, Georgia, on November 27, 2018; and

WHEREAS, following his consideration of the testimony and documentary evidence presented at the hearing and the entire record in this matter, Judge Presley issued an Order on January 25, 2019 (the “Order”), finding, among other things, that the structures located on the properties in question were unfit for human habitation or any use or purpose and presented a clear and present danger to the community as a whole; and

WHEREAS, Judge Presley in his Order ordered that the interested parties and owners of the properties be given until March 31, 2019, to demolish and completely remove all remaining

structures, rubbish, trash, weeds, limbs, dead trees, debris, or other inorganic matter from the properties; and

WHEREAS, Judge Presley in his Order ordered that, as an alternative to demolishing and removing the structures, the interested parties and owners of the properties were required to file, no later than March 31, 2019, proof that they had obtained a valid building permit, approval of plans of repair, and proof of the interested parties' possession of sufficient funds to complete the repairs of the structures in a manner that complied with applicable City and County Building Codes; and

WHEREAS, Judge Presley in his Order further ordered that, in the event that the interested parties failed to comply with the Order, the City of Lookout Mountain shall undertake the removal of the structures and debris; and

WHEREAS, a copy of the Order is attached to this Ordinance and fully incorporated herein; and

WHEREAS, the City of Lookout Mountain's Ordinance No. 145, Section 4.7, provides, among other things, that if the owners or parties in interest fail to comply with any order for the removal or demolition of a dwelling, building or structure, the Nuisance Hearing Officer may cause such dwelling, building or structure to be removed or demolished after first being ordered to do so pursuant to an ordinance adopted by the City Council of the City of Lookout Mountain; and

WHEREAS, the Nuisance Hearing Officer has advised the City Council that the owners and interested parties have failed to comply with Judge Presley's Order, have not demolished and removed the structures in question, and have not taken action to obtain approval for the repair of the structures;

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

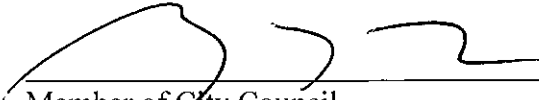
Section 1. The Nuisance Hearing Officer or her designees are hereby directed to effectuate the purposes of the City of Lookout Mountain's Ordinance No. 145 and of O.C.G.A. §§ 41-2-7 through 41-2-17 with respect to the properties, buildings, and structures described in the attached Order, those properties being specifically identified as City of Lookout Mountain Tax Parcel Nos. 4006 014, 4006 018, 4006 018A, and 4006 019. In particular, the Nuisance Hearing Officer or her designees are specifically ordered and directed to proceed with the demolition and removal of all remaining structures, rubbish, trash, weeds, limbs, dead trees, debris, or other inorganic matter from the aforesaid properties and to take all necessary and related actions necessary or appropriate to effectuate such demolition and removal. The interested parties identified in the attached Order shall be responsible for and shall reimburse the City of Lookout Mountain for all such costs of demolition, removal, clean up and remediation as provided by state law and/or the ordinances of the City of Lookout Mountain, and the City of Lookout Mountain may record a lien on the properties as provided by the Order and applicable law.

Section 2 Savings Clause. If any of the sections, subsections, sentences, clauses or phrases of this Ordinance are for any reason held to be unconstitutional or invalid, the validity of the remaining portions of this Ordinance shall not be thereby affected since it is the express intent of the Council of the City to pass each section, phrase, paragraph and word separately.

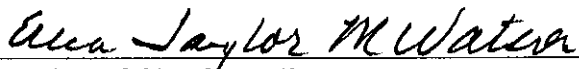
Section 3. Repealer. All Ordinances or parts of Ordinances in conflict herewith are hereby repealed.

Section 4. Effective Date. This Ordinance shall be effective ten (10) days after its adoption and approval by at least three (3) members of the Council of the City of Lookout Mountain, Georgia, after two (2) readings at least one (1) week apart.

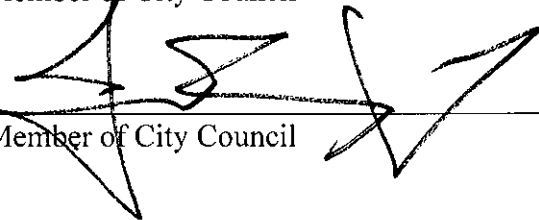
APPROVED on first reading on May 9, 2019.



Member of City Council



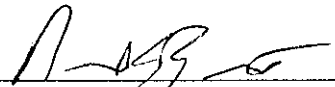
Member of City Council



Member of City Council

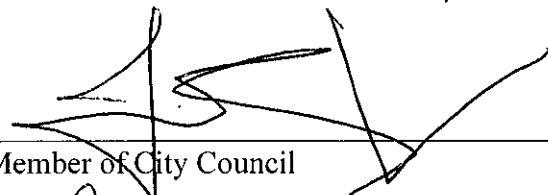
Member of City Council

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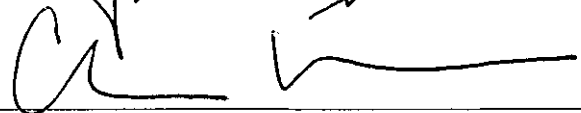


Mayor of Lookout Mountain, Georgia


APPROVED AND ADOPTED on second reading on June 6, 2019.



Member of City Council

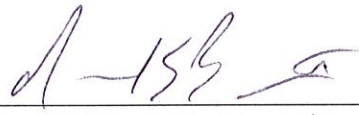


Member of City Council


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Member of City Council


Mayor of Lookout Mountain, Georgia

ATTEST:

City Clerk

IN THE MUNICIPAL COURT OF LOOKOUT MOUNTAIN, GEORGIA

In Re:

Tax Parcel Nos.

4006 014, 4006 018, 4006 018A
204 McFarland Road
Lookout Mountain, GA 30750

Interested Parties:

Jesse B Sims
c/o Donald Sims
709 Dawson St.
Thomasville, GA 31792
As to Parcel #4006 014

Jesse Sims
Mtn Gardens
c/o Donald Sims
709 N Dawson St.
Thomasville, GA 31792
As to Parcel #4006 018

Geraldine Sims
c/o Donald Sims
709 N. Dawson St.
Thomasville, GA #4006 018A

Parcel 4006 019

ORDER

This matter was heard on November 27, 2018 at approx. 5:00 pm, by the Court which was appointed as hearing officer by the Nuisance Officer under Ordinance 145 and pursuant to OCGA §§ 41-2-7 et seq., specifically § 41-2-9.

Present at the hearing were the following:

Jesse Sims, Jr., Donald Sims, and Paul Sims (the "Interested Parties"); Angie Southerland, the Lookout Mountain, Georgia Nuisance Officer; and William K. Pickering, Esq., the Lookout Mountain, Georgia City Attorney. The interested parties were informed by the Court of their right to counsel and, each of the interested parties waived such right on the record. Following such waiver, the Court received testimony

and exhibits into evidence and makes the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

1. Building officials and nuisance officers for the City of Lookout Mountain, Georgia issued Citations for violations of ordinances, primarily Lookout Mountain Ordinance Numbers 127 and 145. The Court finds that the Citations are well founded and properly served upon all interested parties except as listed below. The Citations are appended to this Order as Exhibit 3
2. Jesse Sims, Jr., who appears to the Court to be an interested party was not properly served prior to the hearing. However, Jesse Sims, Jr. did appear and voluntarily waived notice and service of process. He furthermore agreed that the hearing shall be binding upon him and his interest in Parcel 4006 019.
3. The Interested Parties and the City of Lookout Mountain, Georgia entered into an agreement as to some of the structures identified on Trial Exhibit 2 to wit: that all the structures other than the Controverted Structures (defined below) were to be demolished.
4. As used in this Order, the term "Controverted Structures" shall mean the structures identified as "House 2," "House 3," "Garage," "Apt. 7," and "Apt. 8" on Trial Exhibit 2.
5. Per the agreement of the parties, the Court finds that all structures identified on Exhibit 2 other than the Controverted Structures meet the definition of a nuisance under the City Ordinance and are hereby determined to be nuisances. Such structures are therefore **ORDERED** to be demolished and removed from the property as provided in such Ordinance 127 and 145 and O.C.G.A 41-2-9.
6. As to the Controverted Structure, the Court received testimony from the Interested Parties and Angie Sutherland, Lookout Mountain, Georgia Nuisance Officer. Having heard testimony of these witnesses and Interested

Parties, this Court finds that such structures present a clear and present nuisance.

7. This Court further finds that the controverted structures as identified in Paragraph 4 above, would require substantial costs to bring into compliance with current City and County building codes. The Court finds that the amount of such repair costs would be more than 75% of any reasonable value placed upon such structures.
8. This Court finds that the Controverted Structures are unfit for human habitation or any use or purpose and present a clear and present danger to the community as a whole.

CONTROLLING LAW

9. "[W]hile the right exists in the exercise of the police power to destroy property which is a menace to public safety or health, public necessity is the limit of the right and the property cannot be destroyed if the conditions which make it a menace can be abated in any other recognized way.
Polsgrove v. Moss, 154 Ky. 408, 157 SW 1133; 39 AmJur pp. 461-462, Sec. 186; 62 CJS, Municipal Corporations, § 281, pages 631-632; Crossman v. City of Galveston, 112 Tex. 303, 130*130 316, 247 SW 810, 26 ALR 1210." City of Houston v. Lurie, 224 SW2d 871, 14 ALR2d 61. See also Albert v. City of Mountain Home, 337 P2d 377; City of Aurora v. Meyer, 38 Ill. 2d 131 (230 NE2d 200); Childs v. Anderson, 344 Mich. 90, 73 NW2d 280; Application of the Village of Suffern, 209 NYS2d 599; Newton v. Highland Park, 282 SW2d 266; Horton v. Gullledge, 277 NC 353 (177 SE2d 278.)
10. The vice of the ordinance under consideration is that it flatly permits uncompensated destruction of the owner's property where the cost of repair would exceed 50 percent of the value of the structure unrepaired. In this it differs from similar ordinances which have been approved by various courts. In Pereplechikoff v. City of Los Angeles, 345 P2d 261, the condition was that where there was a nonconforming use the owner had a choice of allowing

demolition under police power *or* so repairing the building that it conformed to the zoning laws.

WHEREFORE, premises considered, the Court hereby:

ORDERS that the Interested Parties and Owners of such Property shall have until March 31, 2019 to demolish and completely remove all remaining structures, rubbish, trash, weeds, limbs, dead trees, debris or other inorganic matter from the Property; the Court furthermore

ORDERS that, in the alternative to demolishing and removing the Controverted Structures, the Interested Parties and Owners of the Property shall file, no later than March 31, 2019, proof that they have obtained a valid building permit, approval of the plans of repair and the drawings by the City of Lookout Mountain, Georgia, and proof of the Interested Parties' possession of sufficient funds to complete the repairs of the Controverted Structures in a manner that complies with the applicable City and County Building Codes; and the Court furthermore

ORDERS that, in the event such Interested Parties, are not in compliance with this Court's Order, then the City of Lookout Mountain, Georgia shall take such efforts to remove such structures and debris at the earliest convenient date after March 31, 2019; and the Court furthermore

ORDERS that the City shall record a lien on such Property as provided Ordinances 127 and 145 and O.C.G.A. 41-2-7 et seq. and place such lien on such Property as provided by statute and ordinance in an amount equal to the cost of the City of Lookout Mountain, Georgia to comply with this order; and the Court furthermore

ORDERS that the Nuisance Officer may schedule a Hearing to determine whether the Interested Parties are in compliance or non-compliance with this Court's Order.



BUDDY B. PRESLEY, Jr., JUDGE