

final
2-17-04

**CITY OF MCINTYRE
NUISANCE ORDINANCE**

WHEREAS, it is necessary to amend the Code of Ordinances, in order to revise the Ordinances pertaining to Nuisances and the abatement of nuisances in the City of McIntyre, Georgia.

NOW THEREFORE, under and by virtue of the power vested in the McIntyre City Council, under the Charter and police power of the City, the Council hereby ordains: That Nuisance Ordinance for the City of McIntyre read as follows:

ARTICLE I – NUISANCES

Sec. 10-56. Jurisdiction.

The Municipal Court of McIntyre shall have jurisdiction to try issues concerning the source and abatement of public nuisances within the geographical limits of the City in accordance with the provisions of Chapter 2 of Title 41 of the *Official Code of Georgia Annotated (O.C.G.A. 41-2-1. Et seq.)*

Sec. 10-57. Applicability.

The provisions of this Ordinance shall apply to residential, commercial, industrial, and business property, whether being occupied or not and whether being developed or not.

Sec. 10-58. Procedure for abatement of nuisances: service.

- (A) A proceeding to abate a public nuisance may be commenced under this chapter by the filing of a complaint in the name of the City against the respondent in the Municipal Court of McIntyre, specifically setting forth therein the facts of the alleged nuisance. Except when brought in the name of the City by a public officer thereof, private citizens may not have a public nuisance abated unless special injury can be shown. Upon the written petition of five (5) or more residents of the City, setting forth the special injuries alleged, a petition shall be filed in the name of the City of McIntyre, identifying therein the petitioners and injuries alleged. Where the alleged public nuisance involves a condition existing upon private property, the respondent shall be the owner(s) of such property, each person in lawful possession if not the owner, and any parties in interest, as hereafter defined.
- (B) Complaints or orders issued under this Chapter shall be served upon each named respondent, and a return of service signed by the serving agent shall be filed with the clerk of the municipal court. Service may be either personal or by leaving such copy at the respondent's place of residence with a person of responsible age. Service on city residents may be perfected by any police officer, or the building official charged with the investigation of complaints under this chapter.
- (C) If the respondent resides outside the city but within the State of Georgia, service shall be perfected by causing a copy of such complaint or orders to be served by the sheriff or any lawful deputy of the county of residence of such party. Nonresidents of this state shall be served by publishing once each week for two (2) successive weeks in the legal organ of Wilkinson County and posting a copy of the complaint or order in a conspicuous place on the premises affected by the complaint or order.

- (D) Where the address of such nonresident is unknown, a copy of such complaint or order shall be mailed to him by registered or certified mail.
- (E) In the event the respondent is a minor, an estate or an incapacitated person, the guardian or other personal representative shall be served in the manner hereinabove provided; however, if such party has no guardian or personal representative, service shall be perfected by personally serving the Probate Judge of Wilkinson County, who shall stand in the place of an protect the rights of such person or appoint a guardian ad litem for such person, as provided by law.
- (F) In the event the whereabouts of any owner or party in interest is unknown and the same cannot be ascertained by the petitioner I the exercise of reasonable diligence, the petitioner shall make an affidavit to that effect and service by publication, as described in subsection (C.) above, shall he sufficient. Where known, any person, firm or corporation holding itself out as an agent for the property involved shall be served in the manner provided herein.
- (G) At the time of filing a complaint or orders in the municipal court, a copy thereof shall also be filed in the office of the clerk of Superior Court of Wilkinson County on the *Lis Pendens* docket, and such filing shall have the same force and effect as other *Lis Pendens* notices provided by law; provided that any such complaint shall 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 in the office of the Clerk of the city of McIntyre.

Sec. 10-59. Definitions.

The following definitions shall apply in the enforcement and application of this Ordinance.

- (A) **Closing:** Securing and causing a dwelling, building or structure to be vacated.
- (B) **Drug Crime:** Any act which is a violation of Article 2 of *Chapter 13 of Title 16 of the Official Code of Georgia Annotated*, commonly referred to as the "Georgia Controlled Substances Act."
- (C) **Dwelling, building, or structure:** Any building or structure or part thereof and occupied for human habitation or commercial, industrial, or business uses or intended to be so used, and includes any outhouses and appurtenances belonging thereto or usually enjoyed therewith and also includes any building or structure of any design.
- (D) **Governing Body:** The Mayor and Council of the City of McIntyre, Georgia.
- (E) **Municipality:** The City of McIntyre, Georgia.
- (F) **Nuisance:** Any condition which tends to the immediate annoyance of the public in general and is manifestly injurious to the public health or safety, or tends greatly to corrupt the manners and morals of the public, including without limitation, the following:

- (1) 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, due to lack of adequate ventilation, light or sanitary facilities; or dilapidation, disrepair, structural defects, uncleanness, or their defects therein which increase the hazards of fire, accidents, or other casualties, or which are dangerous and injurious to the health, safety and welfare of the residents of this city, including vacant, dilapidated structures, or such structures in which drug crimes are being committed, for which a public necessary exists for the repair, closing or demolition of such structures;
 - (2) Any private property within the City on which there has been allowed to accumulate garbage, weeds, trash, junk, filth, abandoned vehicles, and other unsanitary or unsafe conditions which would present a public health hazard or nuisance to those persons living in the vicinity;
 - (3) Property on which there is kept or maintained dangerous or diseased animal(s) or fowl;
 - (4) The generation of smoke, fumes, or noxious odors from any property in sufficient amounts to become a danger or an annoyance to the public;
 - (5) Any building, dwelling, or place commonly known as a "blind tiger" where alcoholic beverages are sold in violation of law.
 - (6) Any other condition or conditions constituting a nuisance under state law.
- (G) **Owner:** The holder of the title in fee simple to the real estate and every mortgagee of record.
- (H) **Parties in interest:** Persons possession of such property and all individual associations and corporations who have an interest of record in the county where the property is located, including executors, administrators, guardians, and trustees, including Tax Commissioner of Wilkinson County, Georgia.
- (I) **Public Officer:** Those officers and employees of the City of McIntyre, Georgia, County of Wilkinson or State of Georgia, whose duties include code enforcement and inspections within this municipality, including, without limitation, the Chief of Police, City Clerk, the building or zoning official, the fire inspector, the Wilkinson County Health Inspector and the state fire marshal.
- (J) **Repair:** Closing a dwelling, building or structure or the cleaning or removal of debris, trash, garbage, and other materials present and accumulated which create a health or safety hazard in or about such dwelling, building or structure.

Sec. 10-60. Standards for determination of nuisances.

- (A) A finding of non-compliance of any building, fire, health, sanitation, or life safety code, regulation or ordinance now or hereafter adopted by the governing authority of this city shall constitute prima facie evidence that a public nuisance exists. Any written citation served upon a property owner by a public officer charged with code enforcement shall specify the code section deemed to be violated and state sufficient details to apprise the property owner of the basis for the citation.
- (B) Public officers charged with code enforcement shall have the following powers and duties:
- (1) To investigate the conditions existing on any private property within the city to determine which dwellings, buildings or structures are unfit for human habitation or for commercial, industrial or business use; provided, however, that no public officer shall enter into a secured structure without consent of the owner or tenant in possession unless he first obtains a warrant based upon probable cause.
 - (2) To delegate any of his functions and powers under this chapter to his employees as he deems necessary to carry out the purposes of this chapter.
- (C) In addition to specified code violations noticed, and without limiting the generality of the foregoing, the following conditions are subject to abatement:
- (1) Defects increasing the hazards of fire, accidents or other calamities, including improper storage of materials on the premises;
 - (2) Lack of adequate ventilation, light or sanitary facilities;
 - (3) Dilapidation and disrepair, including those structures which have been damaged by fire, wind or other causes such that thirty five (35%) percent or more of the external structure and roof have been destroyed or structural members weakened;
 - (4) Sanitation and general uncleanness, including improper keeping of pets and animals on the premises, or the improper disposal of human or animal wastes;
 - (5) Accumulations of trash, weeds having a height of twelve (12") inches or more, debris, junk, abandoned vehicles, filth, standing or stagnant water, and other unsafe conditions; and
 - (6) Vacant and unsecured dwellings, buildings, or structures or vacant, unsecured dwellings, buildings or structures in which drug crimes are being committed.

Sec. 10-61. Procedures for Hearings; findings by the Court; abatement.

- (A) Whenever a public officer issues a citation to a property owner as provided in this chapter, and the property owner fails to respond by taking the necessary action to correct the condition within ten (10) days of the service of the citation, the public officer shall notify the City Clerk, who shall forthwith cause to be filed a complaint in the name of the City of McIntyre seeking to abate the condition on grounds it constitutes a public nuisance. The complaint shall state all charges giving rise to such action, including a reference to the specific code, regulation or ordinance(s) deemed to be in violation, if any, and those facts known in support of the complaint. If the complaint is based upon the petition of five (5) or more residents of the City, it shall identify the petitioners and the specific injury alleged. The complaint shall be served upon the responding parties in the manner set forth in Sec 10-58 of this Ordinance, and shall be accompanied by a notice of the date of hearing before the municipal court, which date shall not be less than ten (10) days nor more than thirty (30) days after the date service is perfected. Continuances will only be granted for good cause shown.
- (B) At the hearing, the burden shall be upon the City to prove its complaint by competent evidence. The responding party(s) shall have the right to file an answer to the complaint and to appear in person or by counsel, to present evidence and to cross-examine the City's witnesses.
- (C) If after a hearing the Judge of the Municipal Court determines that a public nuisance exists, as defined by this chapter and Title 41, Chapter I and Chapter 2 of the Official Code of Georgia Annotated, he shall make his findings and conclusions of law and impose such order as required to assure the abatement of such nuisance, provided, however, the responding party shall be afforded a reasonable time in which to comply with the order of abatement. Costs may be imposed upon the respondent, which costs must be paid as a condition of any permit or license necessary to abate the nuisance, in addition to regular permit fees.
- (D) If the Court determines that a dwelling, building or structure is unfit for human occupation, or for current commercial, industrial or business use, or is vacant, dilapidated, or is used in connections with the commission of drug crimes, he shall state his findings and cause to be served upon the owner and parties in interest an order, as follows:
 - (1) If the repair, alteration or improvement of the dwelling, building or structure can be made at a reasonable cost in relation to the value of the dwelling, building or structure, an order requiring the owner or party(s) 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, close and secure the dwelling, building or structure as a human habitation; or
 - (2) If the repair, alteration or improvement of the dwelling, building or structure cannot be made at a reasonable cost in relation to the value of the dwelling, building or structure, an order requiring the owner or party(s) in interest, within the time specified in the order to remove or demolish such dwelling, building or structure.

In no event shall the court order the removal or demolition of any dwelling, building or structure except upon a finding based upon competent evidence, that the costs of repair, alteration or improvements thereof exceeds one-half (1/2) the value of such dwelling, building or structure will have when repaired to satisfy the minimum requirements of law; provided, however, nothing contained herein shall prevent the governing authority from exercising the power of eminent domain for the taking of such dwelling, building, or structure for public purposes.

- (E) If the owner or party(s) in interest fails to comply with an order to vacate, close and secure a dwelling, building or structure within the time specified therein, the City Clerk may cause the dwelling, building or structure to be vacated, closed and secured and may post conspicuously thereon a placard with the following words:

**‘THIS BUILDING IS UNFIT FOR HUMAN HABITATION
OR COMMERCIAL, INDUSTRIAL OR BUSINESS USE.
THE USE OR OCCUPANCY OF THIS BUILDING FOR HUMAN
HABITATION OR FOR COMMERCIAL, INDUSTRIAL OR
BUSINESS USE IS STRICTLY PROHIBITED AND UNLAWFUL.**

BY ORDER OF THE CITY OF MCINTYRE, GEORGIA”

If the owner of the party(s) in interest fail to comply with an order to remove and demolish a dwelling, building or structure within the time specified therein, the City Clerk may cause the demolition thereof; provided, however, that such power may not be exercised until the governing authority of the City shall have, by resolution, directed the City Clerk to proceed.

- (F) The cost of bringing a complaint pursuant to this Ordinance, together with any costs reasonably incurred by the City in abatement of a public nuisance after determination thereof by the municipal court, shall be a lien against the real estate upon which such cost was incurred. Such lien shall attach to the real estate upon the filing of an itemized statement of the total sum of the costs by the City Clerk in the office of the City Clerk on a lien docket maintained for such purposes. If a dwelling, building or structure is removed or demolished by the City, the City Clerk shall sell in a commercially reasonable manner all salvageable materials therefrom and deduct the proceeds from the costs of demolition. Any surplus of proceeds over costs shall be paid to the owner and parties in interest. The lien shall also be recorded in the office of the Clerk of the Superior Court of Wilkinson County, Georgia, on the lien docket and/or General Execution Docket maintained for such purposes.
- (G) The City may enforce its lien in the following manner:
- (1) The owner or parties in interest shall be allowed to satisfy the amount due on such lien by paying to the City, within 30 days after the perfection of such lien, a sum o money equal to twenty-five (25%) percent of the total amount due and by further paying the remaining balance due on such lien, together with interest at the rate of seven (7) percent per annum, in three (3) equal annual installments, each of which shall become due and payable on the anniversary date of the initial payment;

- (2) Should the property upon which such lien is perfected be sold, transferred or conveyed by the owner or parties in interest at any time prior to the termination of the three year period, then the entire balance due on such lien shall be due and payable to the City; and
- (3) Should the amount due on such lien, or any portion thereof, not be paid as herein provided or be unpaid after the passage of the three year period, the City may enforce the collection of the total amount due in the same manner as provided in *Official Code of Georgia Annotated 48-5-358* and other applicable tax statutes; provided however, this procedure shall be subject to the right or redemption by any person having any right, title or interest in or lien upon the property, as provided by *Article 3 of Chapter 4 of Title 48 of the Official Code of Georgia Annotated*.
- (G) Nothing contained herein shall prevent or prohibit the municipal court from punishing by its contempt powers any owner or parties in interest that willfully fail or refuse to comply with an order entered in accordance with this chapter.

Sec. 10-62. Effective Date.

This Ordinance amendment shall become effective upon its adoption by the City Council as provided in the Charter and Code of Ordinances. All ordinances or parts thereof in conflict with this Ordinance amendment are hereby repealed.