

O-042004a

**AN ORDINANCE TO REGULATE
THE ABATEMENT OF NUISANCES IN NEWTON COUNTY, GEORGIA;
TO REPEAL CONFLICTING PROVISIONS; TO PROVIDE FOR AN
EFFECTIVE DATE; AND FOR OTHER PURPOSES**

BE IT ORDAINED by the Board of Commissioners, Newton County, Georgia, and by the authority of the same, that Chapter 33 of Division II of the Code of Newton County Georgia, 2001, entitled Nuisances is hereby deleted in its entirety and the following Ordinance is adopted in lieu thereof:

Section 33-101 Title

This Ordinance shall be known and may be cited as "The Nuisance Abatement Ordinance of Newton County, Georgia."

Section 33-102 Purpose and Findings

The purpose of this Ordinance is to establish uniform regulations and procedures for the determination and remedy of a nuisance.

It is found and declared that in Newton County, Georgia 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 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 in Newton County; or general nuisance law and which constitute a hazard to the health, safety, and welfare of the people of this state; and that a public necessity exists for the repair, closing, or demolition of such dwellings, buildings, or structures.

It is found and declared that in Newton County, Georgia, 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 this state 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 there exists in Newton County a dwelling, building, or structure which is 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 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 Newton County, or

vacant, dilapidated dwellings, buildings, or structures, Newton County shall exercise its police power to repair, close, or demolish the aforesaid dwellings, buildings, or structures in the manner provided in this Ordinance as authorized by O.C.G.A. § 41-2-7 to § 41-2-17.

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.

Section 33-103 Definitions

Except as otherwise provided herein, all words shall have the customary dictionary meaning. The present tense includes the future tense; the singular shall include the plural, and the plural the singular; and the use of masculine or feminine gender is for convenience only, and the use of each shall include the other.

As used in the Ordinance, the term:

1. **Applicable codes** means (A) any optional housing or abatement standard provided in Chapter 2 of Title 8, Official Code of Georgia, 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, Official Code of Georgia; and (C) any building codes adopted by local ordinance prior to October 1, 1991, or the minimum standard codes provided in Chapter 2 of Title 8, Official Code of Georgia, after October 1, 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.
2. **Building Official**
The person or persons designated by the Newton County Planning Commission to be responsible for the administrative functions required in connection with the enforcement of the Development Regulations of Newton County.
3. **Closing** means securing and causing a dwelling, building or structure to be vacated and secured against unauthorized entry.
4. **Dwellings, Buildings, or Structures** means any building or structure or part thereof used and occupied for human habitation, commercial, industrial, or business uses, or intended to be so used, and includes any outhouses and appurtenances belonging thereto or usually enjoyed thereto or usually enjoyed therewith and also includes any building or structure of

any design. However, 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.

5. **Governing Body** means the Board of Commissioners of Newton County, Georgia.
6. **Owner** means the holder of the title in fee simple and every mortgagee of record.
7. **Parties in Interest** means
 - (A) Persons in possession of said property and premises;
 - (B) Persons having of record Newton County 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.
8. **Public Authority** means any housing authority or any officer who is in charge of any department or branch of the government of the County or state relating to health, fire, or building regulations or other activities concerning dwellings, buildings, or structures in Newton County.
9. **Public Officer** means the officer or officers who are authorized by O.C.G.A. § 41-2-7 through § 41-2-17 and by this Ordinance to exercise the powers prescribed by such ordinances or any agent of such officer or officers.
10. **Repair** means closing a dwelling, building, or structure or 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.
11. **Resident** means any person residing in Newton County on or before the date on which the alleged nuisance arose.

Section 33-104 Duty of Owner of Dwelling, Building, Structure or Property

Every owner of every dwelling, building, structure, or property within Newton County, Georgia, has the duty to construct and maintain such dwelling, building, structure, or property in conformance with the applicable Newton County, Georgia 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.

Section 33-105 Designation and Authority of Building Official

1. **Designation of Building Official.** The Building Official is designated and appointed to exercise the powers presented by this Ordinance.
2. **Powers of Enforcement Authorized.** The Building Official is hereby authorized to exercise such powers as may be necessary or convenient to carry out and effectuate the purpose and provisions of this Ordinance and O.C.G.A. § 41-2-7 to § 41-2-17, including the following additional powers:
 - A. To investigate the dwelling conditions in the unincorporated area of the county 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;
 - 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 deems necessary to carry out the purposes of this Ordinances;
 - E. To delegate any of his functions and powers under this Ordinance to such officers and agents as he may designate; and
 - F. To consult with any engineers or other qualified professionals in carrying out the functions and powers of this Ordinance.
3. **Standards for Determining Unfitness for Habitation.** The Building Official 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 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 Newton County, Georgia; such

conditions may 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; and
- F. Uncleanliness.

Section 33-106 Enforcement Procedures

1. **Filing of Request; Investigation.** Whenever it appears to the Building Official (on his own motion) or whenever a request is filed with the Building Official by a public authority or by at least five residents of the unincorporated area of the county if the property in question is located in the unincorporated area of the county 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; or constitutes an endangerment to the public health or safety as a result of unsanitary or unsafe conditions, the Building Official shall make an investigation or inspection of the specific dwelling, building, structure, or property.

2. **Issuance of Thirty-Day Notice.** If the Building Official'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; or constitutes an endangerment to the public health or safety as a result of unsanitary or unsafe conditions, the Building Official shall notify the Board of Commissioners of such finding and shall issue and cause to be served via certified mail upon the owner and any parties in interest notice that the dwelling, building, structure, or property is unfit for human habitation or for commercial, industrial, or business use and not in compliance with applicable codes; or constitutes an endangerment to the public health or safety as a result of unsanitary or unsafe conditions. The notice shall instruct the owner to repair, alter, improve, vacate and close or demolish (in compliance Section 4-100 of the Moving, Placement, or Removal of Buildings Ordinance of Newton County, Georgia) said dwelling, building, structure, or property within 30 days. If the dwelling, building, structure or property is not repaired, altered, improved, vacated and closed or demolished within 30 days, the Building Official is authorized to file a complaint with the Magistrate Court as provided below.

3. **Re-inspection; Filing of Complaint.** The Building Official shall re-inspect the specific dwelling, building, structure, or property upon the expiration of the 30-day time period provided in the initial notice. If the Building Official's re-inspection identifies that the dwelling, building, structure, or property continues to be unfit for human habitation or for commercial, industrial, or business use and not in compliance with applicable codes; or constitutes an endangerment to the public health or safety as a result of unsanitary or unsafe conditions, the Building Official may file 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.
4. **Contents of Complaint.** The complaint shall:
 - a. identify the subject real property by appropriate street address and official tax map reference;
 - b. identify the owner and parties in interest;
 - c. state with particularity the factual basis for the action; and
 - d. contain a statement of the action sought by the public officer to abate the alleged nuisance. Unless specifically authorized by the Board of Commissioners, demolition shall not be sought for any dwelling, building, structure or property that is unoccupied or has exceptional historical, architectural or social uniqueness or significance.
5. **Service of Complaint.** The complaint shall be served as provided in O.C.G.A. § 41-2-12.
6. **Issuance of Summons; Hearing.** The summons shall notify the owner and parties in interest that a hearing will be held before the Magistrate Court, 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 15 days nor more than 45 days after the filing of said complaint. 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.
7. **Issuance of Order by Court.** If, after such notice and hearing, the court 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 and not in compliance with applicable codes, 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:

- 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 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 applicable codes relevant to the cited violation; or
- B. If the repair, alteration, or improvement of the said 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 vacate and close or demolish and remove such dwelling, building, or structure and all debris from the property.

For the purposes of this section, the court shall determine 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, Official Code of Georgia, 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 Newton County, Georgia.

- 8. **Noncompliance with Order.** If the owner fails to comply with an order to repair, vacate and close or demolish the dwelling, building, or structure, the Building Official or his designee may cause such dwelling, building, or structure to be repaired, altered, or improved or to be vacated and closed or demolished; and the Building Official or his designee 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 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."

9. **Demolition Procedure.** If the Building Official has the structure demolished, a 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 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 Building Official and Newton County 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.

10. **Recovery of Costs of Abatement.** The amount of the cost of repair, closure or 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.

Said lien 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 Newton County and shall relate back to the date of the filing of the lis pendens notice required under O.C.G.A. § 41-2-12(g). The clerk of superior court shall record and index such certified copy of the order in the deed records of Newton 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 Building Official 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 Chapter 4 of Title 48, Official Code of Georgia; 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 Newton County. 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.

The Board of Commissioners may waive and release any such lien imposed on property upon the owner of such property entering into a contract with the county 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.

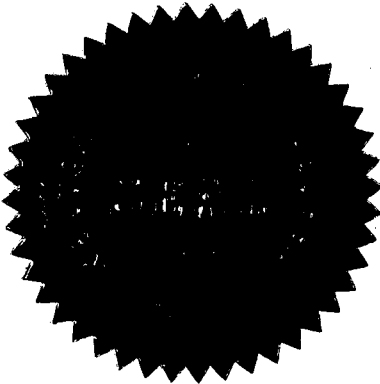
11. **Appeal; Injunction.** Review of a court order requiring the repair, alteration, improvement, closure or demolition of a dwelling, building, or structure shall be by direct appeal to the superior court under O.C.G.A. § 5-3-29.

Any person affected by an order issued by the Building Official may petition to the superior court for an injunction restraining the Building Official from carrying out the provisions of the order and the court may, upon such petition, issue a temporary injunction restraining the Building Official pending the final disposition of the cause; provided, however, that such person shall present such petition to the court within 15 days of the posting and service of the order of the public officer. De novo hearings shall be had by the court on petitions within 20 days. The court shall hear and determine the issues raised and shall enter such final order or decree as law and justice may require; provided however, that it shall not be necessary to file bond in any amount before obtaining a temporary injunction under this Ordinance.

Section 33-107 Generally

1. **Repeal of conflicting provisions.** All ordinances or regulations or parts thereof in conflict herewith are hereby repealed.
2. **Effective date.** This Ordinance shall be in force and take effect on April 20, 2004.

SO ORDAINED, this 20th day of April 2004.



Newton County Board of Commissioners

By: *Aaron Varner*
Aaron Varner, Chairman

Attest: *Jackie Smith*
Jackie Smith, Clerk

**NEWTON COUNTY BOARD OF COMMISSIONERS
REGULAR MEETING
April 20, 2004**

O-042004a Abatement of Nuisance Ordinance

- Board stressed that the county is not leaning towards a housing code allowing inspectors to go into the older homes and trying to make people bring them up to today's standards.
- Ordinance addresses houses that have been moved into county and not brought up to building code
- Concerned about houses being started and never finished.
- State law changed drastically
- Consult engineers and other qualified staff.
- Requires BOC approval of demolition of structure.

Motion: To adopt O-042004a Abatement of Nuisance Ordinance as presented by the County Attorney's office.

Proposed by: Commissioner Mort Ewing, District One

Second: Commissioner Ester Fleming, Jr., District Three

Motion Carried

Note: The original ordinance is contained in file number O-042004a, incorporated herein by reference and expressly made a part of these minutes.