

AN ORDINANCE TO REGULATE NUISANCES AND NUISANCE ABATEMENT

THE COUNCIL OF THE CITY OF COMER HEREBY ORDAINS:

**WHEREAS**, the Mayor and City Council have determined that it is in the best interests of and consistent with the convenience and necessity of the City of Comer to amend its city code, the following action is taken:

**THEREFORE**, the Mayor and City Council ordain as follows:

SECTION 1. THE CODE OF THE CITY OF COMER, GEORGIA, IS HEREBY AMENDED BY DELETING SECTION 33-101 AND BY ADDING NEW SECTIONS 33-101 AND 33-106 THROUGH 33-110, TO READ AS FOLLOWS:

SECTION 2

Section 33-101 **Definitions**

Nuisance shall mean anything which causes continuing hurt, inconvenience, or damage to another, provided that the hurt, inconvenience, or damage complained of shall not be fanciful or such as would affect only one of extraordinary sensitivity but rather such as would affect an ordinary reasonable person; the fact that the act done may be otherwise lawful shall not keep it from being a nuisance.

NOTE; Nuisances are defined and classified under state law. See sections 41-1-1, 41-1-2 O.C.G.A.

For the purposes of this chapter, the following words shall have the meanings respectively ascribed below:

1. **Nuisance.** Anything which causes hurt, inconvenience, or damage to another, provided that the hurt, inconvenience, or damage complained of shall not be fanciful, or such as would affect only one of fastidious taste, but rather such as would affect an ordinary reasonable man; and the fact that the act done may otherwise be lawful shall not keep it from being a nuisance.
2. **Nuisance per se.** An act, occupation, or structure which is a nuisance at all times and under any circumstances, regardless of location or surroundings.
3. **Nuisance, Private.** A nuisance limited in its injurious effects to one or a few individuals.
4. **Nuisance, Public.** A nuisance which damages all persons who come within the sphere of its operation, though it may vary in its effects on individuals.
5. All Definitions in O.C.G.A. § 41-2-8, and as may hereafter be amended, are incorporated herein by reference.

## SECTION 3

### **Section 33-106 Proceedings to Abate Generally**

Any nuisance existing within the corporate limits of this city, except for a nuisance hereinafter excepted, shall be abated in the manner set forth in this chapter.

1. **Initiation.** Proceedings to abate a nuisance, whether public or private, shall be initiated by the filing of a complaint with the City Clerk/Treasurer, which complaint shall state the nature and location of the nuisance and the name and address of the complainant or complainants. In the case of a private nuisance, the complaint shall be filed by the person or persons injured by the nuisance; in the case of a public nuisance, the complaint shall be filed on behalf of the public by the city attorney or District Attorney, or by a private citizen specially injured by the nuisance.
2. **Determination of Nuisance Subject to Abatement**  
The public officer appointed hereunder may determine, under existing conditions, if a dwelling, building, or structure constitutes a nuisance subject to abatement as set forth in O.C.G.A. § 41-2-10(a) and (b).
3. **Notice of Hearing.** Upon the filing of a complaint as hereinabove provided, the City Clerk/Treasurer shall issue a notice directed to the owner of the premises upon which the nuisance complained of is located and, if the person maintaining the same be a different person from the owner, then also to the person maintaining the nuisance, calling on such person to show cause, either personally or by attorney, at the time and place directed by the City Clerk/Treasurer, why such activity alleged to be a nuisance should not be ordered abated and removed by the Judge of the Municipal Court. Such notice shall be served at least ten (10) days and not more than thirty (30) days prior to the date set for the hearing by any authorized officer of the city, and shall be made either personally or by leaving a copy at the party's most well-known place of abode.

A copy of such notice shall also be mailed to the complainant or complainants.

Nonresidents of the State of Georgia shall be served by posting a copy of such complaint or orders 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.

4. **Order of Abatement.** If, after hearing all the evidence, the Judge

of the Municipal Court should decide that the activity complained of is a nuisance, the Judge shall issue an order. The order shall specify within what time it is to be abated by the defendant. If not abated within the specified time, the Judge shall issue a writ directed to the Police Chief or any member of the police force, commanding that the nuisance be abated. A copy of such order of abatement shall be served on the party or parties maintaining the nuisance. If the city removes the nuisance the expenses incurred in the removal shall be paid by the owner.

5. **Effect of Non-compliance.** In the event of a refusal to comply with the order of abatement issued by the Judge of the Municipal Court, the person or persons maintaining the nuisance shall be subject to arrest for violation of state law.
6. **Penalty.** Any person who shall erect or continue after notice to abate a nuisance which tends to annoy the community, injure the health of the citizens in general or corrupt the public morals shall be guilty of a misdemeanor.

#### SECTION 4

##### **Section 33-107 Powers of Public Officer**

The public officer appointed hereunder may exercise such powers as may be necessary or convenient to carry out and effectuate the purpose and provisions of Official Code of Georgia Sections 41-2-7 through 41-2-17, including the following powers in addition to others granted in Code Sections 41-2-7 through 41-2-10 and Code Sections 41-2-12 through 41-2-17:

1. To investigate the dwelling conditions in the municipality 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 as he deems necessary to carry out the purposes of the ordinances; and
5. To delegate any of his functions and powers under the ordinance to such officers and agents as he may designate.

The Comer Building Inspector is appointed as the public officer for the determination of what constitutes a nuisance subject to abatement, and is authorized to undertake investigation, prosecution, and all other actions necessary on behalf of the City of Comer to abate nuisances.

## SECTION 5

### **Section 33-108. Unfit Buildings or Structures.**

The City Council finds that dwelling, building or structure conditions of the character described in O.C.G.A. Section 41-2-7 exist within the corporate limits of Comer. The construction or maintenance of any dwelling, building, structure, or property in violation of this ordinance or in violation of Chapter 36 of the Comer Code of Ordinances, State Minimum Standard Construction Codes, shall constitute a public nuisance.

## SECTION 6

### **Section 33-109 Procedures Relating to Unfit Buildings or Structures**

For any proceedings relating to the dwellings, buildings, or structures within the City which are unfit for human habitation or commercial, industrial, or business uses and not in compliance with applicable codes, which are vacant and being used in connection with the commission of drug crimes, or which constitute an endangerment to the public health or safety as a result of unsanitary or unsafe conditions, the following provisions shall apply:

1. It is the duty of the owner of every dwelling, building, structure, or property within the jurisdiction to construct and maintain such dwelling, building, structure, or property in conformance with applicable codes in force within the jurisdiction, or such 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;
2. The City Clerk or Building Inspector, or any other such public officer designated or appointed by ordinance, shall exercise the powers prescribed by this ordinance;
3. Whenever a request is filed with the public officer by a public authority or by at least five residents of the municipality 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 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, at a date and time certain and at a place within the 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;

4. 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:

- 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 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

**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 demolish and remove such dwelling, building or structure and all debris from the property.

For purposes of this ordinance, 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 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, 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;

5. 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.”;**

6. 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 and;

7. The amount of the cost of demolition, including all court costs, appraisal fees, administrative costs incurred by the City or 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.
8. The lien provided for in paragraph 33-109.7 of this ordinance 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 Chapter 4 of Title 48; provided, however that the limitation of Code Section 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 municipality 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.
9. Where the remittance is to a municipality, the tax commissioner shall collect and retain an amount equal to the cost of administering a lien authorized by O.C.G.A. Title 41, Chapter 2 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.
10. The governing authority may waive and release any such lien imposed on property upon the owner of such property entering into a contract with the municipality 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. 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.

## SECTION 7

### **Section 33-110 Public Health Hazard or General Nuisance on Private Property**

All provisions of this section shall be applied to private property where an accumulation of weeds, trash, junk, filth, and other unsanitary or unsafe conditions shall create a public health hazard or a general nuisance to those persons residing in the vicinity. A finding by any governmental health department, health officer, or building inspector that such property is a health or safety hazard shall constitute prima-facie evidence that said property is in violation of this section and O.C.G.A. §§ 41-2-8 through 41-2-17.

## SECTION 8 Liability

Neither the approval of any action under the provisions of this ordinance, nor the compliance with provisions of this ordinance, shall relieve any person from the responsibility for damage to any person or property otherwise imposed by law nor impose any liability upon the Mayor or City Council for damage to any person or property.

## SECTION 9 Conflicts between Specific and General Provisions.

Where there is an apparent conflict in this Ordinance between specific and general provisions, it is the intention hereof that the specific shall control.

## SECTION 10 Severability.

If any section, provision, or clause of any part of this Ordinance shall be declared invalid or unconstitutional, or if the provisions of any part of this Ordinance as applied to any particular situation or set of circumstances shall be declared invalid or unconstitutional, such individuality shall not be construed to affect the portions of this Ordinance not so held to be invalid, or the application of this Ordinance to other circumstances not so held to be invalid. It is hereby declared as the intent that this Ordinance would have been adopted had such invalid portion not been included herein.

## SECTION 11 Repeal of Conflicting Provisions.

All ordinances or parts of ordinances in conflict with this ordinance, and

not preserved hereby, are hereby repealed.

SECTION 12 Effective Date

This Ordinance shall become effective immediately after its passage and approval in the manner prescribed by law.

Passed and approved this 7th day of May, 2002, at a meeting of the Mayor and Council of the City of Comer, Georgia.

On File

William E. Burroughs, Mayor, City of

Comer

Attest:

On File

Stephen H Sorrells, City Clerk

Approved as to Legal Form:

On File

Victor Y. Johnson, City Attorney